

# EXHIBIT 1



ARTIFACT NUMBER [1]

THE AFFIDAVIT OF MIWAKA G. MESSER aka MIWA

AS ANNEXED:

153974/2020

6/2/2020

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
SULLIVAN PROPERTIES, L.P.,

Index No.: \_\_\_\_\_/2020

Plaintiff,

-against-

**AFFIDAVIT OF  
MIWAKO G. MESSER**

BARIS DINCER,

Defendant.

-----X

STATE OF NEW YORK    )  
                                  :ss:  
COUNTY OF NEW YORK)

MIWAKO G. MESSER, being duly sworn, deposes and states:

1. I reside in apartment 3AR at 111 Sullivan Street, New York, New York (the “Building”). I am familiar with the defendant, Baris Dincer (“Defendant”), the tenant who resides in apartment 2BR in the Building.
2. Defendant began exhibiting disturbing behaviors in March 2020 – around the time that the New York State “Pause” went into effect, and has escalated and continued to date. I began keeping notes regarding each incident that occurred involving Defendant.
3. As detailed below, I have notified Plaintiff’s management on multiple occasions of Defendant’s disturbing behavior – not only directly towards me, but towards other Building residents as well – in addition to the constant construction taking place in his apartment.
4. I not only fear for my physical safety, but I fear that Defendant’s behavior could lead to the physical destruction of the Building and my home. While I understand that the courts were not running at full capacity due to the Covid-19 pandemic, I, along with the other residents

NOT APPROVED

in the Building, deserve to have some intervention to stop Defendant from his threatening and dangerous behavior.

✖ 5. I first notified the Building super regarding the Defendant during the day of March 28, 2020 when Defendant was drilling into the walls in his apartment which caused the buzzer for my apartment to go off. I had to disassemble the buzzer so the noise would stop. I understand that Defendant drilled into a water pipe and flooded the apartment below Defendant's apartment.

✖ 6. During the night of March 29, 2020, I heard noise in the hallway outside of my apartment. I later learned that Defendant vandalized my neighbor's front door with cigarettes and ashes, and an oily substances.

✖ 7. On Monday, March 30, 2020, Defendant followed me up the stairs to my floor in the Building in an aggressive manner, asking me what apartment I live in. Defendant then apologized for the banging and told me that he was installing two chandeliers in his apartment. He proceeded to drill and hammer in his apartment throughout the day.

✖ 8. Overnight from April 1-April 2, 2020, Defendant began drilling and hammering in his apartment at about 1 am for approximately 30 minutes, and began again at approximately 9:45 pm. A neighbor on the 4<sup>th</sup> floor of the Building began yelling from the hallway to Defendant to stop hammering, and Defendant responded by screaming something about building a bed. He then began hammering against at approximately 10:30 pm and would not stop.

✖ 9. On April 6, 2020, Defendant was screaming at the Building porter that the resident in apartment 3BR was playing records all the time. Since I live next door to apartment 3BR, I can state with certainty that there was no noise coming from that apartment at all.

✖ 10. On April 10, 2020, I emailed the Building super to inform him that Defendant began drilling and banging around in his apartment around midnight.

✖ 11. On the night of April 11-April 12, 2020, I was awoken at approximately 1 am when I heard my neighbor in apartment 3BR ask someone why he was leaving stuff on her door. I learned that my neighbor heard someone outside her door and found Defendant there, and asked him why he was leaving stuff on her door. He did not respond and left to go back downstairs. Thereafter, he began playing loud music in his apartment that could be heard throughout the Building.

✖ 12. Also during the night of April 11 – April 12, 2020, I heard drilling coming from Defendant's apartment and it sounded as if there were wires being fed through the walls based on the scratching sounds being made inside of the walls.

13. Additionally, on April 12, 2020 at 12:29 am, the Defendant began screaming – 5 times in a row – that he's "building a f\*&ing bed."

14. After the incident on April 12, 2020, my neighbor in apartment 3BR left the apartment to go stay with her mother in California. Another neighbor moved out as well as a result of Defendant's behavior.

✖ 15. On April 15, 2020, Defendant repeatedly slammed his door closed and his window open – at 2:30 am. He then began screaming "who f\*&^ing broke my f\*&^ing window." I am fairly certain that he broke his own window as nobody is around but him, and I was in my apartment upstairs listening to him banging around in his apartment. It also sounded like he was throwing things against his wall.

✖ 16. On April 16, 2020, Defendant began hammering in his apartment at 1:20 am.



✖ 17. On April 19, 2020, I heard Defendant coming down the stairs in the building and heard what sounded like him pouring some liquid on the door of apartment 2BR. He was wearing a backpack and earbuds and very calmly turned to me and said “oh, hi”. I did not feel safe engaging with him and went back into my apartment.

18. I emailed the building super three (3) times that evening, and got yelled at by a cop for call 311 and wasting resources. I later received a call from Officer Bowen from the First Precinct who said that we cannot file a report unless someone is actually hurt. She informed me that it was the building’s responsibility to get Defendant out of the Building.

✖ 19. On April 19, 2020 at 1:15 am, Defendant started blasting music in his apartment. It sounded like he was stripping plastic sheeting from something (maybe packaging), and the hallway reeked of cigarette smoke. At 3am the music was still blasting and Defendant was banging around in the hallway with a tape gun. He then slammed his door – twice in an hour’s time.

20. At approximately 1:15 pm, Defendant began screaming that he’ll kill the person throwing eggs at his window facing the courtyard. After the dressing-down that I received from Officer Bowen, I did not call the cops.

✖ 21. At approximately 12:20 pm on April 21, 2020 I heard Defendant creeping around the Building. There was music blasting from his apartment but I also heard him come upstairs. I later found a blue paper face mask draped on the stairs up to the 4<sup>th</sup> floor of the Building.

✖ 22. On April 27, 2020, Defendant had the door to his apartment wide open while I was taking my trash out – his apartment stunk of cigarette smoke even though this is a non-smoking Building. He then started banging on the radiator and I wondered if he was going to flood the building again.

**INFORMATION ONLY**

✗ 23. On April 28, 2020 I made three trips down the stairs in a 30 minute period – to take out my trash, for laundry pick-up and to bring packages up to my apartment. Each time the Defendant opened his door and watched me as I went upstairs. He later began drilling and hammering in his apartment, and also what sounded like sawing into the walls in his apartment. When I later passed by Defendant's apartment, I saw the damage that he caused by his drilling along the outside of his front door frame on the hallway side.

24. I emailed Paul Regan, in-house counsel for Plaintiff's managing agent, and informed him of the most recent occurrences, and letting him know that having lived in the Building for many years, I had never encountered a neighbor such as Defendant. I let Mr. Regan know that I would not speak with him because I have seen how hostile he has been towards other tenants who have asked him to make less noise, and let him know that I am genuinely concerned that he will physically assault me or start vandalizing the door to my apartment as he did with my neighbor.

✗ 25. Also on April 28, 2020, Defendant was drilling and hammering into the walls in his apartment, and sawing into the drywall. I was informed that the Building had installed video cameras and I contacted management to let them know the times that the drilling/hammering/sawing was done on the outside of the door frame in the hallway – so they could see if there was an video footage.

✗ 26. On April 29, 2020, I emailed Plaintiff and management about the electric wires to the newly installed security cameras being cut. cameras are installed. While I did not personally see Defendant cut any wires, shortly after the cameras were installed and the installers left the Building, Defendant started drilling and sawing and digging around his door. Thereafter, the cables were cut and needed to be reinstalled.



✖ 27. On May 5, 2020 at approximately 12:30 pm, Defendant began singing and screaming in his apartment.

✖ 28. On May 6, 2020, Defendant began drilling near the radiator in his apartment at approximately 10:20 am, and began singing and screaming at approximately 1:20 pm.

✖ 29. On May 7, 2020, I again emailed Paul Regan and informed him that Defendant was screaming/singing at the top of his lungs and had been doing so for over an hour.

✖ 30. On May 8, 2020 I emailed the Building super to inform him that Defendant was drilling into his ceiling, and later in the day I informed the Building super that he had been going on and off all day since 2:30 am – and it sounded as if he was doing whatever he was doing next to and on top of his radiator.

✖ 31. On May 12, 2020 Defendant began drilling and hammering at 9 pm.

✖ 32. At midnight on April 13, 2020, Defendant was blasting his TV and banging. I emailed Paul Regan to inform him of the blasting of Defendant's music or TV, and that I could hear Defendant tearing up the walls in his apartment and slamming his door. I also informed that Defendant had been drilling and hammering overnight.

✖ 33. On May 20, 2020, the Building super went to Defendant's apartment to fix his broken window and I could hear him screaming that it is "MY HOME...you can't just come whenever!"

✖ 34. On May 21, 2020, Defendant was making crazy noises throwing things out at 2am. At 5am there was smoke emanating from Defendant's apartment – as if he had been cooking something.

✖ 35. Again on May 22, 2020, Defendant was cooking something in his apartment causing smoke to fill the hallways.

✗ 36. On May 23, 2020, I saw Defendant in the hallway. He had garbage bags blocking the stairs and apologized for blocking my way. He then tried talking to me about “some crazy neighbor”. I said “I thought it was you” and I kept walking.

✗ 37. On May 24, 2020, after returning to the Building from a walk, I heard water running in apartment 1BR. I informed management and thereafter learned that Defendant again flooded apartment 1B. In the morning, the hallway reeked of denatured alcohol or paint thinner – I informed management that I am becoming increasingly concerned that Defendant is going to set the Building on fire given his smoking. I heard him yelling at the porter who was banging on his door about the flood, saying that he was “only painting” and writing programs. He screamed that he was “very busy” and that there was “no drilling.”

✗ 38. On May 27, 2020, I emailed Paul Regan about Defendant hammering in his apartment at midnight. While I was emailing, one of the lights in my apartment went out – and it wasn’t the bulb. I can only guess that Defendant hit an electrical line while drilling.

✗ 39. On May 29, 2020 at approximately 9:00 pm, Defendant began drilling in his apartment. From the sound and the vibration on my floor, he’s either drilling in the ceiling or hit a stud in the wall because the sound of grinding metal accompanied the drilling noise.

✗ 40. On June 1, 2020, Defendant began blasting music from his apartment at approximately 2 pm which continued well past 10pm in the evening, disturbing my ability to work from home.

41. Throughout this entire quarantine, Defendant has conducted himself in a manner that – aside from being in violation of his lease - exhibits no regard for his fellow neighbors who he disrupts on a daily and nightly basis with whatever construction work he is performing in his apartment.



42. Defendant has succeeded in making me feel unsafe in my own home -- where I've lived for many years! I fear for my safety, particularly after having the police tell me that I cannot file a report unless there is an injury! I fear that Defendant may physically hurt me, or do something to destroy the Building and my home.

  
MIWAKO G. MESSER

Sworn to before me this  
2<sup>nd</sup> day of June, 2020.

  
Notary Public

SHARI S. LASKOWITZ  
Notary Public, State of New York  
No. 02LA6046659  
Qualified in New York County  
Commission Expires August 14, 2022