

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT  
EASTERN DISTRICT  
OF NEW YORK

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PETER J. GLEASON,

Plaintiff,

-against-

**CV 12 COMPLAINT 4123**  
JURY TRIAL DEMANDED

FIRE COMMISSIONER NICHOLAS SCOPPETTA, individually and in his official capacity; BATTALION CHIEF GEORGE BELNAVIS, individually and in his official capacity; LIEUTENANT EDWARD BOLES, individually and in his official capacity; SUPERVISING FIRE MARSHAL BRIAN GROGAN, individually and in his official capacity; CAPTAIN PATRICK REYNOLDS, individually and in his official capacity; THE UNIFORMED FIRE OFFICERS ASSOCIATION; THE FIRE DEPARTMENT OF THE CITY OF NEW YORK, and THE CITY OF NEW YORK.

**DEARIE, J.**

**MANN. M.J.**

Defendants.  
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Plaintiff, Peter J. Gleason, by his attorneys, DUNNINGTON, BARTHOLOW & MILLER, and as for his complaint respectfully alleges as follows:

**I.**

**PRELIMINARY STATEMENT**

Plaintiff is a retired firefighter now admitted to practice law in New York. This action is based on the New York City Fire Department (FDNY) and its officials' unlawful search, seizure, and subsequent publication and public dissemination of Plaintiff's confidential medical records and information derived therefrom in retaliation for Plaintiff acting as legal counsel for a plaintiff in an action against the FDNY. The FDNY acts as legal custodian of medical records of former

firefighters maintained in a depository in Kings County. Firefighters have constitutionally-protected liberty and property interests in the confidentiality of their medical records that are protected from unlawful searches and seizures, publications and public disseminations, and deprivations without notice and a meaningful opportunity to be heard. These medical records are confidential and protected from unlawful government search and seizure and public dissemination by federal statute and by the Fourth Amendment to the U.S. Constitution. Additionally, Plaintiff has a property interest in the medical records protected by the Due Process Clause of the U.S. Constitution. Defendants owe firefighters a duty of care to maintain the confidentiality of such records.

In early 2006, Plaintiff filed a notice of claim against the FDNY and certain of its officers on behalf of William Kregler, who was also a retired firefighter. Kregler claimed that the FDNY violated his First Amendment rights by retaliating against him by terminating his application for appointment to the position of City Marshal because of his public support of Robert Morgenthau who was then a candidate for District Attorney. *Kregler v. City of New York*, 375 Fed.Appx. 143 (2d Cir. 2010).

On or around July, 2009, Plaintiff was a candidate for City Council for the First Councilmanic District (lower Manhattan). As part of the process, Plaintiff sought the endorsement of the Uniformed Fire Officers Association. During an interview with officers of that Association, Plaintiff was bombarded with hostile questions regarding his representation of Kregler.

Shortly thereafter, on or around August 19, 2009, the FDNY unreasonably searched and seized Plaintiff's confidential medical records without a search warrant. The FDNY then released Plaintiff's medical records to the *Village Voice*, a supporter of Plaintiff's principal

political adversary. By releasing Plaintiff's confidential medical records, the FDNY intended to and did retaliate against Plaintiff for speech that is constitutionally protected; inflicted an adverse employment action on Plaintiff; maliciously inflicted extreme emotional, financial and reputational damage upon Plaintiff; and substantially interfered with Plaintiff's rights of political association, public association, and liberty to effectively represent the individuals and entities of his choice guaranteed by the First Amendment to the United States Constitution. The unlawful search, seizure, publication and public dissemination was arbitrary, served no legitimate governmental interest and was motivated solely by a desire to punish Plaintiff for his representation and to serve the FDNY's political animus and that of individual defendants named in this action. Defendants also republished the *Village Voice* article to firefighters by forwarding a link via email blast.

In accessing Plaintiff's medical records without court authorization and without any legitimate government interest and then publishing Plaintiff's medical records, the FDNY wanted to punish Plaintiff for his representation of a client and did so, effectively destroying his candidacy and damaging his reputation. The FDNY's behavior was extreme and outrageous, warranting punitive damages. Four aggravating factors show an absence of mistake and calculated malice. *First*, the FDNY released the records shortly prior to the election in such a manner that Plaintiff would not have the time to respond to or correct misleading published statements. *Second*, the FDNY released the records to a *Village Voice* reporter known for vitriolic personal attacks on political adversaries. The FDNY's leak was a dirty trick that effectively destroyed Plaintiff's political campaign and sent a chilling message to any former firefighter willing to speak out against the FDNY. *Third*, the FDNY's retaliation against Plaintiff is extreme and outrageous because it shows contempt for judicial proceedings and a

willingness to use confidential medical records for unlawful purposes and to reward its officers engaging in such illegal conduct. *Fourth*, the FDNY's retaliation is part of a municipal policy and a pattern and practice of retaliation against former and current firefighters who exercise their First Amendment and other Constitutionally-protected rights.

## II.

### NATURE OF THE ACTION

1. This is a civil action seeking a declaratory judgment, equitable relief, a preliminary injunction, damages, costs, and attorney's fees brought pursuant to 28 U.S.C §1331, 28 U.S.C. §§2201-2202, 42 U.S.C. §1983, 42 U.S.C. §1988 and Rule 65 of the Federal Rules of Civil Procedure, to redress violations of the Plaintiff's right under the Due Process Clause and the 1<sup>st</sup>, 4<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution.

2. The Plaintiff seeks to secure, among other relief requested herein, a declaratory judgment declaring that the FDNY's release of his confidential medical records is in conflict with the common law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and United States law, and also violates Plaintiff's privacy rights guaranteed by the U.S. Constitution.

3. In addition, the Plaintiff also seeks to secure, among other relief requested herein, injunctive relief enjoining the FDNY from further violations of Plaintiff's rights.

4. This court has supplemental jurisdiction over state law claims alleged herein because such claims are based on the same operative facts.

**III.**

**JURISDICTION AND VENUE**

5. Jurisdiction of the court is invoked pursuant to 28 U.S.C. §1331 in that this is a civil action arising under the Constitution and laws of the United States and involves a conflict between state action and the laws and regulations of the United States under the Supremacy Clause of the United States Constitution.

6. Jurisdiction of the court is also invoked pursuant to 28 U.S.C. §1343(a)(3) and §1343(a)(4) to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States, and to secure equitable or other relief under any act of Congress providing for the protection of civil rights.

7. Plaintiff seeks declaratory relief pursuant to 28 U.S.C. §§ 2201(a) and 2202.

8. Plaintiff seeks permanent injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

9. Plaintiff possesses standing to commence and maintain this action because he is aggrieved by the state action that conflicts with both: (i) United States laws and regulations that are the subject matter of this lawsuit; and (ii) Plaintiff's rights protected by United States law, regulations, and the U.S. Constitution.

10. Plaintiff seeks punitive damages and reasonable attorney's fees as part of the costs authorized to the prevailing party in an action pursuant to 42 U.S.C. §1983, predicated upon 42 U.S.C. §1988 and 42 U.S.C. §2000.

11. Venue is proper in the Eastern District of New York, pursuant to 29 U.S.C. §1331 because a substantial part of the events giving rise to the claim occurred in Kings County, New York, and the Defendants' actual place of business and/or employ is within the Eastern District of New York.

**IV.**

**THE PARTIES**

12. At all relevant times mentioned herein, Plaintiff Peter J. Gleason was and still is an individual residing at 53 North Moore Street, New York, NY 10013 and an attorney in good standing licensed to practice law in New York State.

13. Defendant Brain Grogan at all times relevant was a Supervising Fire Marshal in the FDNY's Bureau of Fire Investigation. He resides at 14 Hauser Street, Bohemia, New York 11716.

14. Defendant Nicholas Scoppetta at all times relevant was the Fire Commissioner for the FDNY. Fire Commissioner Scoppetta had a business address of FDNY HQ, 9 MetroTech Center, Brooklyn, New York 11201 and a home address of 350 Central Park West, New York, NY 10025.

15. Defendant George Belnavis at all times relevant was a Lieutenant or Battalion Chief of the FDNY. Battalion Chief Belnavis has a business address of FDNY HQ, 9 MetroTech Center, Brooklyn, New York 11201.

16. Defendant Edward Boles is a Lieutenant of the FDNY. Lieutenant Boles has a business address of FDNY HQ, 9 MetroTech Center, Brooklyn, New York 11201.

17. Defendant Patrick Reynolds is a Captain of the FDNY. Captain Reynolds has a business address of FDNY HQ, 9 MetroTech Center, Brooklyn, New York 11201.

18. Defendant Fire Department of the City of New York ("FDNY") is a department of the City of New York and is an employer and/or an agent of an employer within the meaning of 42 U.S.C. §2000e(b), as amended. Its principal office is at 9 MetroTech Center, Brooklyn, New York 11201.

19. Defendant Uniformed Fire Officers Association ("UFOA") is an unincorporated labor association that represents the interests of Fire Officers in the FDNY. The UFOA's principal office is at 225 Broadway, Suite 411, New York, New York 10007. Defendants Boles and Reynolds at all relevant times were/are Executive Board members of the UFOA.

20. Defendant the City of New York is a municipal corporation and is an employer and/or agent of an employer within the meaning of 42 U.S.C. §2000e(b), as amended. Its principal office is at 9 MetroTech Center, Brooklyn, New York 11201.

V.

**ALLEGATIONS RELEVANT TO ALL CLAIMS**

**A. BACKGROUND**

21. From 1986 through 1996, Plaintiff served as a firefighter in the employ of the FDNY.

22. In 1996, Plaintiff retired due to a back injury suffered on the job.

23. Plaintiff's injury was caused by a truck hitting a parked vehicle in which the Plaintiff sat.

24. Plaintiff's medical records included an MRI showing that the Plaintiff had a serious injury as defined by New York state law.

25. The FDNY maintains medical records of all firefighters, current and former.

26. The FDNY and its officers owe a duty of care to past and present firefighters to maintain the confidentiality of such records.

27. This duty is founded in the common law and in state and federal law, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. §1320d *et seq.*

28. In 2006, Plaintiff filed a Notice of Claim against the FDNY on behalf of William Kregler.

29. Also in 2006, Plaintiff acted as lead trial counsel in representing Kregler in meetings before the New York City Department of Investigation.

30. Kregler claimed that he had been denied the position of City Marshal in retaliation for his support of Robert Morgenthau.

31. Kregler later filed suit in the U.S. District Court for the Southern District of New York. Plaintiff is not counsel of record for Kregler in the SDNY matter.

32. In 2009, Plaintiff became a candidate for a City Council seat in the First Councilmanic District (Lower Manhattan).

33. In the summer of 2009, Plaintiff succeeded temporarily in keeping the incumbent off the ballot and in blocking the incumbent from receiving campaign matching funds.

34. Accordingly, the media described Plaintiff as one of the "front runners" in the race.

35. In June or July of 2009 Plaintiff appeared before the UFOA to seek its endorsement.

36. The UFOA is the union representing officers of the FDNY.



37. During the interview, Lieutenant Edward Boles and Battalion Chief George Belnavis questioned Plaintiff extensively on the appropriateness of his representation of Kregler and improperly suggested to him that he should not continue such representation.

38. Boles informed Plaintiff that Brian Grogan, one of the named defendants in *Kregler*, was a union delegate who “had a problem” with Plaintiff.

39. Following the interview, upon information and belief, one or more of the named individual Defendants used a false login to access and print out computerized summaries of Plaintiff’s medical records (“the medical records”) through the Bureau of Fire Investigations.

40. The medical records were accessed without Plaintiff’s knowledge or consent.

41. The medical records were confidential.

42. On or before August 19, 2009, one or more of the named individual Defendants provided reporter Wayne Barrett with a copy of the medical records.

43. Defendants provided the medical records to the *Village Voice* knowing and intending that confidential information in the medical records would be published in the *Village Voice*.

44. On August 19, 2009, the *Village Voice* published an article authored by Wayne Barrett and Georgia Bobley titled: “*District 1 Council Race: The Skinny on Challenger Pete Gleason.*”

45. The article was based substantially on the medical records.

46. The article described a 1993 incident in which Plaintiff had been injured and referred to an “inconclusive” CAT scan.

47. However, the CAT scan was not “inconclusive” and indeed showed a serious back injury: a herniated disk that was so severe that it impacted the thecal sac.

48. Indeed, when interviewing Plaintiff, George Bobley conceded, referring to the CAT scan “that’s a serious injury.”

49. Upon information and belief, Defendants, acting singly or in concert, pressured Wayne Barrett to publish the false statement regarding his medical records in an effort to hold Plaintiff up to ridicule and to falsely imply that Plaintiff had falsified an injury.

50. Shortly following publication of the *Village Voice* article, Defendants distributed the *Village Voice* article to firefighters via email blast. Attached hereto as Exhibit “A” is one example (email of Patrick Reynolds dated August 20, 2009).

51. Plaintiff’s claims in this action do not depend on the truth or falsehood of the *Village Voice* article, but lie simply on the invasion and publication of medical records. The falsity, however, is indicative of the extreme malice and animus that are so shocking as to support the award of punitive damages and is also probative of the retaliatory intent of Defendants.

52. Publication of the *Village Voice* article caused Plaintiff extreme reputational damage.

53. Publication of the *Village Voice* article crippled Plaintiff’s political campaign.

54. Margaret Chin won the City Council race and is currently still serving.

55. Following the *Village Voice* article’s publication, Plaintiff filed a complaint with the FDNY.

56. The FDNY repeatedly assured Plaintiff that an investigation into the publication of his medical records was occurring.

57. Upon information and belief, these assurances were a sham.

58. Upon information and belief, the FDNY, as part of its improper municipal policy and practice, encourages and tolerates lax security of medical records and FDNY brass routinely use medical records for improper purposes and are not subjected to discipline.

59. This atmosphere of lawlessness, laxity, and retaliation comes directly from the top: Defendant Nicholas Scoppetta is responsible for the utter failure to maintain proper security and for an FDNY culture where such breaches of firefighter confidentiality are not punished.

60. In or around October, 2010, the UFOA gave Wayne Barrett an award for outstanding journalism.

**B. THE DAMAGE DONE: PLAINTIFF SUFFERS AND CONTINUES TO SUFFER INJURY REQUIRING JUDICIAL INTERVENTION.**

**B.1. Deprivation of Liberty Interest**

61. Defendants' actions have deprived Plaintiff of his liberty interests including, but not limited to, Plaintiff's constitutionally protected right to:

- Privacy in his medical records;
- Represent clients of his choice without government interference and retaliation;
- Be free of the threat that Defendants will further attack him and violate his rights in the future.

**B.2. Deprivation of Property Interest**

62. Defendants' actions have deprived Plaintiff of his property interest in his employment and in his license to practice law

63. Defendants' actions have deprived Plaintiff of his property interest in the confidentiality of the medical records.

VI.

**CAUSES OF ACTION**

**FIRST CLAIM FOR RELIEF**  
**(1983 – First Amendment)**  
**(Against All Defendants)**

64. Plaintiff repeats and re-alleges the allegations set forth within paragraphs 1 through 63 herein.

65. Plaintiff exercised his constitutionally protected right to free speech and association by representing William Kregler.

66. The Defendants had no legitimate government interest in accessing or publishing Plaintiff's medical records.

67. Defendants acted under color of state law and authority in maintaining and accessing the medical records.

68. Defendants' actions caused Plaintiff to suffer injuries that would chill a person of ordinary firmness from continuing to engage in the constitutionally protected activity of representing persons asserting claims against the FDNY.

69. Defendants' conduct violated clearly established rights belonging to Plaintiff (including, but not limited to, his liberty right in the privacy of his medical records and his property right in the confidentiality of these records), of which reasonable persons in Defendants' position knew or should have known.

70. Defendants engaged in the conduct described by this Complaint intentionally, knowingly, willfully, wantonly, maliciously, and in reckless disregard of Plaintiff's federally protected rights.

71. Defendants' conduct proximately caused significant injuries, damages and losses to Plaintiff.

**SECOND CLAIM FOR RELIEF**  
**(1983 – Fourth Amendment)**  
**(Against All Defendants)**

72. Plaintiff repeats and re-alleges the allegations set forth within paragraphs 1 through 71 herein.

73. The actions of Defendants as described herein, while acting under color of state law and authority, intentionally deprived Plaintiff of the securities, rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, including his right to freedom from unlawful seizure and public dissemination of his property as guaranteed by the Fourth Amendment to the Constitution of the United States of America and 42 U.S.C. §1983 in that Defendants seized, publicly disseminated, and otherwise deprived Plaintiff of his rights in the confidentiality of his medical records in which Plaintiff enjoys a property interest.

74. Defendants acted without cause or justification and intentionally, knowingly, recklessly, and excessively retaliated against Plaintiff in a manner resulting in violation of Plaintiff's Fourth Amendment rights.

75. Defendants' conduct proximately caused significant injuries, damages, and losses to Plaintiff.

**THIRD CLAIM FOR RELIEF**  
**(1983 – Fourteenth Amendment (Substantive Due Process))**  
**(Against All Defendants)**

76. Plaintiff repeats and re-alleges the allegations set forth within paragraphs 1 through 75 herein.

77. Defendants' conduct deprived Plaintiff of his constitutionally protected liberty and property interests in the confidentiality of his medical records and to practice law without governmental interference.

78. In addition, Defendants' conduct continues to deprive Plaintiff of his constitutionally protected life, liberty and property interests.

79. Defendants acted without cause or justification and intentionally, knowingly, recklessly, and excessively as alleged above in a manner resulting in violation of Plaintiff's Constitutionally-protected rights that shocks the conscience of any reasonable person.

80. Specifically, Defendants have retaliated against and punished Plaintiff for representing William Kregler and by failing to discipline those who violated Plaintiff's rights.

81. Since Plaintiff has received no assurances that these violations have been investigated or that security measures have been put in place, Plaintiff requests declaratory and injunctive relief herein requiring the FDNY to properly secure Plaintiff's medical records.

82. Defendants' conduct proximately caused (and continues to threaten to cause) significant injuries, damages, and losses to Plaintiff.

83. As a result of the grave and significant dangers presented here, no type of post-deprivation remedy can mitigate the violation of Plaintiff's constitutional rights here.

**FOURTH CLAIM FOR RELIEF**  
**(1983 – Fourteenth Amendment (Procedural Due Process))**  
**(Against All Defendants)**

84. Plaintiff repeats and re-alleges the allegations set forth within paragraphs 1 through 83 herein.

85. Defendants' conduct deprived Plaintiff of his constitutionally protected liberty and property interests in the confidentiality of his medical records.

86. In addition, Defendants' conduct continues to deprive Plaintiff of his constitutionally protected life, liberty and property interests in his medical records.

87. Accordingly, as requested below, Plaintiff requests damages; a declaratory judgment that Defendants' actions violate and are in conflict with the common law, the laws of the United States and the U.S. Constitution.

## VII.

### PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff respectfully demands the following relief:

**As for Claims 1, 2, 3 and 4 (Under 42 U.S.C. § 1983):**

1. That the court grant an award of compensatory damages against Defendants, in such an amount determined at trial by jury including pre- and post-judgment interest;
2. That the court grant affirmative injunctive relief, directing the Defendants to implement security measures;
3. That the court declare that to the extent FDNY security measures permit usage of confidential medical records for political reasons, such measures conflict with federal law and such security measures are unconstitutional facially or, in the alternative, as applied;
4. For an award of reasonable attorney's fees and costs pursuant to 42 U.S.C. §1988(b);
5. For an award for reimbursement of any and all expert fees incurred by the plaintiff, pursuant to 42 U.S.C. §1988(c);

6. For punitive damages that are reasonable and just under these circumstances and such other and further relief as this Court may deem just and proper; and

7. Awarding costs, damages, reasonable attorney's fees, punitive damages, and such other and further relief as is just and proper including pre- and post-judgment interest.

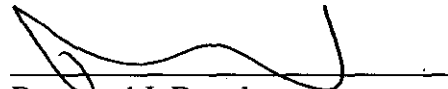


Dated: August 17, 2012  
New York, New York

Respectfully submitted,

**DUNNINGTON BARTHOLOW &  
MILLER LLP**

By:

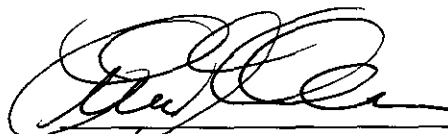


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**VERIFICATION**

I declare, subject to the penalties of perjury under the laws of the United States that the foregoing is true and correct, except where alleged upon information and belief, and with respect to those allegations, I believe them to be true.

Dated: New York, New York  
August 17 2012

A handwritten signature in black ink, appearing to read "Peter J. Gleason", written over a horizontal line.

Peter J. Gleason