

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DANIEL RIVERA,

Plaintiff,

COMPLAINT

-against-

Civil Action No. _____

THE CITY OF NEW YORK, Lieutenant Daniel McEnroe,
Lieutenant Dennis Sweeney, Firefighter Christopher
Combs, and Fire Commissioner Daniel Nigro, in their
individual and official capacities,

Defendants.

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Plaintiff DANIEL RIVERA (“Plaintiff” or “Rivera”), by and through his attorneys Levy Ratner, P.C., alleges upon personal knowledge as to himself and his own acts, and upon information and belief as to all other matters, as to which allegations he believes substantial evidentiary support will exist after a reasonable opportunity for further investigation and discovery, as follows against the City of New York (“City”), Fire Commissioner Daniel Nigro, Lieutenant Daniel McEnroe, Lieutenant Dennis Sweeney, and Firefighter Christopher Combs (collectively referred to as “Defendants”).

NATURE OF ACTION

1. This is an action to remedy discrimination in employment because of race and national origin, and retaliation in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended, 42 U.S.C. §§ 2000e, *et seq.*; 42 U.S.C. § 1983; the New York State Human Rights Law (“NYSHRL”), New York Executive Law §§ 290 and 296; and the New York City Human Rights Law (“NYCHRL”), New York City Administrative Code §§ 8-101, *et seq.*, and Negligent Infliction of Emotional Distress. This action seeks declaratory and injunctive relief,

back pay, front pay, and compensatory and punitive damages both to secure future protection and to redress the deprivation of Plaintiff's rights under these federal, state, and local laws.

2. Plaintiff further alleges retaliation in violation of the Modified Remedial Order ("MRO" or "Order") in *United States, et al. v. City of New York*, No. 07-cv-2067 (NGG)(RLM) ("*Vulcan Society*") (Docket No. 1143 at ¶17). That Order, among other things, enjoined retaliation against any person because he sought or obtained relief from the court in that litigation. Plaintiff sought and obtained relief as a claimant in the *Vulcan Society* case, and the retaliation he experienced violated the MRO.

3. Plaintiff Rivera, a former U.S. Marine and Eagle Scout, joined the FDNY in the wake of 9/11 because of his desire to serve the City. He excelled in the Fire Academy and was selected as a squad leader. Rivera was then selected by the drill instructor, Firefighter Richard Othmer, to lead his entire class of probationary firefighters into the family day celebration marching and singing cadence. This is an honor reserved for the most respected probationary firefighter in the Academy class. After graduating from the Academy, Rivera also thrived at the firehouse where he was assigned. He was encouraged to seek appointment to the FDNY's prestigious Special Operations Command by several officers. However, in 2014, after admitting to fellow firefighters that he was a claimant in the *Vulcan Society* litigation, Rivera was subjected to unremitting harassment and cruelty that was known to his commanding officers. The FDNY leaders who were aware of the abuse, including the FDNY's Equal Employment Opportunity Office and its Bureau of Investigations and Trials (BITs), failed to protect him, and their inaction resulted in additional injury to Rivera. Ultimately, Rivera's psychological harm

was so great that FDNY physicians diagnosed him with PTSD as a result of the workplace treatment he received and found Rivera medically disabled from service.

4. As a result of Defendants' discriminatory and retaliatory treatment, Rivera has suffered severe emotional damage, has lost the salary and benefits he would have earned as a firefighter, has lost a career that had been immensely rewarding and personally valuable to him, and has lost the opportunity to receive the promotion to lieutenant that he studied for and would have received in 2018.

JURISDICTION AND VENUE

5. The jurisdiction of this Court is proper under 42 U.S.C. § 2000e-5(f)(3), 28 U.S.C. §§ 1331 and 1343(a)(3)-(4), and 28 U.S.C. § 1367(a) for claims arising under the NYSHRL and NYCHRL, based on supplemental jurisdiction over claims that arise from a common nucleus of operative facts and are so intertwined with other matters pending before the Court as to make exercise of supplemental jurisdiction appropriate. The jurisdiction of this Court is also proper pursuant to the MRO in *Vulcan Society*. (Docket No. 1143).

6. Venue is proper as the FDNY is headquartered in Brooklyn, New York and Plaintiff has previously obtained relief from this Court in *Vulcan Society*.

7. Plaintiff has fully complied with all prerequisites to jurisdiction in this Court under Title VII. This action is founded on a charge filed with the United States Equal Employment Opportunity Commission ("EEOC") in December 2016 (Charge No. 520-2017-00681). This lawsuit is commenced within ninety (90) days of Plaintiff's receipt of a notice from

the United States Department of Justice (“DOJ”) that he has a right to sue. A copy of the notice is annexed hereto as Exhibit “A”.

JURY DEMAND

8. Plaintiff hereby demands a trial by jury on all issues properly triable thereby.

PARTIES

9. Plaintiff Daniel D. Rivera is a 44 year old Hispanic male who resides in the State of New York, County of New York. He is a Hispanic “Delayed Hire Claimant” in the *Vulcan Society* lawsuit.

10. Defendant City of New York (“City”) is a municipal corporation duly organized and existing under the laws of the State of New York. Defendant City is an employer as defined by Title VII, the New York State Human Rights Law and the New York City Human Rights Law. Defendant City is a “person” for purposes of enforcement of the rights guaranteed under 42 U.S.C. § 1983. Defendant City was or is the employer of Plaintiff Rivera, and of Defendants Nigro, McEnroe, Sweeney, and Combs.

11. Defendant City maintains the Fire Department of the City of New York (“FDNY”) and employs firefighters who, among other things, are responsible for protecting life and property in the City of New York.

12. Defendant Daniel Nigro has served as Fire Commissioner of the FDNY from June 9, 2014 through the present. He is responsible for enforcing the FDNY’s Equal Employment Opportunity Policy and the City EEO Policy and for ensuring that the actions of the FDNY do

not deprive any individual of the rights secured by the Constitution and laws of the United States, as well as the Constitution and laws of the State and City of New York. Defendant Nigro knew or should have known of the discriminatory practices and wrongful acts of the Defendants described in this Complaint, and he condoned, ratified and/or authorized such conduct and recklessly disregarded the consequences thereof. He is sued in both his individual and official capacities.

13. Daniel McEnroe is a Lieutenant in the FDNY. During the relevant period, he was assigned to Ladder Company 35 where he was responsible for carrying out the FDNY's Equal Employment Opportunity policies and for ensuring the firehouse was in compliance with other FDNY policy. Defendant McEnroe knew or should have known of the discriminatory practices and wrongful acts of the Defendants described in this Complaint, and he condoned, ratified and/or authorized such conduct and recklessly disregarded the consequences. He is sued in both his individual and official capacities.

14. Dennis Sweeney is a Lieutenant in the FDNY. During the relevant period, he was assigned to Ladder Company 35 where he was responsible for carrying out the FDNY's Equal Employment Opportunity policies and for ensuring the firehouse was in compliance with other FDNY policy. Defendant Sweeney knew or should have known of the discriminatory practices and wrongful acts of the Defendants described in this Complaint, and he condoned, ratified and/or authorized such conduct and recklessly disregarded the consequences. He is sued in both his individual and official capacities.

15. Christopher Combs is a firefighter in the FDNY assigned to Ladder Company 35. His actions resulted in worse treatment of firefighter Rivera at Ladder 35. He is sued in both his individual and official capacities.

STATEMENT OF THE FACTS

16. In 1999, Plaintiff Rivera took Civil Service Exam No. 7029 for an entry-level firefighter position. Rivera joined the Fire Academy as a probationary firefighter in May 2002 and graduated from the Fire Academy in July 2002. Because he was near the top of his Academy class and a squad leader, he was given the opportunity to choose his firehouse assignment. He selected Ladder Company 35 in Manhattan.

17. Rivera excelled in Ladder 35. When he started, the FDNY had no standard-issue gear to rappel out of windows. Rivera used his knowledge and skills as a rock climber to design a system for rappelling out of windows that firefighters in his battalion began keeping it with their gear. Because of his exceptional performance while still a probationary firefighter, Rivera was encouraged by his officers – including Chief James Hodgens, Captain Barry Meade, Captain Michael Fitzgerald, Captain Jim Gormley, then-Lieutenant John Miles, Lieutenant Paul Lupano, and Lieutenant Kevin Burke – to seek a position with Special Operations Command (“SOC”). Although Rivera was offered a SOC position, he decided to remain in the firehouse to hone his job skills before pursuing a specialized assignment. Later in Rivera’s career he developed an unconscious firefighter drag and rescue device called the FAST Strap which was widely adopted by Officers within his Fire House. It is still in use today.

Plaintiff Becomes a “Delayed Hire” Claimant

18. In 2009, this Court found that the City's use of Civil Service Exam No. 7029 discriminated against black and Hispanic applicants. (*Vulcan Society*, Docket No. 294). Although Rivera had been hired as a firefighter, his hiring was delayed as a result of the exam's unlawful adverse impact on Hispanic test takers. Rivera submitted a claim for relief in the *Vulcan Society* litigation on or about June 18, 2012, was assigned Claimant # 200005763 by the claims administrator, and was granted relief by this Court on August 9, 2013 (Docket No. 1182) based upon the Report and Recommendation of Special Master Mitra Hormozi (Docket No. 1145-3 at p. 10).

19. In 2014, two new probationary firefighters were assigned to Rivera's firehouse – one black and one Hispanic. They were “Priority Hires” in the *Vulcan Society* case, which meant that after passing the computer-based test, the physical exam, and all of the other post-exam screening steps, they were eligible to join the Department with retroactive seniority, as part of the remedy for the City's earlier use of racially-discriminatory firefighter exams. Several firefighters at Ladder 35 refused to welcome or even speak to these Priority Hires. On the overtime sheets, which display seniority, firefighters consistently crossed out the new hires' Priority Hire seniority (which was retroactive) and wrote in their actual time-on-job seniority.

20. Around this same time, Rivera told some of his coworkers that he too was a claimant in the *Vulcan Society* case. This revelation changed Rivera's status in his firehouse virtually immediately. Soon after he disclosed his status as a claimant in the *Vulcan Society* litigation, Rivera began to find realistic-looking plastic cockroaches placed on his belongings at the firehouse. Early in his career, Rivera had told his coworkers about his extreme fear of

cockroaches, and had explained the reason for it. Rivera suffered a traumatic incident at four years old. His father hit him and left him crying in a dark basement closet. Rivera woke covered in roaches having fallen asleep near a nest. He sprayed his body with roach killer similar to Raid, suffered chemical burns and required hospitalization. Rivera's coworkers seemed to understand that this was a serious issue, and they did not tease him about his intense aversion to cockroaches. Over the prior dozen years, Rivera's coworkers had never exploited his fear of cockroaches, until they learned that he was a claimant in the *Vulcan Society* case.

21. The first time this happened, Rivera found a cockroach, which appeared to be real, sitting on top of his deodorant, and he suffered a panic attack. He jumped back in fear, experienced heart palpitations, was unable to breathe normally, and became sweaty and nauseous. Rivera's coworkers witnessed his panic attack. Nevertheless, Rivera soon began finding plastic cockroaches all over his personal items at work: on his combination lock, his FDNY photograph, in his guitar, in his car, his pockets, and even in and on his fire gear. Rivera asked his coworkers for help, but the harassment did not stop. Rivera at one point found about 50 fake cockroaches taped to his locker. Firefighter Combs was present on this occasion; he laughed and did not offer to help.

22. On December 27, 2014, Rivera arrived for a shift and went to his locker, nearly touching a real, dead cockroach that someone had affixed to his lock. The use of an actual cockroach was profoundly painful and upsetting. Rivera took the extremely rare step of reporting the incident to Lt. Dennis Sweeney. When Sweeney came to investigate, Rivera's coworkers blocked Sweeney's entrance and physically pushed him out of the locker room, saying "Leave -

this isn't your concern, we'll handle this." They then locked the door to the locker room, pushed Rivera away and cornered him. They became physically confrontational. They pushed Rivera and jabbed him with their fingers. They shouted obscenities at him, calling him a "rat" and saying, among other things, "You don't report things to the officers!"

23. When Rivera finally managed to leave the locker room, he found Firefighter Gregory Petrik, the most senior firefighter in the firehouse, and explained what had just occurred. Petrik apologized to Rivera for what he had experienced and indicated he would take care of it. Shortly thereafter, using a voicemail system that Ladder 35 and Engine 40 used for delivering urgent messages to all members of both companies, Petrik recorded and delivered a message to all members of the firehouse stating, "I just finished speaking with a member of the firehouse, firefighter Daniel Rivera, who was visibly shaken and disturbed and told me what he had just endured at the firehouse concerning cockroaches and members harassing him. This harassment stops now. If anyone has a problem with it, come see me. This behavior must stop." Petrik told Rivera that he had sent the message to everyone. Rivera later learned that even some retired officers received the message. Rivera believes that all of the officers assigned to his firehouse received the message. No officer assigned to the fire house ever approached Rivera to discuss the voicemail or the harassment that prompted it.

24. Lt. Sweeney did not reenter the locker room that day, did not discipline the firefighters who had prevented his entrance, and did not follow up with Rivera at any point about the complaint that Rivera was attempting to make to him. Upon information and belief, Lt. Sweeney did not report the incident to EEO, nor was any firefighter held responsible for harassing

Rivera. This incident left a deep impression upon Rivera, who realized that the leadership in his firehouse would not protect him or even ask questions about Firefighter Petrik's voicemail. The incident and accompanying voicemail alienated him within his fire company where he was now labeled as a "rat" for having sought Firefighter Petrik's help. From that day forward, it was as if Rivera were excommunicated from his firehouse. Rivera began to fear for his life both at the firehouse and in responding to emergencies.

25. On January 31, 2015, during a trip to a 10-alarm fire at a warehouse in Brooklyn, Rivera's coworkers spoke to each other but refused to speak to Rivera and walked away from him when he approached. Rivera was shunned in this way even at the active fire scene by members of his fire company. Only Rivera's lieutenant directly communicated with him. Shunning within the FDNY is particularly dangerous because unit cohesion and communication are essential elements of safety at a fire scene. Rivera was stunned and devastated to realize that even in the midst of a 10-alarm fire he would be refused status as a member of the team. This incident had a profoundly negative impact on Rivera's psychological wellbeing.

26. On March 12, 2015, Rivera's grandmother died at 106 years old. The firehouse did not send flowers and did not offer to cover Rivera's shifts, as they always did for other firefighters after the death of a family member, and as they had done when Rivera's other grandmother had died in 2004, before Rivera was known to be a claimant in the *Vulcan Society* litigation. Many of Rivera's colleagues – with whom he had worked closely for more than a decade – knew that this grandmother had been like a parent to him, and the Company's total unity in refusing to show him sympathy was again both shocking and gut-wrenching.

27. Soon thereafter, Rivera's coworkers defaced the pictures of him that were on the walls of the firehouse by adding rat whiskers, blacking out the picture, or writing the word "rat" over his face. His photograph was routinely removed from its position on the Company display board and repositioned, out of seniority order, alongside the probationary firefighters. Rivera returned it to its rightful position several times, understanding that the placement of his photograph in the probationary firefighter section was intended as an insult. In or around April 2015, Rivera's photograph was completely removed from the display board in the firehouse where every member of the Company had a photo displayed. These defaced photographs – and the display board with Rivera's picture missing – were in plain view of the Company officers. Nonetheless, no Lieutenant, Captain or Battalion Chief asked Rivera about the missing photograph or attempted to replace it. Upon information and belief, neither the defacing nor the removal of Rivera's photograph was reported to the FDNY's EEO Office or to its Bureau of Investigation and Trials (BITs), which is charged with investigating instances of workplace misconduct and other violations of FDNY policy.

28. Near the end of May 2015, Ladder 35 was assigned to conduct a building search after a crane collapse. Safety protocols require firefighters to perform such searches using a buddy system in which no fewer than two firefighters work an area together. Rivera's coworkers, however, broke with protocol and left him alone. Rivera reported this to a senior firefighter Jeffrey Mark and to Lt. Dennis Sweeney, the officer on duty. Upon information and belief, this infraction was not reported to the EEO Office or to BITs and no step was taken to ensure Rivera's future safety at a fire scene.

29. In or around June 2015, Rivera took a short medical leave in an effort to recover psychologically from the situation at his firehouse.

30. Starting in or around July 2015, Rivera's name was removed each day from the list of shift assignments on a bulletin board in the firehouse, even though he rewrote it daily. Rivera tried carving his name into the wood board to make it permanent, but someone whittled out his carving. When he rewrote his name in permanent marker, someone blacked it out. This board is in full view of company officers, but none of them took any protective or corrective action.

31. Likewise, Rivera's name was repeatedly cut out of the overtime list in the firehouse, and the page would then be carefully taped back together. His name was also blacked out of the Company phone list. Upon information and belief, this behavior was seen and/or known by officers who took no action to ensure that Rivera was able to receive overtime opportunities.

32. In April or May 2015, after receiving a threatening call from Firefighter Combs while he was home and off duty, Rivera reported the deteriorating situation at his workplace to Captain Lewis Robinson and Captain Peter Irish. Captain Irish reported the situation to the FDNY's EEO Office. Rivera is not aware of any further steps being taken by anyone at the FDNY to resolve the situation.

33. From May through July 2015, Rivera spoke regularly with the staff of the FDNY EEO Office.

34. In August 2015, while Rivera was on vacation, probationary firefighter Gordon Springs, who is black, endured an incident of hazing at Ladder 35. Members of Ladder 35 became convinced that Rivera encouraged Springs to file an EEO complaint, further stoking their anger at Rivera. (Springs has since filed a lawsuit regarding his treatment at Ladder Company 35 and the FDNY's handling of his complaint. *See Springs v. City of New York*, Civil Action No. 17-CV-541(AJN) (S.D.N.Y.)).

35. In or around September 2015, Rivera found a glue trap with a live cockroach on it immediately in front of his locker.

36. That summer and fall, Rivera's coworkers stopped agreeing to trade shifts with him or even to relieve him at the end of his shift or allow Rivera to relieve them. Under ordinary circumstances, firefighters often trade work shifts to lengthen the number of consecutive days away from work. It is also customary for firefighters to arrive at work several hours before the official start of the work shift to relieve the firefighters working the prior tour and to be relieved before the official end of their tour. Rivera's coworkers forced him to "ride to the hour," meaning that he would be the last person relieved, even though firefighters are typically relieved in seniority order. When Rivera reported this in October or November 2015, Lt. McEnroe said, "This is a really bad and difficult situation, but you had to expect some kind of backlash."

37. Rivera stopped working overtime shifts, despite the significant financial loss that entailed, because of the hostility that he felt at work.

38. Rivera also sought counseling for the depression, anxiety, insomnia, and panic attacks he was experiencing as a result of his mistreatment in the workplace.

39. Rivera updated BITs and the EEO office regularly about what was happening to him by text message, email, phone, and in person. He also provided detailed, contemporaneous notes to those offices about his treatment at work. Despite his regular contact with staff from both offices, Rivera's working conditions continued to deteriorate. There was no meaningful assistance from either office.

40. In September 2015, senior firefighter Matthew Dennehy, Ladder 35's delegate for the Uniformed Firefighters Association, told Rivera that he was reviled in the Company and that the situation could not be fixed. Dennehy told Rivera that he should seek a transfer, and should not attend the upcoming house meeting with the Union trustee and Union lawyer.

41. After the Union meeting, Rivera's mutual partner, firefighter Christopher Combs, ended their three-year mutual partnership, and Rivera was forced to work straight shifts instead of 24 hour shifts. Within the FDNY, firefighters frequently pair up as "mutual partners" entering into an arrangement whereby the two partners trade tours allowing each firefighter to work twenty-four hour shifts instead of the "straight shifts" of a firefighter's ordinary schedule. Combs and Rivera were paired as mutual partners because they were two of the four seated chauffeurs for Ladder 35 and needed to work opposing schedules to ensure coverage. The loss of his mutual partner meant that Rivera no longer had a standing arrangement to work twenty-four hour tours and, because his coworkers refused to trade shifts with him, he no longer had flexibility in scheduling his work. It also meant that he was occasionally assigned to work when another seated chauffeur was also working, which meant that Rivera lost the opportunity to earn the shift differential paid to chauffeurs each tour.

42. Rivera tried to find another mutual partner. When he called other firehouses in his battalion, he was told that “no one here is ever going to work for you, so stop calling.” Rivera understood that the discrimination and retaliation he had experienced at his firehouse had now spread to other locations.

43. When Rivera approached Lt. McEnroe to report another incident, Firefighter Vincent Dillion said “you’re going to go cry to the officer, you little spic!” Lt. McEnroe did not chastise Dillion and, upon information and belief, did not report the incident.

44. Rivera stopped eating in the kitchen with his coworkers and spent most of his shift, when they were not out on a call, in the gym. For months, he even slept in the gym rather than use the bunk room for fear of what his coworkers might do to him in his sleep. In order to protect himself, Rivera would set up weights and other items by the door so that anyone entering the gym would knock them over thereby waking him up. He left the lights on and struggled to sleep. Upon information and belief, none of Rivera’s officers ever reported this to either the EEO or BITs offices although they undoubtedly knew he was no longer eating with his coworkers or sleeping in the bunk room.

45. In September 2015, Rivera responded to a high-rise fire. He and two other firefighters were assigned to work as a team searching the floors above the fire. Once again, Rivera was left alone to work. Understanding that FDNY policy and his safety required him to conduct the search as a team, Rivera repeatedly attempted to rejoin his coworkers only to be left alone again. Rivera called for an elevator to take him down and got no response. He walked down 10 flights of stairs in smoky conditions alone in order to reach the outside and safety.

Rivera's safety was jeopardized by his coworkers' refusal to work with him in violation of FDNY policy. Rivera reported this breach of protocol to BITs and upon information and belief no steps were taken to reprimand his coworkers. Rivera understood that the Department would not take steps to ensure his safety.

46. Rivera was not treated according to the firehouse customs relating to seniority. For example, in early October 2015, Rivera was assigned to the "roof" position, even though he was the senior firefighter on duty that day and the one who should have been driving. As noted above, firefighters arriving near the end of Rivera's shifts would relieve more junior firefighters instead of Rivera. Rivera reported this conduct to Captain Robinson, who said, "This is retaliation," but, upon information and belief, Robinson did not report the conversation to the EEO Office or to BITs, as required by FDNY EEO policy.

47. In November 2015, Michael Goldman, a counselor in the FDNY's Counseling Services Unit (CSU) recommended that Rivera seek psychiatric help for insomnia, anxiety, panic attacks and depression that had begun and worsened over the previous two months. Rivera spoke with a psychiatrist in December 2015. Rivera remains under the treatment of a psychiatrist.

48. In December 2015, on a day on which Rivera was supposed to be the chauffeur, Firefighter Combs informed Rivera that Combs would be driving. Combs said that Rivera's seniority no longer mattered, and Rivera had no say what happened in the house anymore. Combs made this statement during roll call, in front of both fire companies. After 14 years as a firefighter, Rivera was deprived of both the pride and the monetary premium associated with seniority and the position of chauffeur. He was publically humiliated by the Company's senior

man whose voice carried significant weight in the fire house. Nobody challenged Combs' pronouncement, including the officers present.

49. Rivera's insomnia, depression, anxiety and panic attacks continued, and they interfered with his ability to enjoy time with his family and friends. He became withdrawn and overwhelmed by depression. He struggled to get out of bed and lost interest in his favorite hobbies.

50. Rivera had difficulty getting himself to go to work because he feared for his life and dreaded the humiliation and belittlement he endured there.

51. On December 5, 2015, Combs cornered Rivera in the locker room and demanded, "So, have you made any calls today? Did you call EEO? BITS? Anyone? Did you call your mommy?" Rivera objected to the reference to his family, and Combs replied that "I'll talk about whomever the fuck I want to talk about. You can go fuck your mother and anytime you want to meet me outside at any time then let's go." Rivera asked if Combs was threatening him, and Combs said "you take it however you want!" and then said "you're goddamn right that's a threat." Rivera reported the threat to BITs immediately.

52. On December 9, 2015, Chief Donohue, the Manhattan Borough Commander; the Division Three Commander; the Battalion Nine Commander and other Fire Chiefs visited Rivera's firehouse and met first with the firehouse's officers and then with the firefighters on duty.

53. Upon information and belief, the Fire Chiefs informed the firehouse's officers that they were removing Firefighter Combs from the Company in response to the threats reported against Rivera. Firefighter Combs was detailed to the closest neighboring firehouse, Engine 23, in the same battalion. In circumstances such as this, where a member is threatened and requires protection from another firefighter, it is unheard of for the FDNY to maintain such close proximity between them and the detail assignment. Combs' assignment undermined the efficacy of the FDNY's action because Engine 23 often responds to the same emergencies as Rivera's firehouse.

54. After the Chiefs left, Lt. McEnroe and Capt. Robinson said that the EEO office was going to meet with everyone in the firehouse and that the hazing in the firehouse needed to stop. They warned the collected firefighters that if the incidents got out to the media, people could be fired. They reassured them that the EEO Office did not want that to happen. Rivera understood that his officers were conducting damage control, not attempting to take responsibility for or control over conditions at his fire house. Rivera felt terrified by the looks of blame he received from the other firefighters.

55. Overwhelmed by humiliation and fear, Rivera suffered another panic attack and went on medical leave the following day.

56. Rivera was supposed to start vacation on December 13, 2015, but did not leave until December 25 because of his condition. Although the FDNY medical officer, Dr. Kevin Kelly approved the delayed start of his vacation and although the Department would typically credit back the unused vacation days, the credit was not honored. Rivera informed his company

and division-level officers, EEO, BITs and the Manhattan Union trustee, to no avail, costing him 66 vacation hours.

57. BITs had promised Rivera that upon his return from vacation in February 2016, things would be “completely different” and “much better.” Rivera returned hopeful, but Siheem Roseborough from the EEO Office and Assistant Commissioner Robert Wallace from BITs both told him that “not that much has happened” to relieve the hostile situation at his firehouse.

58. While Rivera was on vacation, in violation of FDNY protocol, Rivera was placed into the Supervised Medical Leave Program (SMLP). None of the officers helped avoid the loss of vacation days or assist Rivera in resolving the issue.

59. In March 2016, Rivera was once again forced to work alone at a fire scene in violation of FDNY policy. Rivera responded to a multiple-dwelling fire near his firehouse. Rivera was working in a smoke-filled basement alone when another firefighter entered the basement, saw him working, and left him alone. At one point while working at this fire, Rivera entered one of the rooms where the fire had originated and was overhauling the ceiling and wall where the fire was located. Although he was standing on a counter to do this work, in violation of FDNY procedure, none of his fellow firefighters moved into position to spot him if he fell. When Rivera lost his footing and fell on the counter, none of his fellow firefighters came to his aid. He was ultimately helped by a covering officer.

60. On April 20, 2016, while parked in Columbus Circle, Firefighter Peter Grillo, who had 1.5 years of seniority compared to Rivera’s 14 years, shouted at Rivera, “You are not a fucking senior guy. You’re a nobody. No one cares for you, and you’re only here to fill a body

and take us where we need to go.” Grillo lunged to attack Rivera and asked him, “What the fuck are you going to do about it?” Firefighter Gaius Ebrat held Grillo back while laughing, and Rivera reported the incident to Lts. McEnroe and Sweeney. Throughout the FDNY, senior firefighters are afforded deference by their less senior coworkers. It is extremely rare for a junior firefighter to speak so disrespectfully to a 14-year veteran.

61. Rivera made a workplace violence report to BITs regarding Grillo’s behavior. He also submitted a charge of retaliation with the EEO Office. Even though Rivera had told only his officers that he would be filing the reports, Firefighter Christopher Contaldi from Engine 40 told Lt. McEnroe while Rivera was in the room that four other firefighters were aware of his complaint and planned to file a counter-complaint.

62. Rivera went out on medical leave following this incident. Both the Department’s Chief Medical Officer Kerry Kelly and Rivera’s own psychiatrist determined that Rivera was suffering from PTSD as a result of the treatment he had received from all levels of personnel in his firehouse.

Rivera’s Medical Diagnosis and Resulting Disability Retirement

63. In September 2017 Rivera was deemed disabled based on the diagnosis of Dr. Kelly and an examination by the FDNY Medical Board of the Pension Fund. Rivera was constructively discharged and forced to retire on an ordinary disability pension on January 10, 2018.

64. Rivera continues to receive private treatment from a psychiatrist and takes multiple prescription medications to cope with the anxiety, depression, panic attacks, insomnia,

and phobias caused by his work for the FDNY. Rivera never experienced these symptoms requiring prescription psychiatric medications until his experience of harassment at the FDNY.

65. Rivera was constructively discharged due to unchecked, outrageous retaliation in his firehouse, which created an extremely and persistently hostile work environment. As a result, he has lost a career and the opportunity to be promoted. In June 2015, Rivera took and passed the FDNY Lieutenant's exam making him eligible for promotion to Lieutenant this year. He has now lost back and future pay including the compensation associated with the Lieutenant's rank and the ability to seek further promotion. Since 2015, Rivera's wages were reduced due to the discrimination and retaliation he faced. This includes lost work, chauffeur pay, and overtime opportunities, as well as a reduction in his monthly pension payment. His pension benefits are far less than what he would have received after completing a full career with the Department. He has also lost 66 hours of vacation pay discussed in paragraph 57 above.

AS AND FOR A FIRST CAUSE OF ACTION

Violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*

66. Plaintiff repeats and re-alleges paragraphs 1 through 65 above, as if fully set forth herein.

67. The actions of Defendant City of New York as set forth above constitute discrimination based on race and national origin and retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*

AS AND FOR A SECOND CAUSE OF ACTION

Violation of 42 U.S.C. § 1983

68. Plaintiff repeats and re-alleges paragraphs 1 through 67 above, as if fully set forth herein.

69. The actions of the Defendants as set forth above constitute a violation of 42 U.S.C. § 1983.

AS AND FOR A THIRD CAUSE OF ACTION
Violation of New York Executive Law §§ 290, 296

70. Plaintiff repeats and re-alleges paragraphs 1 through 69 above, as if fully set forth herein.

71. The actions of the Defendants as set forth above constitute discrimination based on race and national origin and retaliation in violation of the New York Executive Law §§ 290 and 296.

AS AND FOR A FOURTH CAUSE OF ACTION
Violation of New York City Administrative Code §§ 8-101 *et seq.*

72. Plaintiff repeats and re-alleges paragraphs 1 through 71 above, as if fully set forth herein.

73. The actions of the Defendants as set forth above constitute discrimination based on race and national origin and retaliation in violation of the New York City Administrative Code §§ 8-101 *et seq.*

AS AND FOR A FIFTH CAUSE OF ACTION
Negligent Infliction of Emotional Distress

74. Plaintiff repeats and re-alleges paragraphs 1 through 73 above, as if fully set forth herein.

75. The actions of Defendants Daniel McEnroe, Dennis Sweeney, and Christopher Combs as set forth above constitute negligent infliction of emotional distress.

AS AND FOR A SIXTH CAUSE OF ACTION
Violation of Modified Remedial Order in *Vulcan Society* Litigation

76. Plaintiff repeats and re-alleges paragraphs 1 through 75 above, as if fully set forth herein.

77. The actions of Defendant City of New York as set forth above constitute a violation of paragraph 17 of the Modified Remedial Order (Docket No. 1143) in *United States, et al v. City of New York*, Civil Action No. 07-2067 (NGG)(RLM)(E.D.N.Y.).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this court will:

- A. Issue a declaration that Defendants violated Plaintiff's rights under federal, state and local law;
- B. Award equitable relief in the form of back pay and lost future earnings;
- C. Award compensatory damages for the injuries Plaintiff suffered by reason of Defendants' unlawful conduct, including damages for the pain, suffering, emotional distress, loss of dignity, humiliation, and damage to reputation and livelihood endured by Plaintiff in amounts that are fair, just and reasonable, to be determined at trial;
- D. Award Plaintiff punitive damages in an amount to be determined at trial;

E. Award Plaintiff all reasonable attorneys' fees and costs of this action and fees for any work required to ensure compliance with any order for injunctive relief, as provided for in 42 U.S.C. § 1988 and 42 U.S.C. § 2000e-5(k); and

F. Award other such relief as the Court determines to be just and proper.

Dated: June 7, 2018
New York, New York

LEVY RATNER, P.C.



By: Dana E. Lossia
Richard Levy
Rebekah Cook-Mack
80 Eighth Avenue
New York, New York 10011
(212) 627-8100
(212) 627-8182 (fax)
dlossia@levyratner.com
rlevy@levyratner.com
rcookmack@levyratner.com

Attorneys for Plaintiff Daniel Rivera

EXHIBIT A



U.S. Department of Justice
Civil Rights Division

NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

CERTIFIED MAIL

7016 2140 0000 5580 7990

950 Pennsylvania Avenue, N.W.

Karen Ferguson, EMP, PHB, Room 4701

Washington, DC 20530

April 13, 2018

Mr. Daniel Rivera
c/o Dana E. Lossia, Esquire
Law Offices of Levy & Ratner
80 Eighth Ave., 8th Floor
New York, NY 10011

Re: EEOC Charge Against New York City Fire Dept.
No. 520201700681

Dear Mr. Rivera:

Because you filed the above charge with the Equal Employment Opportunity Commission, and more than 180 days have elapsed since the date the Commission assumed jurisdiction over the charge, and no suit based thereon has been filed by this Department, and because you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., against the above-named respondent.

If you choose to commence a civil action, such suit must be filed in the appropriate Court within 90 days of your receipt of this Notice.

The investigative file pertaining to your case is located in the EEOC New York District Office, New York, NY.

This Notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your case is meritorious.

Sincerely,

John M. Gore
Acting Assistant Attorney General
Civil Rights Division

by 
Karen L. Ferguson
Supervisory Civil Rights Analyst
Employment Litigation Section

cc: New York District Office, EEOC
New York City Fire Dept.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DANIEL RIVERA,

(b) County of Residence of First Listed Plaintiff New York (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) LEVY RATNER, P.C. 80 8th Avenue, New York, NY 10011 (212) 627-8100

DEFENDANTS

THE CITY OF NEW YORK, Lieutenant Daniel McEnroe, Lieutenant Dennis Sweeney, Firefighter Christopher Combs, and Fire Commissioner Daniel Nigro, in their individual and official capacities,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 2000e-5(f)(3), 28 U.S.C. §§ 1331 and 1343(a)(3)-(4), and 28 U.S.C. § 1367(a)
Brief description of cause: Retaliation in violation of remedial order in 07-cv-2067 and Title VII, and race discrimination in violation of Title VII

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Nicholas G. Garaufis DOCKET NUMBER 07-cv-2067

DATE 06/07/2018 SIGNATURE OF ATTORNEY OF RECORD Dana Jensen

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Dana E. Lossia, counsel for Plaintiff Daniel Rivera, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

None

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? Yes No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: Dana Lossia

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

DANIEL RIVERA,

Plaintiff(s)

v.

THE CITY OF NEW YORK, Lieutenant Daniel McEnroe, Lieutenant Dennis Sweeney, Firefighter Christopher Combs, and Fire Commissioner Daniel Nigro, in their individual and official capacities,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) THE CITY OF NEW YORK, 100 Church Street, New York, NY 10007
Lieutenant Daniel McEnroe, 9 MetroTech Center, Brooklyn, NY 11201
Lieutenant Dennis Sweeney, 9 MetroTech Center, Brooklyn, NY 11201
Firefighter Christopher Combs, 9 MetroTech Center, Brooklyn, NY 11201
Fire Commissioner Daniel Nigro, 9 MetroTech Center, Brooklyn, NY 11201

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

LEVY RATNER, P.C.
Dana E. Lossia
Richard Levy
Rebekah Cook-Mack
80 80th Avenue, New York, NY 10011

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: