

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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**ERIC WHITEHEAD,  
513 Cambridge Avenue  
Buffalo, New York 14215,**

**Plaintiff,**

**COMPLAINT**

v.

**Index No.:**

**CITY OF BUFFALO,  
City Hall  
65 Niagara Street  
Buffalo, New York 14202, and**

**CITY OF BUFFALO FIRE DEPARTMENT,  
195 Court Street  
Buffalo, New York 14202**

**Defendants.**

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Plaintiff, ERIC WHITEHEAD, by his attorneys, GIBSON, McASKILL & CROSBY, LLP, for his causes of action against defendants, CITY OF BUFFALO and CITY OF BUFFALO FIRE DEPARTMENT, herein allege as follows:

1. At all times hereinafter mentioned, plaintiff, ERIC WHITEHEAD, was and is a resident of the County of Erie, State of New York.

2. At all times hereinafter mentioned, defendant, CITY OF BUFFALO, was and is a municipal corporation, licensed and authorized to transact business in the County of Erie and State of New York, maintaining offices at 65 Niagara Square, Buffalo, New York.

3. At all times hereinafter mentioned, defendant, CITY OF BUFFALO FIRE DEPARTMENT, was and is a department of defendant, CITY OF BUFFALO, a municipal corporation, duly existing under and by virtue of the laws of the State of New York.

4. Upon information and belief, at all times hereinafter mentioned, defendant, CITY OF BUFFALO, operated and administered defendant, CITY OF BUFFALO FIRE DEPARTMENT, as

part of its governmental function.

5. Upon information and belief, on or about January 10, 2019, a structure fire was caused to be created, maintained, continuing, ongoing, not reduced and/or not extinguished the premises located at 82 Butler Avenue, City of Buffalo, State of New York.

6. Upon information and belief, the source of the structure fire at the 82 Butler Avenue premises on January 10, 2019 was in the attic.

7. Upon information and belief, as a result of the structure fire at the 82 Butler Avenue premises, defendant, THE CITY OF BUFFALO FIRE DEPARTMENT, was dispatched to the 82 Butler Avenue premises.

8. Upon information and belief, on January 10, 2019, plaintiff, ERIC WHITEHEAD, was employed as a firefighter with defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT.

9. Upon information and belief, on January 10, 2019, while carrying out, discharging and/or performing his duties as a firefighter for defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, plaintiff, ERIC WHITEHEAD, was dispatched to the 82 Butler Avenue premises, on Engine 21, in response to the structure fire.

10. Upon information and belief, on January 10, 2019, at and/or around the time of the incident at issue, the atmosphere of the 82 Butler Avenue premises was Immediately Dangerous to Life or Health (“IDLH”).

11. Upon information and belief, on January 10, 2019, while carrying out, discharging and/or performing his duties as a firefighter for defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, plaintiff, ERIC WHITEHEAD, entered the 82 Butler Avenue

premises to combat the structure fire.

12. Upon information and belief, on January 10, 2019, while carrying out, discharging and/or performing his duties as a firefighter for defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, at the 82 Butler Avenue premises, plaintiff, ERIC WHITEHEAD, was performing non-lifesaving measures.

13. Upon information and belief, on January 10, 2019, while carrying out, discharging and/or performing his duties as a firefighter for defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, at the 82 Butler Avenue premises, plaintiff, ERIC WHITEHEAD, was working with fellow Engine 21 firefighter, Gregory Blum as his “attack” man.

14. Upon information and belief, on January 10, 2019, while carrying out, discharging and/or performing his duties as a firefighter for defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, at the 82 Butler Avenue premises, plaintiff, ERIC WHITEHEAD, was working in the “officer” position.

15. Upon information and belief, on January 10, 2019, while carrying out, discharging and/or performing his duties as a firefighter for defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, at the 82 Butler Avenue premises, plaintiff, ERIC WHITEHEAD, was working in the “officer” position in close proximity to fellow Engine 21 firefighter, Gregory Blum, providing assistance in the operation of the hose line.

16. Upon information and belief, on January 10, 2019, while carrying out, discharging and/or performing his duties as a firefighter for defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, at the 82 Butler Avenue premises, fellow Engine 21 firefighter, Gregory Blum, did evacuate the 82 Butler Avenue premises, thereby breaking visual/voice contact

and compromising firefighter accountability.

17. Upon information and belief, on January 10, 2019, when fellow Engine 21 firefighter Gregory Blum did evacuate the 82 Butler Avenue premises, thereby breaking visual/voice contact and compromising firefighter accountability, plaintiff, ERIC WHITEHEAD, was caused to be left behind in the attic, and/or the stairwell leading to the attic, of the 82 Butler Avenue premises as the sole member of the Engine 21 team.

18. Upon information and belief, on January 10, 2019, while carrying out, discharging, and/or performing his duties as a firefighter for defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, as the sole member of the Engine 21 team present in the attic of the 82 Butler Avenue premises, plaintiff, ERIC WHITEHEAD, was struck by an unknown object, lost contact with the Engine 21 hose line, and was caused to become disoriented.

19. Thereafter, upon information and belief, on January 10, 2019, while carrying out, discharging, and/or performing his duties as a firefighter for defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, plaintiff, ERIC WHITEHEAD, did become isolated in an environment immediately dangerous to life and health, which did result in a “man down” situation.

20. As a result of the foregoing, while within the course and scope of his employment as a firefighter with defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, plaintiff, ERIC WHITEHEAD, was caused to and did sustain serious and permanent injuries to his person, and conscious pain and suffering.

21. On or about March 6, 2019, plaintiff, ERIC WHITEHEAD, served defendants, CITY OF BUFFALO and CITY OF BUFFALO FIRE DEPARTMENT, with a Notice of Claim, setting

forth in detail the particulars of Plaintiff's claim.

22. More than thirty (30) days have elapsed since service of the Notice of Claim, and defendants, CITY OF BUFFALO and CITY OF BUFFALO FIRE DEPARTMENT, have failed, neglected, and refused to pay or adjust this claim.

23. This action is timely commenced within one year and ninety days after the happening of the events upon which the claims are based, and all requirements precedent to suit contained in the New York General Municipal Law and other laws of the State of New York have been met.

24. Upon information and belief, this action falls within one or more of the exceptions set forth in CPLR Section §1602.

25. The amount of damages sought in this action exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR PLAINTIFF'S FIRST CAUSE OF ACTION AS AGAINST DEFENDANTS, PURSUANT TO GENERAL MUNICIPAL LAW §205-a, PLAINTIFF HEREIN ALLEGES UPON INFORMATION AND BELIEF:**

26. Plaintiff repeats and realleges the allegations contained in paragraphs "1" through "25" of this Complaint as if more fully set forth herein.

27. While within the course and scope of his employment with defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, engaged in his duties as a firefighter, plaintiff, ERIC WHITEHEAD, was caused to and did sustain serious and permanent injuries to his person and conscious pain and suffering.

28. That on January 10, 2019, defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, violated and departed from certain, specific, direct and immutable rules, regulations, policies and procedures, and practices in fighting and/or responding to

the fire.

29. That these violations and departures include, but are not limited to, failing to ensure that all personnel are aware of the dangers of working around a fire, especially an attic and/or structure fire; in failing to have, develop and/or enforce a standard operating procedure that addresses strategies and tactics for the type of fire present at the 82 Butler Avenue premises on January 10, 2019; in failing to ensure that the incident commander received interior status reports and perform/continue evaluating risk-versus-gain; in failing to ensure that crew integrity was maintained at all times on the fireground; in failing to ensure that the incident commander received accurate personnel accountability reports so he could account for all personnel operating at the 82 Butler Avenue premises; in failing to ensure that a separate incident safety officer, independent from the incident commander, was appointed; in failing to ensure that firefighters used their self-contained breathing apparatus and were properly trained in emergency procedures with said apparatus; failing to ensure that firefighters were equipped with proper equipment, including radios with “mayday” buttons which were operable while wearing, wet, flame retardant gloves; failing to identify and/or consider the atmosphere of the whole building located at 82 Butler Avenue, Buffalo, New York as being Immediately Dangerous to Life and Health prior to deducing the fire’s location on January 10, 2019; failing to ensure that each firefighter remained in visual and/or voice contact with one another at all times; failing to adequately and properly train its agents, employees and/or representatives; failing to inform all members of the firefighting team that everyone had been evacuated from the house and they were now performing non-life saving measures; in compromising firefighter accountability; failing to properly and accurately document incident details; in causing and allowing a firefighter to become isolated and distressed requiring rescue; and in failing to provide

Plaintiff a place of employment free from recognized hazards likely to cause death or serious physical harm to employees as required by OSHA Section 5(a)(1) of OSHA and Labor Law Section 27-a (Public Employee Safety and Health Act).

30. That, more specifically, these violations and departures include, but are not limited to, failure to comply with certain federal regulations and standards, including, but not limited to, 29 CFR § 1910.134 and 29 CFR § 1910.156 (e)(4)(i), adopted in New York State by 12 NYCRR §800.3; failure to follow certain National Fire Protection Association standards; failure to comply with and follow relevant and applicable OSHA and Labor Law/Public Employee Safety and Health Act Sections; and failure to comply with certain state regulations and standards, including, but not limited to 29 CFR § 1910.134(d)(1)(iii), 29 CFR § 1910.134(g)(4)(i), 12 NYCRR Part 801.29(a), 19 NYCRR Part 426, and 19 NYCRR Part 427.

31. That, prior to and on January 10, 2019, defendants, CITY OF BUFFALO and CITY OF BUFFALO FIRE DEPARTMENT, should have complied with, followed, implemented, enforced and/or adopted the aforementioned standards, codes, sections, guidelines, regulations, etc.

32. That, as a result of defendants', CITY OF BUFFALO and CITY OF BUFFALO FIRE DEPARTMENT, above-listed violations, Plaintiff was injured externally, internally and permanently in and about the head, body, limbs and nervous system so that he became and will continue to be disabled and will continue to suffer pain, discomfort, disfigurement, distress and psychological adjustment. That by reason of the aforesaid injuries Plaintiff required the services of physicians, surgeons, nurses, hospitals, therapy, manipulations and medicines and will continue to incur such expenses in the future; that as a result of the aforesaid injuries and resulting permanent disabilities, the plaintiff was incapacitated from his educational pursuits, profession and/or employment, and will

continue to be incapacitated from his educational pursuits, profession and/or employment in the future; and as a result of the aforesaid injuries and permanent disabilities, the future earning capacity, profession, livelihood and social and personal endeavors, hobbies and activities of the plaintiff will be partially and/or permanently impaired; and as a result of all of the aforesaid, the plaintiff has otherwise been damaged in a sum which exceeds the jurisdictional limits of all lower Courts which would otherwise have jurisdiction and as may be awarded by the trier of facts herein.

33. That the aforementioned injuries sustained by plaintiff, ERIC WHITEHEAD, were proximately caused by the neglect, omission, willful or culpable negligence of defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, in failing to comply with the requirements of the above-listed statutes, ordinances, rules, orders, and/or requirements, in violation of General Municipal Law § 205-a.

**AS AND FOR PLAINTIFF'S SECOND CAUSE OF ACTION AS  
AGAINST DEFENDANTS, PLAINTIFF HEREIN ALLEGES,  
UPON INFORMATION AND BELIEF:**

34. Plaintiff repeats and realleges the allegations contained in paragraphs "1" through "33" of this Complaint as if more fully set forth herein.

35. While within the course and scope of his employment with defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, engaged in his duties as a firefighter, plaintiff, ERIC WHITEHEAD, was caused to and did sustain serious and permanent injuries to his person and conscious pain and suffering.

36. That plaintiff, ERIC WHITEHEAD's, injuries, together with his conscious pain and suffering, were caused by defendants', CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, negligence, carelessness and recklessness in violating and departing from certain,



specific, direct and immutable rules, regulations, policies and procedures, and practices while fighting and/or responding to a fire the 82 Butler Avenue premises; in failing to ensure that all personnel were aware of the dangers of working around a fire, especially an attic and/or structure fire such as the fire present at the 82 Butler Avenue premises on January 10, 2019; in failing to have, develop and/or enforce a standard operating procedure that addresses strategies and tactics for the type of fire present at the 82 Butler Avenue premises on January 10, 2019; failing to ensure that the incident commander received interior status reports and performed/continued evaluating risk-versus-gain; failing to ensure that crew integrity was maintained at all times on the fireground; failing to ensure that the incident commander received accurate personnel accountability reports so he could properly account for all personnel operating at the 82 Butler Avenue premises on January 10, 2019; failing to ensure that a separate incident safety officer, independent from the incident commander, was appointed; failing to ensure that firefighters used their self-contained breathing apparatus and were trained in emergency procedures with said apparatus; failing to ensure that firefighters were equipped with proper equipment, including radios with “mayday” buttons which were operable while wearing, wet, flame retardant gloves; failing to identify and/or consider the atmosphere of the whole building located at 82 Butler Avenue, Buffalo, New York as being Immediately Dangerous to Life and Health prior to deducing the fire’s location on January 10, 2019; failing to ensure that each firefighter remained in visual and/or voice contact with one another at all times; failing to adequately and properly train its agents, employees and/or representatives; failing to inform all members of the firefighting team that everyone had been evacuated from the house and they were now performing non-life saving measures; in compromising firefighter accountability; in failing to properly and accurately document incident details; in causing and allowing a firefighter to become isolated and

distressed requiring rescue; in failing to provide Plaintiff a place of employment free from recognized hazards likely to cause death or serious physical harm to employees as required by OSHA Section 5(a)(1) of OSHA and Labor Law Section 27-a (Public Employee Safety and Health Act); in failing to comply with, follow, implement, enforce and/or adopt relevant and applicable standards, codes, sections, guidelines, regulations, etc., including, but not limited to, 29 CFR § 1910.134 and 29 CFR § 1910.156 (e)(4)(i), adopted in New York State by 12 NYCRR §800.3; failure to follow certain National Fire Protection Association standards; failure to comply with and follow relevant and applicable OSHA and Labor Law/Public Employee Safety and Health Act Sections; and failure to comply with certain state regulations and standards, including, but not limited to 29 CFR § 1910.134(d)(1)(iii), 29 CFR § 1910.134(g)(4)(i), 12 NYCRR Part 801.29(a), 19 NYCRR Part 426, and 19 NYCRR Part 427, 19 NYCRR Part 426 and 19 NYCRR Part 427).

37. That, as a result of defendants', CITY OF BUFFALO and CITY OF BUFFALO FIRE DEPARTMENT, above-listed violations, Plaintiff was injured externally, internally and permanently in and about the head, body, limbs and nervous system so that he became and will continue to be disabled and will continue to suffer pain, discomfort, disfigurement, distress and psychological adjustment. That by reason of the aforesaid injuries Plaintiff required the services of physicians, surgeons, nurses, hospitals, therapy, manipulations and medicines and will continue to incur such expenses in the future; that as a result of the aforesaid injuries and resulting permanent disabilities, the plaintiff was incapacitated from his educational pursuits, profession and/or employment, and will continue to be incapacitated from his educational pursuits, profession and/or employment in the future; and as a result of the aforesaid injuries and permanent disabilities, the future earning capacity, profession, livelihood and social and personal endeavors, hobbies and activities of the plaintiff will

be partially and/or permanently impaired; and as a result of all of the aforesaid, the plaintiff has otherwise been damaged in a sum which exceeds the jurisdictional limits of all lower Courts which would otherwise have jurisdiction and as may be awarded by the trier of facts herein.

**WHEREFORE**, plaintiff, ERIC WHITEHEAD, for his causes of action as stated herein as against defendants, CITY OF BUFFALO and CITY OF BUFFALO FIRE DEPARTMENT, herein demands judgment for sums which exceed the jurisdictional limits of all lower courts, together with the costs and disbursement of this action, together with such other and further relief as this Court may deem just and proper.

DATED: Buffalo, New York  
August 7, 2019

**GIBSON, McASKILL & CROSBY, LLP**

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