

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

Index No.: \_\_\_\_\_

Date Summons filed: \_\_\_\_\_

\_\_\_\_\_,

Plaintiff,

Plaintiff designates

Nassau County as the place of trial

The basis of venue is:

Plaintiff's residence

-against-

WANTAGH FIRE DEPARTMENT,  
WANTAGH FIRE DISTRICT,  
KENNETH KELLY, JR., and JOSEF SEIER,  
Defendants,SUMMONS

Plaintiff resides at:

Nassau County

-----X  
TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Stony Brook, New York  
January 11, 2023

Yours, etc.

MITEV LAW FIRM, PC

VESSELIN MITEV, ESQ.

Attorney for Plaintiff

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Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU-----X  
[REDACTED]

Index No.: \_\_\_\_\_

Plaintiff.

-against-

**VERIFIED COMPLAINT****WANTAGH FIRE DEPARTMENT,  
WANTAGH FIRE DISTRICT,  
KENNETH KELLY, JR., and JOSEF SEIER,**  
Defendants.-----X  
Plaintiff, [REDACTED]

(hereinafter referred to as the "Plaintiff"), by her attorneys.

**MITEV LAW FIRM, P.C.**, complaining of Defendants, hereby alleges the following:

1. At all relevant times, Plaintiff [REDACTED] was over the age of 18 and a resident of Nassau County.
2. At all relevant times, the Defendant Wantagh Fire Department was and is a Municipal Fire Department corporation, organized, existing, and operating under the laws of the State of New York, whose principal place of business is in the State of New York, headquartered at 2995 Jerusalem Avenue, Wantagh, New York 11793, with a business address of 3470 Park Avenue, Wantagh, New York 11793.
3. At all relevant times, the Wantagh Fire District, with a business address of 3470 Park Avenue, Wantagh, New York 11793, in Nassau County, was and is an entity of the Wantagh Fire Department and operated exclusively and as a fully integrated part of the Wantagh Fire Department.
4. At all relevant times, the Board of Commissioners for the Wantagh Fire Department, with a business address of 3470 Park Avenue, Wantagh, New York 11793, was and is an entity of the Wantagh Fire Department and operated exclusively and as a fully integrated part of the Wantagh Fire Department.

5. At all relevant times the Fire Department and Fire District were and are alter egos of each other.
6. At all relevant times, Defendant Kenneth Kelly, Jr., was Chief of the Wantagh Fire Department.
7. At all relevant times, Defendant Josef Seier, was Captain of the Wantagh Fire Department.
8. The foregoing persons/entities are hereafter referred to as the "Defendants".
9. This action arises out of the grotesque and shocking sexual assault, battery and misconduct against Plaintiff perpetrated by Defendant Kelly, Jr. and Defendant Seier, who were employed by the Wantagh Fire Department, upon the Plaintiff, as well as the negligent supervision, retention and hiring on behalf of the Wantagh Fire Department.
10. The Plaintiff restates and reiterates each and every allegation contained in the preceding paragraphs as if set forth fully herein.
11. At all relevant times, from January 14, 2022 through January 15, 2022, Plaintiff was a female volunteer fire medic for the Wantagh Fire Department located in Wantagh, New York, Nassau County.
12. At all relevant times, including the entire aforementioned time frame, Defendant Kelly, Jr. was employed by the Wantagh Fire Department as a Fire Chief and Defendant Seier was employed by the Wantagh Fire Department as a Captain.
13. At all relevant times both Defendants Seier and Kelly, Jr. were superior officers to the Plaintiff.
14. On January 14, 2022, the Plaintiff was invited to the Wantagh Fire Department Station #4 for a gathering to celebrate Engine 7 Captain Josef Seier's birthday.



15. The Plaintiff arrived at the Wantagh Fire Department Station #4 without any alcohol at the request of Defendant Seier and his girlfriend.
16. The Plaintiff arrived at approximately 9:30 P.M., as she had gone directly from her day job to Station #4.
17. Upon her arrival Plaintiff was immediately served and continuously overserved with multiple alcoholic drinks by Defendants Seier and Kelly, Jr. She was encouraged to consume various liquor such as Malibu and "Black Death", all provided by the Fire District Defendants, who knew or should have known that serving and overserving of female patrons, including female firefighters, in an attempt to make them more vulnerable to be preyed upon by male firefighters, including individual Defendants, was a recurrent ongoing problem at the District.
18. Upon information and belief, Defendant's Kelly, Jr. and Seier had premeditated a plan which included getting the Plaintiff intoxicated to the point where that the Plaintiff would not be able to consent to their advances, and once the Plaintiff was so intoxicated that she could not consent, they were going to take advantage of her impaired state and sexually assault her.
19. During the evening there were many other firefighters at the birthday celebration for Defendant Seier, and all throughout the evening while the Plaintiff was sitting at the bar located inside the fire station's company room, Defendant Seier would lean into the Plaintiff as well as keeping his hand on her thigh, all unwelcome advances that Plaintiff was unable to fend off due to her continuing to be served and overserved alcohol.
20. At approximately 2:00 A.M., Defendant Kelly, Jr. stated to Defendant Seier that they were going to "wet her like a sponge", referring to the Plaintiff, and then Defendant Kelly, Jr.

began shutting down the party and telling everyone to leave.

21. It was not until the Plaintiff heard the lewd sexual comments made by the Defendants about her, that the Plaintiff began to realize that the Defendants' intentions were to sexually assault her in her intoxicated state, as she would not be able to consent or fight off their sexual advances.
22. After Defendant Kelly, Jr. had cleared the Station Company Room of the other attendees of the birthday party, the two Defendants and the Plaintiff were alone at the bar of the fire house company bar. Defendant Seier began forcing himself upon the Plaintiff.
23. Plaintiff repeatedly told Defendant Seier "no", no less than five (5) times, as well as telling him that "this is a bad idea" while Defendant Seier ignored her and continued to force himself upon the Plaintiff and kissing her against her will.
24. Defendant Seier kept telling the Plaintiff "come on" and "what is a bad idea?" while the Plaintiff repeatedly tried to fend him off as she was trapped between Defendant Seier and Defendant Kelly, Jr., as she was too intoxicated to leave.
25. The Defendants Seier and Kelly, Jr. kept on telling the Plaintiff as she was struggling to get away from the Defendants that there were no cameras where they were.
26. Defendant Seier started to get even more aggressive with the Plaintiff, telling her "you want to see this big dick?"
27. Defendant Kelly, Jr. said to the Plaintiff "we know you like it" and then reminded the Plaintiff that it was Defendant Seier's birthday and that she was to be his "present" all while the Plaintiff was trapped between both of the Defendants who were visibly sexually aroused.
28. Defendant Kelly, Jr. started to touch the Plaintiff even more, continuously and against her

will, and placed his exposed and erect penis on her right leg while forcing himself upon the Plaintiff and kissing her.

29. As this point, Plaintiff was so intoxicated that she would slip in and out of consciousness, and when she regained consciousness she realized she had been taken against her will by the individual Defendants and was inside the Station House bathroom with the two individual Defendants with the door locked.

30. Thereafter, individual Defendants removed the Plaintiff's clothing from the waist down and Defendant Kelly, Jr. forcibly bent the Plaintiff over the sink and vaginally penetrated her, unprotected and without her consent.

31. At the same time, Defendant Seier forced the Plaintiff to perform fellatio on him, against her will, and without her consent.

32. Defendant Seier also penetrated the Plaintiff orally using his fingers of one of his hands in her mouth while the other was penetrating the Plaintiff's vagina.

33. Defendant Kelly, Jr. had left the fire house while Defendant Seier continued to sexually assault the Plaintiff.

34. Once Defendant Kelly, Jr. had left, the Plaintiff was then brought into the Officer's Room of the Fire Station, where Defendant Seier forced the Plaintiff's head and mouth onto his penis, choked her, and continued to vaginally penetrate the Plaintiff, unprotected and without her consent. Once Defendant Seier had finished he ejaculated onto the Plaintiff's shirt.

35. The Plaintiff arrived home at approximately 4:00 A.M., and on January 15, 2022, she received the following text from Defendant Kelly, Jr. stating "Had fun last night. But,



remember, that's between you me and Joe only forever" a clear admission of the grotesque rape of Plaintiff by individual Defendants:



36. As a result of this grotesque sexual assault and battery Plaintiff suffered bruises, contusions, pain, suffering and stiffness along her back, spine, neck, head, bruising, contusions, pain, and suffering in her vagina, as well as suffered and continues to suffer from severe psychological harm and depression, feelings of shame, humiliation, loss of sleep, anxiety, anger, loss of appetite, loss of self-worth, loss of self-esteem and other neurological and psychical damages, severe and permanent, whose entire and full sequelae are yet to be fully determined.

**AS AND FOR A FIRST CAUSE OF ACTION: ASSAULT**

37. The foregoing acts by Defendant Kelly, Jr. and Defendant Seier were intentional.

38. The foregoing acts by Defendant Kelly, Jr. and Defendant Seier were acts of physical conduct.

39. The foregoing acts by Defendant Kelly, Jr. and Defendant Seier placed the Plaintiff in

imminent apprehension of harmful and/or offensive contact.

40. The foregoing acts by Defendant Kelly, Jr. and Defendant Seier thus constituted assault.

41. As a result of this tortious conduct Plaintiff suffered bruises, contusions, pain, suffering and stiffness along her back, spine, neck, head, bruising, contusions, pain, and suffering in her vagina, as well as suffered and continues to suffer from severe psychological harm and depression, feelings of shame, humiliation, loss of sleep, anxiety, anger, loss of appetite, loss of self-worth, loss of self-esteem and other neurological and psychical damages, severe and permanent, whose entire and full sequelae are yet to be fully determined.

42. By reason of the foregoing, the Plaintiff is entitled to damages in an amount to be determined by the trier of fact, plus attorney's fees, costs, and disbursements.

43. Pursuant to C.P.L.R. §3017(c), the amount of damages sought herein exceeds the jurisdictional limits of all lower courts which would have jurisdiction.

**AS AND FOR A SECOND CAUSE OF ACTION: BATTERY**

44. Plaintiff repeats, reiterates, and realleges each and every allegation contained in the preceding paragraphs as if set forth fully herein.

45. The foregoing acts by Defendant Kelly, Jr. and Defendant Seier were intentional.

46. The foregoing acts by Defendant Kelly, Jr. and Defendant Seier were acts of physical conduct.

47. The foregoing acts by Defendant Kelly, Jr. and Defendant Seier were without the Plaintiff's consent and were per se offensive in nature.

48. The foregoing acts by Defendant Kelly, Jr. and Defendant Seier thus constituted battery.

49. As a result of this tortious conduct Plaintiff suffered bruises, contusions, pain, suffering and stiffness along her back, spine, neck, head, bruising, contusions, pain, and suffering in



her vagina, as well as suffered and continues to suffer from severe psychological harm and depression, feelings of shame, humiliation, loss of sleep, anxiety, anger, loss of appetite, loss of self-worth, loss of self-esteem and other neurological and psychical damages, severe and permanent, whose entire and full sequelae are yet to be fully determined.

50. By reason of the foregoing, the Plaintiff is entitled to damages in an amount to be determined by the trier of fact, plus attorney's fees, costs, and disbursements.

51. Pursuant to C.P.L.R. §3017(c), the amount of damages sought herein exceeds the jurisdictional limits of all lower courts which would have jurisdiction.

**AS AND FOR A THIRD CAUSE OF ACTION: NEGLIGENCE**  
**HIRING/RETENTION/SUPERVISION**

52. Plaintiff repeats, reiterates, and realleges each and every allegation contained in the preceding paragraphs as if set forth fully herein.

53. Defendants Wantagh Fire Department, Wantagh Fire District, and Board of Commissioners knew or should have known that the employees present at their facilities were likely to come into contact with the individuals they retained as firefighters, especially those they hired for Chief and Captain positions, such as Defendant Kelly, Jr. and Defendant Seier.

54. Defendants Wantagh Fire Department, Wantagh Fire District, and Board of Commissioners owed a duty of care to all employees, including the Plaintiff, who were likely to come into contact with Wantagh Fire Department Defendant Chief Kelly, Jr. and Wantagh Fire Department Captain Seier, to insure that they did not use abuse of their positions to injure employees, intentionally or otherwise.

55. This duty of care is amplified with regards to Defendant Kelly, Jr. and Defendant Seier, as their employment positions were ones that inherently involved constant close contact and

unsupervised contact with employees and were inherently a top-down dynamic, placing individual Defendants in a top-tier position vis-à-vis other personnel, such as individual Plaintiff.

56. Defendants Wantagh Fire Department, Wantagh Fire District, and Board of Commissioners, at all relevant times held out their organization and all penumbras of it, including all of the fire houses, to be a safe place for employees, including the Plaintiff, to spend extended periods of time at, on and off duty, in what was expected to be a safe environment imbued with genteel comradery, and not sexual depravity.
57. Defendants Wantagh Fire Department, Wantagh Fire District, and Board of Commissioners, its Officers, Agents, Board Members, and Staff knew or should have known of Defendant Kelly, Jr. and Defendant Seier's propensity for the conduct which caused the Plaintiff's injuries prior to, or at the times of, the injuries' occurrence.
58. Defendants Wantagh Fire Department, Wantagh Fire District, and Board of Commissioners, its Officers, Agents, Board Members, and Staff were negligent in failing to properly supervise Defendant Kelly, Jr. and Defendant Seier.
59. That any employee, female or male, would fall victim to sexual abuse from one of their hired Chiefs and Captains is a foreseeable result of the Defendant's Wantagh Fire Department, Wantagh Fire District, and Board of Commissioners' negligence.
60. At all times relevant herein, Defendant's Wantagh Fire Department, Wantagh Fire District, and Board of Commissioners, its Officers, Agents, Board Members, and Staff actions were willful, wanton, malicious, reckless, negligent and/or outrageous in their disregard for the rights and safety of the Plaintiff.
61. Defendants thus breached the duties they owed to Plaintiff, by their foregoing conduct.

62. As a direct and proximate result, Plaintiff suffered bruises, contusions, pain, suffering and stiffness along her back, spine, neck, head, bruising, contusions, pain, and suffering in her vagina, as well as suffered and continues to suffer from severe psychological harm and depression, feelings of shame, humiliation, loss of sleep, anxiety, anger, loss of appetite, loss of self-worth, loss of self-esteem and other neurological and psychical damages, severe and permanent, whose entire and full sequelae are yet to be fully determined.

63. By reason of the foregoing, the Plaintiff is entitled to damages in an amount to be determined by the trier of fact, plus attorney's fees, costs, and disbursements.

64. Pursuant to C.P.L.R. §3017(c), the amount of damages sought herein exceeds the jurisdictional limits of all lower courts which would have jurisdiction.

**AS AND FOR A FOURTH CAUSE OF ACTION: NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

65. Plaintiff repeats, reiterates, and realleges each and every allegation contained in the preceding paragraphs as if set forth fully herein.

66. As a result of the multiple assaults, she suffered at the hands of Defendant Kelly, Jr. and Defendant Seier, the Plaintiff suffered bruises, contusions, pain, suffering and stiffness along her back, spine, neck, head, as well as bruising, contusions, pain, and suffering in her vagina.

67. As superiors to Plaintiff, Defendants Seier and Kelly owed her a duty of good faith and to maintain and not invade her personal space and to protect, as a fellow firefighter, her personal safety.

68. The acts of individual Defendants unreasonably endangered Plaintiff's physical safety and caused Plaintiff to fear for her own safety.



69. As a direct and proximate result, Plaintiff suffered bruises, contusions, pain, suffering and stiffness along her back, spine, neck, head, bruising, contusions, pain, and suffering in her vagina, as well as suffered and continues to suffer from severe psychological harm and depression, feelings of shame, humiliation, loss of sleep, anxiety, anger, loss of appetite, loss of self-worth, loss of self-esteem and other neurological and psychical damages, severe and permanent, whose entire and full sequelae are yet to be fully determined.
70. By reason of the foregoing, the Plaintiff is entitled to damages in an amount to be determined by the trier of fact, plus attorney's fees, costs, and disbursements.
71. Pursuant to C.P.L.R. §3017(c), the amount of damages sought herein exceeds the jurisdictional limits of all lower courts which would have jurisdiction.

**AS AND FOR A FIFTH CAUSE OF ACTION: INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS**

72. Plaintiff repeats, reiterates, and realleges each and every allegation contained in the preceding paragraphs as if set forth fully herein.
73. As a result of the multiple assaults, she suffered at the hands of Defendant Kelly, Jr. and Defendant Seier, the Plaintiff suffered bruises, contusions, pain, suffering and stiffness along her back, spine, neck, head, as well as bruising, contusions, pain, and suffering in her vagina.
74. Defendants' Seier and Kelly, Jr.'s acts as set forth herein represent extreme and outrageous intentional conduct, which was intended to and did caused the Plaintiff to suffer severe and extreme emotional distress.
75. As a direct and proximate result, Plaintiff suffered bruises, contusions, pain, suffering and stiffness along her back, spine, neck, head, bruising, contusions, pain, and suffering in her vagina, as well as suffered and continues to suffer from severe psychological harm and

depression, feelings of shame, humiliation, loss of sleep, anxiety, anger, loss of appetite, loss of self-worth, loss of self-esteem and other neurological and psychical damages, severe and permanent, whose entire and full sequelae are yet to be fully determined.

76. By reason of the foregoing, the Plaintiff is entitled to damages in an amount to be determined by the trier of fact, plus attorney's fees, costs, and disbursements.

77. Pursuant to C.P.L.R. §3017(c), the amount of damages sought herein exceeds the jurisdictional limits of all lower courts which would have jurisdiction.

**AS AND FOR A SIXTH CAUSE OF ACTION: PRIMA FACIE TGRT**

78. Plaintiff repeats, reiterates, and realleges each and every allegation contained in the preceding paragraphs as if set forth fully herein.

79. The foregoing acts by Defendants were motivated by disinterested malevolence in that they sought to dehumanize Plaintiff and use her simply as a vessel to satisfy their animalistic sexual urges, without her consent, while being allowed free reign to do so by the District Defendants who had turned a blind eye to such willful and wanton acts which they knew or should have known were occurring on District premises.

80. There was no excuse or justification for the aforesaid conduct.

81. As a direct and proximate result, Plaintiff suffered bruises, contusions, pain, suffering and stiffness along her back, spine, neck, head, bruising, contusions, pain, and suffering in her vagina, as well as suffered and continues to suffer from severe psychological harm and depression, feelings of shame, humiliation, loss of sleep, anxiety, anger, loss of appetite, loss of self-worth, loss of self-esteem and other neurological and psychical damages, severe and permanent, whose entire and full sequelae are yet to be fully determined.

82. By reason of the foregoing, the Plaintiff is entitled to damages in an amount to be determined by the trier of fact, plus attorney's fees, costs, and disbursements.

**AS AND FOR A SEVENTH CAUSE OF ACTION: DRAM SHOP**

83. Plaintiff repeats, reiterates, and realleges each and every allegation contained in the preceding paragraphs as if set forth fully herein.

84. Defendants, including the District Defendants, were aware of and in fact encouraged the dispensing and sale of alcohol and intoxicants, upon District premises to persons including Plaintiff.

85. District employees, including Defendants, unlawfully sold and/or assisted in procuring and/or delivered to and or gave and/or served and overserved Plaintiff alcohol and liquor to an already visibly intoxicated Plaintiff, knowing of her intoxicated state.

86. By reason of the foregoing, Plaintiff sustained injuries to her person.

87. Defendants' conduct violated GOL Section 11-101 and Section 65 of the Alcoholic Beverage Control Law.

88. As a direct and proximate result, Plaintiff suffered bruises, contusions, pain, suffering and stiffness along her back, spine, neck, head, bruising, contusions, pain, and suffering in her vagina, as well as suffered and continues to suffer from severe psychological harm and depression, feelings of shame, humiliation, loss of sleep, anxiety, anger, loss of appetite, loss of self-worth, loss of self-esteem and other neurological and psychical damages, severe and permanent, whose entire and full sequelae are yet to be fully determined.

89. By reason of the foregoing, the Plaintiff is entitled to damages in an amount to be determined by the trier of fact, plus attorney's fees, costs, and disbursements.



**AS AND FOR AN EIGHTH CAUSE OF ACTION: NEGLIGENCE**

90. Plaintiff repeats, reiterates, and realleges each and every allegation contained in the preceding paragraphs as if set forth fully herein.
91. The Defendants, jointly and severally, negligently caused injuries, emotional distress and damage to the Plaintiff.
92. The acts, conduct and/or omissions of the Defendants were the direct and proximate cause of injury to the Plaintiff and violated the Plaintiff's statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.
93. As a direct and proximate result, Plaintiff suffered bruises, contusions, pain, suffering and stiffness along her back, spine, neck, head, bruising, contusions, pain, and suffering in her vagina, as well as suffered and continues to suffer from severe psychological harm and depression, feelings of shame, humiliation, loss of sleep, anxiety, anger, loss of appetite, loss of self-worth, loss of self-esteem and other neurological and psychical damages, severe and permanent, whose entire and full sequelae are yet to be fully determined.
94. By reason of the foregoing, the Plaintiff is entitled to damages in an amount to be determined by the trier of fact, plus attorney's fees, costs, and disbursements.

**PUNITIVE DAMAGES**

95. Defendants' willful, wanton conduct evinces a total, conscious and/or reckless disregard for the life and well-being of the Plaintiff, as well as for the health, well-being, and rights of others, and employees in particular including the Plaintiff, who either were or foreseeably could have come into contact and subsequently been harmed due to the Defendant Kelly, Jr. and the Defendant Seier's errors, acts, and/or omissions.

96. As a consequence, an award of punitive damages is required to uphold and vindicate the public interest.

**NOTICE OF CLAIM**

97. Plaintiff timely filed an appropriate Notice of Claim with the Fire District, the Fire Department and the Board of Commissioners, within 90 days of the incidents complained of herein.

98. More than 30 days have elapsed since the filing of the aforesaid Notices and adjustment or payment thereof has been neglected and/or refused.

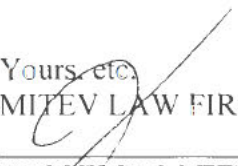
99. Plaintiff demands a trial by jury.

**WHEREFORE,** Plaintiff demands a judgment as follows:

- a. On the First Cause of Action, damages in an amount to be determined by the trier of fact, plus attorney's fees, costs, and disbursements.
- b. On the Second Cause of Action, damages in an amount to be determined by the trier of fact, plus attorney's fees, costs, and disbursements.
- c. On the Third Cause of Action, damages in an amount to be determined by the trier of fact, plus attorney's fees, costs, and disbursements.
- d. On the Fourth Cause of Action, damages in an amount to be determined by the trier of fact, plus attorney's fees, costs, and disbursements.
- e. On the Fifth Cause of Action, damages in an amount to be determined by the trier of fact, plus attorney's fees, costs, and disbursements.
- f. On the Sixth Cause of Action, damages in an amount to be determined by the trier of fact, plus attorney's fees, costs, and disbursements.

- g. On the Seventh Cause of Action, damages in an amount to be determined by the trier of act, plus attorney's fees, costs, and disbursements;
- h. On the Eighth Cause of Action, damages in an amount to be determined by the trier of act, plus attorney's fees, costs, and disbursements;
- i. Punitive damages.
- j. Such other and further relief that this Court shall deem just and proper.

Dated: Stony Brook, New York  
January 11, 2023

Yours, etc.  
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