UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM HAUGHEY, Plaintiff, -against- THE COUNTY OF PUTNAM; THE TOWN OF CARMEL; INSPECTOR ROBERT GEOGHEGAN; ROBERT EFFEREN; CHIEF DARYL JOHNSON; DOUGH CASEY; PO JUSTIN FISCHER; DETECTIVE MICHAEL NAGLE; SERGEANT ROBERT BEHAN; SERGEANT JOHN DEARMAN; JOSEPH CHARBONNEAU; JOHN DOES 1-5; and ANTHONY F. PORTO, SR., ANTHONY M. PORTO, JR., SMALLEY'S INN & RESTAURANT aka SMALLEYS INN, TNT CAFE INC., operating under the trade name Smalley's Inn and/or Smalley's Inn Mainstreet Cafe, Defendants.	**SECOND AMENDED COMPLAINT** 18 CV 2861 (KBF) (Jury Trial Demanded)

Plaintiff William Haughey, by his attorney RITA DAVE, ESQ., respectfully alleges upon information and belief, the following:

NATURE OF ACTION

1. This civil rights action arises from the wrongful arrest, prosecution, and conviction of William Haughey, an innocent, hardworking construction worker who was sentenced to 10 years in prison after a local business owner with

strong ties to law enforcements officials, conspired with them to frame Haughey for starting a fire in a tavern in Carmel New York.

2. In 2016, the Putnam County District Attorney's Office reinvestigated the case and moved to overturn Haughey's conviction. The District Attorney found that Haughey was actually innocent of the charges, and that it had been impossible to conclude the fire was an arson. To the contrary, the District Attorney concluded the fire was in all likelihood an electrical one caused by faulty electrical wiring, which the century-old tavern had been cited for shortly before the fire.

3. Haughey was released from prison in May 2016. By then, however, he had spent over eight grueling years in prison for a "crime" that never took place, suffered extraordinary mental and emotional damages, was publicly shamed and humiliated as a criminal, and lost some of the best years of his life.

4. Defendants' horrendous and unlawful conduct violated New York and Federal law and entitles Haughey to substantial compensatory and punitive damages under 42 U.S.C. § 1983, a federal statute authorizing a civil rights lawsuit based on such conduct.

JURISDICTION AND VENUE

5. This action arises under the U.S. Constitution and 42 U.S.C. § 1983. This Court has subject matter jurisdiction pursuant to 28 U.S.C §§ 1331, 1343(3).

6. Under 28 U.S.C § 1391(b) and (c), venue is proper in the Southern District of New York because the County of Putnam, Town of Carmel and other defendants are situated or reside in that Judicial District.

7. On August 4, 2016, Haughey filed a timely notice of claim with the Town of Carmel and County of Putnam in accordance with law. On October 20, 2016, attorneys for the County of Putnam deposed Haughey, and on October 21, 2016, attorneys for the Town of Carmel deposed Haughey. More than 90 days elapsed with neither municipality settling Haughey's claim.

PARTIES

8. Plaintiff William Haughey ("PLAINTIFF") is a citizen of the United States, currently residing in the State of Florida. At all relevant times to this complaint, he was a resident of New York.

9. Defendant County of Putnam ("PUTNAM") is a municipal corporation within the State of New York. At all relevant times, PUTNAM employed the personnel identified in the acts underlying this lawsuit and maintained the Putnam County Bureau of Emergency Services, Putnam County Fire Department, and Putnam Department of Public Safety. Under § 53 of the County Law, PUTNAM is liable for the torts of its employees.

10. Defendant Town of Carmel ("CARMEL") is a municipal corporation in PUTNAM. At all times relevant to this lawsuit, CARMEL employed the

persons identified in the acts underlying this lawsuit and maintained the Carmel Police Department and Carmel Fire Department. Under § 65 and 67 of the Town Law, CARMEL is liable for the torts of its employees.

11. Defendant Robert Geoghegan ("INSP. GEOGHEGAN") was and is a fire inspector for PUTNAM.

12. Defendant Robert Efferen ("INSP. EFFEREN") was and is a fire inspector for PUTNAM.

13. Defendant Daryl Johnson ("CHIEF JOHNSON") was and is the Chief of the Carmel Fire Department.

14. Defendant Dough Casey ("CASEY") was and is an employee of the Putnam County Fire Department.

15. Defendant Michael Nagel was and is a detective for the Carmel Police Department ("DET. NAGEL").

16. Defendant Robert Behan was and is a Sergeant employed by the Carmel Police Department ("SGT. BEHAN").

17. Defendant John Dearman was and is a Sergeant employed by the Carmel Police Department ("SGT. DEARMAN").

18. Defendant Justin Fischer ("PO FISCHER") is a police officer for the Carmel Police Department.

19. Defendant Joseph Charbonneau ("CHARBONNEAU") is a Town Attorney for the City of Carmel.

20. Defendants JOHN DOES 1-5 ("DOE 1-5") were at all times relevant to this complaint, duly appointed and acting employees of PUTNAM and/or CARMEL.

21. Defendants Anthony F. Porto, Sr. and Anthony M. Porto, Jr. ("THE PORTOS") were and are the owners of the Smalley's Inn, a bar located in Carmel, New York. Defendants Smalley's Inn & Restaurant, aka, Smalley's Inn, TNT Café, Inc., operating under the trade name Smalley's Inn and/or Smalley's Inn Mainstreet ("CORPORATE DEFENDANTS"), are business entities owned, operated, and/or controlled by the PORTOS, and through which the PORTOS committed some of the wrongs complained of, and which, upon information and belief, were unduly enriched through the PORTOS and their own knowing fraud, and filing of false insurance claims defaming and injuring PLAINTIFF.

22. At all times relevant to this complaint, all defendants acted under the color of state law, or with those who acted under the color of state law.

FACTUAL BACKGROUND

A. As Plaintiff Enjoys A Night Out At Local Tavern, An Electrical Issue At The Tavern Causes A Small Fire In The Bathroom Ceiling

23. On March 10, 2007, PLAINTIFF was one of several patrons socializing in Smalley's Inn & Restaurant, a local tavern in Carmel, New York. The PORTOS owned the Inn.

24. In the late night hours, an electrical issue caused a small fire in the bathroom ceiling.

25. PLAINTIFF and several other good Samaritans, smelling smoke, ran into the bathroom, quickly located and extinguished the fire, removed burning and charred papers from the ceiling, and spared the tavern of any serious damage.

26. That a fire occurred in the bathroom ceiling was unremarkable: the Inn dates back to the 1800's and at the time of the fire its electrical system used antiquated fuse boxes.

27. Old newspapers had been stuffed into the walls and ceiling of the Inn for insulation, and shortly before the fire at issue in PLAINTIFF's case, another electrical fire had occurred at the Inn when old wiring melted away and started a fire.

28. Moreover, just months prior to the fire in PLAINTIFF's case, The New York State Board of Fire Underwriters, the official electrical inspection agency for more than 900 municipalities throughout New York State, had inspected the Inn and cited it for multiple electrical code violations.

29. That Board of Fire Underwriters directed the Inn to update its electrical system in accordance with the New York State Building and Electrical Code.

30. Nevertheless, at all time relevant to PLAINTIFF'S case, the PORTOS failed to make those required updates to the Inn's electrical system.

B. The Day After The Fire, The Inn's Owner, Who Held A Grudge Against Plaintiff, Makes A False Complaint To Police Accusing Plaintiff Of Starting The Fire

31. The day after the fire, the Inn's owner, the PORTOS, seized upon PLAINTIFF's kind deed in helping to extinguish the fire, as a basis to have him falsely arrested on arson charges.

32. At the time, the PORTOS and his family were prominent business owners in CARMEL with close ties to the law enforcement community there.

33. Moreover, at the time, the PORTOS held a grudge against PLAINTIFF because PLAINTIFF had been renting an apartment from one of the PORTOS' close friends and business partners, and PLAINTIFF and the business partner were on the verge of litigation over PLAINTIFF's tenancy.

34. On March 11, 2007, the PORTOS called Carmel Police Department and reported that PLAINTIFF had intentionally set the fire in the bathroom ceiling.

35. The PORTOS's complaint was blatantly false.

36. Neither the PORTOS nor anyone else observed PLAINTIFF start the fire.

37. Moreover, the PORTOS, initially unaware of the extent of the fire damage, had an incentive to have the fire designated an arson for insurance

purposes as an arson would not be attributable to the Inn's failure to update its electrical system.

C. Police Respond To The Inn And Aid The Portos In Having Plaintiff Falsely Arrested For Arson

38. Within hours of the PORTOS' call to police, DET. NAGLE arrived at the Inn and spoke with the PORTOS.

39. The PORTOS informed DET. NAGLE that PLAINTIFF had started the fire in the bathroom.

40. After speaking with the PORTOS, DET. NAGLE requested the assistance of the Carmel Fire Department and Putnam County Bureau of Emergency Services.

41. Among those who responded pursuant to DET. NAGLE's request were CHIEF JOHNSON, INSP. GEOGHEGAN, ROBERT EFFEREN, PO FISCHER, CASEY, and DOES 1-5, each of whom knew the PORTOS and their family, and were aware of the status they held in the community.

42. At the time the above individuals responded, New York law placed on CHIEF JOHNSON the legal responsibility for determining whether the fire was an arson and/or incendiary.

43. Specifically, New York General Municipal Law § 204-d, entitled "Duties of the Fire Chief," explicitly provided that "[t]he fire chief of any fire department or company shall, in addition to any other duties assigned to him

by law or contract, to the extent reasonably possible *determine or cause to be determined the cause of each fire* … which the fire department or company has been called to suppress" and to "contact[] the appropriate investigatory authority if he has reason to believe the fire … is of incendiary or suspicious origin."

44. CHIEF JOHNSON's responsibility for being the ultimate decision maker with respect to the nature of the cause of the fire was also recognized by the Putnam County Bureau of Emergency Services.

45. Specifically, Robert McMahon, the Commissioner of the Putnam County Bureau of Emergency Services at all times relevant to this complaint, acknowledged that the Putnam County Bureau of Emergency Services "simply assists[s] the fire chief in his determination as whether the fire, in his opinion, was suspicious, incendiary, or accidental." Letter of Robert McMahon to William Haughey, March 12, 2009 (Exhibit A).

46. McMahon further acknowledged that the Putnam County Bureau of Emergency Services "Fire Investigators are a tool for the Fire Chief. It is the Fire Chief who is responsible for determining the cause and origin of a fire. The Investigators simply help the Chief make that determination," and that the Putnam County Bureau of Emergency Services "really do[es] not have a say or an obligation to find out how the fire started." Letter of Robert McMahon to William Haughey, March 29, 2011 (Exhibit B).

47. At the scene, DET. NAGLE immediately colored the fire investigation by informing the responding officials that, in accordance with the PORTOS's narrative, PLAINTIFF had set the fire in the bathroom.

48. Moreover, DET. NAGLE informed the responding officials that witnesses had informed him that PLAINTIFF had placed paper towels between the drop ceiling and the ceiling and lit the paper on fire.

49. DET. NAGLE's representation in this regard was false. As previously stated, there were no eyewitnesses to how the fire began and no one gave DET. NAGLE any such statement.

50. Taking the cue from the PORTOS and DET. NAGLE, CHIEF JOHNSON, INSP. GEOGHEGAN (a former police officer), INSP. EFFEREN, and DOES 1-5, then conducted an invalid, incomplete, reckless, grossly negligent, and intentionally misleading fire investigation and falsely took the position that the fire did not have an electrical or accidental cause, and thus an arson had occurred.

51. Defendants' conduct violated the most basic principles of fire investigation, egregiously deviating from accepted fire investigation protocols and demonstrating an intentional or reckless disregard for proper procedures. Defendants' "investigation," by its very nature, made it *impossible* to determine whether an arson had occurred as opposed to whether the fire had an electrical or accidental origin, as:

(a) The fire investigation did not include an examination of a smoke eater that was in the bathroom ceiling. The smoke eater is an electrical device that was supposed to prevent cigarette smoke from tripping the fire alarm, and as an electrical device, it could have been the source of the fire, and THE PORTOS disposed of the smoke eater before police could examine it. *This made it impossible to exclude an electrical source from being the cause of the fire*;

(b) The investigation did not include an examination of the entire area above the ceiling of the bathroom where witnesses saw the fire, to determine if there was any connection between the smoke eater that was in that area and the fire;

(c) Despite two witnesses informing the police that they saw flames emanating from the vent above the bathroom door, *which provided the exhaust for the smoke eater*, the vent was not inspected;

(d) The electrical system in the Inn was not examined despite the fact that just a few months before the fire in this case, faulty electrical wiring in the Inn had caused another fire there;

(e) The investigation did not account for the charred wood noted by witnesses, charring that could not have occurred in the short period between PLAINTIFF entering the bathroom and a customer smelling smoke; the charring suggested that the fire was burning *before* PLAINTIFF had even entered the bathroom, and thus he was not the cause of it;

(f) The investigation did not examine the floor above the fire, which sustained the bulk of the damage, and which was consistent with the smoke eater causing the fire; and

(g) The fact that papers were removed from the ceiling when the fire was extinguished indicated that the fire had ignited the paper rather the paper igniting the fire. That paper is much easier to burn and would have been consumed in its entirety, like starting a fire in a fireplace with newspaper, had it been the originating point of the fire.

52. Based on the above, it was impossible for defendants to legitimately conclude an arson had occurred.

53. Moreover, each defendant participating in the fire investigation and those on the scene were aware of the above.

D. Defendants Falsely Arrest Plaintiff And Create Several False Reports Representing The Fire Was An Arson And All Electrical And Accidental Causes For It Had Been Eliminated

54. Despite the total lack of evidence to conclude an arson occurred, on March 10, 2007, SGT. DEARMAN, PO FISHER, and DET. NAGLE, with the consent, aid, and under instructions from all other individual defendants, placed PLAINTIFF under arrest for arson.

55. Additionally, the individual defendants, collectively, acting in concert, aiding and abetting each other, and conspiring with each other, prepared a series of false reports memorializing the knowingly false claim that all accidental causes for the fire had been eliminated and the fire was an arson.

56. PUTNAM Fire Investigation Team Incident Field Notes (attached as Exhibit C), for example, falsely represented that all electrical systems, appliances, and accidental causes for the fire had been eliminated. *Id.* p. 3.

57. INSP. GEOGHEGAN prepared an Incident Summary Report (attached as Exhibit D), repeating that false claim:

> "After thoroughly examining the physical evidence present … and ruling out all possible accidental and

natural causes, the Fire Investigation Team determined the fire to be incendiary in nature."

58. Likewise, CHIEF JOHNSON prepared a Carmel Fire Department report (attached as Exhibit E) indicating the PUTNAM Fire Investigation Team, which were one of his tools and which reported to him, "determined that the fire was incendiary in nature."

59. Each of the above representations and reports were negligently, recklessly, intentionally, and/or with deliberate indifference, made, and omitted all of the exculpatory and/or impeaching information detailed in ¶¶ 47-53, 55-58, above, 60, 78 and 83, below.

E. Defendants Provide Their False Reports To The Putnam County District Attorney's Office, And Affirmatively Mislead That Office Into Commencing Formal Criminal Proceedings Against Plaintiff

60. The individual defendants, after preparing their false reports, then forwarded those reports, along with the PORTOS' complaint, to the Putnam County District Attorney's Office to convince that Office to commence formal criminal proceedings against PLAINTIFF.

61. At the time, defendants, upon information and belief, did not inform the DA's Office:

(a) that it was *impossible* to eliminate an electrical or accidental cause of the fire and thus impossible to establish that a crime had even occurred,

(b) that their reports and various representations that the fire was incendiary were false, and

(c) of the exculpatory and/or impeaching information detailed in ¶¶ 47-53, 55-58, and 60 above, and 78 and 83, below.

62. Moreover, defendants did not provide the DA's Office with various photographs taken at the crime scene, or inform the DA's Office that those photographs contained highly exculpatory evidence strongly suggesting the fire was an electrical one (¶ 83, below).

63. Nor did defendants inform the DA's Office of their close relationships to the PORTOS' family, or the incentive the PORTOS had to have the fire classified an arson.

64. The DA's Office, deceived by defendants, then presented arson charges to a grand jury to have PLAINTIFF indicted.

65. Unbeknownst to the DA's Office, however, the grand jury presentation was false and misleading, as the grand jury

(a) was never informed that it was *impossible* to establish that an arson had occurred,

(b) was not presented with the exculpatory and/or impeaching information detailed in ¶¶ 47-53, 55-58, above, and 70, 78 and 83 below,

(c) was never provided with the exculpatory crime scene photographs, ¶ 83, below,

(d) was never informed of defendants' false representations and reports claiming the fire was an arson, and

(e) was affirmatively lied to by DET. NAGLE, who testified falsely that "there would be no other reason that a fire would start [in the ceiling] other than someone starting it."

66. The grand jury indicted PLAINTIFF for arson in the second degree and criminal mischief, and he was then held over for trial.

67. Following PLAINTIFF's indictment, the individual defendants continued to mislead the DA's Office, through affirmative representations, acts and omissions, and assure that Office that the fire was incendiary in nature, and all electrical and accidental causes for the fire had been eliminated.

68. The DA's Office, accepting defendants' representations, called INSP. GEOGHEGAN as a witness at PLAINTIFF's criminal trial. There, INSP. GEOGHEGAN falsely testified that the fire was not "electrically," "accidentally," "mechanically," or "naturally caused," but rather was incendiary in nature.

69. Based on defendants' deception, on April 16, 2008, PLAINTIFF was convicted and sentenced to *10 years* in prison. Upon information and belief, after PLAINTIFF's arrest and/or conviction, the PORTOS and CORPORATE DEFENDANTS filed several knowingly false, inflated, insurance claims alleging PLAINTIFF had started the fire in Smalley's. Based on those lies, the PORTOS and CORPORATE DEFENDANTS unjustly recovered substantial sums through those false claims, claims which would have otherwise been denied had the

PORTOS and CORPORATE DEFENDANTS reported the true electrical nature of the fire.

F. Defendant Charbonneau Covers-Up Defendants' Misconduct

70. Following PLAINTIFF's conviction, he filed a series of FOIL requests seeking access to all exculpatory and/or impeaching evidence in his case.

71. Nevertheless, CHARBONNEAU, acting in a purely administrative capacity as Town Attorney, conspired, and aided and abetted the other defendants in hiding the exculpatory and/or impeaching evidence (¶¶ 47-53, 55-58, 60, 68, *supra,* 78 and 83 below) from PLAINTIFF.

72. CHARBONNEAU hid the requested evidence and persuaded a court to deny PLAINTIFF's access to that evidence, thereby delaying PLAINTIFF's exoneration, and prolonging his incarceration, for several additional years.

G. Nearly Nine Years After Plaintiff Is Convicted, The District Attorney Discovers Defendants' Deception And Moves To Overturn Plaintiff's Conviction And Release Him From Prison

73. In 2013, after PLAINTIFF lost all of his state court appeals, he commenced a federal *habeas corpus* proceeding challenging his wrongful conviction. The case was assigned to the Honorable Vincent I. Briccetti, a Judge in the United States District Court for the Southern District of New York.

74. PLAINTIFF, acting on his own behalf without an attorney, swore that he was innocent and had been wrongfully convicted.

75. Included in PLAINTIFF's submissions were reports from two fire experts who had examined the evidence in PLAINTIFF's case and concluded *it was impossible* to conclude that an arson had occurred or to rule out an electrical cause of the fire. (A copy of the experts' joint report is attached as Exhibit F).

76. On May 5, 2016, Putnam County District Attorney Robert Tendy, after conducting an independent investigation, filed a memorandum of law (attached as Exhibit G) in federal court *declaring PLAINTIFF was innocent, had been wrongfully convicted, and should be released from prison immediately.*

77. The DA informed the federal court that his Office had reached this conclusion after thoroughly reviewing, among other things, the case file, reports from PLAINTIFF's fire experts, and a report of a third fire expert that the New York Attorney General's Office had retained in connection with PLAINTIFF's habeas corpus proceeding. *Id.* ¶ 3.

78. The DA explained to Judge Briccetti that Smalley's Inn had been the subject of "numerous electrical code violations and another electrical fire" shortly before the one in PLAINTIFF's case, and that "[s]adly," it appears PLAINTIFF spent many years in prison "for helping to put out a fire - not start one." *Id.* ¶¶ 25-26.

79. The DA explained that every fire expert consulted after trial — two hired on PLAINTIFF's behalf and one hired by the Attorney General's

Office— "concluded that the origin of the fire could not be determined" and thus "there could not be an arson conviction." *Id.* ¶ 14.

80. The DA further informed Judge Briccetti that "there was ample evidence" the fire may have been electrical. *Id.*

81. The DA concluded that an examination of a video from the night of the fire "clearly belie[d]" many of the assertions made by the prosecution witnesses, including the PORTOS, at trial. *Id.* ¶ 18.

82. The DA found that there was nothing suspicious about PLAINTIFF helping to extinguish the fire that night. *Id.* ¶ 22.

83. The DA explicitly conceded that the crime scene photographs PLAINTIFF alleged had been suppressed from his defense attorney were exculpatory. The photographs, the DA said,

> were certainly exculpatory[.] These photographs include one … that demonstrates that the space immediately above the dropped ceiling of the Smalley' s Inn bathroom was *not* connected to the wall vent from which witnesses observed smoke and flames, and that the smoke-eater device about which the owner, [Anthony M. Porto], testified, was not in the space immediately above the bathroom's dropped ceiling, but in a separate confined space above, *and which serviced the vent.* This was material that would have been important in demonstrating to the jury that testimony from prosecution witness [INSP. GEOGHEGAN] that the fire was incendiary and that there could have been no electrical cause of the fire, was invalid. The photograph also would have been material in showing the significance of [INSP.

> GEOGHEGAN's] failure to inspect this separate space that serviced the vent and housed the smoke-eater.

Id. ¶ 29.

84. Based on the above, the DA consented to all relief PLAINTIFF sought in his habeas corpus proceeding, and to his immediate release from prison. *Id.* ¶ 34.

85. On May 9, 2016, Judge Briccetti ordered that PLAINTIFF be released from prison. By then, PLAINTIFF had served nearly nine years of his 10-year sentence.

86. On May 23, 2016, the DA's Office formally agreed on the record that PLAINTIFF was "actually innocent of the offenses of which he was convicted," that INSP. GEOGHEGAN's conclusion that the fire was incendiary/an arson was "fundamentally flawed," and no witness observed PLAINTIFF put anything into the space above the bathroom ceiling tiles. Stipulation of Settlement, attached as Exhibit F, at ¶ 8.

87. The DA conceded that there "was no physical evidence of any paper towels having been the cause of the fire." *Id.* ¶ 11.

88. On May 23, 2016, Judge Briccetti granted PLAINTIFF's habeas corpus petition, vacated his conviction, dismissed his indictment with prejudice, and barred the prosecution from ever retrying PLAINTIFF. Exhibit H (Final Judgment Order).

PLAINTIFF'S DAMAGES

89. PLAINTIFF's injuries and damages, all of which were foreseeable and proximately brought about by defendants' acts and omissions, include, but are not limited to:

(a) His false arrest and malicious prosecution;

(b) Nearly nine years of unjust incarceration;

(c) Mental and emotional damages from being falsely arrested, incarcerated, and required to defend against false charges;

(d) Shame and humiliation;

(e) Legal fees and expenses for which he is responsible exceeding

(f) The loss of employment income, and diminution of future earning ability; and

(g) Substantial pain and suffering.

FIRST CAUSE OF ACTION

(Evidence Manufacturing; Denial of A Fair Trial Under The Fifth, Sixth, and Fourteenth Amendments; 42 U.S. C. § 1983; All Individual and Corporate Defendants)

90. PLAINTIFF repeats and realleges each and every allegation contained in ¶¶ 1 through 89 of this Complaint, and incorporates them here.

91. Defendants, individually and acting in concert and aiding and abetting the other, intentionally, recklessly, and with deliberate indifference to PLAINTIFF's constitutional rights, created numerous false reports omitting the

exculpatory and/or impeaching information detailed in ¶¶ 47-53, 55-58, above, 60, 78 and 83, and alleging PLAINTIFF intentionally set the fire in Smalley's Inn.

92. The misleading information contained in those reports, and the information omitted from them, was likely to, and did, influence the jury's decision.

93. Those defendants then forwarded those reports to prosecutors, and made verbal representations to those prosecutors affirming the content of those reports. The prosecutors in turn relied on them to commence formal criminal proceedings against PLAINTIFF.

94. Defendants' actions deprived PLAINTIFF of his right to not be prosecuted on fabricated evidence, and to a fair trial under the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution, and were the proximate cause of PLAINTIFF's injuries (¶ 89, *supra*).

95. PUTNAM and CARMEL are liable for these wrongs by virtue of their policymakers' direct participation, ¶¶ 127-162, in the wrongs and civil conspiracy set forth herein.

SECOND CAUSE OF ACTION

(Wrongful Arrest And Detention Under The Fourth Amendment and *Manuel v. City of Joliet,* 137 S.Ct. 911 (2017); 42 U.S. C. § 1983; All Individual and Corporate Defendants)

96. PLAINTIFF repeats and realleges each and every allegation contained in ¶¶ 1 through 95 of this Complaint, and incorporates them here.

97. Defendants, individually and acting in concert and aiding and abetting the other, intentionally, recklessly, and with deliberate indifference to PLAINTIFF's constitutional rights, without probable cause, and in disregard of overwhelming evidence of PLAINTIFF's innocence, wrongfully arrested and detained him at the scene and thereafter for intentionally setting the fire at Smalley's Inn.

98. Moreover, defendants, in absence of probable cause for PLAINTIFF's continued seizure, continued the seizure by making false representations and submitting false reports to prosecutors who continued the charges against PLAINTIFF and his detention and/or seizure.

99. By virtue of the foregoing, defendants are liable for PLAINTIFF's wrongful arrest and detention, and the damages set forth in ¶ 89, above.

100. PUTNAM and CARMEL are liable for these wrongs by virtue of their policymakers' direct participation, ¶¶ 127-162, in the wrongs and civil conspiracy set forth herein.

THIRD CAUSE OF ACTION

(Malicious Prosecution and Deprivation of Liberty Under the Fourth, Fifth, Sixth, and Fourteenth Amendments; 42 U.S. C. § 1983; All Individual and Corporate Defendants)

101. PLAINTIFF repeats and realleges each and every allegation contained in ¶¶ 1 through 100 of this Complaint, and incorporates them here.

102. Defendants, individually and acting in concert and aiding and abetting the other, intentionally, recklessly, and with deliberate indifference to PLAINTIFF's constitutional rights, by virtue of the foregoing, acting in concert with additional persons for whose acts they are liable, initiated, continued, and/or caused the initiation or continuation of, criminal proceedings against PLAINTIFF.

103. The criminal proceedings terminated in PLAINTIFF's favor.

104. There was no probable cause for the commencement or the continuation of the criminal proceedings.

105. The Defendants acted with actual malice.

106. The aforesaid conduct operated to deprive PLAINTIFF of his rights under the Constitution and the Laws of the United States:

(a) Not to be arrested, prosecuted, detained, denied bail, or imprisoned based upon false, fabricated, manufactured, misleading, or inherently unreliable "evidence," including false allegations in violation of the Fourth and Fourteenth Amendments, and the Due Process and Fair Trial Clauses of the Fifth, Sixth and Fourteenth Amendments, to the U.S. Constitution; and

(b) Not to be deprived of his liberty absent probable cause to believe he has committed a crime, in violation of his rights under the Fourth and Fourteenth Amendments to the U.S. Constitution.

107. The foregoing violations of PLAINTIFF's federal constitutional rights by the defendants, together with their co-conspirators and accomplices, known and unknown, directly, substantially, proximately, and foreseeably caused

the continuation of Plaintiff's malicious prosecution without probable cause, and his other injuries and damages.

108. The foregoing violations of PLAINTIFF's rights amounted to Constitutional torts and were affected by actions taken under color of State law, and within the scope of the Defendants' employment and authority.

109. Defendants committed the foregoing violations of PLAINTIFF's rights knowingly, intentionally, willfully, recklessly, negligently, and/or with deliberate indifference to PLAINTIFF's constitutional rights.

110. By reason of the foregoing, the defendants are liable for the damages set forth in ¶ 89, above.

111. PUTNAM and CARMEL are liable for these wrongs by virtue of their policymakers' direct participation, ¶¶ 127-162, in the wrongs and civil conspiracy set forth herein.

FOURTH CAUSE OF ACTION

(Failure To Intervene; 42 U.S.C. § 1983; Fourth, Fifth and Fourteenth Amendments; Sgt. Behan, Sgt. Dearman, Chief Johnson, and Does 1-5)

112. PLAINTIFF repeats and realleges each and every allegation contained in ¶¶ 1 through 111 of this Complaint, and incorporates them here.

113. Defendants, who were present at the scene and had direct knowledge of the violation of PLAINTIFF's Fourth, Fifth and Fourteenth Amendment rights through his wrongful arrest and detention, and malicious prosecution, based on a

non-existent arson, individually and acting in concert and aiding and abetting the other, intentionally, recklessly, and with deliberate indifference to PLAINTIFF's constitutional rights exhibited deliberate indifference and/or gross negligence toward PLAINTIFF's rights by failing to intervene to prevent the violation of those rights by their peers and subordinates, even though they had legal and constitutional obligations to do so.

114. Rather than intervene, defendants directly participated in, ratified, and aided and abetted, the violation of PLAINTIFF's constitutional rights as set forth above.

115. Each of the defendants had a realistic opportunity to intervene and prevent the harm PLAINTIFF suffered, a reasonable person in defendants' positions would know that PLAINTIFF's rights were being violated, yet none of the defendants took reasonable steps to intervene.

116. The defendants, by virtue of the foregoing, are liable for the damages set forth in ¶ 89, above.

117. PUTNAM and CARMEL are liable for these wrongs by virtue of their policymakers' direct participation, ¶¶ 127-162, in the wrongs and civil conspiracy set forth herein.

FIFTH CAUSE OF ACTION

(Denial of A Fair Trial Under The Fifth, Sixth, Fourteenth Amendments, and *Brady v. Maryland*, 373 U.S. 83 (1963); All Individual and Corporate Defendants)

118. PLAINTIFF repeats and realleges each and every allegation contained in ¶¶ 1 through 117 of this Complaint, and incorporates them here.

119. Defendants, individually and acting in concert and aiding and abetting the other, intentionally, recklessly, and with deliberate indifference to PLAINTIFF's constitutional rights, suppressed from the DA's Office and PLAINTIFF (a) the exculpatory and impeaching information detailed in ¶¶ 47-53, 55-58, 60, 78 and 83, above, (b) the fact that other defendants had created false reports, (c) that defendants made false representations to the DA's Office that the fire was an arson, and (d) that defendants made false representations to the DA's Office that the possibility that the fire was accidental and electrical had been eliminated.

120. The suppressed evidence was material, likely to influence a jury's decision, and there is a reasonable probability that had the evidence been disclosed to the defense, the result of PLAINTIFF's trial would have been different.

121. Defendants' actions deprived PLAINTIFF of his right

(a) Not to be arrested, indicted, prosecuted, detained, convicted, or imprisoned based upon false, fabricated, manufactured, misleading, or inherently unreliable "evidence," including the statements and testimony of witnesses who have been improperly influenced, coerced,

or manipulated to provide such statements and testimony, in violation of the Due Process and Fair Trial Clauses of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution;

(b) Not to be deprived of his liberty absent probable cause to believe he has committed a crime, in violation of his rights under the Fourth and Fourteenth Amendments to the United States Constitution; and

(c) To timely disclosure of all material evidence favorable to the defense pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and their progeny, and the Due Process and Fair Trial Clauses of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

122. The foregoing violations of PLAINTIFF's federal constitutional rights by defendants and their co-conspirators and accomplices, known and unknown, directly, substantially, proximately, and foreseeably caused the initiation and continuation of Plaintiff's criminal prosecution, his loss of liberty and detention without bail, his wrongful conviction, his subsequent imprisonment, and his other injuries and damages.

123. The foregoing violations of PLAINTIFF's rights amounted to Constitutional torts and were affected by actions taken under color of State law, and within the scope of the defendants' employment and authority.

123. Defendants committed the foregoing violations of PLAINTIFF's rights knowingly, intentionally, willfully, recklessly, and/or with deliberate

indifference to Plaintiff's constitutional rights or to the effect of such misconduct upon PLAINTIFF's constitutional rights.

125. By reason of the foregoing, the defendants are liable to PLAINTIFF pursuant to 42 U.S.C. § 1983, for compensatory and for punitive damages detailed in ¶ 89, above.

126. PUTNAM and CARMEL are liable for these wrongs by virtue of their policymakers' direct participation, ¶¶ 127-162, in the wrongs and civil conspiracy set forth herein.

SIXTH CAUSE OF ACTION
(*Monell*/42 U.S.C. § 1983: Claim Against Carmel For The Actions Of Chief Johnson)

127. PLAINTIFF repeats and realleges each and every allegation contained in ¶¶ 1 through 126 of this Complaint, and incorporates them here.

128. At the time of PLAINTIFF's prosecution, CARMEL, pursuant to statute, practice, custom, and affirmative ordinances or memorandums, delegated to CHIEF JOHNSON, Chief of the Carmel Fire Department, all final policymaking authority[1] with respect to (a) the determination of the causes of fires, including whether a fire was an arson, (b) reporting arsons to the DA's Office, (c) disclosing all relevant facts regarding the cause of the purported arson, (d) cooperating with,

[1][T]here will be cases in which policymaking responsibility is shared among more than one official[.]" *City of St. Louis v. Praprotnik*, 485 U.S. 112, 126 (1988).

reporting for, and furthering, any criminal prosecution based on CHIEF JOHNSON's conclusion that a fire was an arson and/or incendiary.

129. At all times relevant to this complaint, New York General Municipal Law § 204-d, "Duties of the Fire Chief," explicitly provided that "[t]he fire chief of any fire department or company shall, in addition to any other duties assigned to him by law or contract, to the extent reasonably possible *determine or cause to be determined the cause of each fire* … which the fire department or company has been called to suppress" and to "contact[] the appropriate investigatory authority if he has reason to believe the fire … is of incendiary or suspicious origin." That statute also required CHIEF JOHNSON to "file with the office of fire prevention and control a report containing such determination and any additional information required by such office regarding the fire or explosion." *Id.* *McMillian v. Monroe County*, 520 U.S. 781, 786, 789, 795 (1997) (for *Monell* purposes, and consistent with federalist principles, a state's own classification of a policymaker's specific function ordinarily will determine whether § 1983 liability may attach).

130. CHIEF JOHNSON's responsibility for being the ultimate policymaker is also established by admissions made by the Commissioner of Putnam County Bureau of Emergency Services.

131. Specifically, Robert McMahon, the Commissioner of the Putnam County Bureau of Emergency Services acknowledged that the Putnam County Bureau of Emergency Services "simply assists[s]" CHIEF JOHNSON in his

determination as whether the fire, in CHIEF JOHNSON's opinion, was suspicious, incendiary, or accidental, that Putnam County Bureau of Emergency Services Fire Investigators are "tool[s] for the Fire Chief," and that the ultimate determination falls to CHIEF JOHNSON.

132. Additionally, CARMEL officially vested CHIEF JOHNSON with the authority to carry out the actions causing PLAINTIFF's civil rights violations.

133. The Carmel Town Board is the legislative, appropriating, governing and policy determining body of the Town and consists of four elected board members plus the Town Supervisor. It is the responsibility of the Town Board to enact, by resolution, all legislation including ordinances and local laws." Town of Carmel Website, Town Board (http://www.ci.carmel.ny.us/town-board)

134. In 2007, the false designation of an arson occurred in PLAINTIFF's case, the four-member Town Board consisted of Carmine DiBattista, Anthony DiCarlo, Robert J. Ravallo, and Richard O'Keefe.

135. This board was the final policymaking authority for Carmel at the time, and they formally and by custom delegated their policymaking authority[2] for determining whether a fire was an arson to the Fire Chief, CHIEF JOHNSON, by, among other things:

a. Promulgating a Town Code that, at all times relevant to this complaint, provided that the Fire Chief is "responsible for all operations of the department." His "duties include fire ground operations" and "*fire reporting,"* necessarily encompassing the designation of fires as accidental or arson;

b. Failing to provide any provision or mechanism whereby the Fire Chief's decision could be reviewed or subject to oversight by the board members, as no provision of the Town Code or any other law provided for review of the Fire Chief's designation of a fire as being an arson;

c. Customarily and by practice leaving the determination of whether a fire was an arson to the fire chief and making his decision *the de facto* last word on the issue.

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[2]*See e.g. Lathrop v. Onondaga County*, 220 F.Supp.2d 129, 138 (N.D.N.Y 2002) (holding Commissioner of DCJS delegated to a Deputy final policymaking authority with respect to employment decisions, as the Commissioner left such decisions to the Deputy, spent little time reviewing on such matters, and the Deputy understood his autonomy); *Mandel v. Doe*, 888 F.2d 783 (11th Cir. 1989) (municipality delegated to a prison physician's assistant final policymaking with regard to the provision of medical care at a prison: "[a]lthough it was initially contemplated that the physician's assistant would be supervised by a medical doctor, the evidence revealed that a custom and practice developed so that the policy was that [the physician's assistant] was authorized to function without any supervision or review at all …. [As such the physician assistant was] "the sole and final policymaker with respect to medical affairs at the road prison.") *Id.* at 794.

136. Moreover, the specialized knowledge required to determine the cause of a fire necessarily required the Fire Chief to be the final policymaker for the Town in this area, as:

a. None of the four Town Board members had any training, qualifications, or expertise in fire investigations, much less determining whether a fire was an arson

b. None of those board members participated in the investigation, examined the evidence in PLAINTIFF's case, and there was no mechanism in place, for them to review, much less overrule, the Fire Chief's determination;

c. Those board members never reviewed the Fire Chief's designation in PLAINTIFF's case; and

d. There is not a single recorded case where those board members reviewed or overruled the Fire Chief's designation that a fire was an arson.

137. CHIEF JOHNSON was thus the formal and/or *de facto* policymaking official for the Town with respect to determining whether a fire was an arson.

138. Since CHIEF JOHNSON was the relevant policymaker in this regard, his participation in the conspiracy to frame PLAINTIFF renders the Town liable under *Monell*. *See e.g. Whisenant v. City of Haltom City*, 106 Fed. Appx 915, 917 (5th Cir. 2004) ("City can be held liable for the city council's part in the conspiracy, because the city council is the City's policymaking body and, consequently, its decisions constitute City policy"); *cf. Sforza v City of New York*,

2009 WL 857496 (S.D.N.Y. Mar. 31, 2009) ("A municipality may be held liable under § 1985 if it is involved in the conspiracy.")

139. CHIEF JOHNSON's decisions as set forth above, at the time they were made, for practical or legal reasons constitute CARMEL's final decisions, and were the moving force behind PLAINTIFF's injuries.

140. In that regard, CHIEF JOHNSON, in his role as final policymaker for CARMEL in the aforementioned areas, fully aware that his reports and findings would be forwarded to and relied upon by the Putnam District Attorney's Office to decide whether criminal charges were warranted against PLAINTIFF, directly participated in, aided and abetted, and conspired with other defendants and unnamed individuals, to falsely designate the fire an arson and to have PLAINTIFF falsely arrested, prosecuted, and convicted for a non-existent crime by, among other things, misleading the DA's Office as to the nature of the fire. Moreover, CHIEF JOHNSON's failure to supervise his subordinates and other members of the Fire Investigation team so as to prevent them from committing the acts and omissions detailed in ¶¶ 38-126, above, renders CARMEL liable for that conduct. *See Amnesty Am. v. Town of W. Hartford*, 361 F.3d 113, 127 (2d Cir. 2004) (holding that "even a single action by a decision maker who possesses final authority to establish municipal policy with respect to the action ordered is sufficient to implicate the municipality" and that Town could be held liable for

actions of Police Chief who personally witnessed police brutality but failed to intervene) (quotes and citations omitted).

141. CHIEF JOHNSON's actions deprived PLAINTIFF of his right

(a) Not to be arrested, indicted, prosecuted, detained, convicted, or imprisoned based upon false, fabricated, manufactured, misleading, or inherently unreliable "evidence," including the statements and testimony of witnesses who have been improperly influenced, coerced, or manipulated to provide such statements and testimony, in violation of the Due Process and Fair Trial Clauses of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, *Zahrey v. Coffey*, 221 F.3d 342, 349 (2d Cir. 2000) (recognizing "right not to be deprived of liberty as a result of the fabrication of evidence by a government officer acting in an investigating capacity");

(b) Not to be deprived of his liberty absent probable cause to believe he has committed a crime, in violation of his rights under the Fourth and Fourteenth Amendments to the United States Constitution; and

(c) To timely disclosure of all material evidence favorable to the defense pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and their progeny, and the Due Process and Fair Trial Clauses of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

142. The foregoing violations of PLAINTIFF's federal constitutional rights and resultant injuries were directly, foreseeably, proximately, and substantially caused by conduct, chargeable to CARMEL, amounting to deliberate indifference to PLAINTIFF's constitutional rights. Moreover, at all relevant times,

CHIEF JOHNSON, individually and acting in concert and aiding and abetting others who wronged PLAINTIFF in this case, acted intentionally, recklessly, and with deliberate indifference to PLAINTIFF's constitutional rights.

143. CHIEF JOHNSON, personally and/or through his authorized delegates, at all relevant times had final authority for designating whether a fire was electrical, accidental, or an arson, and conveying that information to the District Attorney's Office in connection with their decisions as to whether a criminal prosecution was warranted.

144. CHIEF JOHNSON, personally and/or through his authorized delegates, at all relevant times had final authority, and constituted the CARMEL policymaker with respect to the above-mentioned areas.

145. During all times material to this Complaint, CARMEL, through its policymakers, owed a duty to the public at large and to PLAINTIFF, which such policymakers knowingly and intentionally breached, or to which they were deliberately indifferent, as detailed above.

146. By virtue of the foregoing, CARMEL is liable for having substantially caused the foregoing violations of PLAINTIFF's constitutional rights and his resultant injuries.

SEVENTH CAUSE OF ACTION

(*Monell*/42 U.S.C. § 1983: Claim Against Putnam For The Actions Of Insp. Geoghegan and Insp. Efferen)

147. PLAINTIFF repeats and realleges each and every allegation contained in ¶¶ 1 through 146 of this Complaint, and incorporates them here.

148. At the time of PLAINTIFF's prosecution, PUTNAM, by practice, custom, and affirmative ordinances or memorandums, delegated to the PUTNAM County Bureau of Emergency Services, which in turn delegated that authority to on the scene Fire Investigators, including INSP. GEOGHEGAN and INSP. EFFEREN all final policymaking authority with respect to (a) assisting the Carmel Fire Department and its Fire Chief with the determination of the causes of fires, including whether a fire was an arson, (b) advising the Fire Chief on whether the fire should be reported to the DA's Office, and (c) cooperating with, reporting for, and furthering, any criminal prosecution based on their investigation or opinion that a fire was an arson and/or incendiary.

149. PUTNAM officially vested the Commissioner with the authority to carry out the actions causing PLAINTIFF's civil rights violations.

150. The Putnam County Legislature is the elected body that is responsible for setting County policies, reviewing the administration of government, appropriating funding, levying taxes, reviewing and adopting the annual budget, and enacting resolutions and local laws. The Legislature is composed of nine elected members.

151. In 2007, when the false designation of an arson occurred in PLAINTIFF's case, the Putnam County Code § 52-1, and other enactments and resolutions issued by the PUTNAM legislature, provided that the Commissioner of the PUTNAM Bureau of Emergency Services ("the Commissioner") had the sole responsibility to (a) administer and update a County Mutual Aid Plan for Fire Responses; (b) Insure proper emergency response to all natural and man-made emergencies, including fires and (c) Act as a liaison between the County Legislature, the Fire Advisory Board, various fire and EMS agencies, the County Executive and other County officials.

152. The Commissioner was the final policymaking authority for PUTNAM at the time with respect to assisting the Carmel Fire Chief with the determination of the causes of fires, including whether a fire was an arson, whether the fire should be reported to the DA's Office, and cooperating and furthering a subsequent prosecution based on that finding, and the Commissioner formally and by custom delegated to INSP. GEOGHEGAN and INSP. EFFEREN that policymaking authority (n. 2, *supra*) by, among other things:

a. Customarily relying on and totally deferring to those inspectors' designations regarding whether a fire was an arson;

b. Failing to provide any provision or mechanism whereby their decisions could be reviewed or subject to oversight;

c. Moreover, neither the Commissioner or any other superior participated in the investigation, examined the evidence in PLAINTIFF's case, there was no mechanism in place, for them to review, much less overrule, the investigators' designation;

d. The Commissioner never reviewed the investigators' designation in PLAINTIFF's case; and

e. There does not appear to be a single recorded case where the Commissioner reviewed or overruled his investigators' designation that a fire was an arson.

153. Additionally, the Commissioner's delegation of his policymaking authority is evidenced by the admission of Putnam County Bureau of Emergency Services Commissioner Robert McMahon, which acknowledged that INSP. GEOGHEGAN and INSP. EFFEREN were essentially given unfettered discretion in advising CHIEF JOHNSON on whether or not a fire was an arson (Exhibits A and B); *see Lathrop v. Onondaga County*, 220 F.Supp.2d 129, 138 (N.D.N.Y 2002) (Commissioner of DCJS delegated to a Deputy final policymaking authority with respect to employment decisions, as the Commissioner left such decisions to the Deputy, spent little time reviewing on such matters, and the Deputy understood his autonomy).

154. INSP. GEOGHEGAN and INSP. EFFEREN, by virtue of that delegation, were the formal and/or *de facto* policymaking officials for PUTNAM with concerning the aforementioned areas.

155. Since they were the relevant policymakers in this regard, their participation in the conspiracy to frame PLAINTIFF, their creation of false

reports, and the acts set forth in ¶¶ 38-127, above, renders PUTNAM liable under *Monell*.

156. INSP. GEOGHEGAN and INSP. EFFEREN's decisions as set forth above, at the time they were made, for practical or legal reasons constitute PUTNAM's final decisions, and were the moving force behind PLAINTIFF's injuries.

157. In that regard, INSP. GEOGHEGAN and INSP. EFFEREN, in their role as final policymakers for PUTNAM in the aforementioned areas, fully aware that their reports and findings would be forwarded to and relied upon by the Putnam District Attorney's Office to decide whether criminal charges were warranted against PLAINTIFF, directly participated in, aided and abetted, and conspired with other defendants and unnamed individuals, to falsely designate the fire an arson and to have PLAINTIFF falsely arrested, prosecuted, and convicted for a non-existent crime by, among other things, misleading the DA's Office as to the nature of the fire.

158. INSP. GEOGHEGAN and INSP. EFFEREN's actions deprived PLAINTIFF of his right

(a) Not to be arrested, indicted, prosecuted, detained, convicted, or imprisoned based upon false, fabricated, manufactured, misleading, or inherently unreliable "evidence," including the statements and testimony of witnesses who have been improperly influenced, coerced, or manipulated to provide such statements and testimony, in violation of the Due Process and Fair Trial Clauses of

the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, *Zahrey v. Coffey*, 221 F.3d 342, 349 (2d Cir. 2000) (recognizing "right not to be deprived of liberty as a result of the fabrication of evidence by a government officer acting in an investigating capacity");

(b) Not to be deprived of his liberty absent probable cause to believe he has committed a crime, in violation of his rights under the Fourth and Fourteenth Amendments to the United States Constitution; and

(c) To timely disclosure of all material evidence favorable to the defense pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and their progeny, and the Due Process and Fair Trial Clauses of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

159. The foregoing violations of PLAINTIFF's federal constitutional rights and resultant injuries were directly, foreseeably, proximately, and substantially caused by conduct, chargeable to PUTNAM, amounting to deliberate indifference to PLAINTIFF's constitutional rights. Moreover, at all relevant times, INSP. GEOGHEGAN and INSP. EFFEREN, individually and acting in concert and aiding and abetting others who wronged PLAINTIFF in this case, acted intentionally, recklessly, and with deliberate indifference to PLAINTIFF's constitutional rights.

160. The Commissioner, through his authorized delegates, INSP. GEOGHEGAN and INSP. EFFEREN, at all relevant times had final authority in the aforementioned areas.

161. During all times material to this complaint, PUTNAM, through its policymakers, owed a duty to the public at large and to PLAINTIFF, which such policymakers knowingly and intentionally breached, or to which they were deliberately indifferent, as detailed above.

162. By virtue of the foregoing, PUTNAM is liable for having substantially caused the foregoing violations of PLAINTIFF's constitutional rights and his resultant injuries.

EIGHTH CAUSE OF ACTION
(42 U.S.C. §1983 Civil Conspiracy; All Defendants)

163. PLAINTIFF repeats and realleges each and every allegation contained in ¶¶ 1 through 162 of this Complaint, and incorporates them here.

164. Defendants all explicitly and/or implicitly agreed to commit with each other and/or other unnamed conspirators, the wrongs detailed above, and to ultimately have PLAINTIFF falsely arrested for arson.

165. Each defendant then committed overt acts, *as detailed above,* to accomplish the goal of the conspiracy, including, but not limited to, violating the most basic principles of fire investigation, intentionally deviating from accepted fire investigation protocols to achieve a desired result, and rendering and falsely reporting to the DA and in reports that the fire was an arson when, in truth:

(a) The fire investigation did not include an examination of a smoke eater that was in the bathroom ceiling. The smoke eater is an electrical device that was supposed to prevent cigarette smoke from tripping the fire alarm, and as an electrical device,

it could have been the source of the fire, and THE PORTOS disposed of the smoke eater before police could examine it. *This made it impossible to exclude an electrical source from being the cause of the fire*;

(b) The investigation did not include an examination of the entire area above the ceiling of the bathroom where witnesses saw the fire, to determine if there was any connection between the smoke eater that was in that area and the fire;

(c) Despite two witnesses informing the police that they saw flames emanating from the vent above the bathroom door, *which provided the exhaust for the smoke eater*, the vent was not inspected;

(d) The electrical system in the Inn was not examined despite the fact that just a few months before the fire in this case, faulty electrical wiring in the Inn had caused another fire there;

(e) The investigation did not account for the charred wood noted by witnesses, charring that could not have occurred in the short period between PLAINTIFF entering the bathroom and a customer smelling smoke; the charring suggested that the fire was burning *before* PLAINTIFF had even entered the bathroom, and thus he was not the cause of it;

(f) The investigation did not examine the floor above the fire, which sustained the bulk of the damage, and which was consistent with the smoke eater causing the fire; and

(g) The fact that papers were removed from the ceiling when the fire was extinguished indicated that the fire had ignited the paper rather the paper igniting the fire. That paper is much easier to burn and would have been consumed in its entirety, like starting a fire in a fireplace with newspaper, had it been the originating point of the fire.

166. By virtue of the foregoing, defendants are liable for conspiring to deprive PLAINTIFF of his right

(a) Not to be arrested, indicted, prosecuted, detained, convicted, or imprisoned based upon false, fabricated, manufactured, misleading, or inherently unreliable "evidence," including the statements and testimony of witnesses who have been improperly influenced, coerced, or manipulated to provide such statements and testimony, in violation of the Due Process and Fair Trial Clauses of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, *Zahrey v. Coffey*, 221 F.3d 342, 349 (2d Cir. 2000) (recognizing "right not to be deprived of liberty as a result of the fabrication of evidence by a government officer acting in an investigating capacity");

(b) Not to be deprived of his liberty absent probable cause to believe he has committed a crime, in violation of his rights under the Fourth and Fourteenth Amendments to the United States Constitution; and

(c) To timely disclosure of all material evidence favorable to the defense pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and their progeny, and the Due Process and Fair Trial Clauses of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

167. Defendants committed the foregoing violations of PLAINTIFF's constitutional rights knowingly, intentionally, willfully, recklessly, and/or with deliberate indifference to them, or to the effect of such misconduct upon them.

168. By reason of the foregoing, the defendants are liable to PLAINTIFF pursuant to 42 U.S.C. § 1983, for compensatory and punitive damages detailed in ¶ 89, above.

DAMAGES DEMAND

WHEREFORE, PLAINTIFF demands judgment against defendants as follows:

a. For compensatory damages of not less than $25,000,000;

b. For punitive damages against the individual defendants of

c. For reasonable attorneys' fees, together with costs and

d. For pre-judgment interest as allowed by law; and

e. For such other and further relief as this Court may deem just

DATED: Brooklyn, New York
December 3, 2018

Rita Dave

RITA DAVE, ESQ.
26 Court Street
Suite 1212
Brooklyn, New York 11242
(516) 782-1614
Email: ritadaveesq@gmail.com

Attorney for Plaintiff William Haughey

EXHIBITS

Exhibit A	Commissioner McMahon Letter dated March 12, 2009
Exhibit B	Commissioner McMahon Letter dated March 29, 2011
Exhibit C	Putnam Fire Investigation Team Incident Field Notes
Exhibit D	Insp Geoghegan Incident Summary Report
Exhibit E	Chief Johnson Carmel Fire Department Report
Exhibit F	Fire Expert Reports
Exhibit G	Tendy Memo of Law
Exhibit H	Judge Briccetti Final Order Judgment

EXHIBIT A

Commissioner McMahon Letter dated March 12, 2009

PUTNAM COUNTY
BUREAU OF EMERGENCY SERVICES

Robert McMahon
Commissioner

Thomas C. Lannon, Sr., Director
Emergency Management

Adam B. Stiebeling
Deputy Commissioner

Robert Cuomo, Director
Emergency Medical Services

March 12, 2009

Mr. William Haughey 08A2160
Clinton Correctional Facility
P.O. Box 2002 Suite 11-2-2T
Dannemora, NY 12929

Dear Bill,

I'll try to answer your questions the best that I can.

The difference between a "cause and origin team" and let's say an "ARSON Squad" is really in the function of the team. None of the investigators who volunteer for the county are police officers or have police officer status. As I said in the last letter, they simply assist the fire chief in his determination as to whether the fire, in his opinion, was suspicious, incendiary or accidental. (The Fire Chief is charged with making a determination of accidental, suspicious or incendiary after every fire.) After that is given to the Fire Chief, the role of the investigator technically stops. For example, if the determination is made that the fire is suspicious or incendiary (perhaps set or definitely set) the Chief will turn it over to the investigating police agency. That's how it is supposed to work. The investigators may, however, be called to testify as to their findings and present their credentials to the court as a qualified or experienced investigator. The level of training of the staff varies, but most are capable of fulfilling this particular function.

Your question regarding their individual training, specifically electrical, is not something that I monitor. Their certifications come from the New York State Office of Fire Prevention and Control in Albany. The only way I could get the Building Department report is from FOIL just the same as you, if in fact, there is a report. There might not be one in existence and in that circumstance as I understand it, they would not be required to produce one.

Regarding the Carmel Fire Department and possible violations in Smalley's, I can say this; they (Carmel Fire Department) do not do inspections on buildings like many big city fire departments do. All the inspections on commercial property in the Town of Carmel are handled by a fire inspector/code enforcement officer/building inspector. I believe that to be Michael Carnazza. He works out of the Town Hall in Mahopac, (60 McAlpin Ave, Mahopac, 10451).

I hope this addresses some of your concerns. Hang in there. Please don't hesitate to write if there is something I can help you with.

Respectfully,

Robert McMahon,
Commissioner

RM/cc

EXHIBIT B

Commissioner McMahon Letter dated March 29, 2011

PUTNAM COUNTY
BUREAU OF EMERGENCY SERVICES

Robert McMahon
Commissioner

Thomas C. Lannon, Sr., Director
Emergency Management

Adam B. Stiebeling
Deputy Commissioner

Robert Cuomo, Director
Emergency Medical Services

March 29, 2011

Mr. William J. Haughey 08A2160
Clinton Correctional Facility
P.O. Box 2002
Dannemora, NY 12929

Dear Bill,

It looks as if you are making progress on your case. That is certainly good news. Mr. Roncallo is a great guy and an excellent fire investigator. I am confident that he is doing the best job possible for you.

Obviously my professional relationship with Mr. Goeghegan is somewhat different. He is part of a team which investigates fire causes under the umbrella of the Bureau of Emergency Services, which as you know is headed by me. I do not know what he will do when presented with new evidence. However, I can say this. Investigator Goeghegan is a former police officer who I have every confidence in that he will do the right thing. Once again I can say to you, if you read the court transcripts (I guess you know that by heart) that he testified very factually to what he observed and how he observed it. Having said that, I am quite surprised that the court saw it differently. I believe when he speaks to Mr. Roncallo, if he has not already done so, he will understand the concerns and questions raised by Mr. Roncallo.

I don't worry about what happens personally since I am not in any way connected to the Fire Investigation. As I think I may have told you before, the Fire Investigators are a tool for the Fire Chief. It is the Fire Chief who is responsible for determining the cause and origin of a fire. The Investigators simply help the Chief make that determination. As far as this office goes, we really do not have a say or an obligation to find out how the fire started.

The electrical board is not in the same building as we are. I will try to talk to them and find out about the inspection on the occupancy.

Stay well and best of luck with the case review.

Respectfully,

Bob McMahon,
Commissioner

RM/cc

112 OLD ROUTE 6 – CARMEL, NEW YORK 10512
Tel. (845) 808-4000 / Fax (845) 808-4010
Emergency Operations Center Tel. (845) 808-4050
Email: pcbes@putnamcountyny.gov Web Page: pcbes.org

EXHIBIT C

Putnam Fire Investigation Team
Incident Field Notes

SR 0428

PUTNAM COUNTY FIRE INVESTIGATION TEAM 070310-03

INCIDENT FIELD NOTES

Date: 03-10-07 Investigator: 40-03

Address: 57 Main St. Town: Carmel

Property:
☐ Residential ☐ Single Family ☐ Multi-family ☑ Commercial ☐ Retail
☐ Wild land ☐ Vehicle ☐ Industrial ☐ Government ☐ Church
☐ School ☐ Other _____
Dimensions: Length _____ Width _____ Height _____

Weather:
☐ Clear ☑ Cloudy ☐ Rain ☐ Snow ☐ Fog ☐ Ice
☐ Thunder ☐ Lightning ☐ Windy

Temp: _____ Wind Speed: _____mph Wind Direction: _____

Status:
Occupied at time of fire? ☑ Yes ☐ No Vacant Building? ☐ Yes ☑ No
Name of last person in structure: _____
Date: _____ Time: _____ ☐ am ☐ pm
Comments: _____

Foundation:
☑ Basement ☐ Crawl space ☐ Slab ☐ Other

Exterior:
☑ Wood ☐ Brick ☐ Stone ☐ Vinyl ☐ Asphalt ☐ Metal
☐ Concrete ☑ Stucco ☐ Other

Roof:
☐ Asphalt ☐ Wood ☐ Tile ☐ Metal ☐ Slate ☐ Other
☐ Gable ☐ Hip ☐ Gambrel ☐ Mansard ☐ Pitch ☑ Multi

Construction type:
☐ Ordinary ☐ Pre Fab ☐ Balloon ☐ Heavy Timber ☑ Wood Frame
☐ Fire Resistive ☐ Non Combustible

Pre Fire Condition:
☐ Good ☑ Average ☐ Poor ☐ Unknown

Alarms & Protection:
Fire Alarm System ☐ yes ☑ no ☐ activated ☐ non functional
Smoke Detectors ☐ yes ☑ no ☐ activated ☐ non functional

Doors and Windows:
☐ Open ☑ Closed ☐ Locked ☐ Forced by FD

PUTNAM COUNTY FIRE INVESTIGATION TEAM
INCIDENT FIELD NOTES

Electric:
☑ On ☐ Off ☐ None ☑ Overhead ☐ Underground ☐ Unknown
☐ Main Panel ☐ 200 Amps ☐ 150 Amps ☐ 100 Amps ☐ Other _____
☐ Breakers ☐ Fuses ☐ Blown ☐ Tripped

Heating System:
☑ On ☐ Off ☐ None ☐ Oil ☐ Propane ☐ Natural Gas ☐ Electric ☐ Wood
☐ Burner ☐ Fireplace ☐ Wood Stove ☐ Pellet Stove ☐ Heater

Hot Water:
☑ On ☐ Off ☐ None ☐ Oil ☐ Electric ☐ Gas

Fire Department:
Requesting Dept: CFD Commander: _____
Observations: _____

Name of First on Scene: CPD
Observations: _____

Mutual Aid Departments Called? ☐ yes ☑ no
First In Firefighter Name: _____ Dept: _____
Observations: _____

Owner:
Name: Tony Pardo Jr. DOB: _____
Address: 57 Main St. Carmel
Phone: Home (845) 225-4007 Cell ( ) ___-___ Work ( ) ___-___
225-4874

Occupant:
Name: Same DOB: _____
Address: _____
Phone: Home ( ) ___-___ Cell ( ) ___-___ Work ( ) ___-___

Discovered By:
Name: Same DOB: _____
Address: _____
Phone: Home ( ) ___-___ Cell ( ) ___-___ Work ( ) ___-___

Reported by:
Name: Same DOB: _____
Address: _____
Phone: Home ( ) ___-___ Cell ( ) ___-___ Work ( ) ___-___
Reported as: _____
Insurance:

PUTNAM COUNTY FIRE INVESTIGATION TEAM
INCIDENT FIELD NOTES
SR 0430

Building Insured: ☑ yes ☐ no Type: ☐ Homeowners ☐ Tenant ☐ Commercial
Insured: _____ Address: _____
Ins Co Name: _____ Phone: ( ) _____-_____

Sources of Ignition:

Heating Systems	☐ Examined	☑ Eliminated	☐ Not Present	☐ Not Eliminated
Portable Heaters	☐ Examined	☑ Eliminated	☐ Not Present	☐ Not Eliminated
Cooking Equipment	☐ Examined	☑ Eliminated	☐ Not Present	☐ Not Eliminated
Smoking Materials	☐ Examined	☑ Eliminated	☐ Not Present	☐ Not Eliminated
Open Flames	☐ Examined	☑ Eliminated	☐ Not Present	☐ Not Eliminated
Hot Objects	☐ Examined	☑ Eliminated	☐ Not Present	☐ Not Eliminated
Electrical System	☐ Examined	☑ Eliminated	☐ Not Present	☐ Not Eliminated
Electric Appliances	☐ Examined	☑ Eliminated	☐ Not Present	☐ Not Eliminated
Spontaneous Ignition	☐ Examined	☑ Eliminated	☐ Not Present	☐ Not Eliminated
Lightning	☐ Examined	☑ Eliminated	☐ Not Present	☐ Not Eliminated
Sun Rays	☐ Examined	☑ Eliminated	☐ Not Present	☐ Not Eliminated

☑ All Accidental Causes Eliminated

Area of Origin:
Indicators of area of origin:

☑ V Patterns	☑ Depth of Char	☐ Evidence of High Temps
☑ Structural Damage	☐ Melted Objects	☑ Statements of Witnesses
☐ Contents Damage	☑ Overhead Damage	☐ Lowest Fire Damage

Locations: Men's Room Vic. of Bar
Above Urinal, Above Drop ceiling
Wood wall/ceiling area Heat Charring
Drop Ceiling Tile Heat Burn marks on Top Side

Factors Affecting Fire Spread: _____

EXHIBIT D

Insp Geoghegan Incident Summary Report

(4)

SR_0440

PUTNAM COUNTY BUREAU OF EMERGENCY SERVICES
112 OLD ROUTE 6 CARMEL, NEW YORK 10512

Case #: 070310-03

INCIDENT SUMMARY CONTINUED:

In order to rule out all possible causes for this fire, the Team inspected the entire men's room area. There was no electrical wiring, electrical outlets, electrical appliances or fixtures in the immediate vicinity. The closest electrical fixture, an exhaust fan / light combination unit, was 20" away from the area of the fire. There was no heating unit or pipes in the immediate area. There were also no visible signs of any resent work done in the area. There were no reports of any electrical storms in the area. The area where the fire occurred is directly above the urinal approximately 7' above the floor. The walls of the 4' x 4' bathroom are tiled and the only combustible materials in the room are paper towels, toilet paper and a plastic waste bucket located in the vicinity of the sink.

After thoroughly examining the physical evidence present, viewing the surveillance video and ruling out all possible accidental and natural causes, the Fire Investigation Team determined the fire to be incendiary in nature. The investigation into this incident is being conducted by Carmel Police Detective Michael Nagle.

Investigator: Robert Geoghegan #40-03

EXHIBIT E

Chief Johnson Carmel Fire Department Report

40002	Carmel Fire Department	NY	03/10/2007	SR 0456	2007-000068	000	No Activity	NFIRS - 1 Basic - pg 2
FDID	Fire Department	State	Incident Date	Station	Incident Number	Exposure		

K2 Owner

SMALLEY'S INN								
Business name (if applicable)					Phone Number			
MR	ANTHONY		PORTO				JR	
Mr., Ms, Mrs.	First Name		MI	Last Name			Suffix	
57		GLENEIDA			AVE			
Number	Prefix	Street or Highway			Street Type		Suffix	
		CARMEL			NY	10512-		
Post Office Box	Apt/Suite/Room	City			State	Zip Code		

L Remarks

For Additional Notes, Please Run the Report Entitled "User Defined and Notes"

Detective Nagel of the Carmel Police Department requested a Chief and members of the PC Fire Investigation team to respond to Smalleys to help investigate a fire in the bathroom early Saturday morning.

According to Mr. Porto, he called the PCSO and reported that a customer had lit a fire in the bathroom, and had left his establishment intoxicated. Carmel Police handled the call and investigation. Neither agency requested Carmel Fire Department.

Chief Johnson responded along with two members of the investigation team. The team determined that the fire was incindiary in nature.

M Authorization

844-Johnson, Daryl		CHIEF	Officer in Char	03/11/2007
Officer in Charge	Signature	Rank	Assignment	Date
844-Johnson, Daryl		CHIEF		03/11/2007
Member Making Report	Signature	Rank	Assignment	Date

EXHIBIT F

Fire Expert Reports

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF PUTNAM

----------X

PEOPLE OF THE STATE OF NEW YORK

(Plaintiff-Respondent)

-vs-

WILLIAM J. HAUGHEY

(Defendant-Appellant)

----------X

STATE OF NEW YORK

COUNTY OF PUTNAM))SS:.

I, William E. Tullpane, depose and say the following:

1). I am a retired New York City Fire Marshal; a copy of my resume is attached hereto.

2). I am familiar with the above captioned case, as I have read all relevant material, including the Grand Jury and Trial transcripts, reports filed by the Carmel police, Carmel Fire Department, the report filed by Mr. Robert Geoghegan, photos of the damage below the fire and other relevant reports and statements including the deposition of Paul Roncallo.

3). After review of the material, I have found that several serious mistakes were made that are responsible for the incarceration of William J. Haughey.

4) First and foremost there was no response by the Carmel Fire Department or any other Fire Department at the time of the incident. The location should have been vacated and secured to insure an investigation that would not be compromised. Subsequent investigations are now to be seen as invalid because they could not guarantee the integrity of the scene.

5) The owner (Anthony Porto Jr.) of the establishment (Smalley's Inn) conveniently suggested that the fire was incendiary and lit by a patron who tried to assist in locating and extinguishing the fire he observed coming from a smoke eater's intake vent.

6) If the fire was incendiary, the owner as well as any of the other patrons had the same means and opportunity as anyone else in the building; therefore all should have been considered suspects, deposed and removed from the scene.

7) Only Anthony Porto Jr. had the opportunity to remove and cover up any evidence he did not want to have anyone else see.

8) The Carmel Police arrested William J. Haughey prior to a proper cause and origin being conducted, without probable cause but on the word of the only person left with access to the fire scene.

9) Without an actual eyewitness, it is the cause and origin or confession of a person that gives the probable cause for an arson arrest.

10) Carmel Police had neither.

11) Carmel Police case V#989-2007 (Exhibit 26) indicate William J. Haughey was arrested at 16:47 hrs on 3/11/07.

12) The Carmel Police records also indicate in (Exhibit 25) that the Carmel Fire Department and Putnam County Fire Investigation Team responded at 1700 hrs on 3/11/07

13) In (Exhibit 3 pg 3) and on Trial transcript pg. 840 indicates Detective Nagel informed the assigned investigator (Robert Geoghegan) that someone had started the fire, lending prejudice to the investigation. As a co-author of the Putnam County Fire Investigation Procedure Guide and as a Fire Investigator with experience I would have inquired of the Detective why he had called us if he had already concluded and solved the investigation sufficient to affect an arrest. My inclination would have been to question the circumstances that resulted in my presence and called for another team to assist because the investigation had already been contaminated by the detectives' comments.

14) It is a matter of record that the people at the bar saw flames inside the large vent grille above the men's room door. They then rushed the room and pushed up the hung ceiling and found material burning, removed the paper and decided the fire to be over. No one thought to call the Fire Department. It is standard firefighting procedure for a close inspection of the area of the building above the fire to both look for victims of smoke inhalation and for further extension of the fire to other areas of the building. It is procedure based upon years of experience with millions of fires yet this was not done.

15) The novice, level 1 fire investigator (Geoghegan) failed to thoroughly investigate the origin and cause of this fire. He failed on several levels. He never even found the area of origin.

16) He failed to examine the fire damage where the smoke eater was. Remember, the witnesses stated that the flames were seen in the grille above the door. No measurements were taken to reflect how high above the door the vent grille is (app. 14" to the bottom). No measurements were taken to determine the distance from the top of the door to the bottom of the dropped ceiling (2"), nor from the top of the dropped ceiling to the bottom of the ceiling above (6"). Eyewitnesses had therefore placed the visible flames no less than 8" above the wooden ceiling of the men's room in a space above the first floor in the approximate location of the smoke eater.

17) He failed to realize fire was extinguished from the floor above, never going upstairs.

18) He failed to document with photos the damage to the floor above the dropped ceiling.

19) He failed to examine the smoke eater that was involved in the fire in the floor above. (damage being hidden by plywood the smoke eater rested on)

20) He failed to examine the circuit the smoke eater was connected to.

21) He failed to eliminate the smoke eater as the possible cause of the fire while it existed at the point of origin. He also failed to determine the point of origin.

22) The electrical failure in any one or more of the components he failed to examine could have started this fire and ignited a secondary fire in the dropped ceiling void below by means of "drop down".

25) No effort was made by Fire Investigator to inspect the electrical panel.

26) Fire Investigator Geohegan was not even able to tell if fuses or circuit breakers protected the Inn.

27) To eliminate electrical causes in any fire the components in the area of origin have to be looked at. They were not. The smoke eater was completely overlooked, as was the area above the dropped ceiling void, the wiring and circuit protection.

28) In the Grand Jury testimony (pg 21) Mr. Porto states he saw flames shooting out above the bathroom door, I believe to mislead the jury. Fire never came from the bathroom but from the smoke eater vent as other witnesses testified.

29) This fire could only have been extinguished from the floor above yet no investigator went upstairs nor did Anthony Porto volunteer who or how it was extinguished. It is unknown how the fire seen was extinguished.

30) The 13 hour delay by the fire investigating team allowed for the alteration and disposal of evidence by the only person with access. The smoke eater along with other crucial evidence was never examined along with the area of origin above the dropped ceiling void.

31) In this case there was no confession, no eyewitnesses and no evidence. The scene was left with the owner who had the time and opportunity to hide and remove evidence.

32) Mr. Haughey sits in prison for a fire that was never proven to be a criminal act as the result of several failures involved in this case but mostly for the lack of a competent cause and origin investigation.

33) It is therefore, my opinion having investigated thousands of fires and years of training in the related field of fire investigation that the cause of this fire could not be ascertained with any degree of scientific certainty.

34) How then do we find a man sitting in prison for starting a fire in an area that was not even accessible from the bathroom he was seen to enter?

Dated: 8 February, 2012

William E. Tulipane

(Retired New York City Fire Marshal)

Sworn to me this 8th day

of February, 2012

GINA MARIE IANUCILLI
Notary Public, State of New York
No. 01IA6242527
Qualified in Putnam County
Commission Expires June 6, 2015

Notary Public

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF PUTNAM

----------X

PEOPLE OF THE STATE OF NEW YORK

(Plaintiff-Respondent)

-vs-

WILLIAM J. HAUGHEY

(Defendant-Appellant)

----------X

STATE OF NEW YORK

COUNTY OF PUTNAM))SS:.

I Paul C.Roncallo depose and say the following:

1). I am a retired New York City Fire Marshal; a copy of my resume is attached hereto.

2). I am familiar with the above captioned case, as I have read all relevant material, including the Grand Jury and Trial transcripts, reports filed by the Carmel police, Carmel Fire Department , the report filed by Mr Robert Geoghegan, photos of the damage below the fire and other relevant reports and statements.

3). After review of the material, I have found several serious mistakes were made and responsible for the incarceration of William J.Haughey.

4) First and foremost there was no response by the Carmel Fire Department or any other Fire Department at the time of the incident.

5) The owner (Anthony Porto Jr.) of the establishment (Smalley's Inn) conveniently suggested the fire was incendiary by a patron who tried to assist in locating and extinguishing the fire he observed coming from a smoke eater's intake vent.

6) If fire was incendiary, the owner as well as any of the other patrons had the same means and opportunity as anyone else in the building; therefore all should have been considered suspects and deposed.

7) Only Anthony Porto Jr. had the opportunity to remove and cover up any evidence he did not want to have anyone else see.

8) The Carmel Police arrested William J.Haughey prior to a proper cause and origin being conducted, without probable cause but on the word of the only person left with access to the fire scene.

9) Without an actual eyewitness, it is the cause and origin or confession of a person that gives the probable cause for an arson arrest.

10) Carmel Police had neither.

11) Carmel Police case V#989-2007 (Exhibit 26) indicate William J. Haughey was arrested a 16:47 hrs on 3/11/07.

12) The Carmel Police records also indicate in (Exhibit 25) that the Carmel Fire Department and Putnam County Fire Investigation Team responded at 1700 hrs on 3/11/07.

13) In (Exhibit 3 pg 3) and on Trial transcript pg. 840 indicates Detective Nagel informed the assigned investigator (Robert Geoghegan) that someone had started the fire, lending prejudice to the investigation.

14) The novice level 1 fire investigator (Geoghegan) failed to thoroughly investigate the origin and cause of this fire.

15) He failed to examine the fire damage above the top of the dropped ceiling where the smoke eater was.

16) He failed to realize fire was extinguished from the floor above never going upstairs.

17) He failed to document with photos the damage to the floor above the dropped ceiling.

18) He failed to examine the smoke eater that was involved in the fire in the floor above - (damage being hidden by plywood the smoke eater rested on)

19) He failed to examine the circuit the smoke eater was hooked up to.

20) He failed to examine the circuit protection device and was not sure what type of protection was used as he never looked.

21) He failed to check the electrical ground.

22) He failed to check all conductors in the area of origin, plumbing, wire, metal lathe, and or the dropped ceiling metal grid work.

23) The electrical failure in any one or more of the components he failed to examine could have started this fire and ignited a secondary fire in the dropped ceiling below from drop down.

24) In Trial transcript (p716) and report filed by the Carmel Fire Department the electrical system had problems with some resulting in previous fire.(exhibit 4) (Reports of the Carmel Fire Department).

25) No effort was made by Fire Investigator to inspect the electrical panel .

26) Fire Investigator Geohegan was not even able to tell if fuses or circuit breakers protected the Inn.

27) There was no mention as to how the fan vent in the dropped ceiling was vented or the material used plastic or metal.

28) Both the smoke eater and vent, fanlight should have had circuits checked thoroughly and overload protection checked for no blow condition and product recalls.

29) To eliminate electrical causes in any fire components in area of origin have to be looked at they were not. The smoke eater was completely overlooked, as was the area above the dropped ceiling, the wiring and circuit protection.

30) I have witnessed cases where metal wire casing (bx) was carrying current, which creates heat and eventually fires.

31) I have witnessed fire escapes, tin ceiling, manholes and plumbing carrying current because an electrical circuit was compromised.

32) If the fire was burning long enough to char wood joists and do $800 damage, this would indicate the fire was burning for longer than initially believed.

33) The fact paper was removed indicates to me that fire extended to the paper rather than the other way around. Paper is much easier to burn and would have been consumed in its entirety. (Like starting a fire in a fireplace, the newspaper always burns first often with out starting the logs)

34) Trash in dead spaces is not uncommon especially in older buildings.

35) In the Grand Jury testimony (pg 21) Mr. Porto states he saw flames shooting out above the bathroom door, I believe to mislead the Jury. Fire never came from the bathroom but from the smoke eater vent as other witnesses testified.

36) The electrical fire which occurred 90 days prior (see report from CFD exhibit 4 dated 12/5/06) in the same building makes me question if this inexperienced team of investigators missed the true cause in this incident.

37) This fire could have only been extinguished from the floor above yet no investigator went upstairs nor did Anthony Porto volunteer who or how it was extinguished.

38) Failure by a court appointed attorney to use a level 2 fire investigator for the defendant contributed to allowance of a flawed cause and origin.

39) The 13 hour delay by the fire investigating team allowed for the alteration and disposal of evidence by the only person with access. The smoke eater along with other crucial evidence was never examined along with the area of origin above the dropped ceiling.

40) In this case there was no confession, eyewitnesses and no evidence. The scene was left with the owner who had the time and opportunity to hide and remove evidence.

41) In an unrelated case where there was a confession (Kent Highway Dept) The DA's office would not convene a grand jury. The investigators from the sheriffs' office found criminal

action had taken place over a period of year. Highway employees refused to cooperate unless subpoenaed to a Grand Jury; they never were.

42) Mr. Haughey sits in prison for a fire that was never proven to be a criminal act as the result of several failures involved in this case but mostly for the lack of a competent cause and origin investigation.

43) It is therefore, my opinion having investigated thousands of fires and years of training in the related field of fire investigation that the cause of this fire could not be ascertained with any degree of scientific certainty.

Dated: February 8th, 2012

Paul C. Roncallo

(Retired New York City Fire Marshal)

Sworn to me this 8th day
Of February 2012

GINA MARIE IANUCILLI
Notary Public, State of New York
No. 01IA6242527
Qualified in Putnam County
Commission Expires June 6, 2015

Notary Public

EXHIBIT G

Tendy Memo of Law

Case: 7:13-cv-08768-VB-LMS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

WILLIAM HAUGHEY,

13 CV 8768 (LMS)(VB)

Petitioner,

-v-

P.GONYEA, Superintendent,
Mohawk Correctional Facility,

Respondent.

----------x

MEMORANDUM IN SUPPORT OF PETITION
FOR WRIT OF HABEAS CORPUS, 28 U.S.C. §2254

ROBERT TENDY
PUTNAM COUNTY DISTRICT ATTORNEY
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Carmel, NY 10512
845-808-1050
845-808-1966 (fax)
robert.tendy@putnamcountyny.gov

TO: ERIC SCHNEIDERMAN, ESQ
New York State Attorney General
Attn.: Paul Lyons, Esq.
Nikki Kowalski, Esq.
120 Broadway
New York, NY 10271
212-416-8229

THEODORE S. GREEN
BREEN & WILLSTATTER
200 Mamaroneck Avenue – Suite 605
White Plains, NY 10601

MEMORANDUM IN SUPPORT OF PETITION
FOR WRIT OF HABEAS CORPUS, 28 U.S.C. §2254

BACKGROUND

1. I, Robert Tendy, am the District Attorney of Putnam County New York. My term began on January 1, 2016.

2. This is in regard to Inmate William Haughey (08A2160), currently housed in the Wallkill Correctional Facility in Wallkill, New York. Mr. Haughey was convicted of Arson in the Second Degree in Putnam County, New York, by jury verdict on February 15, 2008. He was sentenced to ten years in prison on April 16, 2008.

3. I am thoroughly familiar with the facts and procedure of this case, having painstakingly reviewed a) the file in my office; b) the trial transcript; c) all documents and exhibits used at trial; d) all photos of the scene of the fire; reports from three separate arson investigators.

4. Mr. Haughey has filed a Petition for Writ of Habeas Corpus in the Southern District of New York (Case 7:13-cv-08768-VB-LMS).

5. Prior to my becoming District Attorney of Putnam County, the Putnam County District Attorney's office requested the assistance of the Office of the New York State Attorney General in arguing against Mr. Haughey's petition.

6. Since taking office on January 1, 2016, I have, with other attorneys and an investigator[1], thoroughly reviewed a) the file in my office; b) the trial transcript; c) all documents and exhibits used at trial; d) all photos of the scene of the fire; e) reports from three separate arson investigators; and f) the various motions and appeals filed by Mr. Haughey over the years.

[1] The Putnam District Attorney's Office has created a Conviction Integrity Review Committee. It currently consists of the District Attorney, an investigator, and two criminal defense attorneys—both of whom have served as assistant district attorneys in the Bronx and Manhattan.

7. Based upon a review of all the above, it has been determined that the Putnam County District Attorney's office will unequivocally join in Mr. Haughey's petition. We will also be joining in any future applications to have the conviction vacated. Furthermore, it is the hope of my office that Mr. Haughey be released from prison as soon as possible.

8. On May, 2, 2016 Mr. Haughey's case was brought on before the Hon. Lisa Margaret Smith, United States Magistrate Judge. Judge Smith is the Magistrate assigned to hear the writ of Mr. Haughey. The court appearance was scheduled as a result of my office notifying all interested parties that we would be joining in Mr. Haughey's petition.

9. One of the main discussions in court concerned the questions of what role the Putnam District Attorney's office would now have in the case, and what role the Attorney General's Office would have in the case.

10. It was determined that the Putnam District Attorney's office would be substituted in place of the New York Attorney General's office. This was placed on the record. At that time, I moved to withdraw the opposition papers to Mr. Haughey's petition, and informed the court that I would joining in his application.

ARGUMENT IN SUPPORT OF PETITION

11. The arguments in support of Mr. Haughey's petition are set forth in his pro se petition and memorandum. Once Theodore S. Green was appointed as counsel to Mr. Haughey, Mr. Green added his own *Reply Memorandum of Law In Support of Petition for Writ of Habeas Corpus, 28 U.S.C. §2254.* Mr. Green therein clearly and ably sets forth two points: 1) *Petitioner Did Not Receive Effective Assistance of Counsel as Required by Clearly Established Federal Law;* and 2) *The Evidence Adduced at Trial Was Legally Insufficient. Petitioner Had Made a Clear and Convincing Showing That He Is Actually Innocent.*

12. The Putnam County District Attorney's office agrees with both of these points. There is no reason to recount verbatim all the arguments as stated by Mr. Green and by Petitioner. We agree that the arguments are legally sound. However, briefly, the following:

PETITIONER DID NOT RECEIVE EFFECTIVE ASSISTANCE OF COUNSEL

13. It is quite clear that the attorney for Petitioner did not even consult with an arson expert. This was not a trial strategy. For some reason he assumed the court would not grant the expenditure for an expert. Petitioner asked on numerous occasions that he retain or consult with an expert. The attorney's response was always along the line of "he did not think the court would authorize him to hire an expert. This was despite the fact that there was nothing in the record to indicate this was true.

14. In this case, post-trial, *every* consulted expert—including the one consulted by the Putnam County District Attorney's office—concluded that the origin of the fire could not be determined. Therefore, there could not be an arson conviction. Furthermore, there was ample evidence that investigation at the time by an arson expert might very well have determined that the cause of the fire was electrical.

15. For a defense attorney to simply do nothing about retaining an expert because he thought for some unknown reason that the court would not appoint one is clear proof of ineffective assistance of counsel. In fact, the attorney should have known that it was probably reversible error for the court to refuse to authorize the expenditure of an expert in a case such as this. If he truly believed the court would not authorize an expert, he should have made a thorough record for appellate review. He did not.

16. The law is clear that the right of an indigent person to obtain necessary expert assistance, at the court's expense, is guaranteed by the Constitution. See. Ake v. Oklahoma, 470 U.S. 68

(1985). See also, People v. Vale, 5619 N.Y.S.2d 4 (1st Dept. 1987) (finding of necessity for court appointed expert where defendant demonstrated that his sanity at the time of the offense was likely to be an important factor at trial; People v. Kelly, 732 N.Y.S.2d 484 (3d Dept. 2001) (stating that even though counsel's request came during jury selection, trial court abused its discretion by precluding a defense expert on the subject of DNA from testifying at trial thereby depriving defendant of a fair trial and his right to present his defense); People v. Tyson, 618 N.Y.S.2d 796 (1st Dept. 1994) (holding trial court abused its discretion in denying defendant's request for a reasonable expenditure to retain a spectrographic expert to conduct voice identification analysis and test whether the voice of a person admitting to the crime was the voice of the defendant). Accordingly, while a defendant's right to present evidence always remains subject to the rules of procedure that govern the orderly presentation of evidence at trial, the court must remain mindful that any prospective exclusion of a defense witness in a criminal prosecution implicates a defendant's Sixth Amendment rights. People v. Brown, 710 N.Y.S.2d 194, 195 (3d Dept. 2000).

17. There is no reason why any defense attorney handling a case as serious as this case would not make the retention of an arson expert the major component of the defense. The fact is that the attorney for Petitioner did not even try to obtain an expert. He just inexplicably decided that the court would not permit it—and that was the end of it.

18. Finally, on this point, an examination of the video clearly belies many of the assertions made by prosecution witnesses at trial. These assertions led the jury to believe that the defendant committed acts that clearly proved his guilt—yet he did not commit these acts. Defense counsel in cross examining these witnesses does not seem aware that the video contradicts these

witnesses in many key respects—and that the contradictions go to the heart of the people's case. Yet counsel says nothing about this—it is as if he was not aware of the contents of the video.

19. This leads to the next and very important point which is:

THE EVIDENCE ADDUCED AT TRIAL WAS LEGALLY INSUFFICIENT; PETITIONER HAS MADE A CLEAR AND CONVINCING SHOWING THAT HE IS ACTUALLY INNOCENT.

20. The conviction violated due process under Federal constitutional standards because no rational trier of fact could have found that the evidence adduced at trial established Petitioner's guilt beyond reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (1979).

21. There was no evidence of any "paper towels" having been the cause of the fire—and that which the Petitioner allegedly used to start the fire—despite the "expert's" testimony. The only evidence of this was a few spots of burned material on a toilet seat. It was never determined what these substances were.

22. Despite prosecution witnesses saying so, there was no evidence that Petitioner immediately ran into the bathroom and immediately knew where the fire was. The video shows he looked elsewhere first; many people were looking all over the bar area for the fire. In addition, the testimony of prosecution witnesses was that they were all pointing to the area of smoke and fire *prior* to the Petitioner running into the bathroom and examining the ceiling area—the only logical place to look because the vent area was where the smoke was coming from—and that was somewhere in the ceiling. ANYONE who got into the bathroom first would have looked there. There is nothing suspicious about this whatsoever.

23. The people's "expert" did not examine the area where witnesses initially saw the smoke and flames. This was within a vent that serviced an electric smoke eater. The owner of the establishment claimed the smoke eater had been disconnected for years because smoking was no

longer permitted in his bar—so he disconnected it. Yet most of the patrons that night were smoking in the bar.

24. Nothing the defendant did was any different than anything anyone did in the bar: many were smoking, many used the bathroom, many began to search for the origin of the fire, and everyone eventually realized it was coming from the smoke eater vent which appeared to be accessible through the bathroom ceiling tiles. Patrons and the owner and the Petitioner went into the bathroom. Petitioner was the first to stand on the toilet to pull out a ceiling tile—but anyone could have done this—he just did it first.

25. Where is there evidence of a crime? The theory of the prosecution is that only the defendant knew where the fire was. The fact is that *everyone* knew where it was. Sadly, it appears that the defendant has spent a lot of time in jail for helping to put out a fire—not start one.

26. There were numerous electrical code violations and another electrical fire in the bar in the recent past.

27. As stated earlier, it is unnecessary to copy verbatim all the arguments of Petitioner and his able counsel. It is sufficient to say that it is the opinion of the Putnam County District Attorney that the arguments are of merit. However, there are a few additional issues that bear mentioning.

28. Petitioner alleges that he was deprived of his due process right to a fair trial under the Fifth Amendment to the U.S. Constitution and Brady v. Maryland, 373 U.S. 83 (1983) by the failure of the prosecution, allegedly, to disclose at trial all of the photographs of the scene. Frankly, it is unclear to this writer whether or not the photographs were actually not provided. However, they were certainly not made use of by defense counsel at trial. And they were

certainly exculpatory had they been examined by a competent expert—who would have understood the importance of the photographs.

29. These photographs include one (Petitioner's Exhibit 19) that demonstrates that the space immediately above the dropped ceiling of the Smalley's Inn bathroom was *not* connected to the wall vent from which witnesses observed smoke and flames, and that the smoke-eater device about which the owner, Anthony Porto, testified, was not in the space immediately above the bathroom's dropped ceiling, but in a separate confined space above, *and which serviced the vent.*

30. This was material would have been important in demonstrating to the jury that testimony from prosecution witness Robert Geoghegan, a fire investigator, that the fire was incendiary and that there could have been no electrical cause of the fire, was invalid. The photograph also would have been material in showing the significance of Geoghegan's failure to inspect this separate space that serviced the vent and housed the Smoke-eater.

31. If this evidence was not disclosed, then it constituted newly-discovered evidence that petitioner could not have discovered with due diligence during trial. If it was disclosed, but Petitioner's attorney did nothing with it, then it is further evidence of ineffective assistance of counsel.

32. The prejudice to Petitioner from these errors is further demonstrated by newly-obtained expert opinion evidence filed with Petitioner's CPL §440.10 motion. These include the opinions of two retired fire marshals, Paul Roncallo and William Tulipane (submitted with Petitioner's state court CPL §440.10 motion). Both of these experts concluded that the cause of the fire could not be determined to be incendiary, and that the opinion of the prosecution's fire investigator, Geoghegan, was invalid.

33. The opinions of Mr. Roncallo and Mr. Tulipane were subsequently confirmed by a fire investigator retained by the Attorney General's office, Joseph P. Toscano, who similarly concluded that the cause of the fire could not be determined and that Geoghegan's investigation had failed to exclude other causes, notably electrical causes. It should be noted that Toscano's report was also requested by the Putnam County District Attorney's office. His findings cannot be ignored by this office.

34. Accordingly, The Putnam District Attorney's office joins in the application of Petitioner.

WHEREFORE, The Petition should be granted.

Dated: Carmel, NY
May 5, 2016

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EXHIBIT H

Judge Briccetti Final Order Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

WILLIAM HAUGHEY,

Petitioner,

-v.-

P. GONYEA, Superintendent,
Mohawk Correctional Facility,

Respondent.

----------x

[PROPOSED]
STIPULATION OF
SETTLEMENT

13 CV 8768 (LMS) (VB)

IT IS HEREBY STIPULATED AND AGREED by and between the parties and/or their respective counsel as follows:

1. William Haughey brought the instant habeas corpus petition as an inmate of the New York State Department of Corrections and Community Supervision (DIN Number 08A2160), challenging a judgment of conviction rendered in Putnam County Court, on April 16, 2008, convicting him of arson in the second degree, New York Penal Law §150.15, and criminal mischief in the fourth degree, New York Penal Law §145.00, subd. 1, and sentencing him principally to ten years' imprisonment.

2. On May, 2, 2016, the case was brought on before the Hon. Lisa Margaret Smith, United States Magistrate Judge. At that time, the Putnam County District Attorney's office, by District Attorney Robert V. Tendy, was substituted as counsel for Respondent, in place of the New York Attorney General's office. Mr. Tendy moved to withdraw the opposition papers to Mr. Haughey's petition, and informed the Court that his office would be joining in Petitioner's

application.

3. On May 9, 2016, Petitioner was granted bail by this Court and released on his own recognizance subject to supervision by this Court's pre-trial services office, pending the determination of the Petition.

4. Mr. Tendy has conducted a thorough review of the state court record and his office's own records including a) the District Attorney's file; b) the trial transcript; c) all documents and exhibits used at trial; d) all photos of the scene of the fire; and e) reports from three separate arson investigators. Mr. Tendy has also had these records reviewed by two independent attorneys and an investigator as part of a conviction review protocol instituted by his office.

5. Based upon this review, the Putnam County District Attorney's office unequivocally joins in Mr. Haughey's petition and has concluded that Mr. Haughey should be released from custody and that his conviction should be vacated.

6. The parties agree that the evidence adduced at Petitioner state trial is legally insufficient under the Federal constitutional standard set forth in *Jackson v. Virginia*, 443 U.S. 307 (1979) in that no rational trier of fact could have found proof of guilt beyond reasonable doubt and that, accordingly, the conviction violates Petitioner's due process rights as guaranteed by U.S. Const., Amend. V. The parties further agree that Petitioner received ineffective assistance of counsel in violation of U. S. Const., Amend. VI, under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). The parties further agree that Petitioner has

established by clear and convincing evidence that he is actually innocent of the offenses of which he was convicted by the state court. All of the arguments set forth in support of these points in the Petition and Affidavit dated December 6, 2013 (ECF Doc. ##2,3), Petitioner's Memorandum in Support dated March 21, 2014 (ECF Doc. #13), Petitioner's Reply Memorandum in Support dated March 11, 2015 (ECF Doc #80), and Respondent's Memorandum in Support dated May 6, 2016 (ECF Doc # 94), are incorporated herein and made a part hereof.

7. To the extent that an argument could be made that Petitioner's Federal constitutional claims are procedurally defaulted, any such defaults should be excused because a) the failure of trial counsel to preserve a claim or timely object, including any failure on his part to sufficiently argue for a trial order of dismissal based on legally insufficient evidence or the failure of the prosecution to make out a prima facie case, constituted ineffective assistance of counsel under the standards of *Strickland*, and therefore sufficient cause to excuse any procedural default, and Petitioner was prejudiced thereby; b) as noted, Petitioner has established by clear and convincing showing that he is actually innocent of the offenses of which he was convicted herein; and c) the State, by Respondent's counsel Robert V. Tendy as District of Attorney of Putnam County, expressly waives any such procedural defaults pursuant to 28 U.S.C. §2254(b)(3).

Legal Insufficiency of the Trial Evidence

8. Petitioner was convicted of arson and criminal mischief in connection with a fire at Smalley's Inn, a bar/restaurant in Carmel, New York. At trial, a prosecution fire investigator, Robert Geoghegan, testified to his conclusion that the fire was incendiary in origin, and that it

did not have an electrical or other cause. This conclusion was fundamentally flawed. Geoghegan's investigation could not rule out unintentional causes of the fire because he confined his investigation to the bathroom and the space between the bathroom's ceiling tiles and the plywood layer above. Despite observations by witnesses of smoke and flames from within a vent that serviced an electrical smoke-eater device, Geoghegan failed to inspect that location, which was in a separate space above the plywood layer. Geoghegan failed to determine whether the restaurant was equipped with a circuit breaker or fuse box or to inspect same, failed to examine the fire damage above the plywood layer, failed to document or inquire about the whereabouts of the supposed paper material that witnesses claimed was removed or fell from above the dropped ceiling, and failed to examine the wires and circuitry that the smoke-eater was hooked up to.

9. At trial, the owner of Smalley's Inn, Anthony Porto, testified, without explanation, that he insulted Petitioner when the latter showed up at the restaurant, but Petitioner displayed no belligerence or hostility in return. No other witness corroborated Porto's testimony about these disrespectful remarks, and Porto did not eject Petitioner from the bar, instead serving him like any other customer. This was weak evidence of motive that did not approach proof beyond reasonable, even together with other trial evidence.

10. The trial proof did not establish that Petitioner had advance knowledge of the fire's location and shows otherwise. When patrons and the bartender first detected an odor of smoke, Petitioner did not promptly enter the bathroom. Rather, as confirmed by a surveillance video, he and another patron, Marion Snizek, moved away from the bar and bathroom towards a

different part of the restaurant, as if searching for a possible cause of the smoke there. After they returned, Petitioner still did not immediately enter the bathroom, instead remaining outside while Snizek went in to examine the garbage pail. It was only after the bartender began pointing to the wall vent above that Petitioner finally entered the bathroom. By that time, it made sense to Petitioner and others that the bathroom ceiling tiles would be a logical place to try to access the fire. At trial, the prosecution made much of the fact that Petitioner lifted a particular ceiling tile among the eight in the bathroom. But, given that the fire was coming from the vent above and slight to the left of the bathroom door, the particular ceiling tile that Petitioner lifted was one of only two that it would have made sense to lift. Photographs show that the only other tile that it would have made sense to lift was a partial tile situated in the left front corner, but that would have required Petitioner to awkwardly reach over the opened bathroom door while balancing himself on the toilet and/or urinal (ECF Doc. ##53-4 SR 74; 53-14 SR 986, 988, 990; 53-15 SR 994; 53-16 SR 1121). The tile Petitioner lifted would have been the one within his easiest reach *and* closest to the wall vent. Moreover, since it was a full tile (as opposed to the other tile, which partial), it would have afforded a better view of the area above the dropped ceiling. (ECF Doc. #53-4 SR 74). The video strongly suggests that Petitioner borrowed, but returned, a lighter *before* entering the bathroom. Further, another patron had used the men's room several minutes before people detected smoke, and the patrons could have smelled smoke only after the fire had smoldered for some time.

11. No witness observed Petitioner put anything into the space above the bathroom ceiling tiles, nor was he the only person who had access to and entered the bathroom prior to the fire. Despite testimony that material that appeared to be burned papers towels were seen in, or falling

or being removed from the area of the dropped ceiling, none of this material was preserved or photographed. and no material identifiable as the remains of papers towels was observed by fire investigator Geoghegan upon his inspection of the scene. A photograph showed black, ash-material accumulated on the bathroom's urinal, but it is not identifiable as the remains of papers towels (ECF Doc. #53-4 SR 88, 90). There was no physical evidence of any paper towels having been the cause of the fire.

12. Nothing the defendant did was different than what others did in the bar: others were smoking, others used the bathroom, others began to search for the origin of the fire, and everyone eventually realized it was coming from the smoke-eater vent which appeared to be accessible through the bathroom ceiling tiles. Patrons and the owner and the Petitioner went into the bathroom. Petitioner was the first to stand on the toilet to push up a ceiling tile, but anyone could have done this; he just did it first.

13. There is legally insufficient evidence of a crime. The theory of the prosecution was that only the defendant knew where the fire was. The fact is that *everyone* knew where it was. It appears that the defendant has spent years in prison for helping to put out a fire, not start one.

14. There were electrical problems at Smalley's and in fact, another electrical fire in the bar in the recent past prior to the incident for which Petitioner was arrested.

Ineffective Assistance of Counsel; Actual Innocence

15. As found by the state trial court, Petitioner's trial counsel, Edward McCormack, specifically requested funds for an arson investigator before trial. As further found by the state trial court, Mr. McCormack was advised that as he was already approved to hire an investigator, he could use those funds to hire the arson investigator. He was further reminded that the Order provided that he could make application for additional funds, if necessary (ECF Doc. #53-22 SR 1536).

16. Petitioner's trial counsel would later aver that he did not hire an arson investigator because he did not believe that the Court had authorized funding for an arson investigator.

17. Trial counsel's failure to retain an expert based on his erroneous belief that the trial court would not authorize funding for the expert constitutes deficient performance and ineffective assistance of counsel under U. S. Const., Amend. VI and the standard set forth in *Strickland v. Washington*, 466 U.S. 668, 686 (1984).

18. Petitioner was prejudiced by counsel's deficient performance under the *Strickland* standard. Among other prejudice, McCormack, due to his lack of preparation and failure to have an arson investigator view the scene and consult with him, was ineffective in challenging the opinion of the prosecution's fire investigator that the fire was incendiary and had no electrical cause. As noted, the opinion of the prosecution's fire investigator was invalid. This was further confirmed by the affidavits of retired Fire Marshals Paul Roncallo and William Tulipane which were submitted in support of Petitioner's state court motion to vacate the judgment pursuant to

New York Criminal Procedure Law §440.10. ECF Doc. ##53-17 SR 1155-1168; 53-16, 1120-1125. Under the standard set forth in *Strickland*, Petitioner has shown that his trial attorney's performance fell "below an objective standard of reasonableness," and that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland, supra*, 466 U.S. at 687-688, 694, 696.

19. The opinions of Mr. Roncallo and Mr. Tulipane were subsequently confirmed by a fire investigator retained by the Attorney General's office, Joseph P. Toscano, who similarly concluded that the cause of the fire could not be determined and that Geoghegan's investigation had failed to exclude other causes, notably electrical causes. ECF Doc. #80-2. Toscano's report was also requested by the Putnam County District Attorney's office. Thus, *every* expert consulted post-trial, including the one consulted by the Putnam County District Attorney's office, concluded that the origin of the fire could not be determined. Therefore, there could not be an arson conviction on this record. Furthermore, there was ample evidence that investigation at the time by an arson expert might very well have determined that the cause of the fire was electrical.

20. Based on the entire record of this habeas corpus proceeding, and for all of the reasons discussed herein and in the previously filed pleadings that are incorporated herein, the parties agree that Petitioner has established by clear and convincing evidence that he is actually innocent of the offenses of conviction.

EXHIBIT G

Habeas Corpus Final Judgment Order

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM HAUGHEY,

Petitioner,

-v.-

P. GONYEA, Superintendent,
Mohawk Correctional Facility,

Respondent.

FINAL JUDGMENT ORDER

13 CV 8768 (VB)(LMS)

HON. VINCENT L. BRICCETTI, U.S District Judge

Upon all of the documents and proceedings before this Court, and pursuant to the stipulation of the parties dated May 19, 2016, it is hereby ORDERED, ADJUDGED and DECREED that the application of the petitioner, William Haughey, for a writ of habeas corpus is GRANTED on the following grounds:

As set forth in greater detail in the annexed stipulation, the parties have stipulated and agreed that:

a. The evidence adduced at Petitioner's state trial is legally insufficient under the Federal constitutional standard set forth in *Jackson v. Virginia*, 443 U.S. 307 (1979), in that no rational trier of fact could have found proof of guilt beyond reasonable doubt as to each count of conviction -- *to wit*, arson in the second degree, New York Penal Law §150.15, and criminal mischief in the fourth degree, New York Penal Law §145.00, subd. 1 -- and, accordingly, the convictions violate Petitioner's due process rights as guaranteed by U.S. Const., Amend. V;

b. Petitioner received ineffective assistance of counsel in violation of U. S. Const., Amend. VI, and was prejudiced thereby, under the Federal constitutional set forth in *Strickland v. Washington*, 466 U.S. 668 (1984); and

c. To the extent that an argument could be made that Petitioner's Federal constitutional claims are procedurally defaulted, any such defaults are excused because a) the failure of trial counsel to preserve a claim or timely object, including any failure on his part to sufficiently argue for a trial order of dismissal based on legally insufficient evidence or the prosecution's failure to make out a prima facie case, constituted ineffective assistance of counsel under the standards of *Strickland*, and therefore sufficient cause to excuse any procedural default, and Petitioner was prejudiced thereby; b) Petitioner has established by clear and convincing evidence that he is actually innocent of the offenses of which he was convicted herein; and c) the State, by Respondent's counsel Robert V. Tendy, District of Attorney of Putnam County, expressly waives any such procedural defaults pursuant to 28 U.S.C. §2254(b)(3).

WHEREFORE, based on the foregoing, it is hereby ORDERED, ADJUDGED and DECREED, that the Petition is GRANTED.

Accordingly, it is further hereby ORDERED that (1) Petitioner's conviction and sentence are vacated and the underlying indictment (No. 21/2007) is dismissed WITH PREJUDICE; (2) Respondent is FOREVER prohibited from re-trying petitioner; and (3) Petitioner is UNCONDITIONALLY RELEASED.

SO ORDERED:

Dated: May 23, 2016

HON. VINCENT L. BRICCETTI
United States District Judge