

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MICHAEL GALA, JOSEPH JARDIN, MICHAEL
MASSUCCI, and FRED SCHAAF,

Plaintiffs,

NOTICE OF REMOVAL

Case No. 23 Civ.1543

-against-

LAURA KAVANAGH, as Commissioner of the New
York City Fire Department, and the NEW YORK CITY
FIRE DEPARTMENT,

Defendants.

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**TO: THE UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK**

Defendants Laura Kavanagh, as Commissioner of the New York City Fire Department, and the New York City Fire Department, by and through their attorney, the Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, respectfully move this Court as follows:

1. On February 27, 2023, Plaintiffs filed a hybrid Verified Petition/Complaint in a New York State Supreme Court, Kings County, under Index No. 506192/2023, alleging Federal and State claims, and setting forth the claims for relief upon which the proceeding/action was based. A copy of the Verified Petition/Complaint is annexed hereto as Exhibit "A."

2. In the Verified Petition/Complaint, Plaintiffs assert a liberty interest claim under the Due Process Clause, Fourteenth Amendment of the United States Constitution, pursuant to 42 U.S.C. § 1983. Accordingly, upon the filing of the Verified Petition/Complaint, the above-captioned action is a civil action of which the District Court has original jurisdiction pursuant to 28 U.S.C. § 1331, in that it alleges claims which arise under the laws of the United States. This

action is therefore removable to the District Court without regard to the citizenship or residence of the parties, pursuant to 28 U.S.C. §§ 1441 and 1443.

3. On February 27, 2023, Petitioner also filed a Proposed Order to Show Cause/Temporary Restraining Order, Notice of Petition, Memorandum of Law, Affirmation of Thomas Richardson in Support of Petitioner's Motion, and Request for Judicial Intervention. A copy of these documents is collectively annexed hereto as Exhibit "B."

4. In the Count Two of the Verified Petition/Complaint, Plaintiffs assert a liberty interest claim under the Due Process Clause of the 14th Amendment to the United States Constitution, pursuant to 42 U.S.C. § 1983. Accordingly, upon the filing of the Verified Petition/Complaint, the above-captioned action is a civil action of which the District Court has original jurisdiction pursuant to 28 U.S.C. § 1331, in that it alleges claims which arise under the laws of the United States. This action is therefore removable to the District Court without regard to the citizenship or residence of the parties, pursuant to 28 U.S.C. §§ 1441 and 1443.

5. This Notice of Removal is timely because it is being filed within thirty (30) days of the filing of the Verified Petition. See 28 U.S.C. § 1446(b).

6. All Defendants consent to the removal of this action to federal court.

7. Defendants will promptly file a copy of this Notice of Removal with the Clerk of the State Court in which the action is pending.

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WHEREFORE, Defendants respectfully request that the above-captioned action be removed from the Supreme Court of the State of New York, County of Kings, to the United States District Court for the Eastern District of New York.

Dated: New York, New York
February 28, 2023

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EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

In the Matter of the Application of

MICHAEL GALA,
JOSEPH JARDIN,
MICHAEL MASSUCCI, and
FRED SCHAAF,

Petitioners-Plaintiffs,

For a Judgment pursuant to Article 78 of the Civil
Practice Law and Rules,

-against-

LAURA KAVANAGH, as Commissioner of the
New York City Fire Department, and the NEW
YORK CITY FIRE DEPARTMENT,

Respondents-Defendants.

Index No. _____

Assigned to Justice _____

Date Purchased: Feb. 27, 2023

VERIFIED ARTICLE 78
PETITION AND COMPLAINT

Petitioners-Plaintiffs by and through their attorneys, Walden Macht & Haran LLP, for their hybrid verified Article 78 petition and complaint, allege the following:

NATURE OF THE ACTION

1. This case is about one thing: the safety of the public and valiant firefighters of the New York City Fire Department.

2. Large fires—which present grave risk of spreading to adjacent buildings, causing building collapses, and killing ordinary people and first responders—require the most effective crisis-response teams, especially Incident Commanders, who carry ultimate responsibility for averting tragedy.

3. Within the New York City Fire Department (“FDNY”), the Incident Commanders for large fires are the Staff Chiefs, which comprise the Chief of Department, Chief of Operations, Assistant Chiefs, and Deputy Assistant Chiefs.

4. When any fire department, police department, or other public-safety or military organization has inadequate or inexperienced Incident Commanders, people die.

5. As described below, LAURA KAVANAGH (“Respondent Kavanagh”),¹ as Commissioner of the FDNY, has taken a series of actions in the period between November 2022 and February 2023, which has resulted in the demotion (actual or constructive) or reassignment of at least ten Staff Chiefs, including the Chief of Department. Most of these positions have not been filled.

6. Respondent Kavanagh’s actions have created a grave risk to the City of New York as well as firefighters across the city. When Respondent Kavanagh’s ill-conceived demotions go into effect (between March 4th and 6th), two critical problems exist: (a) there will be no Staff Chiefs who have ever served as Incident Commanders on a 5-alarm fire; and (b) there are only four Staff Chiefs with sufficient rank, in the absence of more senior chiefs, to cover 4-alarm fires across the entire city (and it is entirely unclear whether they have served as Incident Commanders for a 4-alarm fire before). Judicial action is required to maintain the safety of New York City residents and visitors by restoring the firefighting responsibilities of Staff Chiefs who were re-assigned.

7. As to the merits, Respondent Kavanagh’s brief tenure as FDNY Commissioner has shown what happens when a political operative is put in charge of a public-safety agency as vital as the FDNY. Through the demotions and reassignments, as well as through other decisions antithetical to public safety, Respondent Kavanagh has abused the office of Fire Commissioner, violated the oath of office, put the public and members of the FDNY at risk, and retaliated against

¹ This is a hybrid petition and plenary complaint. Commissioner Laura Kavanagh is a Respondent-Defendant but is referred to herein as “Respondent Kavanagh.”

senior staff for raising safety concerns about leadership decisions (collectively, but as described in detail below, the “Retaliation Decisions”).

8. This Verified Article 78 Petition and Complaint, together with the ample evidentiary support (including an affidavit from one of the most experienced firefighting professionals in the country), seeks to end Respondent Kavanagh’s campaign of internecine warfare within the FDNY by reversing and annulling the Retaliation Decisions.

VENUE AND JURISDICTION

9. CPLR § 7804 provides that jurisdiction lies within New York State Supreme Court.

10. Pursuant to CPLR §§ 7804(b) and 506(b), venue in this proceeding lies in Kings County, in the judicial district where the Respondents-Defendants made the determinations complained of, where the material events otherwise took place, and where the principal office of the Respondents-Defendants is located.

PARTIES

11. Petitioner-Plaintiff Michael Gala (“Petitioner Gala”) has dedicated his entire professional life to protecting the people of New York City, first as a police officer, and then, for the past thirty-six years, as a firefighter. He is a highly decorated and widely respected member of the FDNY who has responded to countless life-threatening emergencies, including the terrorist attacks on September 11, 2001. His devotion to the job and his tireless work ethic allowed him to achieve the rank of Assistant Chief. Petitioner Gala has received several citations for bravery as well as numerous other honors, including the FDNY Columbia Association’s Man of the Year in 2018. He is a nationally recognized authority on firefighting operations and a prolific writer and lecturer on all things fire-services related. He has taught and authored several publications on firefighting tactics and strategies. Petitioner Gala was a target of Respondent Kavanagh’s

Retaliation Decisions, including both her retributive reassignment campaign and, on February 3, 2022, being unceremoniously demoted.

12. Petitioner-Plaintiff Joseph Jardin (“Petitioner Jardin”) has served in the FDNY for thirty-seven years, dedicating much of his career to Rescue Operations. He has served as both the Chief of Safety and Chief of Fire Prevention and achieved the rank of Assistant Chief. Petitioner Jardin has a degree in Fire Protection Engineering and is an expert on fire prevention, building codes, and fire-safety standards. He served for seven years on the National Fire Protection Association’s (“NFPA”) Standards Council and chaired the NFPA’s Guide for Structural Firefighting Using Fire Dynamics Technical Committee and the NFPA’s Safety to Life Project’s Building Service and Fire Protection Equipment and Residential Occupancies Technical Committees. Petitioner Jardin has received numerous awards recognizing his FDNY service and NFPA standards work. He was a target of Respondent Kavanagh’s Retaliation Decisions, including both her retributive reassignment campaign and, on February 3, 2022, being unceremoniously demoted.

13. Petitioner-Plaintiff Fred Schaaf (“Petitioner Schaaf”) has served in the FDNY for over thirty years and achieved the rank of Assistant Chief. He has dedicated his entire adult life to serving the people of New York City and ensuring public safety. He has received awards for his FDNY service and bravery. In 2019, Petitioner Schaaf became the Queens Borough Commander, overseeing all FDNY operations in Queens County, the largest borough in New York City. He served in this role until Respondent Kavanagh abruptly reassigned him. Petitioner Schaaf was a target of Respondent Kavanagh’s Retaliation Decisions, including both her retributive reassignment campaign and, on February 3, 2022, being unceremoniously demoted.

14. Petitioner-Plaintiff Michael Massucci (“Petitioner Massucci”) has served in the FDNY for nearly thirty-three years and achieved the rank of Deputy Assistant Chief. He has dedicated his entire adult life to serving the people of New York City and ensuring public safety. He has received numerous awards for his bravery and service. Within the FDNY, Petitioner Massucci is well known for his encyclopedic institutional knowledge of the FDNY and its operations. He served as Chief of Uniformed Personnel for six years until Respondent Kavanagh reassigned him to work in the “Toolroom” under the Bureau of Operations with no clear role or responsibilities. Petitioner Massucci has been a target of Respondent Kavanagh’s Retaliation Decisions and was reassigned to a job with no responsibilities. Because he also had to endure the consequences of Respondent Kavanagh’s unsafe decision making, Petitioner Massucci was constructively demoted.²

15. Respondent Laura Kavanagh is the 34th Fire Commissioner of the FDNY. Prior to joining the FDNY in 2014, Respondent Kavanagh worked primarily as a political operative on political campaigns and in local government, never a day as a firefighter. Respondent Kavanagh has no experience fighting fires and worked only on the civilian side of the FDNY before ascending to Commissioner.

16. Respondent-Defendant FDNY is a department of the government of the City of New York.

² As noted elsewhere, use of the term “constructive demotion” is consistent with federal law, which analyzes constructive demotion cases in the same manner as constructive dismissal. *See, e.g., Chanval Pellier v. Brit. Airways, Plc.*, No. 02-CV-4195, 2006 WL 132073, at *5 (E.D.N.Y. Jan. 17, 2006); *Fenney v. Dakota, Minnesota & Eastern R. Co.*, 327 F.3d 707, 717 (8th Cir. 2003).

RELEVANT LEGAL AUTHORITIES

17. A special proceeding under Article 78 of the CPLR is available to challenge the actions or inaction of agencies and officers of state and local government. Under CPLR § 7803, a Court may determine, inter alia, “whether the body or officer failed to perform a duty enjoined upon it by law,” and “whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion.”

18. The conduct and operations of the FDNY are governed by the Regulations of the Fire Department of the City of New York (“FDNY Regulations”). The FDNY Regulations require that “Assistant Chiefs and Deputy Assistant Chiefs are appointed by the Fire Commissioner in consultation with the Chief of Department to serve as members of the Chief of Department’s staff.”³

19. Also pursuant to the FDNY Regulations, Staff Chiefs serve, on a rotating basis, as citywide Command Chiefs. The responsibilities of a Command Chief include “[m]andatory response on 3rd alarm.”⁴ Command Chiefs also have “[d]iscretionary response to any alarm. Staff Chiefs shall, at their discretion and compatible with their administrative function, visit the site of fires of lesser proportions than 3rd alarms to effectively evaluate Deputy Chiefs, Battalion Chiefs and Company Operations.”⁵ Command Chiefs must also respond to any incident involving three or more fatalities and must respond to all “complex emergencies involving multiple deaths, the possibility of multiple deaths or where the nature of the emergency, in the opinion of the Staff

³ FDNY Regulations, Chapter 5.

⁴ *Id.* § 5.1.1.

⁵ *Id.*

Chief, requires his/her presence.”⁶ Additionally, Command Chiefs must be personally involved when there is an apparatus collision or injuries to firefighters.⁷

OVERVIEW OF INCIDENT COMMANDER CRISIS

20. As of this filing, the FDNY had nineteen individuals who could serve as Incident Commander at 3-alarm fires or more severe ones (“Staff Chiefs”).

21. Of those, eight have been demoted (actually or constructively). Accordingly, this leaves only eleven Incident Commanders for all 3-alarm fires city-wide. Given that 4- and 5-alarm fires require higher-ranking officers within the Staff Chiefs, this leaves no one—not a single Staff Chief—who has experience as Incident Commander for a 5-alarm fire. But Petitioners-Plaintiffs have learned that two other Staff Chiefs have orally requested reassignment, and one has opted for medical leave, reflecting their constructive demotions as well. Petitioners-Plaintiffs learned that these requests were oral because the demoted Staff Chiefs did not want “to be in the papers.” In total, the demotions leave only four Staff Chiefs with sufficient rank to provisionally cover 4-alarm fires in the absence of more senior chiefs, but it is entirely unclear that any of those four have experience as Incident Commanders for 4-alarm fires as of today.

22. If this information is accurate, only eight Incident Commanders will remain, none with experience as Incident Commanders for 5-alarm fires, and one or two with 4-alarm experience.

23. This is a terrifying prospect for public safety. Having such a small group of Incident Commanders available to respond to serious fires is unworkable and would require prompt promotion of others with no experience as Incident Commander in such grave crisis situations.

⁶ *Id.* §§ 5.1.3-4.

⁷ *Id.* §§ 5.1.5-6.

FACTS

I. Structure of the FDNY

24. The FDNY is a vast hierarchical organization, consisting of both uniformed and civilian divisions, all under the oversight of the Fire Commissioner.

25. The uniformed division of the FDNY—the brave women and men who risk life and limb daily to ensure public safety—handles the responsibilities traditionally associated with firefighting.

26. The civilian branch largely provides support to the uniformed division through non-operational functions, such as legal, purchasing, inspections, and code enforcement.

27. The Chief of Department sits atop the uniformed division and usually serves as a key advisor to the Fire Commissioner. The Chief of Department is a “five-star” Chief, meaning five stars sit on the shoulder of his uniform. In addition to the administrative and oversight responsibilities associated with the position, the Chief of Department is on call twenty-four hours a day, seven days a week, and responds to major emergencies throughout the five boroughs of the City of New York.

28. Beneath the Chief of Department are three lines of operational direct reports: (1) Chief of Operations, a four-star chief, (2) Assistant Chiefs, who are three-star chiefs, and (3) Deputy Assistant Chiefs, who are two-star chiefs. In FDNY parlance, this team is referred to as “Staff Chiefs,” although “Senior Chiefs” would be more fitting. The Staff Chiefs form, as part of their duties, the coterie of most-experienced experts of the FDNY, ensuring on an operational level that the City of New York remains safe and the FDNY operates effectively on a daily basis.

29. The other responsibility of the Staff Chiefs—the one that is most solemn, with the most gravity, and the most serious consequences—is that they are the only uniformed officers in

the entire city who can serve as commanding officers (*i.e.*, Incident Commanders) for any fire that requires three alarms or more.⁸ They therefore serve an indispensable role in keeping city residents and other firefighters safe, as explained below.

30. Beneath the Staff Chiefs are the following ranks of the FDNY: (1) Deputy Chiefs, who have an eagle on their shoulders, (2) Battalion Chiefs, who have an oak leaf on their shoulders, responsible for managing a specific battalion, which includes several fire companies consolidated by geographical region, (3) Captains, with two bars on their shoulders, responsible for managing a specific fire company, which includes several firefighters, (4) Lieutenants, with one bar on their shoulders, responsible for assisting the Captain in managing the fire company, and (5) Firefighters. All promotions within these positions are based on written exams governed by the civil service system regulated and administered by the New York City Department of Citywide Administrative Services. To be promoted above Deputy Chief, an individual must be selected by the Fire Commissioner, in consultation with the Chief of Department.⁹

31. The FDNY uses the “alarm” system to indicate the severity of fires and the number of personnel and trucks necessary to fight them. For each alarm, the FDNY will send four engine companies, two ladder companies, and additional special units, including additional battalion chiefs. A 1-alarm fire is typically commanded by Battalion and Deputy Chiefs. If the Battalion and/or Deputy Chief in charge of the fire feels the fire is expanding and additional backup is necessary, he or she will raise the alarm and an additional six companies will be sent. As a fire increases in severity, the seniority of the commanding officer in charge of fighting the fire also increases.

⁸ FDNY Regulations, Chapter 5.

⁹ FDNY Regulations, Chapter 5.

32. The Staff Chiefs serve on a rotation as Command Chiefs who are on call to respond to large fires and other incidents. For each 2- and 3-alarm fire across the city—meaning, the alarm was raised to call in six or twelve additional companies to battle a fire alongside the originally responding six companies—the Command Chief, who is an Assistant Chief or Deputy Assistant Chief, is alerted and either monitors the situation remotely or goes to the scene.¹⁰ For 3-alarm fires, the Command Chief must respond to serve as onsite Incident Commander.¹¹ Staff Chiefs must also respond to various other emergency incidents, including where there are fatalities or the possibility of fatalities.¹²

33. In large fires, this role of coordinating the various battalions and companies is crucial. In addition to extensive knowledge and experience with firefighting, the commanding officer must have the communication and leadership skills necessary to command multiple battalions at once to fight a fire that has already raged sufficiently out of control that the previous Deputy Chief needed to raise the alarm. If the fire expands to a fourth alarm, the four-star Chief of Operations typically commands the firefighting effort, if the fire expands to a fifth alarm, the five-star Chief of Department typically takes command. If the Chief of Department is away, the Chief of Operations covers the command at a 5-alarm fire.

34. Currently, there are nineteen Staff Chiefs: one Chief of Department, one Chief of Operations, ten other Assistant Chiefs, and seven Deputy Assistant Chiefs.¹³ Typically, Staff

¹⁰ FDNY Regulations, Chapter 5.

¹¹ *Id.*

¹² *Id.*

¹³ Other Assistant Chiefs and Deputy Assistant Chiefs who are in the process of retiring, and are not active, are not counted here.

Chiefs serve as Incident Commanders for approximately four to six large-scale fires each year. That correlates to about 100 very serious fires each year that are two alarms or more.

35. Each uniformed member of the FDNY swears an oath to serve and protect life and property—an oath that they take to heart and seek to live out each and every day on the job.

36. Those who serve as Staff Chief have enormous and grave responsibilities. It is critically important that these promotion decisions are based on experience and merit alone. Lives depend on it.

37. In the history of FDNY, upon information and belief, no Commissioner has demoted multiple Staff Chiefs at once.

II. Critical Importance of Incident Commander

38. Experienced, effective Incident Commanders are critical for reducing fatalities among the public and first responders.

39. For example, on June 18, 2007, the infamous Charleston, South Carolina, Sofa Super Store fire claimed the lives of nine firefighters. An official report on the causes for the tragedy noted that when the situation worsened, “the absence of an effective overall Incident Commander and an appropriate command structure” resulted in only one of two teams being ordered to withdraw from the building. The report concluded, “The decision . . . should have been made early enough to allow the firefighters . . . to withdraw safely. This critical decision was not made, because there was no effective Incident Commander coordinating the operation, continually reevaluating the situation, and providing overall direction.”¹⁴

¹⁴ “Firefighter Fatality Investigative Report: Sofa Super Store,” at 97-99, City of Charleston, June 18, 2007, available at https://www.charleston-sc.gov/DocumentCenter/View/26695/Charleston_phase_two_report.

40. Similarly, an official report on a January 24, 2022 fire in Baltimore, Maryland that resulted in the deaths of three firefighters stated in part, “[t]he Incident Commanders failed to provide assignments to arriving Chiefs resulting in self-assignment. . . . This contributed to confusion, freelancing, and compounded the lack of accountability.” The report contained multiple recommendations for increased training of Incident Commanders.¹⁵

41. A similar official report on incident-response failures during a 2021 fire in Maryland, which caused a firefighter fatality, best summarizes the role of an Incident Commander:

The demands placed on the [Incident Commander] is unmatched by any other position on the incident scene. They bear the responsibility for the personal safety of every individual on the fireground. Their job requires cognitive skills and abilities that require years and years of experience to obtain.¹⁶

42. The risks posed by inexperienced Incident Commanders in emergency response situations are not confined to fires. The 1993 law enforcement siege on the Branch Davidian compound in Waco, Texas was an operational disaster. The U.S. Treasury Department’s report on the Bureau of Alcohol, Tobacco, and Firearms’ (“ATF”) handling of the raid was scathing, citing “disturbing evidence of flawed decision making” and “supervisory failures.”¹⁷ In particular, the report noted that neither of the two ATF agents in charge of the raid—one of whom had been designated Incident Commander despite having less tactical experience than other agents—“had

¹⁵ “205 S. Stricker Street,” at 118, Baltimore Board of Inquiry, Sept. 13, 2022, available at https://cityservices.baltimorecity.gov/resources/LineofDutyDeathReport_205S_Stricker_Street.pdf.

¹⁶ “After-Action Report and Improvement Plan,” at 155, Frederick County, Aug. 2022, available at <https://frederickcountymd.gov/DocumentCenter/View/339823/Joshua-Laird-LODD-After-Action-Report-8-18-22---NO-PERSONAL-INFO>.

¹⁷ “Investigation of Vernon Wayne Howell aka David Koresh,” at 7, Dept. of the Treasury, Bureau of Alcohol, Tobacco, and Firearms, Sept. 1993, available at https://www.policinginstitute.org/wp-content/uploads/2018/02/DOT-Report-ATF-Investigation-of-David-Koresh_Sept-1993.pdf.

any experience remotely comparable to the raid attempted.”¹⁸ The report added, “As a result, they were ill-prepared for the command of a large-scale, high-risk assault on a large, heavily armed structure.”¹⁹ The raid resulted in the deaths of 76 civilians, 25 of whom were children, and four ATF agents.

43. Another key example is the horrific school shooting in Uvalde, Texas, on May 24, 2022. The Texas House of Representatives report on the incident described “systemic failures and egregiously poor decision making.”²⁰ A central failing of the emergency response was the chief of police’s failure to assume or transfer the role of Incident Commander. The report stated that “the lack of effective incident command is a major factor that caused other vital measures to be left undone.”²¹ Despite 376 law enforcement officers responding that day, 21 children were slaughtered.²²

44. Put simply, when an emergency response team lacks an experienced, effective Incident Commander, innocent people die needlessly.

¹⁸ *Id.* at 153, 174.

¹⁹ *Id.* at 174.

²⁰ “House Investigative Committee on the Robb Elementary Shooting,” at 5, Texas House of Representatives, July 17, 2022, available at https://house.texas.gov/_media/pdf/committees/reports/87interim/Robb-Elementary-Investigative-Committee-Report.pdf.

²¹ *Id.* at 62-63.

²² *Id.* at 5, 64, 76.

III. Appointment of Respondent Kavanagh as FDNY Commissioner

45. On February 16, 2022, Mayor Eric Adams announced the appointment of Respondent Kavanagh as acting Commissioner of the FDNY following the retirement of former Commissioner Daniel A. Nigro, who led the department for eight years.²³

46. Upon becoming acting Fire Commissioner, Respondent Kavanagh was placed at the top of the FDNY hierarchy and took the reins of the largest and busiest municipal Fire Department in the United States, overseeing a \$2 billion dollar budget and 17,000 members.²⁴

47. As such, Respondent Kavanagh has been tasked with ensuring that the FDNY's "main goal . . . to provide fire protection, emergency medical care, and other critical public safety services to residents and visitors in the five boroughs" is served on a daily basis.²⁵

48. Prior to joining the FDNY in 2014, Respondent Kavanagh primarily worked as a political operative on political campaigns and in local government, never a day as a firefighter. Respondent Kavanagh has no experience fighting fires and worked only on the civilian side of the FDNY before ascending to Commissioner.²⁶

49. Upon joining the FDNY in 2014, Respondent Kavanagh first served as Director of External Affairs—the press office—before being promoted to Assistant Commissioner for External Affairs a few months later.

²³ "End of an era: Commissioner Dan Nigro retires after half century with FDNY," ABC News, Feb. 16, 2022, available at <https://abc7ny.com/dan-nigro-fdny-commissioner-daniel/11569770/>.

²⁴ "Laura Kavanagh, Fire Commissioner," NYC.gov, available at <https://www.nyc.gov/site/fdny/about/overview/leadership/fire-commissioner.page>.

²⁵ "FDNY Overview," NYC.gov, available at <https://www.nyc.gov/site/fdny/about/overview/overview.page>.

²⁶ "Laura Kavanagh, Fire Commissioner," NYC.gov, available at <https://www.nyc.gov/site/fdny/about/overview/leadership/fire-commissioner.page>.

50. In 2015, Respondent Kavanagh was promoted to Deputy Commissioner for Government Affairs and Special Projects, a role she kept until 2018.²⁷

51. In other words, until 2018, Respondent Kavanagh's roles were limited to politics and government, which fit with her background as a political operative.

52. In 2018, Respondent Kavanagh was appointed First Deputy Commissioner.²⁸ It was the first time her official titles expanded beyond External Affairs or Government Affairs. She was, at the time, approximately 35 years old.

53. On February 16, 2022, with only four years of additional experience on the civilian side of the organization, and at just 39 years of age, Respondent Kavanagh was appointed as acting Fire Commissioner.

IV. Respondent Kavanagh's Decision-Making Contrary to the Interests of Public Safety Put the Public and FDNY Members at Risk Daily

54. As explained below, Respondent Kavanagh demoted (actually or constructively) eight of her most senior chiefs without cause and with no explanation. On information and belief, three additional Staff Chiefs have acknowledged their constructive dismissals through requests for reassignment or medical leave.

55. If these demotions take effect on March 4 and 6, as planned, the FDNY will be left with an unimaginable level of unpreparedness. After losing eleven Staff Chiefs, the FDNY will soon be left with as few as seven Staff Chiefs who have experience serving as Incident Commander at 2- and 3-alarm fires. There will be no one left with experience commanding a five-alarm fire;

²⁷ "Fire Commissioner Appoints New First Deputy Commissioner and Chief of Staff," NYC.gov, Jan. 31, 2018, available at <https://www.nyc.gov/site/fdny/news/fa1218/fire-commissioner-appoints-new-first-deputy-commissioner-chief-staff#/0>.

²⁸ "First female commissioner Laura Kavanagh to lead NYC fire department," AP, Oct. 28, 2022, available at <https://www.usatoday.com/story/news/nation/2022/10/28/first-female-commissioner-nyc-fire-department/10622884002/>.

and, one or two of the remaining Staff Chiefs may have had some prior experience serving as Incident Commander on a 4-alarm fire (it is unclear whether any do have Incident Commander experience at 4-alarm fires).

56. Although the gravamen of this action concerns Respondent Kavanagh's very recent actions to gut the ranks of the Staff Chiefs based on their disagreements with her over matters of public safety, to humiliate them through reassignments to places like the FDNY Quartermaster and Toolroom, and to then disparage them publicly through a campaign of disinformation and slander, background on Respondent Kavanagh's mismanagement and malfeasance serves as important context.

57. As an initial matter, Respondent Kavanagh inherited a department that was functioning at a very high level, by any objective indicator. According to the FDNY annual report for 2020, the department has seen a significant decrease in fire-related fatalities and injuries. For instance, in 2017, there were 73 civilian fire-related fatalities. By 2020, those numbers had decreased to 63 civilian fire-related fatalities, a 13.7% reduction in fatalities.²⁹

58. The FDNY attributes this decrease to a number of factors, including enhanced fire safety education and outreach programs, improved technology and equipment, and better training for firefighters.

59. An experienced professional would not seek to fix that which is unbroken. A political operative would.

60. Instead of concentrating on preserving and maintaining the safety of New York City residents and the firefighters within its ranks, Respondent Kavanagh focused her efforts on

²⁹ "FDNY Bureau of Fire Investigation, 2020 Annual Report," at 51, NYC.gov, available at <https://www.nyc.gov/assets/fdny/downloads/pdf/about/bfi-2020-annual-report.pdf>.

“revolutionizing” the FDNY, including by repeatedly demanding undefined and unquantified “out-of-the-box thinking” by her Staff Chiefs. This ill-defined approach supplanted a focus on firefighting science, which has required, established, and clear military protocols, adherence to science and training, and expert precision. Following appointment as Acting Commissioner, Respondent Kavanagh made numerous unprecedented decisions, ungrounded in safety or best practices. Each time, the Staff Chiefs objected. These decisions included:

61. **Self-Contained Breathing Apparatus (“SCBA”) Purchasing Decision.** The SCBA is the most important piece of equipment that protects the men and women of the FDNY from smoke, toxic gas, and harmful particulates as they fight fires. The FDNY’s SCBA equipment is at the end of its life cycle, and so the Department will soon purchase new units at a cost of \$50-\$100 million. Because this equipment is so critical, the FDNY created a special SCBA Committee, comprising experts in fire safety, operations, and R&D, which has been meeting for years to test and develop the next generation SCBA apparatus for the FDNY. Upon becoming commissioner, Respondent Kavanagh altered the composition of the SCBA Committee, sidelining these experts and instead putting the decision primarily in the hands of her civilian staff.

62. **Putting an Unqualified Civilian in Charge of R&D.** Respondent Kavanagh announced to several Staff Chiefs that Research and Development, the experts who carefully study and make recommendations on safety and equipment, was being moved out of the Safety Command. Instead, it will report to a civilian in the technology segment of the organization, who will in turn report to another civilian without an R&D background.

63. **Making Firefighter Safety a Civilian Task.** Under the normal structure, the Chief of Safety, responsible for overseeing all aspects of firefighter and public safety, would report to the Chief of Department on the uniformed side. When Respondent Kavanagh took over, however,

she decided to have the Chief of Safety report to the civilian Commissioner's office instead of the Chief of Department.

64. **Taking Fire-Code Inspection Out of Fire Department Purview.** Respondent Kavanagh sought to reassign FDNY's fire prevention responsibilities to the NYC Department of Buildings and permit buildings to self-certify violations of their fire alarm systems. This move alarmed experienced members of the FDNY, including Jardin, since many of the self-certifications have been discovered to be fraudulent, and fires in self-certified buildings have led to the deaths of firefighters.

65. **Ending Practice of Meeting with Chiefs.** For nearly a year since she took office, from February 2022 to February 2023, Respondent Kavanagh held no meetings with the full group of Staff Chiefs, who serve as the FDNY's coterie of experts. This is entirely inconsistent with the practices of past Fire Commissioners who typically met with and consulted their chiefs on at least a monthly basis (and more frequently before COVID-19).

66. The Staff Chiefs raised their concerns with her decisions to Respondent Kavanagh and her staff, stating that, in their expert view, these decisions harmed public safety. Instead of taking the advice of her experienced Staff Chiefs, Respondent Kavanagh took their concerns as unjustifiable dissent.

V. **Respondent Kavanagh's Reassignment Campaign to Retaliate Over Expressions of Safety Concern**

67. To put the Staff Chiefs who dared to question her decisions in their place, Respondent Kavanagh began a pattern of abuse of power and retaliation. The first set of Retaliation Decisions were to reassign Assistant Chiefs and Deputy Assistant Chiefs to meaningless positions within the FDNY, and to strip them of their duties. Respondent Kavanagh ordered these reassignments in November 2022, less than a month after being installed as

Commissioner, with one reassignment made even earlier, when she was still Acting Commissioner. In total, Respondent Kavanagh moved at least six Assistant Chiefs and Deputy Assistant Chiefs—out of a total of seventeen—to meaningless and made-up jobs with little to no responsibilities and reassigned a seventh out of his field of expertise. The reassignments were a bold-faced attempt by Respondent Kavanagh to force the Assistant Chiefs and Deputy Assistant Chiefs into retirement, as a member of Respondent Kavanagh’s staff admitted.

68. **Michael Gala:** On November 21, 2022, Gala was notified that he was being arbitrarily reassigned to work as “Chief Quartermaster.” This was a fictitious title and a made-up job. The Quartermaster is the FDNY’s outfitting department, providing firefighters with uniforms. It is run by a civilian outside vendor, staffed with FDNY civilian employees. There are no members of the uniformed division who work there. By making him “chief” quartermaster, overseeing no uniformed personnel and with no real role in managing the FDNY store, Respondent was quite openly trying to humiliate Chief Gala to compel him to retire. In fact, during the meeting in which Respondent Kavanagh’s deputy, Lizette Christoff, informed Chief Gala of his reassignment, as soon as Chief Gala left the room, Christoff said words to the effect of: “He is going to retire.” In other words, this was an unambiguous, and admitted, attempt at constructive discharge.

69. **Joseph Jardin:** In or around August 2022, Jardin was abruptly removed from his role as Chief of Fire Prevention and moved him to a far smaller job in Operations at Fort Totten. This was an attempt to constructively discharge Chief Jardin.

70. **Fred Schaaf:** On November 21, 2022, Chief Schaaf was unceremoniously removed from his position as Queens Borough Commander. He was given no clear role or responsibilities. This was an attempt to constructively discharge Chief Schaaf.

71. **Michael Massucci:** In November 2022, without explanation, Chief Massucci was informed of his reassignment to the Toolroom located in Long Island City with no responsibilities. This was an attempt to constructively discharge Chief Massucci.

72. **Kevin Brennan:** Brennan was reassigned twice, first in August 2022 when he was moved from his position as Assistant Chief of Fire Prevention to a role in Operations, and then again in November 2022, when he was sent to Fort Totten with no clear role or responsibilities. This was an attempt to constructively discharge Chief Brennan.

73. **Michael Meyers:** Also around this time, Meyers, a thirty-one year veteran of the FDNY, was removed from his role as Chief of Safety and reassigned to the Office of Emergency Management, an external city agency. This was an attempt to constructively discharge Chief Meyers.

74. **Frank Leeb:** Also in November 2022, Leeb was informed of his reassignment out of his position as acting Chief of Training.³⁰ Although he was reassigned as Chief of Safety, this meant that instead of being in line for a promotion to a three- or four-star chief as Chief of Training, he was passed over. Upon information and belief, the only reason he was moved out of his field of expertise, for which he is widely renowned as a national leader in firefighter training, was so that Respondent Kavanagh could reassign and retaliate against Chief Michael Meyers (noted above), who was very vocal about the SCBA project, and Respondent Kavanagh needed someone to take his job. Accordingly, this was an attempt to constructively discharge Chief Leeb.

³⁰ Leeb's reassignment is particularly concerning. He is recognized nationally and internally as a "training czar," whose demotion will have a cascading effect on the training that the FDNY firefighters receive, affecting not only the firefighters' readiness, but also the quality of the work they conduct while out in the field.

VI. Respondent Kavanagh Finally Calls a Meeting with Her Staff Chiefs

75. Because of Respondent Kavanagh's actions detailed above—including the decisions contrary to public safety and the retributive reassignment campaign—the FDNY was in severe disarray by the start of 2023. On Friday, February 3, 2023, Respondent Kavanagh ordered that a Staff Chiefs meeting take place. This would be Respondent Kavanagh's first, and only, meeting with all of the chiefs. Three chiefs—Gala, Jardin, and Schaaf—were instructed not to attend.

76. During the meeting, Respondent Kavanagh falsely disparaged her chiefs. She accused them of “pestering her for promotions and personal cars.”³¹ Respondent Kavanagh also noted that she had not been given updates about other issues such as a “pending critical situation around the purchase of new air respirators for firefighters.”³² However, and as explained above, the “critical situation,” concerning the purchase of new “air respirators” for firefighters was a creature of Respondent Kavanagh's making.

77. During that same meeting, Respondent Kavanagh continued to berate the Staff Chiefs for not “thinking outside the box.”³³

78. The Staff Chiefs sat in the meeting and tried to appease Respondent Kavanagh. It soon became apparent, however, that the meeting was not an attempt by Respondent Kavanagh to seek out the advice and counsel of the Staff Chiefs or find an amenable path forward. Instead, this

³¹ Thomas Tracy, Michael Gartland, and Graham Rayman, “Two high-ranking FDNY chiefs surrender titles in protest after commissioner demotes three other chiefs in shake-up,” N.Y. Daily News, Feb. 6, 2023, available at <https://www.nydailynews.com/new-york/nyc-crime/ny-fdny-chiefs-shakeup-demotions-protest-laura-kavanaugh-20230206-uwzvmmskxbhvzav7ujd7tbt6ku-story.html>.

³² *Id.*

³³ *Id.*

meeting was a pretext for Respondent Kavanagh's next move—the demotions of Gala, Jardin, and Schaaf—which the rest of the Staff Chiefs did not yet know was coming, because Respondent Kavanagh did not tell them.

79. Most concerning, this sensitive meeting was secretly recorded and later leaked to the media. On information and belief, it was Commissioner Kavanagh herself who approved the decision to leak the recording.

VII. Respondent Kavanagh Makes an Example of Gala, Jardin, and Schaaf by Demoting Them Without Consulting the Chief of Department

80. On February 3, 2023, Assistant Chief Gala, Assistant Chief Jardin, and Assistant Chief Schaaf were instructed not to attend the Staff Chief meeting but were instead asked to meet with Respondent Kavanagh's chief of staff, Luis Martinez. In those meetings, Martinez informed each Staff Chief that, effective March 4, 2023, they were being demoted to the rank of Deputy Chief—two ranks below their current rank. These demotions were the second set of Retaliation Decisions, after Assistant Chiefs Gala, Jardin, and Schaaf remained at the Department after their reassignments.

81. On the evening of February 3, Respondent Kavanagh ordered that Assistant Chief Gala, Assistant Chief Jardin, and Assistant Chief Schaaf be immediately removed from the Citywide command rotation, meaning they are no longer serving as Incident Commanders.

82. Notably, Gala (62 years old), Jardin (61 years old), and Schaaf (60 years old), are the three oldest Staff Chiefs in the FDNY, and none were provided with any information or insight into the reasons for their demotions.

83. Unable to force their retirement through humiliating reassignments, Respondent Kavanagh decided to twist the knife further and unceremoniously demoted these proud public

servants. She did so in violation of lawful procedure because she did not consult the Chief of Department as required in Chapter 5 of the FDNY Regulations.

84. In fact, Respondent Kavanagh knew that the Chief of Department would have disagreed with the decision, had he been consulted.

85. As the Staff Chiefs sat to discuss the bewildering meeting they had just completed with Respondent Kavanagh, one of the Staff Chiefs received word that Chief Jardin had been demoted. He told the rest of the meeting's participants, and the response from every other chief—including the Chief of Department and Chief of Operations—was surprise and shock. The Chief of Department and Chief of Operations stormed out of the room. They knew that if Chief Jardin had been demoted, the other two Staff Chiefs who were instructed not to attend the earlier meeting that day were also being demoted.

86. Upon information and belief, the Chief of Department and Chief of Operations went directly to the Respondent Kavanagh. They asked her, in sum and substance, if it was true that she was demoting these three Staff Chiefs, and they asked why she was doing so without discussing it with them first. Respondent Kavanagh responded, in substance, by confirming that she was demoting Staff Chiefs, and said words to the effect of: "Had I said something to you in advance, you would have tried to talk me out of it." This was an admission that not only did Respondent Kavanagh not consult with the Chief of Department before demoting the Staff Chiefs, but she knew that the demotions would be against their advice. Thus, Respondent Kavanagh ignored her obligation under the FDNY Regulations to consult with the Chief of Department regarding Staff Chief appointments.

VIII. Other Staff Chiefs Suffered Constructive Demotions

87. No Staff Chief can remain in his or her position if the Commissioner is creating grave safety risks and preventing the Staff Chief from performing his or her job. Based on the actions described above, Chief of Department John Hodgens and Chief of Operations John Esposito immediately asked for a reduction in rank to Deputy Chief.³⁴ Petitioner Massucci did so as well, along with Deputy Assistant Chief Leeb and Assistant Chief Kevin Woods.³⁵ They submitted paperwork and informed Respondent Kavanagh of the reality of the situation: they had been constructively demoted, and so they asked to be returned to the rank of Deputy Chief. In addition, on information and belief, three more Staff Chiefs either orally requested a reduction in rank to Deputy Chief, or, because of planned medical leave, will soon be inactive and so did not yet request a reduction in rank.

88. Indeed, in his submitted paperwork, Esposito stated that “the events of [the] last several weeks (including being excluded from discussions and the decision-making process on serious issues affecting the Bureau of Operations) make clear that Commissioner Kavanagh no longer has [] ‘faith and trust’ in me. These events have resulted in a serious breach of trust with my subordinate personnel. To ensure the Chiefs, Company Officers and Firefighters stay focused on the mission I can no longer remain as the Chief of Operations.” Massucci wrote in his letter to Respondent Kavanagh: “My reassignment to the Bureau of Operations and placing me in the toolroom in the Bureau of Tech Services was an attempt to humiliate and disgrace me amongst my

³⁴ Joe Marino, Larry Celona, and Jorge Fitz-Gibbon, “FDNY turmoil spreads as another chief asks to give up rank after commish’s shake-up,” N.Y. Post, Feb. 8, 2023, available at <https://nypost.com/2023/02/08/fdny-turmoil-continues-to-spread-with-another-chief-giving-up-rank/>.

³⁵ Susan Nicol, “Two More FDNY Deputy Chiefs Follow Suit, Ask to Return to Previous Assignments,” Firehouse.com, Feb. 9, 2023, available at <https://www.firehouse.com/careers-education/news/21295221/fdny-deputy-chiefs-frank-leeb-kevin-woods-latest-to-step-aside-after-leadership-turmoil>.

superiors, subordinates, coworkers and friends. Stating later that my skillsets were being better utilized in my new position was yet another attempt to further disgrace me. The lack of transparency and the lack of truthfulness, not only with me but with the entire Uniformed Executive Staff, has brought me to this decision. I can no longer function as a Deputy Assistant Chief under your administration.”

89. On information and belief, Respondent Kavanagh’s actions have also crippled the FDNY’s ability to even find replacement Staff Chiefs. On information and belief, offers to some candidates to ascend to the (now open) Staff Chief position have been rejected.

90. With these demotions set to take effect soon (March 4 and March 6, 2023), the FDNY will be left with an unimaginable level of unpreparedness to respond to and command fires of three alarms or more. What’s more, qualified candidates do not want to take the job because they cannot ensure public safety in the current environment.

IX. In Response to Public Backlash, Respondent Kavanagh has Focused Her Efforts on a Smear Campaign

91. As the Staff Chiefs voice disagreement with Respondent Kavanagh’s decisions, she is continuing to act as a political operative, not a safety professional. Attempting to smear the victims, on information and belief, Respondent Kavanagh is retaliating and engaging in a pattern of retribution, punishment, and abuse of power by smearing them in the press. This is Respondent Kavanagh’s third set of Retaliation Decisions.

92. Numerous examples attest to this campaign. Each of these smears is provably false.

- a. On February 6, 2023, the New York Daily News quoted anonymous sources calling Gala, Jardin, and Schaaf “bad apples.” The Daily News article further alleged that (1) Schaaf “resisted transferring and disciplining some firefighters” when “allegations of racism” were made in a Queens firehouse; (2) Jardin was the subject

of “a series of complaints with the city’s Office of Equal Employment Opportunity” for his “tough-guy management style”; and (3) Gala was considered a “divisive element in the department.”³⁶

- b. On February 6, 2023, the New York Post quoted a high-ranking department source who said that Gala, Jardin, and Schaaf were demoted in part because of how they mistreat and “undermine their counterparts.”³⁷
- c. On February 6, 2023, the Chief Leader quoted a longtime FDNY member who alleged that Jardin had “wreaked havoc” on the FDNY’s fire prevention division and was seen as a “racist who would pass up non-white and female employees for promotions.”³⁸
- d. On February 11, 2023, the New York Daily News quoted a source familiar with Respondent Kavanagh’s thinking who claimed Gala, Jardin, and Schaaf “had several complaints filed against them.”³⁹

93. On information and belief, Respondent either made or authorized each of these acts of slander against Petitioners.

³⁶ Thomas Tracy, Michael Gartland, and Graham Rayman, “Two high-ranking FDNY chiefs surrender titles in protest after commissioner demotes three other chiefs in shake-up,” N.Y. Daily News, Feb. 6, 2023, available at <https://www.nydailynews.com/new-york/nyc-crime/ny-fdny-chiefs-shakeup-demotions-protest-laura-kavanaugh-20230206-uwzvmmskxbhvzav7ujd7tbt6ku-story.html>.

³⁷ Larry Celona, Tina Moore, Joe Marino, and Jorge Fitz-Gibbon, “FDNY ranks in ‘turmoil’ after commissioner demotes chiefs, high ranking officials step down,” N.Y. Post, Feb. 6, 2023, available at <https://nypost.com/2023/02/06/all-hell-breaks-loose-at-fdny-as-commish-demotes-chiefs/>.

³⁸ Duncan Freeman, “Two top FDNY chiefs resign,” The Chief Leader, Feb. 6, 2023, available at <https://thechiefleader.com/stories/two-top-fdny-chiefs-resign,49759>.

³⁹ Thomas Tracy, “FDNY Commissioner Laura Kavanagh’s request for ‘out of the box thinking’ sparked demotion drama: Exclusive,” N.Y. Daily News, Feb. 11, 2023, available at <https://www.nydailynews.com/new-york/ny-fdny-commissioner-laura-kavanagh-demotions-recordings-20230211-vtwxkhddyjgfhpcutztyvl6t2u-story.html>.

94. Additionally, on information and belief, the sensitive February 3, 2023 meeting was secretly recorded and was subsequently leaked.⁴⁰ On information and belief, it was leaked in order to disparage the Petitioners-Plaintiffs, and it was Commissioner Kavanaugh herself who approved the decision to leak the recording.

X. Judicial Intervention is Necessary to Protect the Public

95. As a result of Respondent Kavanaugh's actions and her systematic gutting of the FDNY, it is clear the FDNY has crossed a tipping point and its structure is unraveling. If the demotions of Gala, Jardin, and Schaaf go into effect on March 4, 2023, there will be a complete lack of preparedness when the additional demotions go into effect on March 6, 2023.

96. As discussed above, the Staff Chiefs provide crucial leadership and operational control at the scene of 3- to 5-alarm fires. As fires increase in severity, more senior leadership is needed to preserve life and property. Beginning March 6, 2023, when the constructive demotions go into effect, there will be no remaining Staff Chiefs with experience as Incident Commanders for 5-alarm fires; there will be only three Chiefs with some possible experience as Incident Commanders for 4-alarm fires; and there will be only seven Chiefs with experience as the Incident Commander for 3-alarm fires.

97. As a result, judicial intervention is required. Without the Court stopping these demotions, there is an abundantly clear risk to public safety. People will die, people will be injured, and property will be destroyed. As the president of the Uniformed Fire Officers Association, James McCarthy, noted, "the biggest impact [of the demotions] is on the safety of the

⁴⁰ *Id.*

people of New York City. . . . These are the people that come when a fire gets out of hand and cover the logistics and this is going to impact the way we protect the life and property of the city.”⁴¹

98. If this Court stops the demotions from going into effect on March 4, 2023, and March 6, 2023, and preserves the status quo, the FDNY will retain the requisite experience at the top of its ranks and public safety will be preserved. But once these demotions go into effect, the FDNY will be rendered unable to keep the city safe.

FOR A FIRST CAUSE OF ACTION
(For an Order Pursuant to Article 78 of the CPLR Compelling Commissioner Kavanaugh to Stop the Involuntary Demotions and Reverse the Retaliation Decisions)

99. Petitioners-Plaintiffs repeat and re-allege each and every allegation set forth in the paragraphs above.

100. Respondent Kavanaugh’s Retaliation Decisions are arbitrary, capricious, irrational, an abuse of discretion, and in violation of lawful procedure in the following ways, each of which is an independent basis to overturn the involuntary demotions and preserve the status quo:

101. *First*, the Retaliation Decisions, including the involuntary demotions, created a state in which the FDNY cannot adequately respond to the city’s largest and most dangerous fires, which causes grave risk to the health and safety of FDNY personnel and city residents. Respondent Kavanaugh’s Retaliation Decisions included the demotions of three Staff Chiefs and caused the constructive demotions of at least five other Staff Chiefs, and upon information and belief eight other Staff Chiefs, leaving the entire city and all responding firefighters at risk.

⁴¹ Thomas Tracy, Michael Gartland, and Graham Rayman, “Two high-ranking FDNY chiefs surrender titles in protest after commissioner demotes three other chiefs in shake-up,” N.Y. Daily News, Feb. 6, 2023, available at <https://www.nydailynews.com/new-york/nyc-crime/ny-fdny-chiefs-shakeup-demotions-protest-laura-kavanaugh-20230206-uwzvmmskxbhvzv7ujd7tbt6ku-story.html>.

102. *Second*, Respondent Kavanaugh's decision to remove the appointment of Chiefs Gala, Jardin, and Schaaf without consulting the Chief of Department—and, in fact, with knowledge that if he had been consulted, he would have insisted against it—was a violation of lawful procedure pursuant to the FDNY Regulations, Chapter 5.

103. *Third*, Respondent Kavanaugh's actions in attempting to constructively discharge the Staff Chiefs, to retaliate against them, and to stigmatize them, were all unlawful acts that were arbitrary and capricious, and an abuse of discretion.

104. Petitioners-Plaintiffs have no adequate remedy at law.

105. Petitioners-Plaintiffs are entitled to an order pursuant to Article 78 compelling Respondents-Defendants to stop the involuntary demotions and maintain the status quo.

FOR A SECOND CAUSE OF ACTION

**(For an Order Pursuant to 42 U.S.C. § 1983 and the United States and New York
Constitutions Granting a Name-Clearing Hearing for Gala, Jardin, Schaff, and Massucci
for Due Process Violations)**

106. Petitioners-Plaintiffs repeat and re-allege each and every allegation set forth in the paragraphs above.

107. Respondents-Defendants' smear campaign has significantly damaged Petitioners-Plaintiffs' reputations, which in conjunction with their unjustified demotions and constructive demotions, flagrantly infringes on Petitioners-Plaintiffs' protected liberty interests under the Due Process Clause of the United States Constitution and the New York State Constitution.

108. *First*, the inflammatory statements by Respondent Kavanaugh and others at the FDNY have branded Petitioners-Plaintiffs with a stigma, damaging the reputations they have built over decades of public service.

109. These public statements by Respondent Kavanagh and others at the FDNY have caused significant harm to Petitioners-Plaintiffs' honor and integrity and seriously called into question their professional competence.

110. Respondent Kavanagh and others at the FDNY have, for example, called them racists, discriminatory, and "bad apples."

111. These statements made by Respondent Kavanagh and others at the FDNY are false and capable of being proved false.

112. *Second*, Respondents-Defendants have materially altered Petitioners-Plaintiffs' status, rights, and tangible interests as government employees by demoting them from their high-ranking FDNY positions, or by constructively demoting them.

113. These acts by Respondents-Defendants were performed in their official capacities under the color of law.

114. Petitioners-Plaintiffs' demotions and constructive demotions, in conjunction with Respondents-Defendants defamatory statements made contemporaneously with the demotions, tangibly infringe on their protected liberty interests and constitute a due process violation.

115. Petitioners-Plaintiffs have no adequate remedy at law.

116. Petitioners-Plaintiffs are entitled to an order declaring that their civil rights have been violated and granting them a name-clearing hearing.

117. Petitioner-Plaintiffs are also entitled to attorney's fees, costs, and expert fees pursuant to, for example, 42 U.S.C. § 1988, CPLR Chapter 86, and other applicable laws.

RELIEF REQUESTED

118. WHEREFORE, Petitioners-Plaintiffs respectfully request that this Court enter an order granting the relief set forth below:

119. Directing that Respondents-Defendants stop the involuntary demotions of Jardin, Gala, and Schaaf, and reinstate the Staff Chiefs who were actually demoted or who were constructively demoted;

120. Directing the Respondents-Defendants to reverse the reassignment of Petitioners-Plaintiffs Gala, Jardin, Schaaf, and Massucci;

121. Declaring that Respondents-Defendants violated the Petitioners-Plaintiffs' civil rights pursuant to 42 U.S.C. § 1983;

122. Directing that Respondents-Defendants grant Gala, Jardin, Schaaf, and Massucci a name-clearing hearing for due process violations;

123. Enjoining Respondent-Defendants and those in active concert with Respondents-Defendants from publishing any further defamatory statements concerning Petitioners-Plaintiffs;

124. Finding that Respondents-Defendants unlawfully retaliated against Petitioners-Plaintiffs for voicing disagreement with Respondent Kavanagh's actions;

125. Awarding damages to Petitioners-Plaintiffs, in an amount to be determined at trial, to make Petitioners-Plaintiffs whole for any losses suffered as a result of Respondents-Defendants' actions;

126. Awarding Plaintiffs-Petitioners punitive damages, as applicable, for Respondents-Defendants' willful and wanton disregard of their rights;

127. Awarding to Petitioners-Plaintiffs costs, legal fees, and expert fees incurred in connection with bringing this action and proceeding; and

128. Granting such other relief as this Court deems just and proper.

Dated: February 27, 2023

WALDEN MACHT & HARAN LLP

New York, New York

BY:



Jim Walden
Georgia Winston
Adam Cohen

250 Vesey Street, 27th Floor
New York, New York 10281
(212) 335-2030

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

In the Matter of the Application of

MICHAEL GALA,
JOSEPH JARDIN,
MICHAEL MASSUCCI, and
FRED SCHAAF,

Petitioners-Plaintiffs,

For a Judgment pursuant to Article 78 of the Civil
Practice Law and Rules,

-against-

LAURA KAVANAGH, as Commissioner of the
New York City Fire Department, and the NEW
YORK CITY FIRE DEPARTMENT,

Respondents-Defendants.

Index No. _____

Assigned to Justice _____

VERIFICATION

STATE OF NEW YORK)
)
) ss:
COUNTY OF KINGS)

Michael Gala, being duly sworn, states that he has read the foregoing Petition and knows the contents thereof; that the same is true to his own knowledge, except as to matters therein that are stated upon information and belief, and as to those matters, he believes them to be true.



Michael Gala

Sworn to before me this
27th day of February, 2023



2

Registration No. 01LA0001373
County: New York
Valid from 02/13/2023 to 02/13/2027

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

In the Matter of the Application of

MICHAEL GALA,
JOSEPH JARDIN,
MICHAEL MASSUCCI, and
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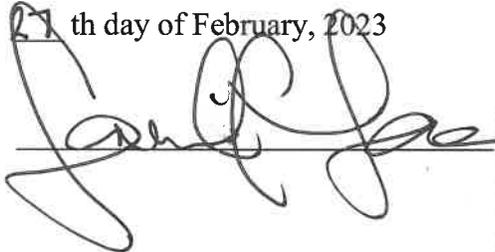
VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF QUEENS) ss:

Michael Masucci, being duly sworn, states that he has read the foregoing Petition and knows the contents thereof; that the same is true to his own knowledge, except as to matters therein that are stated upon information and belief, and as to those matters, he believes them to be true.


Michael Masucci

Sworn to before me this
27th day of February, 2023



SAVANNAH LARSON
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01LA6443264
Qualified in New York County
Commission Expires Oct. 31, 2026

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

In the Matter of the Application of

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JOSEPH JARDIN,
MICHAEL MASSUCCI, and
FRED SCHAAF,

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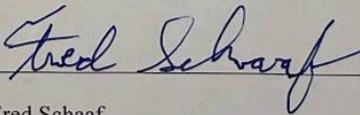
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Assigned to Justice _____

VERIFICATION

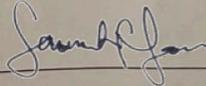
STATE OF NEW YORK)
) ss:
COUNTY OF SUFFOLK)

Fred Schaaf, being duly sworn, states that he has read the foregoing Petition and knows the contents thereof; that the same is true to his own knowledge, except as to matters therein that are stated upon information and belief, and as to those matters, he believes them to be true.



Fred Schaaf

Sworn to before me this
27th day of February, 2023



Registration No. 01LA0001373
County: New York
Valid from 02/13/2023 to 02/13/2027

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

In the Matter of the Application of

MICHAEL GALA,
JOSEPH JARDIN,
MICHAEL MASSUCCI, and
FRED SCHAAF,

Petitioners-Plaintiffs,

For a Judgment pursuant to Article 78 of the Civil
Practice Law and Rules,

-against-

LAURA KAVANAGH, as Commissioner of the
New York City Fire Department, and the NEW
YORK CITY FIRE DEPARTMENT,

Respondents-Defendants.

Index No. _____

Assigned to Justice

**AFFIDAVIT OF THOMAS
RICHARDSON IN SUPPORT OF
PETITIONERS' MOTION**

THOMAS J. RICHARDSON, hereby swears under the penalty of perjury as follows:

1. I submit this affidavit for a limited purpose: in support of Petitioners' Motion for a temporary-restraining order and preliminary injunction (the "Motion"), which enjoins demotions of Staff Chiefs of the New York City Fire Department ("FDNY") and orders reassignment of them to emergency management and incident response functions until this Court hears the merits of the underlying lawsuit.

2. For that reason, I do not discuss every relevant fact known to me, but only the facts relevant to the Motion.

3. In so far as the facts set forth below also serve to verify parts and portions of the Article 78 Petition itself, I ask the Court to accept this affidavit for those purposes as well.

4. Should it be helpful to the Court, I am available to testify in greater detail about the matters set forth herein, as well as about other matters relevant to Commissioner Laura Kavanagh's mismanagement.

My Background and Experience

5. I hold undergraduate and graduate degrees, with course work in crisis management, fire service administration, and fire-fighting operations.

6. I am an FDNY veteran of 42 years. I am still employed by FDNY until later this year. I am still an Assistant Chief.

7. I began my career as a FDNY firefighter in 1980 at Engine Company 227 in the Brownsville section of Brooklyn before rising through the ranks of the Department.

8. In 1990, I was promoted to Lieutenant and worked in Battalion 16 in Harlem for a year before returning to Brooklyn, where I was assigned to Engine Company 235 in Bedford Stuyvesant.

9. In 1994, I was promoted and served as the captain of Engine Company 234 in Crown Heights and later of Squad Company 270 in Queens.

10. In September of 2000, I was promoted to Battalion Chief. I first served in the Bureau of Operations and was subsequently assigned to Battalion 53 in Queens and later to the Special Operations Command. This later assignment was after the 9/11 terrorist attack. I was responsible for managing Special Operations units during the rescue and recovery operation at the World Trade Center site.

11. In January 2003, I was re-assigned to Battalion 38 in Crown Heights, Brooklyn.

12. In November 2014, I was promoted to Deputy Chief, which is the highest civil-service officer rank in FDNY. I was assigned to Division 15 in Brooklyn.

13. In June 2017, I was promoted to Deputy Assistant Chief and designated as the Chief of the Fire Academy, responsible for managing FDNY's fire-training academy. This is the first promotion where I was among the executive staff to the Commissioner ("Staff Chiefs"). I was a 2-star Chief with this promotion.

14. In January 2018, I was promoted to Assistant Chief and designated as Chief of Training. I was responsible for all FDNY training across the entire Department. This was also a placement among Staff Chiefs, and it made me a 3-star Chief.

15. In February 2019, I was promoted to Chief of Fire Operations. My responsibilities included managing 11,000 fire fighters and fire officers in the Bureau of Fire Operations. These represent the entirety of men and women responding to fires and emergencies across the City.

16. In February 2021, I was designated as the Acting Chief of Department. This position is the highest-ranking uniformed position at FDNY, responsible for both Fire and EMS operations.

17. In June 2021, I was appointed permanent Chief of Department of the FDNY following the departure of former Chief of Department John Sudnik. I served in that capacity until January 12, 2022, after an injury sustained while inspecting the aftermath of a 5-alarm fire in the Bronx (333 East 181st Street).

18. During my entire time as a Staff Chief from 2017 through 2021, I was the lead incident commander for multiple 3-, 4- and 5-alarm fires. I held the lead role of incident commander in at least 25 such fires.

Facts Relevant to the Motion

19. Each uniformed member of the FDNY swears an oath to serve and protect life and property—an oath that they take to heart and seek to live out each and every day on the job.

20. Those who serve as Chief of Department, Chief of Operations, Assistant Chief, and Deputy Assistant Chief have enormous and grave responsibilities. It is critically important that these promotion decisions are based on experience and merit alone. Lives depend on it.

21. The FDNY uses the “alarm” system to indicate the severity of fires/emergencies and the number of personnel and trucks necessary to fight them.

22. For each alarm, the FDNY will send four engine companies and two ladder companies.

23. A one-alarm fire is typically commanded by Battalion and Deputy Chiefs.

24. If the Battalion and/or Deputy Chief in charge of the fire feels he is losing the fire and additional backup is necessary, he or she will raise the alarm and an additional six companies will be sent.

25. As a fire or other major incident increases in severity, the seniority and experience of the commanding officer in charge of fighting the fire or responding to the incident also increases.

26. The number on the “alarm” scale generally correlates to the number of “stars” a chief must have to serve as lead first responder. The Staff Chief assigned for any fire or other major emergency is generally referred to at FDNY as an “Incident Commander.”

27. For each 2- and 3-alarm fire across the city—meaning, the alarm was raised to call in six or twelve additional companies to battle a fire alongside the originally responding six companies—an Assistant Chief or Deputy Assistant Chief is assigned as Incident Commander.

28. In larger fires and other major emergencies (such as release of hazardous materials or multiple casualty incidents), the role of the Incident Commander becomes even more crucial, requiring more seniority and greater experience with serious crisis situations.

29. In addition to extensive knowledge and experience with firefighting, the Incident Commander officer must have the communication and leadership skills necessary to command multiple companies at once to fight a fire that has already raged sufficiently out of control that the previous Deputy Chief needed to raise the alarm.

The Demotions: Quantification and Impact

30. In the entirety of my 42-year career, I am aware of no Commissioner that has demoted multiple Staff Chiefs at once.

31. Such a risky decision would require months of succession planning to ensure the safety of our FDNY members, other first responders, and the public.

32. Commissioner Kavanagh demoted three of her most senior leaders—Chiefs Jardin, Gala, and Schaaf—without notice, without cause, and with no explanation. I am aware of no such succession-planning efforts here. Indeed, it seems this highly destabilizing decision was undertaken without any succession planning at all. I have been advised by others in the Department that the Commissioner has been scrambling to find replacements, and a number of candidates have declined.

33. Commissioner Kavanagh's initial demotion decision left six other Staff Chiefs, including the two highest ranking—Chiefs Hodgens and Esposito, along with Chiefs Brennan, Woods, Leeb, and Massucci—unable to perform their responsibilities safely and in compliance with their oaths of office. In effect, Commissioner Kavanagh effectively demoted them as well.

34. The results are terrifying for public safety. Instead of 19 chiefs who can command a 2- or 3-alarm fire, the FDNY will be left with only 9 experienced Incident Commanders.

35. **By way of context**, to summarize the information above, serious fires are generally commanded as follows:¹

- a. The Chief of Department serves as the Incident Commander for 5-alarm fires.
- b. The Chief of Operations serves as the Incident Commander for 4-alarm fires.

¹ These general rules apply unless the designated Incident Commander is unavailable.

- c. Assistant Chiefs or Deputy Assistant Chiefs serve as the Incident Commanders for 3-alarm fires, although sometimes Assistant Chiefs serve as Incident Commanders for 4-alarm fires when the Chief of Operations is unavailable.

36. **By way of impact**, Commission Kavanagh's demotions have gutted the experienced and available Incident Command structure:

- a. There will be no remaining Chiefs with experience as Incident Commanders for 5-alarm fires.
- b. There will be only three Chiefs with possible experience as Incident Commanders for 4-alarm fires, but I am not aware of any of those three serving in that role for 4-alarm fires.
- c. There will be only nine Chiefs with experience as the Incident Commander for 3-alarm fires.
- d. I have been advised by another person in the Department that, of these possible nine available Incident Commanders, one Assistant Chief and one Deputy Assistant Chief have orally conveyed requests for demotions, citing the constructive demotion realities described above. If this information proves accurate, the emergency-management situation is completely untenable.
- e. As a former Chief of Department, having such a small group (whether seven or nine) of Incident Commanders available to respond to serious fires is not possible, and would require prompt promoting of others with no relevant experience in such grave crisis situations.

I swear and affirm that the statements contained above are true and correct and based on my substantial experience.

Dated: February 26, 2023

[Handwritten signature]

Registration No. 01LA0001373
County: New York
Valid from 02/13/2023 to 02/13/2027

Thomas J Richardson

Thomas J. Richardson

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

In the Matter of the Application of

MICHAEL GALA,
JOSEPH JARDIN,
MICHAEL MASSUCCI, and
FRED SCHAAF,

Petitioners-Plaintiffs,

For a Judgment pursuant to Article 78 of the Civil
Practice Law and Rules,

-against-

LAURA KAVANAGH, as Commissioner of the
New York City Fire Department, and the NEW
YORK CITY FIRE DEPARTMENT,

Respondents-Defendants.

Index No. _____

Assigned to Justice _____

**PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF THEIR
APPLICATION BY ORDER TO SHOW CAUSE FOR A TEMPORARY
RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND LIMITED
EXPEDITED DISCOVERY**

Date: February 27, 2023

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Petitioners Michael Gala, Joseph Jardin, Fred Schaaf, and Michael Massucci, by and through their attorneys, Walden Macht & Haran LLP, respectfully submit this Memorandum of Law in support of their motion for a temporary restraining order (“TRO”) and preliminary injunction (1) prohibiting Respondent Laura Kavanaugh, the Commissioner of the New York City Fire Department, and Respondent the New York City Fire Department (the “Department” or “FDNY”)¹ from effectuating any planned demotions of Petitioners Gala, Jardin, and Schaaf and any constructive demotions and (2) restoring Petitioners to the incident-command duties they held before their reassignments, which is necessary for the safety of New York City’s citizens and its firefighters. Petitioners further submit this Memorandum of Law in support of their motion for limited expedited discovery.

PRELIMINARY STATEMENT

In seeking an injunction, Petitioners have a single goal: to protect the safety of the public and the brave and dedicated firefighters of the New York City Fire Department. Respondent Kavanaugh has, over the course of the last four months, waged a war against FDNY’s most experienced and important operational commanders. In an effort to punish them for raising concerns about safety policies, and without any regard to the public-safety implications, Respondent Kavanaugh reassigned and then demoted (actually or constructively) nine Staff Chiefs, including the two most senior officers. The first three of these demotions are effective this Saturday, March 4, 2023. For the reasons set forth below, we request very narrow relief:

¹ This is a hybrid petition and plenary complaint. Petitioners Michael Gala, Joseph Jardin, Fred Schaaf, and Michael Massucci are Petitioner-Plaintiffs, but for the sake of brevity, they are referred to herein simply as “Petitioners.” Likewise, Commissioner Laura Kavanaugh and the FDNY are Respondent-Defendants, but for the sake of brevity, they are referred to herein simply as “Respondents” or “Respondent.”

(a) an order restraining the effective date of all pending demotions until this Court determines the merits of this Article 78 petition, and (b) restoration of Petitioners to their firefighting roles as Incident Commanders for 3- to 5-alarm fires until this Court determines the merits of this suit. Respondent Kavanagh's retaliatory actions have upended the Department's structure by removing long-serving and experienced Staff Chiefs from the operational command structure.

Worse, and of most relevance to our request for an injunction, Respondent Kavanagh's actions decrease the number of Staff Chiefs from nineteen to only nine. The impact is terrifying and more serious than even the numbers reflect. The Staff Chief assigned for a fire or other major emergency, generally referred to as an "Incident Commander," must have both extensive knowledge and experience with firefighting and the communication and leadership skills necessary to command multiple companies at once in order to fight a fire that has already raged sufficiently out of control that the Deputy Chief previously in charge needed to raise the alarm. **Given the ranks of the demoted Staff Chiefs, Respondent Kavanagh's actions have gutted the experienced and available Incident Command structure—leaving no remaining Staff Chiefs with experience as Incident Commanders for 5-alarm fires and only seven Staff Chiefs with experience as Incident Commanders for 3-alarm fires.** In doing so, Respondent Kavanagh is putting firefighters and the entire New York City citizenry they work to protect at grave risk of harm.

Because Respondent Kavanagh's actions pose a significant risk to public safety, Petitioners establish both a risk of irreparable harm and the balance of equities in their favor. And because Respondent Kavanagh's decisions were made without rational justification and without regard to and consideration of their consequences, they are arbitrary and capricious,

and Petitioners are likely to succeed on the merits of their claims. Petitioners’ request for injunctive relief should therefore be granted.

RELEVANT FACTS

Petitioners incorporate the allegations of fact set forth in the Petition and Complaint. Briefly, Respondent Kavanagh’s decision to gut the ranks of the Staff Chiefs—thereby virtually eliminating the Department’s ability to command the response to 4- and 5-alarm fires and severely hampering its ability to respond to 3-alarm fires—has harmed, and will continue to harm, both Petitioners, the members of the Department, and the New York City public. (Verified Art. 78 Pet. And Compl. (“Pet.”) ¶¶ 95-98.)

Since November 2022, Respondent Kavanagh has reassigned at least seven Assistant and Deputy Assistant Chiefs from high-level operational roles—on which the effective functioning of the FDNY relied—to made-up roles with no meaningful responsibilities or significantly reduced responsibilities. (Pet. ¶¶ 67-74.) And she has announced that, as of this Saturday, March 4, 2023—absent the grant of injunctive relief Petitioners are requesting—she will demote Petitioners Gala, Jardin, and Schaaf by two levels, effectively removing these longstanding leaders with more than 30 years’ experience from any operational or leadership roles. (Pet. ¶¶ 80-86.) As a result of these changes, several firefighters in leadership positions have been constructively demoted: they have been forced to request demotion because they cannot otherwise perform their jobs and abide by their oaths. (Pet. ¶¶ 87-90.) Respondent Kavanagh’s actions are without rational basis, and she has offered no justification for them. Rather, they were motivated by personal and political reasons and made without regard for, and without consideration of, the serious risks to the public that they pose.

ARGUMENT

Preliminary injunctive relief should be granted where, as here, the Petitioners can show “(1) a probability of success on the merits, (2) a danger of irreparable injury in the absence of an injunction, and (3) a balance of the equities in the movant’s favor.” *Boyd v. Assanah*, 210 A.D.3d 855, 856 (2nd Dep’t 2022) (citations omitted).

Although ordinarily a preliminary injunction preserves the *status quo* until a final determination on the merits can be made, “there is no question that in a proper case Supreme Court has power as a court of equity to grant a temporary injunction which mandates specific conduct by municipal agencies.” *McCain v. Koch*, 70 N.Y.2d 109, 116 (1987). Courts have granted requests for injunctions, including mandatory injunctions where, as here, doing so would protect public safety. *Doe v. Dinkins*, 192 A.D.2d 270 (1st Dep’t 1993) (affirming grant of mandatory injunction requiring City to reduce population of homeless shelters and take other affirmative actions to protect public safety); *In re Powis v. Giuliani*, No. 100990/95, 1995 WL 17961771, 25 (N.Y. Sup. Ct. Feb. 22, 1995), *aff’d*, *Powis v. Giuliani*, 216 A.D.2d 107 (1st Dep’t 1995) (enjoining FDNY’s decision to launch a program with no careful study or evaluation and in a “rush to judgment”).

A. The Risks To Public Safety Here Establish A Danger Of Irreparable Harm

Where public safety is at risk, courts have routinely found potential irreparable harm and entered injunctions to protect the public from danger. *See, e.g., Central Park Sightseeing LLC v. New Yorkers for Clean, Livable & Safe Streets, Inc.*, 157 A.D.3d 28, 33-34 (1st Dep’t 2017) (finding irreparable harm where protestors’ conduct posed “danger” to “public safety and order” and affirming grant of preliminary injunction enjoining conduct); *Doe*, 192 A.D.2d at 275-77 (finding a “danger of irreparable injury” and affirming grant of preliminary injunction where “[h]uman safety is in issue”); *People v. Anderson*, 137 A.D.2d 259, 271 (4th

Dep’t 1988) (affirming grant of preliminary injunction where “plaintiffs demonstrated an immediate threat to their physical safety and that of their employees, injuries which potentially could be irreparable”); *City of New York v. Tominovic*, 2020 WL 497629, *4 (Sup. Ct. Queens Cnty. 2020) (finding that, in operating illegal short-term rentals, “defendants are engaged in conduct that endangers the lives, health, safety, and well-being of others,” establishing potential irreparable harm); *The City-Wide Council of Presidents v. The New York City Housing Authority*, 2018 WL 1911926, *7 (Sup. Ct. New York Cnty. Apr. 23, 2018) (finding irreparable harm in light of “threat of lead poisoning” and granting injunction requiring City to conduct lead inspections); *251 West 30th St. LLC v. 251 West 30th St. Owner, LLC*, 57 N.Y.S.3d 677, 55 Misc. 3d 1208(A), *5 (Sup. Ct. New York Cnty. 2017) (finding that “[o]wner has made adequate showing of irreparable harm by establishing that Tenant’s use of the Fire Egresses is a safety hazard to residents and patrons, as well as to police and firefighters” and granting injunction); cf. *In re Powis*, No. 100990/95, 1995 WL 17961771, at 27, 32 (noting that “[t]he Plan does not attempt to calculate the lives that may be lost and the injuries that may be suffered as a result of removing alarm boxes,” finding that there is “no adequate remedy at law,” and granting injunctive relief).

In *251 West 30th St.*, for example, the court found that the defendant tenant’s alleged use of a building to hold large events—blocking fire escapes in the process—constituted a risk of irreparable harm because of the safety hazard it created to building residents, event patrons, and the police and firefighters who would need to gain entry during an emergency. 57 N.Y.S.3d 677. Similarly, in *Doe*, the court found that the City’s failure to reduce the population of various homeless shelters led to “overcrowding, fire hazards,” and “vulnerability to crime.” 192 A.D.2d at 270. Noting that “[h]uman safety is in issue. The ultimate relief may

be rendered inadequate, as the loss of one life would render permanent injunctive relief, granted at a later date, ineffective,” the court found that the plaintiffs had demonstrated “a danger of irreparable injury.” *Id.* at 275-76.

Here, the risk of irreparable harm is even more stark. Respondent Kavanagh’s actions have put the safety of the entire City—including firefighters under Respondent Kavanagh’s command—at stake. Respondent Kavanagh has already reassigned at least six high-level Staff Chiefs to meaningless, non-operational roles and reassigned a seventh out of his area of expertise. (Pet. ¶¶67-74.) The planned demotions will further hamper the Department’s ability to adequately command the response to major fires, putting lives at risk because the FDNY’s ability to effectively respond to fires—its main function—will be severely limited. *Id.* Indeed, the stakes could not be higher since Respondent Kavanagh’s actions leave FDNY without any four- or five-star Chiefs—who are the only Incident Commanders able to coordinate responses to 4- and 5-alarm fires. (*see* Richardson Aff. ¶ 36.). This plainly constitutes irreparable harm.²

Indeed, the risk of irreparable harm here is so significant that it warrants a mandatory injunction requiring Respondents to temporarily reinstate Petitioners to their operational positions—positions from which they were removed without warning or justification, and without a plan to replace the gap in operational experience that their reassignments created—in order to ensure that the Department can adequately function. In *The City-Wide Council of Presidents*, the court found that the Petitioners had established irreparable harm stemming from New York City Housing Authority’s (“NYCHA”) alleged failure to comply with

² In addition, Petitioners will suffer additional, but equally irreparable, harm by virtue of the damages to their reputations if these unwarranted, unjustified demotions are permitted to go forward.

requirements relating to lead paint inspections in NYCHA housing. Given the significant “dangers of lead” and the “substantial” “threat of lead poisoning to NYCHA tenants . . . in the absence of further testing and remediation,” the court granted a mandatory injunction requiring NYCHA to, among other things, compile a list of apartments requiring lead inspections and to conduct those inspections within 90 days. 2018 WL 1911926 at *7. Similarly, here, absent Petitioners’ reinstatement to their incident-command responsibilities, the Department will not have enough experienced crisis managers for the largest and most dangerous fires. This risk to public safety cannot be permitted to stand.

B. The Balance Of Equities Favors Petitioners

For the same reasons, the balance of the equities clearly favors the Petitioners. “[T]he ‘balancing of the equities’ usually simply requires the court to look to the relative prejudice to each party accruing from a grant or a denial of the requested relief.” *Sau Thi Ma v. Xaun T. Lien*, 198 A.D.2d 186, 186-87 (1st Dep’t 1993). Courts have repeatedly held that, where there is a risk of danger to the public, the balance of equities tips in favor of the party requesting injunctive relief. *See, e.g., Central Park Sightseeing*, 157 A.D.3d at 33 (finding that the “balance of the equities weighs in plaintiff’s favor” because, among other things, without injunctive relief, “members of the public would continue to be subjected to [protestors’] harassing and potentially dangerous conduct”); *Tominovic*, 2020 WL 497629 at *4 (“The balance of the equities lies in the [city plaintiff’s] favor because of the need to protect human safety.”); *Anderson*, 137 A.D.2d at 271 (finding that balance of equities favored plaintiff, where defendants’ conduct caused “violent confrontations” that threatened physical safety and defendants did not show injury as a result of injunction, “so it cannot be said that the harm to defendants as a result of the injunction outweighs the potential harm to plaintiffs absent an injunction.”).

Here, the safety risks created if an injunction is denied would result in severe prejudice to the public and to the firefighters required to serve in a Department with such severely depleted and inadequate operational (*i.e.*, firefighting) leadership. Temporarily enjoining Respondents from effectuating Respondent Kavanagh’s planned demotions and temporarily restoring Petitioners to their operational duties will permit the Department to operate as it has successfully been operating for years, with experienced Staff Chiefs at the helm. Moreover, entering an injunction here would permit those Staff Chiefs who were constructively demoted to return to their previous positions, since they would be able to perform the work expected of them and thereby comply with their oaths.

On the other hand, granting an injunction here would not prejudice Respondents at all. Respondent Kavanagh has made no claim that her reassignments and planned demotions are based on performance such that keeping Petitioners in leadership positions—positions they held for years—could possibly constitute prejudice, much less cause the kind of safety risks that the denial of an injunction will create. The balance of equities thus weighs entirely in Petitioners’ favor.

C. Petitioners Are Likely To Succeed On The Merits

To establish a likelihood of success on the merits, “[a] prima facie showing of a reasonable probability of success is sufficient; actual proof of the petitioner’s claims should be left to a full hearing on the merits.” *Barbes Rest. Inc. v. ASRR Suzer 218, LLC*, 140 A.D.3d 430, 431 (1st Dep’t 2016). A likelihood of success on the merits may be sufficiently established “even where the facts are in dispute and the evidence need not be conclusive.” *Id.* Moreover, with respect to Petitioners’ request for an injunction prohibiting Respondents from effectuating the planned demotions, Petitioners need only satisfy a reduced showing of likely success on the merits because that grant of injunctive relief would merely preserve the status

quo by maintaining Petitioners' current positions and operational duties. *See O'Henry's Film Works*, 111 Misc. 2d 464, 469 (Sup. Ct. N.Y. Cnty. 1981).

Petitioners are likely to succeed on the merits here. In reassigning and planning to demote Petitioners, Respondent Kavanagh has created a citywide public-safety risk. Respondents' actions are therefore arbitrary, capricious, and irrational, and Petitioners are likely to prevail on the merits of their claims.

The decisions in *Powis v. Giuliani*, 216 A.D.2d 107 (1st Dep't 1995), and *Butler v. Walter*, 160 Misc. 2d 251 (Sup. Ct. 1993), *aff'd*, 210 A.D.2d 941 (4th Dep't 1994), are instructive. In *Powis*, the petitioners challenged the FDNY's decision to remove fire alarm call boxes from New York City streets. 216 A.D.2d at 107. The trial court found that the FDNY's plan to replace call boxes with an enhanced telephone system was made without a "genuine and comprehensive evaluation" of the plan's consequences and failed to "attempt to calculate the lives that may be lost and the injuries that may be suffered as a result of removing alarm boxes," but rather was proffered in a "hasty" "rush to judgment." *In re Powis*, No. 100990/95, 1995 WL 17961771, at 31, 27, 25. The court thus found that the FDNY's decision was arbitrary and capricious and granted the petitioners' request to temporarily enjoin it. *Id.* In affirming, the Appellate Division noted that, "[g]iven the Fire Department's historic and critically important function of responding to the outbreak of fires, there should be at least some threshold showing that the alternative technology upon which it will be relying is adequate to the task." *Powis*, 216 A.D.2d at 108. The court thus "require[d] at least that the alternative system be shown to be reliable and effective with respect to the discharge of the Department's most fundamental public duty" before it would allow the change to be made. *Powis*, 216 A.D.2d at 108.

Similarly, in *Butler*, the court upheld the grant of an injunction prohibiting a Sheriff's Department from promoting corrections officers to supervisory roles in the Department. 160 Misc.2d at 254–55. The court found that the “highly dangerous, life-threatening nature of the work performed by the deputy sheriff sergeants and lieutenants makes it inconceivable” that corrections officers, with no experience as an officer in the Sheriff's Department, could hold supervisory roles in that office. *Id.* at 254. Notably, the court found that although the agency typically had the authority to make personnel decisions, the interests of public health and safety outweighed that authority. *Id.* at 255.

Here, Respondent Kavanagh's ill-advised and unjustified decisions to reassign and demote Petitioners create a serious risk that the FDNY cannot adequately respond to the city's largest and most dangerous fires—causing grave risk to the health and safety of FDNY personnel and the city at large. (Pet. ¶¶ 95-98.) Those decisions were plainly made without a “genuine and comprehensive” evaluation of their consequences, *In re Powis*, No. 100990/95, 1995 WL 17961771, at 31, and Respondents cannot show that the current status of FDNY's operational leadership—down from nineteen to seven chiefs who can command 3-alarm fires and devoid of anyone with experience commanding 5-alarm fires—is “adequate to the task.” *Powis*, 216 A.D.2d at 108.

Indeed, Respondent Kavanagh's decision to gut the Staff Chiefs happened without *any study*, and without experienced replacements in place or even at the ready—and in violation of the FDNY regulations requiring that she consult the Chief of Department. (Pet. ¶¶ 83, 86.) Of course, there was no careful study or evaluation at all since the retaliation decisions were just that: retaliation. The decisions were made despite the demands of public safety, not because of them. Indeed, even in a smear campaign intended to drown out the chorus of public remonstrations over

Respondent Kavanagh’s mismanagement, Respondent Kavanagh has never said the Petitioners lacked the requisite skills and experience to serve as Incident Commanders. Moreover, Respondent Kavanagh’s reassignments and planned demotions, like the promotions in *Butler*, will put less experienced firefighters in charge of significant operations—an unacceptable outcome given the “highly dangerous, life-threatening nature of the work performed.” *Butler*, 160 Misc. 2d at 254. Respondent Kavanagh’s decisions are thus arbitrary and capricious, and Petitioners are likely to succeed on the merits of their claims.

D. The Court Should Grant Petitioners’ Request For Limited Expedited Discovery

Expedited discovery should be awarded here. Respondent Kavanagh has offered no explanation for the reassignment and planned demotions of some of the highest-level and most experienced Staff Chiefs in the Department. Facts relating to her decisions, as well as any evaluation of the impact of her decisions on public safety, are in Respondent Kavanagh’s exclusive control. Expedited discovery is therefore warranted here. *See Town of Pleasant Valley v. New York State Bd. Of Real Property Servs.*, 253 A.D.2d 8 (2nd Dep’t 1999) (ordering discovery in Article 78 proceeding); *Mooney v. Superintendent of New York State Police*, 117 AD.2d 445, 448 (3rd Dep’t 1986) (granting discovery in Article 78 proceeding because for “petitioner to have a viable opportunity to challenge” determination as arbitrary and capricious, “the information and documents upon which the determination was based must be available”); *Margolis v. New York City Transit Auth.*, 157 AD.2d 238, 242 (1st Dep’t 1990) (granting discovery in Article 78 proceeding because Petitioner had cogently argued that Transit Authority’s proffered reason for salary decision “may well be a sham position,” and thus Petitioner was entitled to discovery to address actions taken by that body); *Spinney Hill Collision, Inc. v. Caso*, 56 AD.2d 655 (2nd Dep’t 1977) (same); *Gerber Prod. Co. v. New York State Dep’t of Health*, 47 Misc. 3d 249, 254, 3

N.Y.S.3d 267, 271 (N.Y. Sup. Ct. 2014) (granting discovery in an Article 78 proceeding where it “would address [a] deficiency in the record” and “is clearly relevant for the purposes of determining [sic] whether respondents’ actions were rational.”). Moreover, discovery is available in Article 78 proceedings where, as here, information that proves the petitioner’s claim is “within the exclusive possession and knowledge of the respondents.” *Stop BHOD v. City of New York*, 22 Misc. 3d 1136(A), 881 N.Y.S.2d 367 (Sup. Ct. Kings Cnty. 2009) (citing *Matter of Pignato v. City of Rochester*, 288 A.D.2d 825, 826 (4th Dep’t 2001)).

CONCLUSION

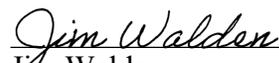
Petitioners, firefighters, and the public at large will suffer immediate and irreparable harm absent the requested injunction, the balance of the equities weighs in favor of Petitioners and the public, and Petitioners are likely to succeed on the merits. This Court should therefore grant a temporary restraining order and preliminary injunction (1) enjoining Respondents from effectuating any demotions of Petitioners and any constructive demotions and (2) restoring Petitioners to the incident-command duties they held before their reassignments. In addition, the Court should grant Petitioners’ request for limited expedited discovery.

Dated: New York, New York
February 27, 2023

Respectfully submitted,

WALDEN MACHT & HARAN LLP

BY:



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*Attorneys for Petitioners-Plaintiffs Michael
Gala, Joseph Jardin, Michael Massucci, and
Fred Schaaf*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

In the Matter of the Application of

MICHAEL GALA,
JOSEPH JARDIN,
MICHAEL MASSUCCI, and
FRED SCHAAF,

Petitioners-Plaintiffs,

For a Judgment pursuant to Article 78 of the Civil
Practice Law and Rules,

-against-

LAURA KAVANAGH, as Commissioner of the
New York City Fire Department, and the NEW
YORK CITY FIRE DEPARTMENT,

Respondents-Defendants.

Index No.

Assigned to

NOTICE OF PETITION

PLEASE TAKE NOTICE, that upon the annexed Verified Article 78 Petition and Complaint, Petitioners-Plaintiffs Michael Gala, Joseph Jardin, Michael Massucci, and Fred Schaaf, by the undersigned counsel, will make an application to this Court, at the courthouse thereof, located at 360 Adams Street, Brooklyn, New York, before a Justice to be assigned, on the 20th day of March, 2023, at 9:30 a.m., or as soon thereafter as counsel can be heard for the following relief, pursuant to CPLR §§ 7803(2) and 7803(3):

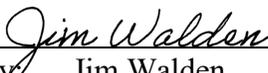
- a. Directing that Respondents-Defendants stop the involuntary demotions of Gala, Jardin, and Schaaf and reinstate the FDNY Staff Chiefs who Respondents-Defendants actually demoted or who were constructively demoted;
- b. Directing the Respondents-Defendants to reverse the reassignment of Petitioners-Plaintiffs Gala, Jardin, Schaaf, and Massucci; and

c. Granting such other relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that, pursuant to C.P.L.R. § 7804, Respondents-Defendants' answer and supporting affidavits, and any other papers in opposition to the above special proceeding, if any, are required to be served upon the undersigned at least five (5) days before the return date hereof. Pursuant to C.P.L.R. § 7804, Petitioners-Plaintiffs' reply, together with supporting affidavits, shall be served at least one day before this Petition is noticed to be heard. Pursuant to C.P.L.R. § 7804(b), this Court has Jurisdiction over this Article 78 Petition and, pursuant to C.P.L.R. § 7804(b) and C.P.L.R. § 506(b), Petitioners-Plaintiffs state that Kings County is a proper venue for this proceeding.

Dated: New York, New York
February 27, 2023

WALDEN MACHT & HARAN LLP


By _____
Jim Walden
Georgia Winston
Adam Cohen
250 Vesey Street, 27th Floor
New York, New York 10281
(212) 335-2030
Attorneys for Petitioners-Plaintiffs

At _____. Part __ of the Supreme Court of the State of New York, held in and for the County of Kings at the Courthouse, 360 Adams Street, Brooklyn, New York on the __ day of February, 2023

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

In the Matter of the Application of

MICHAEL GALA,
JOSEPH JARDIN,
MICHAEL MASSUCCI, and
FRED SCHAAF,

Petitioners-Plaintiffs,

For a Judgment pursuant to Article 78 of the
Civil Practice Law and Rules,

-against-

LAURA KAVANAGH, as Commissioner of
the New York City Fire Department, and the
NEW YORK CITY FIRE DEPARTMENT,

Respondents-Defendants.

**[PROPOSED] ORDER TO SHOW
CAUSE**

Index No. _____

UPON the reading and filing of the Verified Article 78 Petition and Complaint, the Affidavit of Chief Thomas Richardson dated February 26, 2023, the accompanying Memorandum of Law, and upon all prior pleadings and proceedings herein; and sufficient cause being alleged thereof;

LET the Respondents-Defendants LAURA KAVANAGH, as Commissioner of the New York City Fire Department, and the NEW YORK CITY FIRE DEPARTMENT, or their attorneys, show cause at the Courthouse, 360 Adams Street, Brooklyn, New York, at Part __, Room _____,

on the 28th day of February, 2023, at 3:00 o'clock p.m., or as soon thereafter as counsel may be heard, why an Order should not be entered, pursuant to CPLR § 6301 et seq., pending a hearing and determination of the merits of the Petition:

1. Preliminarily enjoining Respondents-Defendants from effectuating any demotions or constructive demotions of Petitioners-Plaintiffs Gala, Jardin, and Schaaf; and
2. Preliminarily restoring Petitioners-Plaintiffs to the incident-command duties they held before their reassignments; and
3. Granting expedited discovery concerning the basis of Respondents-Defendants' decisions and the impact of those decisions on public safety.

SUFFICIENT CAUSE APPEARING THEREFOR, IT IS FURTHER ORDERED that, pending hearing and determination of the within motion for a preliminary injunction:

1. Respondents-Defendants are hereby temporarily enjoined from effectuating the demotions of Petitioners-Plaintiffs Gala, Jardin, and Schaaf, which are scheduled to take effect beginning on Saturday, March 4, 2023;
2. Respondents-Defendants are hereby directed to restore Petitioners-Plaintiffs temporarily to the incident-command duties they held before their reassignments; and
3. Petitioners-Plaintiffs are awarded expedited discovery from Respondents-Defendants concerning the basis of Respondents-Defendants' decisions and the impact of those decisions on public safety.

IT IS FURTHER ORDERED that service of a copy of this Order and the papers upon which it is based be made on or before _____, 2023 upon Respondents-Defendants, by email and by overnight or express mail to their counsel, Corporation Counsel of the City of

New York, at 100 Church Street, New York, New York 10007, ServiceECF@law.nyc.gov, and that the same shall be deemed good and sufficient service;

ORDERED that service of answering papers, if any, shall be served upon Petitioners-Plaintiffs' attorneys, Jim Walden (jwalden@wmhlaw.com), Georgia Winston (gwinston@wmhlaw.com), and Adam Cohen (acohen@wmhlaw.com) by email on or before _____, 2023; and

ORDERED that reply papers, if any, shall be served on Respondents-Defendants or their counsel by email on or before _____, 2023.

IT IS FURTHER ORDERED that answering and reply papers, if any, shall be filed with the Clerk of the Court on or before _____, 2023.

ENTER:

J.S.C.



REQUEST FOR JUDICIAL INTERVENTION
SUPREME COURT, COUNTY OF KINGS

Index No: _____ Date Index Issued: _____

CAPTION Enter the complete case caption. Do not use et al or et ano. If more space is needed, attach a caption rider sheet.	For Court Use Only:
In the Matter of the Application of: MICHAEL GALA, JOSEPH JARDIN, MICHAEL MASSUCCI, and FRED SCHAAF, Plaintiff(s)/Petitioner(s)	IAS Entry Date
-against- For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules, LAURA KAVANAGH, as Commissioner of the New York City Fire Department, and the NEW YORK CITY FIRE DEPARTMENT, Defendant(s)/Respondent(s)	Judge Assigned
	RJI Filed Date

NATURE OF ACTION OR PROCEEDING Check only one box and specify where indicated.

COMMERCIAL

Business Entity (includes corporations, partnerships, LLCs, LLPs, etc.)
 Contract
 Insurance (where insurance company is a party, except arbitration)
 UCC (includes sales and negotiable instruments)
 Other Commercial (specify): _____
NOTE: For Commercial Division assignment requests pursuant to 22 NYCRR 202.70(d), complete and attach the COMMERCIAL DIVISION RJI ADDENDUM (UCS-840C).

MATRIMONIAL

Contested
NOTE: If there are children under the age of 18, complete and attach the MATRIMONIAL RJI ADDENDUM (UCS-840M).
 For Uncontested Matrimonial actions, use the Uncontested Divorce RJI (UD-13).

TORTS

Adult Survivors Act
 Asbestos
 Environmental (specify): _____
 Medical, Dental or Podiatric Malpractice
 Motor Vehicle
 Products Liability (specify): _____
 Other Negligence (specify): _____
 Other Professional Malpractice (specify): _____
 Other Tort (specify): _____

REAL PROPERTY Specify how many properties the application includes: _____

Condemnation
 Mortgage Foreclosure (specify): Residential Commercial
 Property Address: _____
NOTE: For Mortgage Foreclosure actions involving a one to four-family, owner-occupied residential property or owner-occupied condominium, complete and attach the FORECLOSURE RJI ADDENDUM (UCS-840F).
 Partition
NOTE: Complete and attach the PARTITION RJI ADDENDUM (UCS-840P).
 Tax Certiorari (specify): Section: _____ Block: _____ Lot: _____
 Tax Foreclosure
 Other Real Property (specify): _____

SPECIAL PROCEEDINGS

Child-Parent Security Act (specify): Assisted Reproduction Surrogacy Agreement
 CPLR Article 75 – Arbitration [see **NOTE** in **COMMERCIAL** section]
 CPLR Article 78 – Proceeding against a Body or Officer
 Election Law
 Extreme Risk Protection Order
 MHL Article 9.60 – Kendra’s Law
 MHL Article 10 – Sex Offender Confinement (specify): Initial Review
 MHL Article 81 (Guardianship)
 Other Mental Hygiene (specify): _____
 Other Special Proceeding (specify): _____

OTHER MATTERS

Certificate of Incorporation/Dissolution [see **NOTE** in **COMMERCIAL** section]
 Emergency Medical Treatment
 Habeas Corpus
 Local Court Appeal
 Mechanic’s Lien
 Name Change/Sex Designation Change
 Pistol Permit Revocation Hearing
 Sale or Finance of Religious/Not-for-Profit Property
 Other (specify): _____

STATUS OF ACTION OR PROCEEDING Answer YES or NO for every question and enter additional information where indicated.

	YES	NO	
Has a summons and complaint or summons with notice been filed?	<input type="radio"/>	<input checked="" type="radio"/>	If yes, date filed: _____
Has a summons and complaint or summons with notice been served?	<input type="radio"/>	<input checked="" type="radio"/>	If yes, date served: _____
Is this action/proceeding being filed post-judgment?	<input type="radio"/>	<input checked="" type="radio"/>	If yes, judgment date: _____

NATURE OF JUDICIAL INTERVENTION Check one box only and enter additional information where indicated.

Infant’s Compromise
 Extreme Risk Protection Order Application
 Note of Issue/Certificate of Readiness
 Notice of Medical, Dental or Podiatric Malpractice Date Issue Joined: _____
 Notice of Motion Relief Requested: _____ Return Date: _____
 Notice of Petition Relief Requested: _____ Return Date: _____
 Order to Show Cause Relief Requested: TRO and Preliminary Injunction Return Date: _____
 Other Ex Parte Application Relief Requested: and Limited Expedited Discovery
 Partition Settlement Conference
 Poor Person Application
 Request for Preliminary Conference
 Residential Mortgage Foreclosure Settlement Conference
 Writ of Habeas Corpus

RELATED CASES List any related actions. For Matrimonial cases, list any related criminal or Family Court cases. If none, leave blank.
 If additional space is required, complete and attach the **RJI ADDENDUM (UCS-840A)**.

Case Title	Index/Case Number	Court	Judge (if assigned)	Relationship to instant case

PARTIES For parties without an attorney, check the "Un-Rep" box and enter the party's address, phone number and email in the space provided.
 If additional space is required, complete and attach the **RJI ADDENDUM (UCS-840A)**.

Un-Rep	Parties List parties in same order as listed in the caption and indicate roles (e.g., plaintiff, defendant, 3 rd party plaintiff, etc.)	Attorneys and Unrepresented Litigants For represented parties, provide attorney's name, firm name, address, phone and email. For unrepresented parties, provide party's address, phone and email.	Issue Joined For each defendant, indicate if issue has been joined.	Insurance Carriers For each defendant, indicate insurance carrier, if applicable.
<input type="checkbox"/>	Name: Michael Gala Role(s): Petitioner	Jim Walden, Walden Macht & Haran LLP 250 Vesey Street, 27th Floor New York, NY 10281 P: 212-335-2030 F: 212-335-2040 Email:jwalden@wmhlaw.com	<input type="radio"/> YES <input checked="" type="radio"/> NO	
<input type="checkbox"/>	Name: Joseph Jardin Role(s): Petitioner	Jim Walden, Walden Macht & Haran LLP 250 Vesey Street, 27th Floor New York, NY 10281 P: 212-335-2030 F: 212-335-2040 Email:jwalden@wmhlaw.com	<input type="radio"/> YES <input checked="" type="radio"/> NO	
<input type="checkbox"/>	Name: Michael Massucci Role(s): Petitioner	Jim Walden, Walden Macht & Haran LLP 250 Vesey Street, 27th Floor New York, NY 10281 P: 212-335-2030 F: 212-335-2040 Email:jwalden@wmhlaw.com	<input type="radio"/> YES <input checked="" type="radio"/> NO	
<input type="checkbox"/>	Name: Fred Schaaf Role(s): Petitioner	Jim Walden, Walden Macht & Haran LLP 250 Vesey Street, 27th Floor New York, NY 10281 P: 212-335-2030 F: 212-335-2040 Email:jwalden@wmhlaw.com	<input type="radio"/> YES <input checked="" type="radio"/> NO	
<input type="checkbox"/>	Name: Laura Kavanagh, as Commissioner Role(s): of the NYC Fire Department Respondent		<input type="radio"/> YES <input checked="" type="radio"/> NO	
<input type="checkbox"/>	Name: New York City Fire Department Role(s): Respondent		<input type="radio"/> YES <input checked="" type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, UPON INFORMATION AND BELIEF, THERE ARE NO OTHER RELATED ACTIONS OR PROCEEDINGS, EXCEPT AS NOTED ABOVE, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION BEEN PREVIOUSLY FILED IN THIS ACTION OR PROCEEDING.

Dated: February 27, 2023

Jim Walden

 Signature