

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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**JOHN TYSON,**

*Plaintiff,*

**-against-**

**SAINT JAMES FIRE DEPARTMENT,  
CHIEF OF DEPARTMENT EDWARD K. SPRINGER, JR.,  
FIRST ASSISTANT CHIEF RYAN D. DAVIS,  
SECOND ASSISTANT CHIEF DAVID MILLS,  
THIRD ASSISTANT CHIEF FRANK SAPIENZA,  
SAINT JAMES FIRE DISTRICT,  
FIRE COMMISSIONER EDWARD SPRINGER, SR.,  
FIRE COMMISSIONER WILLIAM KEARNEY,  
FIRE COMMISSIONER JOHN YOUNG,  
FIRE COMMISSIONER WILLIAM THEOBALT,**

*Defendants.*  
-----X

**Docket No.:  
18-cv-6908**

**COMPLAINT**

**JURY TRIAL  
DEMANDED**

Plaintiff, JOHN TYSON, by his attorneys THE LAW OFFICE OF ANTHONY M. GRANDINETTE, alleges as follows:

**NATURE OF THE ACTION**

1. This action arises from the Saint James Fire Department and Fire District's retaliation against John Tyson for his exercise of his rights to freedom of speech and political expression for publically opposing a bond which the Fire Chiefs and Fire District Commissioners supported, and for publically opposing the closure of the Saint James Historic Firehouse, which the Fire Chiefs and Fire District Commissioners wanted to close down and sell, and for expressing views which were contrary to that of the majority of the Fire Department's governing body.

**JURISDICTION AND VENUE**

2. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, the First and Fourteenth Amendments to the United States Constitution, the Constitution and laws of the State of New York, and 28 U.S.C. §§ 2201 and 2202.

3. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1343.

4. Plaintiffs further invokes the supplemental jurisdiction of this Court to adjudicate pendant New York State law claims pursuant to 28 U.S.C. § 1367.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) and (2).

### **PARTIES**

6. Plaintiff JOHN TYSON resides in St. James, a hamlet within the Town of Smithtown, County of Suffolk, State of New York.

7. Defendant SAINT JAMES FIRE DEPARTMENT (the “Fire Department”) is a duly constituted municipal entity within the Hamlet of St. James, located within the Town of Smithtown in the State of New York, and at all relevant times herein was the public employer of the Fire Department’s Fire Chief and Assistant Chiefs (collectively the “Fire Chiefs”) who are individually-named as Defendants in this action, who at all relevant times herein acted under color of state law and within the scope of their employment. Defendant Fire Department is not a political subdivision of Defendant Fire District.

8. Defendant CHIEF OF DEPARTMENT EDWARD K. SPRINGER, JR. (“Fire Chief Springer, Jr.”) resides in St. James, New York. At all relevant times herein, Fire Chief Springer, Jr. was a member of the Fire Department who acted under color of law and within the scope of his employment with the Fire Department, as well as in his individual capacity. Fire Chief Springer, Jr. is being sued in his individual capacity.

9. Defendant FIRST ASSISTANT CHIEF RYAN D. DAVIS (“First Assistant Chief Davis”) resides in St. James, New York. At all relevant times herein, First Assistant Chief Davis was a member of the Fire Department who acted under color of law and within the scope of his employment with the Fire Department, as well as in his individual capacity. First Assistant Chief Davis is being sued in his individual capacity.

10. Defendant SECOND ASSISTANT CHIEF DAVID MILLS (“Second Assistant Chief Mills”) resides, upon information and belief, either in Nenconset or Ronkonkoma, New York. At all relevant times herein, Second Assistant Chief Mills was a member of the Fire Department who acted under color of law and within the scope of his employment with the Fire Department, as well as in his individual capacity. Second Assistant Chief Mills is being sued in his individual capacity.

11. Defendant THIRD ASSISTANT CHIEF FRANK SAPIENZA (“Third Assistant Chief Sapienza”) resides in St. James, New York. At all relevant times herein, Third Assistant Chief Sapienza was a member of the Fire Department who acted under color of law and within the scope of his employment with the Fire Department, as well as in his individual capacity. Third Assistant Chief Sapienza is being sued in his individual capacity.

12. Defendant SAINT JAMES FIRE DISTRICT (the “Fire District”) is a duly constituted municipal entity within the Hamlet of St. James, located within the Town of Smithtown in the

State of New York, and at all relevant times herein was the public employer of the Fire District Commissioners who are individually-named as Defendants in this action, who at all relevant times herein acted under color of state law and within the scope of their employment.

13. Defendant FIRE COMMISSIONER EDWARD SPRINGER, SR. (“Fire District Commissioner Springer, Sr.”), resides in St. James, New York. He is the father of Fire Chief Springer, Jr. At all relevant times herein, Fire District Commissioner Springer, Sr. was a member of the Fire District Board of Commissioners who acted under color of law and within the scope of his employment with the Fire District, as well as in his individual capacity. Fire District Commissioner Springer, Sr. is being sued in his individual capacity.

14. Defendant FIRE COMMISSIONER WILLIAM KEARNEY (“Fire District Commissioner Kearney”), resides in St. James, New York. At all relevant times herein, Fire District Commissioner Kearney was a member of the Fire District Board of Commissioners who acted under color of law and within the scope of his employment with the Fire District, as well as in his individual capacity. Fire District Commissioner Kearney is being sued in his individual capacity.

15. Defendant FIRE COMMISSIONER JOHN YOUNG (“Fire District Commissioner Young”), resides in St. James, New York. At all relevant times herein, Fire District Commissioner Young was a member of the Fire District Board of Commissioners who acted under color of law and within the scope of his employment with the Fire District, as well as in his individual capacity. Fire District Commissioner Young is being sued in his individual capacity.

16. Defendant FIRE COMMISSIONER WILLIAM THEOBALT (“Fire District Commissioner Theobalt”), resides in St. James, New York. At all relevant times herein, Fire District Commissioner Theobalt was a member of the Fire District Board of Commissioners who acted under color of law and within the scope of his employment with the Fire District, as well as in his individual capacity. Fire District Commissioner Theobalt is being sued in his individual capacity.

17. Plaintiff is placing Defendants on notice that should Plaintiff learn during the course of discovery of additional conduct committed by Defendants which may give rise to liability, or of the identities of additional individuals who committed acts which may give rise to liability, that Plaintiff will seek to amend his Complaint to allege additional claims and/or to name additional defendants, accordingly.

#### **NEW YORK STATE NOTICE OF CLAIM REQUIREMENTS**

18. Plaintiff served a timely Notice of Claim upon the Saint James Fire District and Saint James Fire Department, in compliance with General Municipal Law § 50-e. *See* Exhibit A (exhibits annexed thereto intentionally omitted herein as they are individually annexed as exhibits).

19. At least thirty days have elapsed since the service of said Notice of Claim and the Fire District and Fire Department have neglected or refused to adjust or pay the claims.

20. The Fire District and Fire Department examined Plaintiff pursuant to General Municipal Law § 50-h on June 13, 2018, in advance of Plaintiff commencing this action.

21. This action has been commenced within one year and ninety days after the happening of the events upon which these claims are based.

### **FACTUAL AND GENERAL ALLEGATIONS**

22. Tyson resides in Saint James, a hamlet within the Town of Smithtown.

23. Tyson was sworn in as a member of the Fire Department in June 2014, and he remained a member in good standing until he was terminated from the Fire Department on January 3, 2018. He had started the application process to join the Fire Department soon after moving to Saint James.

24. The Fire Department is a volunteer organization.

25. Since 1977, whenever Tyson lived in an area which was served by volunteer fire services, he became a member of that organization. Tyson was also a paid firefighter in one area he resided during this timeframe.

26. The Fire Department was formed in or about 1922.

27. The Main Firehouse, also known as the “Historic Firehouse,” was built in or about 1922 or 1923, and it is located at 533 Route 25A, at the intersection of North Country Road and Lake Avenue. The Historic Firehouse is owned by the Fire District, which was formed in 1935.

28. When Tyson first became a member of the Fire Department, he was assigned to Engine Company No. 1, where he remained until his termination. Engine Company No. 1 is stationed in the Historic Firehouse.

29. In 1970, a substation was built at 221 Jefferson Ave (the “Substation”). The Substation houses, among other things, the Fire Department’s and Fire District’s headquarters.

30. In 2011, Tyson had retired from State of Washington Department of Social and Health Services, after 25 years. In June 2016, he started working for the Fire District as a house attendant in the Historic Firehouse, on a part-time basis.

31. In or about 2017, the Fire District’s Board of Commissioners (the “Fire District Commissioners”) proposed a \$12.25 million plan to tear down the Substation, and build a new headquarters for the Fire District and Fire Department at that location.

32. A special election was held in the Hamlet of Saint James on September 19, 2017 regarding the approval of the \$12.25 million bond.

33. The Fire District Commissioners and the Fire Chiefs, represented that the new building was needed to address safety concerns with the two stations currently in use. Others, however, were concerned over the cost of the project and the consequential property tax increases, and that some of the related expenses were unnecessary.

34. Additionally, while the September 19, 2017 vote did not directly address the Historic Firehouse on Route 25A, at various times the Fire District Commissioners and Fire Chiefs advised that they intended on closing it down if the bond was approved, and possibly selling the property. Residents did not want an iconic landmark, and symbol of Saint James history, destroyed. There were also concerns that closing down the Historic Firehouse would reduce emergency response times to the areas served by that station.

35. In 2013, voters had rejected a proposed \$8.75 million bond which would have expanded the Historic Firehouse, as well as the Substation.

36. The vote to approve the bond was highly publicized, and hotly contested. For example, it was the subject of numerous articles in Newsday, TBR News Media, and other online publications. A public hearing was held on August 29, 2017, and residents were invited to tour the two stations. Flyers were distributed throughout the community, and residents were asked to come out and vote for and against the bond. The bond vote, and issues related thereto, were also raised during the Fire Department's general monthly business meetings.

37. The governing body of the Fire Department, including Fire Chief Springer, Jr., the three Assistant Chiefs, and the majority of the Captains, Lieutenants, Officers, and Board of Directors, supported the bond.

38. In fact, First Assistant Chief Davis posted a photograph on Facebook of one of the flyers opposing the bond, seven days prior to the vote, with the caption "Can't wait to spill my lunch over all this bullshit." *See Exhibit B.*

39. Lou DeStefano, an active firefighter, and the House Attendant who primarily worked at the Substation, used a Fire Department vehicle to take down signs posted in opposition to the bond.

40. The Fire District Commissioners likewise supported the bond.

41. "Granny Betsy," Fire District Commissioner Young's wife, posted a photograph on Facebook of a deflated balloon fire truck and fire house, three days prior to the vote, with the caption "They just knocked down the main!!!!" *See Exhibit C.*

42. Members of Engine Company No. 1 were against the bond, and the potential closure and sale of the Historic Firehouse. They discussed the issues during their Sunday truck checks. They also discussed the issues during their Company meetings, which a Chief and Commissioner

would attend, and they advised that the Historic Firehouse was needed to service the northern end of the community. Engine Company No. 1's three Company Officers also wrote to letter to the Fire Chiefs, urging them to keep the Historic Firehouse open.

43. Tyson had initially supported the bond. He ultimately opposed it, however, because he believed the Fire District Commissioners and Fire Chiefs were not being transparent with the community and were not soliciting their input, were not taking firefighters' needs into consideration, and that proposed new building was unnecessarily large, too expensive, and the cost itself was fiscally irresponsible.

44. Tyson was vocal regarding his opposition to the bond and to the closure of the Historic Firehouse. He spoke with members of the community and urged them to vote against the bond. He spoke with members from the Substation who supported the bond regarding the issues pertaining to it. He wrote a signed letter to the Smithtown News stressing the cost of the bond and the fact that the Fire Department had not considered less-expensive alternatives, which was publically attributed to him. He also publically posted on Facebook numerous times expressing his views against the bond, and against closing the Historic Firehouse.

45. In the days and weeks leading up to the vote on the bond, Tyson discussed some his concerns with then-Fire District Chairman Larry Montrose, and Fire District Commissioner Springer, Sr.

46. Fire District Chairman Montrose called Tyson prior to the vote, and asked what it would take to change Tyon's position on the vote. Tyson responded "nothing, I'm sorry, there's nothing you can do to change my mind."

47. On September 19, 2017, the bond was rejected by a vote of 775 to 459.

48. The Fire Department's governing body, who overwhelmingly supported the bond and were infuriated that it had failed. They became resentful toward Engine Company No. 1, which they viewed as the source of major opposition to the bond.

49. Those at the Substation blamed the members of Engine Co. #1 for the bond failing.

50. Christina Koryluk, who, upon information and belief was the fiancé of Steven Furio, a Lieutenant in the Fire Department, even posted the following on Facebook: "I hope the main gets a gas leak and explodes. That is all." *See Exhibit D.*

51. Kevin Barattini, a Captain in the Fire Department who was stationed at the Substation, posted a photograph on Facebook of the Historic Firehouse with the caption "Relocating to Jefferson Ave!" along with a superimposed image of two people carrying a box on which the word "Moving!" is written. *See Exhibit E.*

52. Jimmy Earing, a firefighter who was also stationed at the Substation, replied to Captain Barattini's photograph by posting another photograph of the Historic Firehouse which had a superimposed image of a U-Haul truck positioned in front of the Historic Firehouse. *See id.*

53. Sometime well before the vote on the bond, one of the three Engine Company No. 1 officers, Anthony Varricchio, created a Facebook group titled “St. James Fire Department Engine Company #1” (the “Engine #1 Facebook page”). At or about the time he created this Facebook group, he asked Tyson, as well as Tricia and Richard Weisse (siblings, not spouses), to be the administrators of the group. They agreed.

54. Although Tyson was asked to be an administrator of the Engine #1 Facebook page, he was not told what duties and responsibilities, if any, the administrator had.

55. In fact, Tyson first learned of the duties and responsibilities imposed on an administrator of this Facebook group, after he had already been terminated from the Fire Department.

56. On or about September 24, 2017, five days after the bond had failed, Tricia Weisse posted a photograph of the Historic Firehouse to the Engine #1 Facebook page, without comment. *See* Exhibit F. She posted the photograph in celebration of the fact that the Historic Firehouse would not be closed down.

57. Shortly thereafter, Tyson posted the following comment on that photograph: “It is tough, unless you are looking for a new place to party, to see these pics and remain absolutely unemotional about tearing it down. Nice pics.” *See id.*

58. On the Engine #1 Facebook page, the post is attributed to “St.James Fire Dept. Engine Company No. #1,” and not to Tyson. *See id.*

59. When an administrator of a Facebook group visits that particular group while signed onto his or her personal Facebook account, comments he or she makes on the group are automatically set to appear to be posted from the group itself, rather than the individual. In order to change that setting, when an administrator clicks on a photograph in order to comment on it, he or should must click on the small drop-down arrow near the group photograph, and change the “Liking and commenting as [name of group]” to “Liking and commenting as [personal name].”

60. At the time Tyson posted his comment on Tricia Weisse’s photograph of the Historic Firehouse, he was not aware of these Facebook settings regarding posts by a group administrator on the group’s page. Tyson posted the comment while signed into his personal Facebook account, and when he posted the comment he was acting in his personal and individual capacity. Although the comment itself was publically attributed to the and he intended, and believed at the time, that he was posting the comment in his personal and individual capacity.

61. When Tyson posted his comment on Tricia Weisse’s photograph of the Historic Firehouse, he was off-duty, and he acted as a citizen, commenting on a matter which was of significant public concern to the residents in the Hamlet of Saint James who were served by the Fire Department.

62. The Fire Department’s governing body, particularly the Fire Chiefs, who overwhelmingly supported the bond and were infuriated that it had failed, were outraged at the Facebook



comment which showed support for maintaining the Historic Firehouse rather than building a new structure where the Substation is currently location.

63. While at the Historic Firehouse the following day, Tyson's Captain, Captain Robert Rosenbauer, showed him a printout of the photograph Tricia Weisse had posted, with Tyson's comment on it. He advised Tyson that the "Chiefs" had brought this to his attention, and that "I don't know if anyone is going to get in trouble for this or not."

64. Captain Rosenbauer asked Tyson if he knew who had posted the comment on the photograph. Tyson responded that "it looks like something I did." However, because on the post itself, the comment was not attributed to him, and because Tyson was not aware that posts by a Facebook group administrator are, by default, set to appear as if posted by that group itself, the fact that his name was not attached to the post confused him as to whether he was the one who had written it.

65. Additionally, Tyson was always very active on Facebook, and online generally, particularly regarding political issues. He has written numerous posts, comments, letters, and so forth, and once he had posted the comment on Tricia Weisse's photograph of the Historic Firehouse, he did not give it much thought again.

66. Captain Rosenbauer advised Tyson that he, Tyson, could not have been the one who posted the comment, because his name did not appear near the post.

67. On or about September 29, 2017, Tyson received a telephone call from Second Assistant Chief David M. Mills. Assistant Chief Mills read the comment to Tyson, told him that one of the three administrators—Tyson and the Weisses—were responsible for the post, and that until one of them admits to posting it, all three were suspended from the Fire Department for 90 days. The suspension took effect immediately.

68. Tyson advised Assistant Chief Mills that he possibly wrote the comment but that he was not sure it was him. Tyson was confused about the fact that his name did not appear near the post, and given the extent of his online political interactions, he did not specifically recall posting that particular comment. However, Tyson did advise Assistant Chief Mills that he "would be more than happy to take responsibility" for the post.

69. Tyson was in shock at the fact that he was suspended from the Fire Department. In all his time fire fighter since 1977—both volunteer and paid—he had never been suspended before, and he did not understand why the post warranted suspension in this case.

70. Prior to the suspension taking effect, Tyson did not receive any notice of the charge or charges against him, and he was not provided with a hearing, or any other opportunity to be heard. Additionally, the decision to suspend Claimant was made in violation of GML § 209-1, which permits a suspension "*after* charges are filed and pending disposition of the charges" (emphasis added).



71. Rather, two days *later*, Tyson received a letter from the Fire Department dated September 28, 2017 which was signed by Chief Springer, Jr., advising him that he was socially suspended from the Fire Department for three months, until December 31, 2017, because, according to the letter, “the ‘**It is tough, unless you are looking for a new place to party, to see these pics and remain absolutely unemotional about tearing it down. Nice pics**’ violates the district[']s social media policy.” *See* Exhibit G. The letter did not accuse Tyson of posting the comment, but rather, held him responsible for the post because he was one of the three administrators of the Engine #1 Facebook page. *See id.*

72. The September 28, 2017 letter set forth the guidelines for social suspensions:

Member is still responsible to maintain their percentage and may attend designed trainings, stand by's [sic], work details as approved by the **Chief's Office**. Member must leave immediately following approved events. Member is **NOT** permitted to attend any social events such as parties, dinners, picnics and parades, or participate in extracurricular clubs, groups, teams or organizations associated with the Fire Department & Fire District without permission of the Chief[']s Office.

*See id.*

73. This letter memorialized some of what Second Assistant Chief Mills had conveyed to Tyson on September 29, 2017—that Tyson was suspended. Nonetheless, the decision to suspend Tyson was made without formal charges being filed, and without providing him with notice, a hearing, or any other opportunity to be heard, in violation of GML § 209-l

74. However, the post did not violate the Social Media Policy, and Tyson had not violated the Social Media Policy merely by being an administrator of the Facebook group on which the post was made. If any portion of his post did violate the Social Media Policy, then that policy is unconstitutionally overbroad as it has the effect of prohibiting protected speech—speech made while off-duty, on a matter of public concern, on a public forum.

75. The Fire Chiefs knew that Tyson did not violate the Social Media Policy, as the Social Media Policy itself expressly acknowledges that “[a]s a basic constitutional concept of law, a public employee or department member may comment on a matter of public concern.”

76. Fire Chief Springer, Jr. made the ultimate decision to have Tyson suspended, however he did so, upon information and belief, in conjunction with the unanimous decision of the other Fire Chiefs—First Assistant Chief Davis, Second Assistant Chief Mills, and Third Assistant Chief Sapienza.

77. The Fire Chiefs suspended Tyson in retaliation for his exercise of his First Amendment rights of freedom of speech and freedom of political expression, for publically expressing views which were contrary to that of the Fire Department at large by demonstrating support for maintaining the Historic Firehouse rather than building a new structure where the Substation is

located, which is what the Fire Chiefs and Fire District Commissioners had wanted to accomplish through the failed bond.

78. The Fire Chiefs are high-ranking officials within the Fire Department, who are ultimate decision-makers as to matters of Fire Department membership discipline, including suspension.

79. The decision to suspend Tyson was not a random act.

80. Tyson attempted to appeal his suspension. He wrote a letter dated October 11, 2017 to Chief Springer, Jr. explaining why he believed the suspension was improper, and requesting that it be voided because “I want nothing in my file that casts aspersions on my character or contribution to our district/department.” *See* Exhibit H. Tyson never received a response to this letter from anyone in the Fire Department.

81. Tyson contacted an attorney, Edward M. Taylor, Esq., who wrote a letter dated November 10, 2017 to Fire Chief Springer, Jr., again requesting that Tyson’s suspension be lifted, and that any reference thereto be removed from Tyson’s record.

82. Fire District Chairman Montrose was cc’d to Mr. Taylor’s letter.

83. After the Fire Department and Fire District received Mr. Taylor’s letter, the individual defendants from the two municipal entities discussed the unlawful suspension of Tyson.

84. Fire District Chairman Montrose responded to Mr. Taylor, stating that “the District does not agree with the contents of your communication with respect to any alleged improper actions and/or inactions by the District and/or the Department.” He further stated that the “social suspension” was “interposed by Chief Springer.”

85. In the interim, Joseph Kuethen, a former Fire District Commissioner, a former Chairman of the Board of Fire Commissioners, and an active Firefighter, was running for Fire District Commissioner again.

86. On December 11, 2017, Mr. Kuethen posted a video on the Facebook group “Citizens for a Safer St. James,” titled “Joe Kuethen discusses his objectives as Fire Commissioner, including *establishing unity within the department* and the St. James community as a whole.” *See* Exhibit I (emphasis added).

87. One of the platforms Mr. Kuethen ran on, in fact the first issue raised in his video, was opposing the decision to close the Historic Firehouse. In his video, he also addressed the significant increase in the budget—a 16% increase, which he called “poor planning.” He then stated the following:

The most important objective is looking at the budget, and maintaining that Firehouse. There’s no reason that we need to get rid of that Firehouse. The Fire District owns it. And to maintain it

is, while there's a cost involved, we have to maintain it. And it's a serviceable building. It held up well.

My intent, what I'm going to try to do, is again, establish that unity, and let everyone know what's going on. I don't think it's been there. We've asked for, "Well if this don't work what's the contingency?" and there's been no answer. You know, we need to have that contingency, and that's where forming a civic group or an advisory committee of residents, and a couple of other key people, we could probably come to a better consensus of opinion what we could do to extend ourselves.

88. Several individuals commented on Mr. Kuethen's post.

89. On December 12, 2017, Tyson also commented on Mr. Kuethen's post. In response to Mr. Kuethen's statements, Tyson wrote the following comment:

Joe. you have my vote and possibly six others I have encouraged.

You identify several areas demanding your attention. You will have the most difficulty breaking the commission "group think" and cultivating a commitment to community involvement. Include firefighters in collaboration, not just the favorite sons and daughters but all who desire to provide constructive input.

Unification of the firefighters? Difficult. That responsibility rests with the chiefs who are centered on exploiting differences and punishing those of opposing opinion. You may be able to help set the tone for that a bit.

Tough position. Good luck, sir.

*See id.*

90. Tyson posted the comment while signed into his personal Facebook account, and he posted the comment in his personal and individual capacity.

91. When Tyson posted his comment on Mr. Kuethen's video, he was off-duty, and he acted as a citizen, commenting on a matter which was of significant public concern to the residents in the Hamlet of Saint James who were served by the Fire Department.

92. The Fire Chiefs and Fire District Commissioners were again outraged at Tyson for publically expressing views, this time on a public post which numerous individuals were watching in determine whom to vote for for Fire District Commissioner, which were contrary to the views the held, and which publically critized them on this locally-significant issue.

93. On January 2, 2018, at approximately 1:35 PM, Tyson received another telephone call from Second Assistant Chief Mills, advising him that he was suspended from the Fire Department and that, in sum and substance, Tyson ‘cannot even go to the firehouse at all.’ Second Assistant Chief Mills made clear to Tyson that the suspension was no longer limited to a social suspension, and that he was not permitted to attend the Fire Department’s monthly Department meeting the following evening.

94. Once again, prior to the suspension taking effect, Tyson had not received any prior notice of the charge or charges against him, and was not provided with a hearing, or any other opportunity to be heard. Additionally, the decision to suspend Claimant was made in violation of GML § 209-1, which permits a suspension “*after* charges are filed and pending disposition of the charges” (emphasis added).

95. Rather, as with the first suspension, one or two days *later*, on or about January 3 or 4, 2018, Tyson received a letter from the Fire Department, dated December 28, 2017 and signed by Chief Springer, Jr., advising that the portion of his post, “That responsibility rests with the chiefs who are centered on exploiting differences and punishing those of opposing opinion,” violates the District’s Social Media Policy. *See* Exhibit J. The letter stated that “[t]his is your second offense in regards to a social media policy violation. You are currently socially restricted till December 31, 2017. The chief’s office is now extending your social restriction till June 30th 2018. This is an additional 6 months.” *Id.*

96. This letter memorialized some of what Second Assistant Chief Mills had conveyed to Tyson on January 2, 2018—that Tyson was suspended. Nonetheless, the decision to suspend Tyson was made without formal charges being filed, and without providing him with notice, a hearing, or any other opportunity to be heard, in violation of GML § 209-1.

97. Tyson’s Facebook post, which merely responded to the publically-posted video by “Joe Kuethen discuss[ing] his objectives as Fire Commissioner, *including establishing unity within the department* and the St. James community as a whole” (emphasis added), did not violate the Social Media Policy. If any portion of his post did violate the Social Media Policy, then that policy is unconstitutionally overbroad as it has the effect of prohibiting protected speech—speech made while off-duty, on a matter of public concern, on a public forum.

98. As noted above, Tyson had not violated the Social Media Policy due to being an administrator of the Facebook group on which the comment showing support for maintaining the historic firehouse, was made. (The post itself did not violate the Social Media Policy, either). However, Defendants utilized that unlawful suspension, which was in effect until December 31, 2017, to violate Tyson’s rights even further by extending his suspension for an additional six months. These acts were taken purely in retaliation for Tyson exercising his rights to free speech and freedom of political expression, by expressing views on the political issues pertaining to the Fire District Commissioner’s election and key issues addressed by that election, which were contrary to the views of the majority of the Fire Department’s governing body, and for publically taking a stance against the Fire Chiefs and Fire District Commissioners. These acts were also taken as a means of further retaliating against Tyson for publically opposing the construction of a

new structure where the Substation was located, and for publically opposing the destruction of the Historic Firehouse.

99. The Fire Chiefs again unanimously made the decision to suspend Tyson this second time, and the vote to suspend Tyson this second time was not a random act, either.

100. On January 3, 2018 at or about 8 PM, the Fire Department held its monthly Department meeting. Tyson intended on going to the meeting, however he did not do so because Second Assistant Chief Mills advised him of his full suspension the night before, which prohibited him from attending Fire Department meetings.

101. At the January 3, 2018 meeting, Fire Chief Springer, Jr. recommended that Tyson be terminated from the Fire Department.

102. By a small majority, the Fire Department membership present at the meeting voted to terminate him.

103. The termination was effective immediately.

104. Tyson has not been provided with prior notice of the vote to terminate him from the Fire Department or of the charges upon which the vote to terminate him would be based, and had not been provided with *any* opportunity to be heard on the matter.

105. Rather, the Fire Chiefs strategically had Assistant Chief Mills advise Tyson of the suspension the *day before* the meeting, so that Tyson would not be present when the vote to permanently terminate him from the Fire Department was held.

106. Tyson did not receive any due process, and he was terminated in violation of GML § 209-1.

107. Tyson only learned of the vote to terminate him from the Fire Department, the *following* day, *after* his termination had already taken effect, from Richard Weisse.

108. On December 19, 2017, Tricia and Richard Weisse had filed suit against, among others, the Fire Department, Fire District, Fire Chief Springer, Jr., First Assistant Chief Davis, in the United States District Court for the Eastern District of New York under docket number 17-cv-7392 (DRH) (AKT), due to the violation of their due process and First Amendment rights stemming from their being socially suspended for being administrators of the Engine #1 Facebook page, as discussed above.

109. On January 2, 2018 at 1:28 PM, seven minutes before Assistant Chief Mills advised Tyson of his second suspension, copies of the Weisses' Summons and Complaint were served at the Substation for the Fire District, Fire Department, Fire Chief Springer, Jr., and Assistant Chief Davis. *See Weisse v. St. James Fire Dep't*, 17-cv-7392, DE 14, 16-18. Assistant Chief Mills had not yet learned of the Weisses' lawsuit when he spoke with Tyson at approximately 1:35 PM that day.

110. Once the Weisses' lawsuit was served, and anticipating that Tyson would also likely file suit for the violation of *his* due process and First Amendment rights, the Fire Department submitted a letter to Tyson in order to retroactively attempt to create the appearance of having provided Tyson with sufficient notice of his unlawful termination. The Fire Department submitted a letter to Tyson dated January 15, 2018, which was signed by the Chand Kataria, the Department Secretary, which stated the following:

This letter is to inform you that at the January 3rd, 2018 monthly department meeting, during the Chief's report, upon the recommendation of the Board of Officers, the Chief recommended that you be dropped from the department rolls based on the Chief[']s Order cited below.

In accordance with our Department Bylaws, a vote of the membership was held on the Chief's recommendation. The vote affirmed the Chief's recommendation.

You are further informed that you are no longer a member of the St. James Fire Department.

Please return any Department property and remove any Department or Company decals from your vehicles.

The Chief's recommendation was in accordance with the Chief Orders, Article 9, General Orders, Section 7.

See Exhibit K.

111. Tyson received this letter on or about January 19, 2018. Prior to receiving this letter, no one from the Fire Department, other than Richard Weisse, had advised him that he was terminated from the Fire Department during the January 3, 2018 department meeting.

112. Article 9, Section 7 of the Chief's Orders noted in the January 15, 2018 letter, provides that "[a]ny member who is subjected to three (3) disciplinary actions within a period of two (2) years will be subject to dismissal from the Department pending a review by the Board of Officers." The Chief's Order does not provide for any due process—notice, hearing, or any other opportunity to be heard—prior to being terminated from the Fire Department.

113. Article IV, Section 12 of the By-laws provides that "[i]f a member is found to be derelict in duty, the Board of Officers shall recommend to the Department that the member be dropped from the rolls. Final action of expulsion must be made at a regular meeting by a vote of the members present." The Department By-laws, pursuant to which it was claimed that the membership voted to terminate Claimant, merely dictates when the vote should take place. In any event, it does not either provide for due process —notice, hearing, or any other opportunity to be heard—prior to the Fire Department membership voting to terminate an individual from the Fire Department.



114. Accordingly, the Fire Department's Constitution and By-Laws, as well as the Chief's Orders, are unconstitutional in that respect.

115. Although the Fire Department referenced its by-laws as justifying Tyson's termination, their by-laws did not provide them with the authority to terminate Tyson.

116. GML § 209-1 permits a "fire company to remove a volunteer officer or voluntary member of such company for failure to comply with the constitution and by-laws of such company." However, the Social Media Policy is not part of the Fire Department's Constitution or By-Laws. In fact, the Social Media Policy was enacted by the Fire District, and not the Fire Department.

117. Other than permitting the removal of a volunteer firefighter for failing to comply with the constitution or by-laws, GML § 209-1 prohibits removing members of a volunteer fire department "except for incompetence or misconduct." GML § 209-1 (1-2). Additionally,

Removals on the ground of incompetence or misconduct . . . shall be made *only after a hearing upon due notice and upon stated charges and with the right to such officer or member to a review* pursuant to article seventy-eight of the civil practice law and rules. *Such charges shall be in writing* and may be made by any such authority. The burden of proving incompetency or misconduct shall be upon the person alleging the same. GML § 209-1 (1-2).

GML § 209-1 (3) (emphasis added).

118. Although Article 9, Section 7 of the Chief's Orders noted in the January 15, 2018 letter, provides that "[a]ny member who is subjected to three (3) disciplinary actions within a period of two (2) years will be subject to dismissal from the Department pending a review by the Board of Officers," Tyson had not been provided notice of a third disciplinary action pursuant to which the vote to terminate him from the Fire Department, was made.

119. Defendants acted out of malice, in retaliation against Tyson for publically exercising his rights to free speech and political expression as discussed above.

120. On January 10, 2018, the Fire District held its regular bi-monthly meeting.

121. Unlike the Fire Department's monthly meeting which Tyson was not permitted to attend, the Fire District's meeting was open to the public, and Tyson attended the meeting.

122. All five Fire District Commissioners—Springer, Sr., Young, Kearney, Theobalt, and Kuethen (who had won the election in the interim), were present at the meeting, as were First Assistant Chief Davis, and Third Assistant Chief Sapienza. *See Exhibit L at 1.*

123. Without having received notice, either formal or informal, First Assistant Chief Davis recommended to the Fire District Commissioners that Tyson no longer be recognized as a



volunteer member of the Fire Department, that he be dropped from the Fire District rolls, and that all his related benefits be cancelled.

124. At this point, on January 10, 2018, other than the oral representation made to him by Richard Weisse, Tyson had not even received notice from the Fire Department that he had been terminated.

125. A motion was made on First Assistant Chief Davis's recommendation.

126. Fire District Commissioners Springer, Sr., Young, Kearney, and Theobalt, had discussed Tyson's suspensions, and subsequent termination from the Fire Department, with the Fire Chiefs, prior to the January 10, 2018 meeting. They knew that Tyson was unlawfully suspended and terminated from the Fire Department, and they discussed the issues related thereto.

127. They also planned, in advance of the January 10, 2018 meeting, that at the meeting, one of the Fire Chiefs would be making the recommendation to have Tyson dismissed from the Fire District's rolls. However, they also knew that there was no basis to dismiss Tyson from the District rolls and cancel his related benefits, given that Tyson had been unlawfully suspended and terminated from the Fire Department.

128. Despite that, Fire District Commissioners Springer, Sr., Young, Kearney, and Theobalt voted to no longer recognize Tyson as a volunteer firefighter, and the vote was approved. Fire District Commissioner Kuethen was the only one who opposed the vote. *See id.* at 3.

129. Fire District Commissioners Springer, Sr., Young, Kearney, and Theobalt voted to no longer have Tyson recognized as a volunteer firefighter, which meant that he would be removed from the Fire District rolls and his related benefits would be cancelled, in retaliation against Tyson for his exercise of his First Amendment rights of freedom of speech and freedom of political expression, for publically opposing the bond, a move which the Fire District Commissioners (other than Kuethen) had spearheaded, as well as for publically opposing the closure of the Historic Firehouse.

130. Tyson, who was present at the meeting and had not known to anticipate the vote, was publically humiliated.

131. Tyson had not received any notice of the vote to dismiss him and cancel his benefits, either formal or informal, and had not received any opportunity to be heard on the matter. He was dismissed, and his insurance and LOSAP benefits were cancelled, in violation of his due process rights, and in violation of GML § 209-1. To the extent the vote taken by the Fire District Commissioners was authorized by their governing principles, by-laws, or other procedures, those, too, are in violation of basic due process as well as GML § 209-1.

132. Thereafter, the Fire District sent a letter to Tyson on January 23, 2018, which was dated January 19, and signed by Fire District Commissioner Springer, Sr., advising him that "the Board will be cancelling all insurance coverages for you as an active volunteer due to the act that you are no longer a member of the Department." *See Exhibit M.*

133. As noted, the Fire Chiefs contemplated the fact that as the Weisses had done, Tyson would likely also file suit against them for the violation of his rights.

134. The Fire Chiefs also realized that the very section of the Chief's Orders which they cited to Tyson in their letter dated January 15, 2018 which notified Tyson of his termination from the Fire Department, which then served as the purported basis for his removal from the Fire District rolls, required a third "disciplinary action[ ]," however Tyson had never been given notice of a third disciplinary action pursuant to which the vote to terminate him from the Fire Department, was made.

135. Therefore, prior to drafting and sending the letter dated January 19, 2018, to Tyson, the Fire District Commissioners and the Fire Chiefs again discussed the issues related to Tyson's unlawful suspensions and termination, and the fact that the Fire Department had not provided Tyson with due process.

136. Therefore, the Fire District Commissioners and the Fire Chiefs agreed that in the First District's letter to Tyson informing him, practically speaking, of his removal from the District rolls, and the fact that his benefits were cancelled, the Fire Commissioners would include a third suspension in order to attempt to justify, and legalize, their subsequent unlawful acts toward Tyson.

137. Pursuant to that agreement, in the letter to Tyson dated January 19, 2018, the Fire Commissioners stated the following: "On Monday, January 1, 2018 the Chief's office suspended you for conduct unbecoming towards an officer and conduct unbecoming towards a commissioner. This is in direct violation of the Chief's Orders." *See id.*

138. Tyson received this letter on January 25, 2018. As with the other suspensions mentioned above, Tyson had not received prior (or subsequent) notice of the charge, had not received any notice that he had been suspended for this charge until 24 days *after* the suspension had supposedly taken affect, and was not afforded any opportunity to be heard on the matter. This suspension, *if* it did in fact occur on January 1, 2018, violated Tyson's due process rights as well as GML § 209-1. Additionally, if this suspension did in fact occur, the Fire Department did not have the authority to discipline Tyson for the underlying actions at issue.

139. In taking disciplinary measures against Tyson, the Fire Department treated Tyson differently from other members.

140. Unlike immediately suspending, and then terminating, Tyson from the Fire Department under the guise of enforcing the Social Media Policy when he did not in fact violate it, the Fire Department failed to take any disciplinary measures against other members who *did* violated the Social Media Policy.

141. For example, the Fire Department did not take disciplinary action against Fire Department members who posted the various comments on Facebook, discussed above, which is in violation of the provision of the Social Media Policy which states that "Speech that . . . undermines discipline and harmony among co-workers or negatively affects the public

perception of the District or Department may be sanctioned,” and that “airing personal workplace grievances does not raise a matter of public concern.”

142. In fact, the Fire Department and/or Fire District themselves violated the Social Media Policy by deleting the Engine #1 Facebook page entirely, as the Social Media Policy provides that “[a]ll social media content shall adhere to all applicable laws, regulations and policies *including the records management and retention requirements set by law and regulation.*” (emphasis added).

143. After Tyson’s termination and dismissal, he continued performing his part-time House Attendant duties with the Fire District. He worked 12 hours a week over a three-day period.

144. Even after he was termination from the Fire Department and removed from the Fire District rolls, the animosity toward Tyson from those individuals at the Substation, continued to increase, due to his public stance against their views, with the goal of forcing Tyson to resign from his position with the Fire District.

145. Some members openly showed hostility toward Tyson, such as Lt. Steve Furio, First Assistant Chief Davis, Fire Chief Springer, Jr., Vice President John Stein, Captain Mitch Corace, former Chief Mike Grayson, Fire District Commissioner Springer, Sr., and Fire District Manager Christopher Crychuk, who was Tyson’s supervisor for his paid position with the Fire District.

146. Other individuals within the Fire Department distanced themselves from Tyson. When Tyson walked into a room within the Substation, those present would stop conversing, and would not acknowledge his presence.

147. Although Tyson was not required to clean up after personal-use items, such as used pans or empty cups, individuals from the Substation started leaving these items around intentionally as a sign of disrespect toward Tyson.

148. First Assistant Chief Davis slammed his fist into Tyson’s car, and he noticed that Tyson was in the car at the time, he glared at him.

149. Vice President John Stein called Tyson and the other members of Engine Company #1 “assholes.”

150. Lt. Furio, the fiancé of Christina Koryluk who had posted a comment on Facebook about hoping the Historic Firehouse “gets a gas leak and explodes. That is all,” posted the following in response to a comment Tyson had made on Facebook regarding the sale of the Historic Firehouse:

John Tyson is just a former disgruntled fireman who was voted out of the department for violating the social media policy and insubordination. You are lucky they don’t fire you from your job cleaning the toilets. I think of you every time I take a crap in your [s]o called historic building. Flush out that idea, Grandpa.

151. Lt. Furio was not disciplined for posting this comment, which clearly violated the Social Media Policy.

152. Tyson was advised that the Fire “Chief” “hated” him, and wanted to get him out of the Fire Department—meaning have him leave his paid position with the Fire District.

153. The hostility toward him reached the point where if others were not around, Tyson started fearing for his safety.

154. Tyson also feared that if either he or his wife called for emergency assistance, the Fire Department would not necessarily respond, or at the very least, would not respond in the same manner as they would to another emergency that did not involve him.

155. In early April 2018, Fire District Manager Christopher Crychuk advised Tyson that from then on, Tyson would be required to turn in his keys which he used to access the Historic Firehouse, at the end of every shift. This greatly inconvenienced Tyson, as he was required to pick up his keys at the Substation prior to every shift, and after completing his job at the Historic Firehouse, he then had to go back to the Substation to turn in his keys.

156. However, Lou DeStefano, the House Attendant who primarily worked at the Substation, who supported the bond and the closing of the Historic Firehouse, was not required to turn in his keys.

157. Mr. Crychuk acknowledged to Tyson that in ordering him to turn in his keys every day, he was “following orders.” Upon information and belief, the Fire District Commissioners and the Fire Chiefs, collectively, agreed to have this burden imposed on Tyson, and they had Mr. Crychuk impose this burden on Tyson.

158. The Fire Chiefs and Fire District Commissioners knew of the continued hostility and harassment toward Tyson, however they failed to prevent or rectify the situation. Rather, they condoned the conduct, as they hoped Tyson would feel compelled to quit his job with the Fire District.

159. Due to the ongoing hostility toward him, Tyson resigned from his position with the Fire District as House Attendant on May 14, 2018, and his last day of employment with the Fire District was May 25, 2018.

160. Due to Defendants’ actions, Tyson was unlawfully suspended from the Fire Department—first for three months and then for an additional six month, he then was terminated completely from the Fire Department, and thereafter removed from the Fire District rolls which caused his related benefits to be cancelled, without being provided basis due process. Tyson’s rights to free speech, political expression, and due process were violated, as were his civil rights, and he was retaliated against simply for exercising his rights by expressing views which contrary to the views of the majority of the Fire Department’s governing body, as well as the Fire District’s Board of Commissioners, while off-duty, on matters of public concern, on public pages on a public forum.

161. Tyson was a firefighter from 1977 through this termination in 2017 (other than a few years during this timeframe when he lived in areas which did not have volunteer fire services). Tyson devoted his life to fighting fires and helping others, and risked his life numerous times to save others, even ran into burning buildings several times. Being a firefighter was a tremendous source of joy and fulfillment for him, and he proudly identified himself as a member of the fire department.

162. When he was unlawfully suspended, and then terminated, Tyson was devastated and humiliated. He was unlawfully stripped of the greatest sources of joy and fulfillment in his life, and he suffered emotional distress due to Defendants' actions. Plaintiff however is making clear that he is only seeking garden-variety emotional distress damages, and is not alleging intentional infliction of emotional distress.

163. Tyson's reputation in the community he lived was damaged. For example, members of his condominium associated who, prior to his termination, would call on him in times of emergencies, which provided a great source of pride to Tyson given that he was able to help others in times of need, no longer do that.

164. Tyson also lost the following tangible benefits: \$400 per year for uncovered medical costs, free comprehensive medical exam per year, \$75 per year from AFLAC for having had a PSA test, line-of-duty death benefit—a life insurance policy, and LOSAP (Length of Service Award Program) benefits where upon leaving the Fire Department he would receive \$40 per month, for each year he was a member of the Fire Department (Tyson receives a slightly lesser amount because he elected to confer the benefits upon his wife once he dies).

165. Due to Defendants' actions, Tyson was ostracized within the Fire Department, and he was made to fear for his safety while on Fire Department and Fire District property.

166. Tyson had always been very vocal about his views on political issues—whether national or local. However, due to Defendants' actions, Tyson significantly reduced taking a public stance on matters related to the Fire Department and/or Fire District. For example, prior to a June 2018 referendum to determine whether the Fire District can sell the Historic Firehouse for \$500,000, approximately one-fourth its value, Tyson had requested permission to speak with his condominium association on the pros and cons of the sale. However, he feared that the Fire Department and/or Fire District would become aware of these acts, and that they may not respond to his aid when emergencies arise, and therefore he did not end up speaking on this matter.

## **CAUSES OF ACTION**

### **ONE**

#### **42 U.S.C. § 1983 –1<sup>st</sup> Amendment Free Speech/Political Expression**

167. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-166 as though fully set forth herein.

168. The St. James referendum regarding the bond, and the related issues pertaining to the closure of the Historic Firehouse and the perspective sale of the property, were matters of public concern and public interest.

169. Tyson posted the comments at issue indicating his opposition to the bond and his support for maintaining the Historic Firehouse, as well as his views on the other issues related to, from his personal Facebook account, on a public forum. He also spoke out publically on these matters to members of his community, as well as to individuals within the Fire Department and Fire District.

170. In doing so, Tyson acted as a citizen and member of the public, rather than as a volunteer member of the Fire Department.

171. Therefore, Tyson's speech and conduct were protected by the First Amendment.

172. Defendants suspended, and then terminated, Tyson, and removed him from the Fire District rolls and cancelled his related benefits, because of his public opposition to the views of the majority of the Fire Department's governing body, and the views of the Fire District Commissioners.

173. Defendants acted purely out of malicious spite.

174. In doing so, Defendants restricted and chilled Tyson's speech and political expression. Defendants also chilled the speech and political expression of all other Fire Department members who are now afraid to publically oppose the majority of the Fire Department's governing body as well as the Fire District Commissioners, for fear of retaliation.

175. Accordingly, Defendants violated Tyson's right to free speech and political expression guaranteed to him by the First Amendment to the United States Constitution.

### **TWO**

#### **42 U.S.C. § 1983 –1<sup>st</sup> Amendment Retaliation**

176. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-175 as though fully set forth herein.

177. Tyson had interests protected by the First Amendment—the right to free speech, and the right to participate in the electoral process through political expression.

178. The St. James referendum regarding the bond, and the related issues pertaining to the closure of the Historic Firehouse and the perspective sale of the property, were matters of public concern and public interest

179. Tyson posted the comments at issue indicating his opposition to the bond and his support for maintaining the Historic Firehouse, as well as his views on the other issues related to, from his personal Facebook account, on a public forum. He also spoke out publically on these matters to members of his community, as well as to individuals within the Fire Department and Fire District.

180. In doing so, Tyson acted as a citizen and member of the public, rather than as a volunteer member of the Fire Department.

181. Therefore, Tyson's speech and conduct were protected by the First Amendment.

182. Defendants took adverse actions against Tyson—they suspended him from the Fire Department first for three months, then for another six months, and thereafter terminated him completely. They also claimed that they suspended him a third time. Thereafter, they removed him from the Fire District rolls and cancelled his related benefits. Defendants also engaged in, and condoned, a pattern of harassment toward Tyson which, due to the ongoing hostility, ultimately forced Tyson to resign from his position with the Fire District.

183. Defendants did so purely out of malice, and in retaliation due to Tyson publically opposing the views of the majority of the Fire Department's governing body, and the views of the Fire District Commissioners.

184. Defendants did not have an adequate justification for doing so.

185. Accordingly, Defendants retaliated against Tyson for exercising his First Amendment rights to free speech and political expression, in violation of rights guaranteed to him by the First Amendment to the United States Constitution.

### **THREE**

#### **42 U.S.C. § 1983 –1<sup>st</sup> Amendment Viewpoint Discrimination**

186. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-185 as though fully set forth herein.

187. Defendants restricted and chilled Tyson's speech and political expression because he publically opposed the views of the majority of the Fire Department's governing body, and the views of the Fire District Commissioners.

188. Because Tyson publically expressed political views which differed from those held by the majority of the Fire Department and Fire District, Defendants discriminated against him under the guise of enforcing the Fire District's Social Media Policy.



189. Tyson did not violate the Fire District's Social Media Policy.

190. The Fire Department failed to take disciplinary measures against members who blatantly violated the Social Media Policy. In fact, the Fire Department itself, through its governing members, violated the Social Media Policy by completely deleting Engine #1 Facebook page.

191. Accordingly, Defendants discriminated against Tyson based upon the viewpoint of his political expression, in violation of Tyson's right to free speech and political expression guaranteed to him by the First Amendment to the United States Constitution.

#### **FOUR**

#### **42 U.S.C. § 1983 – 14<sup>th</sup> Amendment Denial of Procedural Due Process**

192. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-191 as though fully set forth herein.

193. As a volunteer firefighter, Tyson was considered a public employee.

194. Tyson therefore had a property interest in his position as a volunteer firefighter with the Fire Department.

195. New York General Municipal Law § 209-l(5) provides that volunteer members of fire departments may be suspended "after charges are filed and pending disposition of the charges."

196. New York General Municipal Law § 209-l(3) provides that volunteer members of fire departments "shall be [removed] only after a hearing upon due notice and upon stated charges and with the right to such officer or member to a review pursuant to article seventy-eight of the civil practice law and rules. Such charges shall be in writing and may be made by any such authority."

197. Defendants are high-ranking officials within the Fire Department who are ultimate decision-makers as to matters of Fire Department membership discipline, including suspension.

198. Defendants were required to provide Tyson with notice of the charges against him prior to suspending him suspended. They were also required provide him with written notice of the charges against him, and have a hearing conducted during which they were required to prove Tyson's misconduct pursuant to the provisions of GML § 209-l(4), prior to terminating him from the Department.

199. Tyson did not receive notice of the charges against him, either orally or in writing, prior to being suspended and ultimately terminated from the Fire Department, or prior to be dismissed from the Fire District and having his related benefits cancelled, and he was not provided with an opportunity to be heard.

200. Therefore, Tyson did not receive the process he was due prior to being suspended and then terminated from the Fire Department, and dismissed from the Fire District.

201. Accordingly, Defendants deprived Tyson of a property interest without the due process of law guaranteed to him by the Fourteen Amendment to the United States Constitution

**FIVE**  
**42 U.S.C. § 1983 – Municipal Liability**

202. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-201 as though fully set forth herein.

203. Defendants violated Tyson's First Amendment rights pursuant to, and in furtherance of, the Fire District's Social Medial Policy.

204. The Social Medial Policy is part of the St. James Fire District Policies, which were formally approved and adopted by the Fire District's Commissioners and Chairman.

205. The Fire District has the final authority to establish municipal policy on this matter.

206. The Fire District's Social Medial Policy operates as a prior restraint on speech.

207. The Fire District's Social Medial Policy regulates, and prohibits, the Fire Department members' right to speech and expression on all speech critical of the Fire Department or its members, or which would tend to embarrass the Fire Department or its members.

208. Numerous matters which may be critical of, or embarrassing to, the Fire Department and/or Fire District, are matters of public concern, including but not limited to misuse of Fire Department and Fire District resources, misuse of taxpayers' funds, misuse of department vehicles, cyberbullying by representatives of the Fire Department and Fire District, and practices or failures that endanger Fire Department members and the public at large.

209. The Fire District's Social Medial Policy therefore regulates and prohibits the Fire Department members' right to speech and expression on matters of public concern

210. The Fire District's Social Medial Policy is therefore unconstitutionally overbroad.

211. The Fire District and the Fire Department know that the Social Media Policy is unconstitutionally overbroad, as the Social Media Policy itself states that "[a]s a basic constitutional concept of law, a public employee or department member may comment on a matter of public concern."

212. The Fire District Commissioners and Fire Chiefs utilized the Social Media Policy as a means of violating Tyson's (and the Weisses') constitutional rights in retaliation for his constitutionally-protected speech.

213. The Fire District Commissioners and Fire Chiefs and are high-ranking officials within the Fire District and Fire Department, respectively, who are ultimate decision-makers as to matters of Fire Department membership discipline, including suspension, termination, and the cancelling of Fire District benefits.

214. Accordingly, the Fire District and Fire Department are liable for the violations of Tyson's First Amendment rights, which were caused due to, and in furtherance of, the unconstitutionally-overbroad Social Media Policy.

215. The Fire District and Fire Department are also liable for the violations of Tyson's First Amendment and Due Process rights, which were caused by the Fire District Commissioners and Fire Chiefs, who, as ultimate decision-makers on matters pertaining to discipline, including suspension, termination, and the cancelling of Fire District benefits, violated Tyson's constitutional rights.

**SIX**  
**42 U.S.C. § 1983 – Conspiracy**

216. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-215 as though fully set forth herein.

217. Defendants, who from two different municipal entities—the Fire Department and Fire District, conspired to violate Tyson's constitutional rights, namely his First Amendment and Due Process rights, due to Tyson's public opposition to their political views pertaining to the Fire Department and Fire District.

218. Defendants intentionally entered into an agreement to have Tyson unlawfully suspended and then terminated from the Fire Department, and to then have him removed from the Fire District rolls so that his benefits would be cancelled.

219. To that end, they agreed that the Fire Department would suspend, and then terminate, Tyson, and that thereafter, the Fire District would dismiss Tyson and cancel his benefits.

220. Each defendant thereafter committed overt acts in furtherance of the conspiracy, and intentionally participated in the furtherance of their agreement.

221. As a result of Defendants' agreement to violate Tyson's constitutional rights, and as a result of the overt acts committed in furtherance of the conspiracy, Tyson was retaliated against for exercising his rights to free speech and political express, he was suspended, and terminated, from the Fire Department, and he was dismissed from the Fire District's rolls and his related benefits were canceled.

## **SEVEN**

### **Pendent State Claim – Right to Free Speech/Political Expression**

222. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-221 as though fully set forth herein.

223. The St. James referendum regarding the bond, and the related issues pertaining to the closure of the Historic Firehouse and the perspective sale of the property, were matters of public concern and public interest.

224. Tyson posted the comments at issue indicating his opposition to the bond and his support for maintaining the Historic Firehouse, as well as his views on the other issues related to, from his personal Facebook account, on a public forum. He also spoke out publically on these matters to members of his community, as well as to individuals within the Fire Department and Fire District.

225. In doing so, Tyson acted as a citizen and member of the public, rather than as a volunteer member of the Fire Department.

226. Therefore, Tyson's speech and conduct were protected by Article I, Section 8, of the New York State Constitution.

227. Defendants suspended, and then terminated, Tyson, and removed him from the Fire District rolls and cancelled his related benefits, because of his public opposition to the views of the majority of the Fire Department's governing body, and the views of the Fire District Commissioners.

228. Defendants acted purely out of malicious spite.

229. In doing so, Defendants restricted and chilled Tyson's speech and political expression. Defendants also chilled the speech and political expression of all other Fire Department members who are now afraid to publically oppose the majority of the Fire Department's governing body as well as the Fire District Commissioners, for fear of retaliation.

230. Accordingly, Defendants violated Tyson's right to free speech and political expression guaranteed to him by Article I, Section 8, of the New York State Constitution.

## **EIGHT**

### **Pendent State Claim – Free Speech Retaliation**

231. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-230 as though fully set forth herein.

232. Tyson had interests protected by Article I, Section 8, of the New York State Constitution—the right to free speech, and the right to participate in the electoral process through political expression.

233. The St. James referendum regarding the bond, and the related issues pertaining to the closure of the Historic Firehouse and the perspective sale of the property, were matters of public concern and public interest

234. Tyson posted the comments at issue indicating his opposition to the bond and his support for maintaining the Historic Firehouse, as well as his views on the other issues related to, from his personal Facebook account, on a public forum. He also spoke out publically on these matters to members of his community, as well as to individuals within the Fire Department and Fire District.

235. In doing so, Tyson acted as a citizen and member of the public, rather than as a volunteer member of the Fire Department.

236. Therefore, Tyson’s speech and conduct were protected by the First Amendment.

237. Defendants took adverse actions against Tyson—they suspended him from the Fire Department first for three months, then for another six months, and thereafter terminated him completely. Thereafter, they removed him from the Fire District rolls and cancelled his related benefits.

238. Defendants did so purely out of malice due to Tyson publically opposing the views of the majority of the Fire Department’s governing body, and the views of the Fire District Commissioners.

239. Defendants did not have an adequate justification for doing so.

240. Accordingly, Defendants retaliated against Tyson for exercising his First Amendment rights to free speech and political expression, in violation of rights guaranteed to him by Article I, Section 8, of the New York State Constitution.

**NINE**

**Pendent State Claim – Procedural Due Process**

241. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-240 as though fully set forth herein.

242. New York General Municipal Law § 209-l provides that volunteer members of fire departments may be suspended “after charges are filed and pending disposition of the charges.”

243. Defendants were required to provide Tyson with notice of the charges against him prior to suspending him suspended. They were also required provide him with written notice of the charges against him, and have a hearing conducted during which they were required to prove Tyson’s misconduct pursuant to the provisions of GML § 209-l(4), prior to terminating him from the Department.

244. Tyson did not receive notice of the charges against him, either orally or in writing, prior to being suspended and ultimately terminated from the Fire Department, or prior to be dismissed from the Fire District and having his related benefits cancelled, and he was not provided with an opportunity to be heard.

245. Therefore, Tyson did not receive the process he was due prior to being suspended and then terminated from the Fire Department, and dismissed from the Fire District.

246. Accordingly, Defendants violated Tyson’s due process of law guaranteed to him by New York State General Municipal Law § 209-l.

**TEN**

**Pendent State Claim – Respondeat Superior/Vicarious Liability**

247. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1-246 as though fully set forth herein.

248. Defendants were at all times acting under color of State law and within the scope of their employment as members of the Fire Department, and members of the Fire District, when they violated Tyson’s constitutional rights and committed the various torts against him, as outline above.

249. As their employers, the Fire Department, and Fire District, are vicariously liable for their actions pursuant to the doctrine of respondeat superior.

**WHEREFORE**, Plaintiff requests the following relief jointly and severally as against all Defendants:

1. A trial by jury on all issues;
2. An award of compensatory damages in an amount to be determined at trial;
3. An award of punitive damages in an amount to be determined at trial;
4. Disbursements, costs, and attorneys' fees pursuant to 42 U.S.C. § 1988; and
5. Such other and further relief as this Court may deem just and proper.

Dated: Mineola, New York  
December 4, 2018

Respectfully,

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