

FACTUAL BACKGROUND

1. Plaintiff is a Firefighter/EMT for LFR. Affidavit of Plaintiff, June 9, 2021, ¶ 2.¹ She has served in that role since July 2013. Plaintiff's Aff. ¶ 2.

2. Mahler is named as an individual defendant, and Plaintiff's Third Amended Complaint contains numerous allegations of discriminatory and retaliatory conduct by Mahler over the past several years. See generally, Third Amended Complaint (ECF No. 94).

3. Mahler has a history of retaliating against Plaintiff when she engages in protected activity, and the City has a history of failing to remedy discriminatory environments for female firefighters:

- a. In 2012, the City circulated a survey to LFR employees regarding discrimination and harassment. Taylor-Riley Aff., Ex. I Several employees noted that they had witnessed sex discrimination and retaliatory conduct. Taylor-Riley Aff., Ex. I, pp. 11-22
- b. In 2014, Taylor-Riley completed her investigation into then Captain Troy Hurd's complaints of retaliation for reporting discrimination and harassment of a female firefighter. Taylor-Riley Aff., Ex. D Taylor-Riley recommended several remedial measures to LFR administration. Taylor-Riley Aff., Ex. D, p. 64
- c. On August 15, 2015, after Plaintiff complained to another Captain about Mahler discriminating against her, Mahler outright refused to take a lift assist call because Plaintiff would have been on the truck with him. Plaintiff's Affidavit, ¶ 4. Although his conduct was reported to his supervisors, no action was taken

¹ Plaintiff's Affidavit in Support of Motion for Preliminary Injunction is attached as Exhibit 1 to Plaintiff's Index of Evidence.

against Mahler. Deposition of Interim Chief Tim Linke, 103:18-104:15.² Mahler's supervisor was disciplined for failing to discipline Mahler after City Human Resources representatives discovered Mahler's behavior. Linke Dep. 104:16-107:1.

- d. In 2016, City of Lincoln Director of Equity and Diversity Kimberley Taylor-Riley completed an investigation of Plaintiff's complaints of discrimination and retaliation at the LFR. Taylor-Riley Aff., June 11, 2021, ¶¶4, 5.³ Taylor-Riley noted that Mahler was not speaking to Plaintiff "because he feared anything he said would be used against him in [Taylor-Riley's] investigation." Taylor-Riley Aff., Ex. D, p.32. Taylor-Riley asked Mahler's Battalion Chief why he had not addressed Mahler's refusal to communicate with Plaintiff and cautioned him that "forcing them to work together on the truck if they are not speaking . . . is a real safety issue when they are on a call. It creates far too big a risk for the City." Id.
- e. The City has been on notice since 2012 of the discriminatory environment for women and failed to heed Taylor-Riley's warnings or implement her recommendations after the Hurd investigation. Taylor-Riley Aff., Ex. I and D, p. 64
- f. As the EEO Director, Taylor-Riley's position required her to independently investigate allegations of harassment and discrimination Taylor-Riley Aff., Ex.

² The relevant excerpts of Chief Linke's deposition testimony are attached as Exhibit 2 to Plaintiff's Index of Evidence. Linke's deposition was taken in a separate litigation (4:17-CV-3050) brought by another LRF employee, but the events at issue in that case also related to unlawful acts against Plaintiff by Mahler. See Affidavit of Kelly Brandon identified as Exhibit 9 in Plaintiff's Index of Evidence.

³ The Affidavit of Kimberley Taylor-Riley, including her investigation report in the Benson and Hurd matters, are identified as Exhibit 10 in Plaintiff's Restricted Index of Evidence.

B, p. 7. Taylor-Riley's evaluations were always positive. Taylor-Riley Aff., Ex. E-H. Jeff Kirkpatrick, then City Attorney, found that the Hurd and Benson's investigations performed by Taylor-Riley were thorough and fair. Taylor-Riley Aff., Ex. H, p. 3.

4. Mahler continues to work as a Captain at Fire Station No. 8. Plaintiff's Aff. ¶ 3. Plaintiff is now assigned to Fire Station No. 1. Plaintiff's Aff. ¶ 2. Regardless of their assignment to different stations, when both of their stations report to the same fire or accident scene, Plaintiff can end up being under Mahler's supervision. Plaintiff's Aff. ¶ 3. This can occur multiple times a day or week. Plaintiff Aff. ¶ 3.

5. Recently, on April 26, 2021, Plaintiff and Mahler were both dispatched to a cardboard storage warehouse fire. Plaintiff's Aff. ¶ 7.

6. Plaintiff's crew ("T1") was comprised of herself, Fire Apparatus Operator ("FAO") Matt Roberts, and Firefighter Trainee Morgan Hurley. Plaintiff's Aff. ¶ 8. Mahler was in charge of a separate team ("T8"), but also served as the Group Ventilation Supervisor overseeing T1. Plaintiff's Aff. ¶ 8.

7. The Incident Commander, Captain Curt Faust, assigned T1 to assist T8 with ventilation. Plaintiff's Aff. ¶ 9. Plaintiff approached Mahler, intending to ask him about how her team should assist with ventilation, but Mahler walked past Plaintiff when she tried to approach him. Plaintiff's Aff. ¶ 9. Plaintiff caught up to Mahler and informed him that her team had been assigned to assist him; she then asked what his plan was for ventilation. Plaintiff's Aff. ¶ 10. Mahler refused to make eye contact with Plaintiff and just said that T8 was going to open some overhead doors. Plaintiff's Aff. ¶ 10. He did not indicate how T1 should assist with his ventilation plan. Plaintiff's Aff. ¶ 10.

8. Plaintiff asked Mahler directly how he wanted her team to assist with ventilation. Plaintiff's Aff. ¶ 11. He ignored Plaintiff's question and walked off towards the building entrance. Plaintiff's Aff. ¶ 11. T1 then also proceeded to the building entrance and Plaintiff once again approached Mahler to ask what he wanted her team to do about ventilation. Plaintiff's Aff. ¶ 11. And once again, Mahler ignored her and walked inside the building. Plaintiff's Aff. ¶ 11.

9. Lacking any direction or plan from Mahler, Plaintiff and the rest of T1 followed Mahler into the building. Plaintiff's Aff. ¶ 12. Plaintiff made another attempt to get Mahler to provide her with direction on ventilation, but he continued to ignore her questions. Plaintiff's Aff. ¶ 13. Mahler then suddenly walked away from Plaintiff and abandoned T1 without communication or direction on how or where to proceed. Plaintiff's Aff. ¶ 14.

10. At this point, there was extremely low visibility inside the building due to heavy smoke. Plaintiff's Aff. ¶ 16. Plaintiff had to be within one foot of her colleagues to read the names on their helmets. Plaintiff's Aff. ¶ 16. Even the outline of bodies could not be seen if more than a few feet away. Plaintiff's Aff. ¶ 16. Realizing that Mahler had deserted them in what is referred to as an "IDLH environment" (immediately dangerous to life or health), Plaintiff worked to get T1 to safety. Plaintiff's Aff. ¶ 17. She had to use her thermal imaging camera to identify the direction of the fire, because if T1 could get close to the fire, they would be able to find a hose line to follow out of the building. Plaintiff's Aff. ¶ 18.

11. As T1 approached the fire, they ran into a different team battling the flames. Plaintiff's Aff. ¶ 19. Plaintiff saw T8 Firefighter Trent Borchers and asked him where Mahler was, but he responded that he did not know. Plaintiff's Aff. ¶ 19. Shortly thereafter, Roberts's low-oxygen alarm went off and Plaintiff had to immediately exit the building with Roberts and Hurley to switch out their oxygen cannisters. Plaintiff's Aff. ¶ 20.

12. Once they obtained new oxygen, T1 was assigned to replace T8. Plaintiff's Aff. ¶ 21. As T8 exited the building, Plaintiff approached Mahler, but he tried to side-step her and walk around her. Plaintiff's Aff. ¶ 21. Plaintiff moved directly in front of Mahler to get him to stop and acknowledge her; she then told him that her team was taking over for T8 and she needed to know what he had been working on inside the building. Plaintiff's Aff. ¶ 21. Mahler refused to look at Plaintiff. Plaintiff's Aff. ¶ 22. He quickly replied, "chasing hot spots on the Charlie side," and then moved around Plaintiff and walked away without giving any further information. Plaintiff's Aff. ¶ 22.

13. As the Group Ventilation Supervisor for T1 and T8, Mahler was required to maintain voice, visual, or physical contact with the personnel under his command and provide them direction about their assignment while inside the building. LFR Management Policy 855.10, p.1.⁴ Mahler's refusal to speak with Plaintiff, and his abandonment of the T1 crew, was a direct violation of LFR's Firefighter Safety Management Policy. LFR Management Policy 855.10, p.1.

14. Mahler's actions also violated LFR's incident command policies and written department best practices. *See* LFR Incident Command Reference Source 851.01; LFR Management Policy 851.05; LFR Best Practice #2- Division/Group Supervision.⁵

- a. Group Supervisors are "responsible for the accountability and tactical level operations within [their] . . . functional assignment and tactical objectives." LFR Best Practice #2, p.1. The "Group Supervisor's single most important job is to maintain accountability of companies operating within the group and monitor

⁴ Management Policy 855.10 is attached as Exhibit 4 to Plaintiff's Index of Evidence. Notably, although Mahler did not attempt to even maintain radio contact with T1, even if he had done so, it would have violated Management Policy 855.10.

⁵ LFR Incident Command Reference Source 851.01 and LFR Management Policy 851.05 are attached to Plaintiff's Index of Evidence as Exhibit 5. LFR Best Practice #2 is attached to Plaintiff's Index of Evidence as Exhibit 6.

air supplies in order to ensure adequate work/rest cycles are followed. Additionally, the supervisor is responsible for ensuring that company officers and their crews enter and exit the structure as a cohesive unit.” LFR Best Practice #2, p.10.

- b. The “[G]roup [S]upervisor must maintain awareness of the location of personnel assigned within the group . . . He/she must also ensure that firefighters are aware of the location of safe areas of refuge within the structure and escape routes.” LFR Best Practice #2, pp.10-11.
- c. “If accountability or communication is lost, they must be re-established as soon as possible or the companies should be withdrawn. If accountability or communication cannot be maintained, the companies must be reorganized so both can be maintained. The [Group] Supervisor must remain flexible in his/her positioning so that crew status can be monitored. He/she must also be in a visible position to allow incoming resources to ‘check-in’ and receive an assignment.” LFR Best Practice #2, p.14.
- d. “A Group Supervisor must ensure his/her location is known for incoming resources to report for task-level functions.” LFR Best Practice #2, p.15.

15. As set forth in LFR Best Practice #2:

The National Institute for Occupational Safety and Health (NIOSH) has identified the top five causal factors of firefighter deaths on the fireground as follows (otherwise known as “The NIOSH 5.”)

1. Improper risk assessment (poor size-up)
2. Lack of incident command
3. Lack of accountability

4. **Inadequate communications**
5. Lack of SOGs or **failure to follow established SOGs.**

Proper training and application of Division/Group Supervision within the Incident Command System enhances safety on the fireground and addresses the importance of the NIOSH 5 within our operational scope.

16. Notably, this retaliation from Mahler at the warehouse fire occurred only four days after Plaintiff had reported Mahler for retaliatory behavior when he disparaged her to another Firefighter. Plaintiff's Aff. ¶¶ 5, 23; April 22, 2021 Complaint.⁶ Plaintiff had filed that report with Administrative Officer Aishah Witte, who assured Plaintiff that Battalion Chief Michael Smith would address the behavior with Mahler immediately. Plaintiff's Aff. ¶ 6.

17. Following Mahler's dangerous, retaliatory conduct at the warehouse fire, Plaintiff spoke with Faust and he ordered her to immediately report the incident. Plaintiff's Aff. ¶ 24. Plaintiff complied and made a detailed complaint, which she submitted to both Faust and Witte. See generally, Plaintiff's Report, May 5, 2021.⁷

18. Faust elevated the complaint to Chief Tim Engler for investigation. Plaintiff's Aff. ¶ 25. Witte was then assigned to investigate Plaintiff's complaint. Plaintiff's Aff. ¶ 25.

19. Witte did not fully investigate Plaintiff's complaint. Plaintiff's Aff. ¶ 26. She spoke with Mahler; she never interviewed Plaintiff, Roberts, or Hurley. Plaintiff's Aff. ¶ 26.

20. Despite not completing an actual investigation into Plaintiff's complaint, Witte informed Plaintiff that Mahler's conduct at the warehouse fire was being excused because he claims to have been confused about his assignment from the Incident Commander. Plaintiff's Aff. ¶ 27.

⁶ The April 22, 2021 Complaint is attached as Exhibit 3 to Plaintiff's Index of Evidence.

⁷ Plaintiff's Report to Captain Faust and Administrative Officer Witte is attached as Exhibit 7 to Plaintiff's Index of Evidence.

21. Before filing this Motion, Plaintiff exhausted all other avenues to protect herself from Mahler's continuing discrimination and retaliation. In addition to internal complaints within LFR and filing charges of discrimination with the Equal Employment Opportunity Commission, Plaintiff also asked that the mayor of Lincoln step forward and fulfill her obligations to enforce the laws against discrimination and retaliation.⁸ Plaintiff's Aff. ¶ 30. In July 2019, Plaintiff contacted Mayor Leirion Gaylor Baird to request a meeting with her regarding the discrimination and harassment at LFR. Plaintiff Aff. ¶ 31 and Ex. 9. After the mayor declined to meet with her, Plaintiff sent a follow up letter pleading for her assistance in ending the unlawful conduct she was experiencing from Mahler and others at LFR. Letter to Mayor Gaylor Baird, August 2, 2019.⁹ Mayor Gaylor Baird again declined to help Plaintiff. Plaintiff Aff. ¶ 31.

22. Under the collective bargaining agreement with the firefighters' union, the City has only 35 days from May 5, 2021, to bring disciplinary proceedings against Mahler for his conduct during the warehouse fire. LFR Collective Bargaining Agreement, §16, p.33. <https://www.lincoln.ne.gov/files/sharedassets/public/hr/forms/contracts/city-contracts/fire-2020-2021-final-contract.pdf>

23. As of the filing of this Motion, no disciplinary action has been brought against Mahler for his retaliatory behavior on April 26, 2021. Plaintiff's Aff. ¶32.

LEGAL ANALYSIS

I. UNDER THE *DATAPHASE* STANDARDS, PLAINTIFF SHOULD BE GRANTED A PRELIMINARY INJUNCTION AGAINST DEFENDANTS

When deciding whether to grant a motion for preliminary injunction, the Court applies the four-factor test set forth in *Dataphase Sys., Inc. v. C.L. Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981)

⁸ Pursuant to Neb. Rev. Stat. § 15-310, the mayor has executive and administrative authority over LFR and is legally obligated to enforce all employment laws against employees of LFR.

⁹ Letter to Mayor Gaylor Baird is attached as Exhibit 8 to Plaintiff's Index of Evidence.

(*en banc*). “In sum, whether a preliminary injunction should issue involves a consideration of (1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that [the] movant will succeed on the merits; and (4) the public interest.” *Dataphase*, 640 F.2d at 114. “No single factor is dispositive, as the district court must balance all factors to determine whether the injunction should issue.” *Lankford v. Sherman*, 451 F.3d 496, 503 (8th Cir. 2006).

A. Plaintiff Faces Irreparable Harm if Mahler is Allowed to Continue Retaliating Against Her.

“Irreparable harm occurs when a party has no adequate remedy at law, typically because its injuries cannot be fully compensated through an award of damages.” *Grasso Ents., LLC v. Express Scripts, Inc.*, 809 F.3d 1033, 1040 (8th Cir. 2016) (citation omitted). The Eighth Circuit has repeatedly held that the loss of professional goodwill and reputation can be a sufficient injury to justify a preliminary injunction. *See United Healthcare Ins. Co. v. AdvancePCS*, 316 F.3d 737, 741 (8th Cir. 2002); *Medicine Shoppe Intern, Inc. v S.B.S. Pill Dr., Inc.*, 336 F.3d 801, 805 (8th Cir. 2003). If the loss of customer confidence can constitute irreparable harm, then surely the loss of life or bodily injury also meets the necessary threshold for a preliminary injunction. *See e.g., Blaine v. North Brevard County Hospital District*, 312 F.Supp.3d 1295, 1306-07 (M.D. Fla. 2018) (Irreparable harm established by risk of bodily harm to plaintiff physicians’ patients if injunction not granted); *In re Bahadur*, 441 F.Supp.3d 467, 486 (W.D. Tex. 2020) (Irreparable harm established by risk of bodily injury and loss of life if injunction not granted); *Donovan v. Philip Morris USA, Inc.*, 268 F.R.D. 1, 26 (D. Mass. 2010) (Irreparable harm established by increased risk of disease and loss of life if injunction not granted).

Moreover, while the injury cannot be merely speculative, “the alleged harm need not be occurring or be certain to occur before a court may grant relief.” *Richland/Wilkin Joint Powers*

Auth. v. United States Army Corps of Engineers, 826 F.3d 1030, 1037 (8th Cir. 2016) (citation omitted). The potential bodily injury or loss of life to Plaintiff is hardly speculative; to the contrary, it is quite likely if Mahler persists in his conduct. Mahler's refusal to communicate with Plaintiff, and his abandonment of Plaintiff and the rest of T1, in a very dangerous situation demonstrates the real risk Plaintiff faces if the injunction is not granted. FAO Roberts's low oxygen alarm went off as Plaintiff was in the process of finding an exit from the building. If she had not been able to locate the hose line because of the thick smoke, Roberts, as well as Plaintiff and Hurley, could have depleted their oxygen supply before being able to exit the building. The realities of firefighting make irreparable harm all the more likely; the first *Dataphase* factor weighs heavily in Plaintiff's favor.

B. The Irreparable Harm to Plaintiff in the Absence of an Injunction Would be Greater than the Harm to Defendants if an Injunction is Granted.

As set forth above, Plaintiff faces drastic, permanent consequences if Mahler continues to violate the law and LFR safety procedures by abandoning his duty to Plaintiff on fire scenes. The fact that he has a history of refusing to communicate with Plaintiff and refusing to fulfill his job duties in order to retaliate against Plaintiff for reporting his unlawful behavior strongly supports Plaintiff's contention that she will continue to face grave harm without this injunction. Notably, the City of Lincoln's own Director of Equity and Diversity, Taylor-Riley, who spent months investigating Plaintiff's earlier complaints against Mahler, noted that it was a significant safety issue for Mahler to refuse to communicate with Plaintiff on fire scenes. On balance, any potential harm or inconvenience to Defendants is minimal. Plaintiff is simply asking Defendants to follow the law and take the steps they have been legally required to all along. The second *Dataphase* factor weighs in Plaintiff's favor.

C. Plaintiff has a Fair Chance of Prevailing on One or More of her Claims in this Litigation.

In evaluating the third factor – likelihood of success on the merits – Plaintiff need only show that she has “a fair chance of prevailing.” *Planned Parenthood Minnesota, North Dakota, South Dakota v. Rounds*, 530 F.3d 724, 732 (8th Cir. 2008) (*en banc*). She does not have to meet the more rigorous threshold of showing a greater than fifty percent chance of prevailing. *Id.* “The proceedings are at an early stage and to prejudge the evidence before it is fully collated and demonstrated is basically unfair. Under these circumstances, the court should avoid deciding with any degree of certainty who will succeed or not succeed.” *O'Connor v. Peru State Coll.*, 728 F.2d 1001, 1002–03 (8th Cir. 1984). Nor does Plaintiff need to establish a fair chance of prevailing on all of her claims – just one of them. *Richland/Wilkin Joint Powers Authority v. U.S. Army Corps of Engineers*, 826 F.3d 1030, 1040 (8th Cir. 2016) (“The plaintiff ‘need only establish a likelihood of succeeding on the merits of any one of [its] claims.’”) (citation omitted).

Plaintiff has more than a fair chance of prevailing on her claims. As set forth more fully in her Third Amended Complaint, Plaintiff has brought causes of action for hostile work environment harassment, sex discrimination, and retaliation under Title VII, the Nebraska Fair Employment Practices Act, and the United States Constitution. The facts alleged in Plaintiff’s Third Amended Complaint demonstrate her ability to succeed on these claims before a jury.

In furtherance of her claims, Plaintiff can show *inter alia*:¹⁰

- Mahler manipulated the scheduling system so that Plaintiff was not permitted to rotate onto the fire truck, thereby depriving her of necessary training and experience. He informed Plaintiff that she needed specialty equipment and an 18–36-month period of observation

¹⁰ Each of the citations in this section are to Plaintiff’s Third Amended Complaint.

before he would allow her to work with him. By contrast, Mahler allowed many male firefighters, including those with less experience than Plaintiff and no specialty equipment, to rotate onto the fire truck. ¶¶25-26, 34.

- When Plaintiff inquired about why she was not included in the truck rotation like the male firefighters, Mahler told her that she should just focus on paramedic work because women are generally less mechanically minded than men. ¶32.
- Captain Brian Giles made numerous complaints to Battalion Chief Eric Jones about Mahler discriminating against Plaintiff and manipulating the schedule to keep her off his truck. ¶37, 45. When Jones eventually gave Mahler a verbal counseling about his behavior, Mahler refused to speak with Jones for a month...until Jones took him out for a beer and apologized for disciplining him. ¶38.
- On one occasion, Mahler made Plaintiff cover kitchen cleaning duty, including handwashing dishes, while he and other male Firefighters sat at a table and watched her. ¶¶51-54.
- Plaintiff engaged in protected activity by complaining to Linke about Mahler's scheduling manipulation and the kitchen cleaning incident. ¶59. Giles submitted a written statement in support of Plaintiff's discrimination/harassment complaint to Linke. ¶ 57.
- Because no action was taken in response to her complaint to Linke, Plaintiff filed an internal EEO complaint with Taylor-Riley. ¶ 79.
- Following her EEO complaint, Mahler refused to look at or speak with Plaintiff. ¶86. Captain Darren Merryman informed Plaintiff that Mahler was angry about her EEO complaint and had requested that Plaintiff not be permitted to rotate onto his truck. ¶86. Any training for Plaintiff would have to be conducted by Merryman or other Firefighters

because Mahler would not train her. ¶86. Mahler's crew also refused to speak to Plaintiff, due to his influence. ¶90. Merryman told Plaintiff that if she needed to communicate with Mahler, it should go through Merryman, who would convey it to Mahler. ¶86.

- Plaintiff complained to Linke and Battalion Chief Leo Benes about the no-communication mandate and Mahler's continued refusal to allow her to rotate onto the fire truck. ¶90. Plaintiff also complained to Merryman. ¶98.
- Plaintiff and her girlfriend were transported to a local hospital following a medical emergency. Lincoln Privacy Officer Sherry Meints informed Plaintiff that there may have been a HIPAA violation involving her medical records related to that incident. ¶92. During an investigation of the HIPAA breach, the City learned that several Firefighters were aware of Plaintiff's private medical information being discussed, but they could not recall who had shared the information. ¶100. Meints told Plaintiff that her investigation was ultimately "inconclusive" regarding the violation. ¶103.
- Plaintiff's personal medical information was somehow shared with Local 644 Firefighters' Union Vice-President Ron Trouba, Jr. ¶81. Trouba met with Plaintiff and mentioned her and her girlfriend's medical emergency details, right before urging her to drop her EEO complaint. ¶81. When Plaintiff complained to Meints that Trouba had access to her medical information and was using it as leverage to dissuade her from protected activity, Meints told Plaintiff that she was not obligated to investigate Trouba's attainment/use of her medical information. ¶103. Despite this, Plaintiff later learned that the City's investigation into the HIPAA violation revealed that Linke had disclosed Plaintiff's private medical information to Trouba. ¶104.

- After three months of investigation, Taylor-Riley completed her report on Plaintiff's allegations of harassment, discrimination, and retaliation. ¶110. She substantiated that Mahler had manipulated the staffing schedule to keep Plaintiff off his truck in favor of working with other male Firefighters. ¶110. She noted that through his manipulations, Mahler had scheduled Plaintiff to work a much heavier workload than male comparators. ¶110. Taylor-Riley interviewed Mahler's prior supervisor, who disclosed that Mahler believes women should not hold urban search and rescue positions and should instead be assigned to paramedic duties. ¶110. She also confirmed that Mahler had similar issues with a female Firefighter at his prior station assignment. ¶110. Benes admitted to Taylor-Riley that the situation between Mahler and Plaintiff had not been properly addressed. ¶110. At the conclusion of her investigation, Taylor-Riley determined that Plaintiff had been discriminated and retaliated against by Mahler. ¶110.
- Despite Taylor-Riley's report and Plaintiff's repeated complaints, Defendants had taken no action to address the unlawful conduct, so Plaintiff was forced to leave her station and become a floating Firefighter. ¶115. Approximately three months later, Plaintiff met with Lincoln Director of Human Resources Doug McDaniel. ¶118. McDaniel admitted that LFR had a systemic issue that needed to be addressed and lamented that this situation would never have happened if the City had a strong "HR wand." ¶118.

While Plaintiff's Third Amended Complaint provides far greater detail, and additional incidents, of the discrimination, harassment, and retaliation she has faced up until the present day, the events described above are more than sufficient to meet Plaintiff's burden of demonstrating a fair chance of success on her claims.¹¹

¹¹ Plaintiff is mindful of the Court's previous, extended analysis of each of her claims in its Memorandum and Order on Defendant's earlier Motion to Dismiss (ECF No. 30). In the interests of efficiency for the Court, Plaintiff has not

D. The Public Interest is Best Served by Protecting Plaintiff from Grievous Harm and Requiring Defendants to Uphold the Law.

Upholding constitutional rights serves the public interest. *D.M. by Bao Xiong v. Minnesota State High School League*, 917 F.3d 994, 1003 (8th Cir. 2019) (finding the fourth *Dataphase* factor was met because the public had a significant interest in the “preservation of constitutional rights.”). “The public [also] has a strong, legitimate interest in the enactment and enforcement of bills passed by their duly-elected representatives.” *Planned Parenthood of Heartland v. Heineman*, 724 F.Supp.2d 1025, 1048 (D. Neb 2010). From the very beginning of this litigation, Plaintiff has requested that Defendants uphold the state and federal laws that govern the workplace. In bringing this Motion, Plaintiff asks the Court to protect the public’s interest in having a municipal employer follow Title VII, the Nebraska Fair Employment Practices Act, and the United States Constitution.

In addition to the public interest in having a municipal employer require its employees to treat each other lawfully, the citizens of Lincoln have a very real interest in ensuring that Mahler does not respond to fire scenes when he is refusing to follow LFR’s safety procedures. By rejecting his obligation to communicate with and supervise Plaintiff during calls, Mahler creates a less efficient, more dangerous situation for citizens whose property catches fire. If Plaintiff or a member of her team had been seriously injured or run out of oxygen in the warehouse fire, resources would have been diverted from the firefighting efforts and directed at rescuing Plaintiff, Roberts, or Hurley. Depriving the public of a necessary community safety resource in order to

restated that legal analysis here. Should the Court prefer Plaintiff to do so, Plaintiff is happy to do a supplemental briefing.

express his anger at Plaintiff certainly implicates the public interest. The final *Dataphase* factor weighs heavily in Plaintiff's favor.

CONCLUSION

For all the reasons outlined above, Plaintiff respectfully requests that the Court 1) appoint an independent, third-party investigator to review Mahler's action at the warehouse fire; 2) order Defendant City of Lincoln to commence disciplinary proceedings against Mahler within the 35-day window of time permitted by the CBA; and 3) enjoin Mahler from participating on fire scenes until the disciplinary proceeding is finalized.

Respectfully Submitted,

AMANDA BENSON, Plaintiff

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Brief in Support of Motion for Preliminary Injunction (including the caption, headings, footnotes, and quotations) complies with Local R. 7.1(d). Using Microsoft Word Version 365, the undersigned certifies that this Brief contains 4,506 words.

/s/ Kelly K. Brandon_____

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11th day of June 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all CM/ECF participants.

/s/ Kelly K. Brandon_____