

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

In the Matter of

MICHAEL GALA,
JOSEPH JARDIN, and,
MICHAEL MASSUCCI,

Plaintiffs,

-against-

THE CITY OF NEW YORK, LAURA
KAVANAGH, as Commissioner of the New
York City Fire Department and in her
individual capacity, and JONPAUL AUGIER
as Deputy Commissioner for Life Safety
Systems and in his individual capacity,

Defendants.

Index No. _____

Date Purchased: March 23, 2023

SUMMONS

Plaintiff designates Kings County as the
place of trial on the basis of the causes of
action accruing therein.

To the above-named Defendants:

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

Dated: March 23, 2023
New York, New York

WALDEN MACHT & HARAN LLP

/s/ Jim Walden

Jim Walden
Walden Macht & Haran LLP
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New York, New York 10281
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To: **The City of New York, Laura Kavanagh, as Commissioner of the New York City Fire Department and in her individual capacity, and JonPaul Augier, as Deputy Commissioner for Life Safety Systems and in his individual capacity**

New York City Law Department
100 Church Street, Room 2-100
New York, New York 10007

The City of New York, Laura Kavanagh, as Commissioner of the New York City Fire Department and in her individual capacity, and JonPaul Augier as Deputy Commissioner for Life Safety Systems and in his individual capacity

9 MetroTech Center
Brooklyn, New York 11201

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Assigned to Justice _____

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COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs, by and through their attorneys, Walden Macht & Haran LLP, allege the following:

NATURE OF THE ACTION

1. Defendant Laura Kavanagh, Commissioner of the New York City Fire Department, targeted Plaintiffs, and others similarly situated, based on age discrimination. Defendant Kavanagh retaliated against them and created a hostile workplace. She sought not just to end, but literally to destroy, their long and distinguished careers.

2. The goal of Defendant Kavanagh's conspiracy, together with other Defendants, was to replace Plaintiffs and other senior employees with younger personnel. The victims were targeted because they were at or near the age of 60. The discriminatory scheme left many victims in its wake, not just Plaintiffs.

3. To accomplish this goal, Defendants engaged in actual misconduct and unethical behavior. Among several other methods and means of the conspiracy, Defendants (a) forced senior employees off medical leave (overriding the medical judgments of their doctors), (b) withheld or threatened to withhold earned or customary benefits from them, (c) cut off their computer access, and (d) leaked false information about them to the press. When these methods failed to achieve Defendant Kavanagh's intended result—bullying seniors into retirement—she resorted to more brutal means, such as demotions, humiliating reassignments, and public disparagement.

4. Although Plaintiffs are white males, Defendants' campaign affected many women and people of color, including the highest-ranking African American woman in the Fire Department, who Defendant Kavanagh unceremoniously fired without cause on March 19, 2023, with her duties assumed by a younger replacement.

5. Defendants' actions were not only wrong, but also cynically hypocritical: they repeatedly told the media and officials at City Hall that their administration was acting on principles of diversity, equity, and inclusion. This is a myth, as three examples attest:

- a. Defendant Kavanagh has claimed credit for greater diversity within the Fire Department because of her role in the 2017 open competitive entrance exam, but, as of December 2022, that test resulted in the hiring of significantly fewer African Americans than the 2012 test. The difference was more than 20%.
- b. Since Defendant Kavanagh assumed the duties of First Deputy Commissioner of FDNY in 2018, she has orchestrated the demotion, resignation, termination, or forced retirement of more than 10 senior women and people of color, often replacing them with younger, white personnel, and often men.

c. In December of 2018, FDNY decided to create a new and important Deputy Commissioner position, which does not often happen. It was the perfect opportunity to promote a woman or person of color. A qualified woman applied, who was a long-serving Director in the Bureau of Operations and was approximately 58 years old. Defendant Kavanagh passed her over. Instead, she promoted Defendant JonPaul Augier, who (1) lacked any meaningful experience, (2) was much younger; (3) had been disciplined for “conduct reflecting discredit on the Department”; (4) had a substantiated Equal Employment Opportunity claim against him while he had been serving Defendant Kavanagh in another role; (5) had, while at Engine 35/Ladder 14 in East Harlem, allegedly harassed two African American firefighters, including by hanging a noose in the firehouse, which allegations had been relayed to Defendant Kavanagh by a senior officer¹; (6) had allegedly referred to community residents at that firehouse as “animals,” which the officer also relayed to Defendant Kavanagh; and (7) is a white male. To do it, she promoted him nine ranks, doubled his salary, and waived requirements related to job postings, merit, and residency.

6. And Defendants’ heinous campaign has had another core tool: to falsely disparage the victims. At times, this was based on false allegations against the victim for misconduct, bias, or bullying on their part. Defendants have used this ploy with respect to several of the Plaintiffs, even though none of the Plaintiffs—not one—has any disciplinary record or substantiated EEO claims against them. Each Plaintiff served with distinction during and/or in the aftermath of the 9/11 terrorist attack in New York City. The use of slander against these heroes shows the wanton

¹ Defendant Kavanagh replied to the reporting officer: “he’s not like that anymore.”

depravity of Defendants' scheme. The Defendants had confidence that, when they leaked false information to the press, certain reporters would not challenge their narrative.

7. Other times, Defendants' victims have been blamed, as a pretext for discrimination, for problems not of their making and, sometimes, for problems of Defendant Kavanagh's making. But the cynical ploy was the same: vilify the victims, drive others against them, and have them removed in favor of younger replacements.

8. Notably, Defendant Kavanagh's illicit pattern and practice has one common thread: ageism. Plaintiffs and other victims—all at or near the age of 60—were subjected to adverse actions, including harsh personnel actions, unfounded accusations of insubordination, reassignments, demotions, disparagement, and baseless attacks on their competence, regardless of race or gender.

9. As the leader of the conspiracy, Defendant Kavanagh encouraged and incentivized various individuals to join her illegal discriminatory aims, including but not limited to Defendant Augier, as described in detail below. The conspirators included other members of Defendant Kavanagh's senior staff and a former FDNY Deputy Commissioner, who works at a well-known university.

10. In this action, Plaintiffs seek: (a) restoration of their ranks and positions—earned through decades of dedication to the safety of the residents of the City of New York; (b) compensatory damages; (c) punitive damages; (d) interest; (e) attorneys' fees and costs; and (e) such other relief as the Court deems appropriate.

11. The allegations set forth below are made on information and belief. That said, the truth of the allegations below will be confirmed by dozens of witnesses (some within FDNY and

some outside who witnessed some of the events), as well as scores of supporting documents, emails, and text messages. Events and conversations are described in summary form.

PARTIES

12. **Plaintiff Michael Gala**, age 62, has dedicated his entire professional life to protecting the people of New York City, first as a police officer, and then, for the past 36 years, as a firefighter. He is a highly decorated and widely respected member of the New York City Fire Department (“FDNY” or the “Department”), who has responded to countless life-threatening emergencies, including the 9/11 terrorist attacks. His devotion to the job and his tireless work ethic allowed him to achieve the rank of Assistant Chief. Plaintiff Gala has received several citations for bravery as well as numerous other honors, including 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.

13. **Plaintiff Joseph Jardin**, age 61, has served in FDNY for 37 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. Plaintiff Jardin is a registered engineer and 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 Safety to Life Project’s Building Service and Fire Protection Equipment and Residential Occupancies Technical Committees. Plaintiff Jardin has received numerous awards recognizing his FDNY service and NFPA standards work.

14. **Plaintiff Michael Massucci**, age 59, has served in FDNY for nearly 33 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 FDNY, Plaintiff Massucci is well known for his encyclopedic institutional knowledge of FDNY and its operations. He served as Chief of Uniformed Personnel for six years.

15. **Defendant City of New York** is a municipal corporation existing under the laws of the State of New York.

16. **Defendant Laura Kavanagh** is the 34th Fire Commissioner of FDNY. Prior to joining FDNY in 2014, Defendant Kavanagh worked primarily as an operative on political campaigns and in local government, never a day as a firefighter. Defendant Kavanagh has no experience fighting fires and worked only on the civilian side of FDNY before ascending to Commissioner. She is sued here in her individual capacity, too.

17. **Defendant JonPaul Augier** currently serves as the Deputy Commissioner for Life Safety Systems. He obtained his current Deputy Commissioner role by leaping eight ranks over a female candidate for the position. He is sued here in his individual capacity, too.

VENUE AND JURISDICTION

18. This Court has jurisdiction over this case pursuant to the N.Y.C. Admin. Code § 8-502 and N.Y. Exec. Law § 297. None of the exceptions to jurisdiction apply.

19. Venue is proper in this Court because the acts giving rise to the claims set forth herein occurred primarily in Kings County. N.Y. C.P.L.R § 504.

20. Pursuant to N.Y.C. Admin. Code § 8-502(c), a copy of this Complaint will be filed with the New York City Corporation Counsel and the New York City Commission on Human Rights within 10 days of filing.

RELEVANT LEGAL AUTHORITIES

21. This case is brought pursuant to the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 *et seq.* (“NYCHRL”), and the New York State Human Rights Law, N.Y. Exec. L. § 290 *et seq.* (“NYSHRL”).

22. The NYSHRL

- a. “A plaintiff alleging discrimination in violation of the NYSHRL must establish that (1) he or she is a member of a protected class, (2) he or she was qualified to hold the position, (3) he or she suffered an adverse employment action, and (4) the adverse action occurred under circumstances giving rise to an inference of discrimination.” *Bilitch v. N.Y.C. Health & Hosps. Corp.*, 194 A.D.3d 999, 1001, 148 N.Y.S.3d 238 (2d Dep’t 2021) (citations omitted).
- b. “A plaintiff alleging retaliation in violation of the NYSHRL must show that (1) he or she engaged in a protected activity by opposing conduct prohibited thereunder; (2) the defendant was aware of that activity; (3) he or she suffered an adverse action based upon his or her activity; and (4) there was a causal connection between the protected activity and the adverse action.” *Bilitch*, 194 A.D.3d at 1004 (citations omitted).
- c. “A plaintiff claiming a hostile work environment animated by discrimination in violation of the NYSHRL must show that the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or

pervasive to alter the conditions of the plaintiff's employment and create an abusive working environment.” *Bilitch*, 194 A.D.3d at 1003 (citation omitted).

- d. An employer's deviation from its policies in making an employment decision can indicate that the decision was a pretext for discrimination. *Turner v. Manhattan Bowery Mgmt. Corp.*, 49 Misc.3d 1220(A), 28 N.Y.S.3d 651, *3 (Sup. Ct. N.Y. Cty. Dec. 15, 2015) (citation omitted). Moreover, a pattern of terminating older employees can show age discrimination. *Murphy v. American Home Prods.*, 159 A.D.2d 46, 49-50, 558 N.Y.S.2d 920 (1st Dep't 1990) (evidence indicating employer's discriminatory treatment of employees other than plaintiff was relevant “since such evidence is highly probative of the employer's actual state of mind”).
- e. In 2019, the N.Y.S. Legislature amended the NYSHRL “to also require an independent liberal analysis to accomplish remedial purposes, as well as narrow construction of exceptions and exemptions.” *Golston-Green v. City of New York*, 184 A.D.3d 24, 35 at n.1, 123 N.Y.S.3d 656 (2d Dep't 2020) (citing N.Y. Exec. L. § 300). The amendment was effective August 12, 2019 and applies to claims filed after the effective date. *Id.*

23. **The NYCHRL**

- a. “The NYCHRL offers retaliation victims, like discrimination victims, broader protection than its NYSHRL counterpart.” *Bilitch*, 194 A.D.3d at 1004 (citations omitted). The NYCHRL should be construed “broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible.” *Albunio v. City of New York*, 16 N.Y.3d 472, 477–478, 922 N.Y.S.2d 244 (2011) (retaliatory actions included undesirable “geographical assignments and hours of work”; being

“shunned and excluded from meetings”; and a requested transfer resulting in “a less desirable job than . . . expected”). “[T]he text and legislative history represent a desire that the [NYCHRL] meld the broadest vision of social justice with the strongest law enforcement deterrent.” *Williams v New York City Hous. Auth.*, 61 A.D.3d 62, 68, 872 N.Y.S.2d 27 (1st Dep’t 2009) (internal quotation omitted).

- b. “In order to prevail on a claim of discrimination under the NYCHRL, a plaintiff must prove that unlawful discrimination was one of the motivating factors of the complained-of conduct.” *Bilitch*, 194 A.D.3d at 1002 (citations omitted). Further, under the NYCHRL, the plaintiff need not prove an adverse employment action or, for a hostile work environment claim, the plaintiff “need only demonstrate that he or she was treated less well than other employees because of the relevant characteristic.” N.Y.C. Admin. Code § 8-107(7); *Reichman v City of New York*, 179 A.D.3d 1115, 118, 117 N.Y.S.3d 280 (2d Dep’t 2020).
- c. Under the NYCHRL, comments reflecting negative judgement based on age and experience are sufficient to defeat dispositive motions. *Rollins v. Fencers Club*, 128 A.D.3d 401, 8 N.Y.S.3d 202 (1st Dep’t 2015) (denying defendants’ summary judgment motion due to combination of ageist remarks and pretextual reasons for termination). Indeed, motions to dismiss have even been denied absent any ageist remarks. *Pustilnik v. Battery Park City Auth.*, 71 Misc.3d 1058, 147 N.Y.S.3d 357 (Sup. Ct. N.Y. Cty. 2021) (denying motion to dismiss age discrimination claim that alleged replacement by younger employees but no ageist remarks).
- d. Manufactured criticisms of plaintiffs can also support a finding of discriminatory intent. *Bennett v. Health Mgmt. Sys.*, 92 A.D.3d 29, 43, 936 N.Y.S.2d 112 (1st

Dep't 2011); *see also Rollins*, 128 A.D.3d 401, 403, 8 N.Y.S.3d 202 (“Once there is some evidence that at least one of the reasons proffered by defendant [for the adverse employment action] is false, misleading, or incomplete, a host of determinations properly made only by a jury come into play.”).

FACTS

I. STRUCTURE OF FDNY

24. FDNY is a vast hierarchical organization headed by the Fire Commissioner (the “Commissioner”) and her staff. Below the Commissioner, FDNY is divided into a uniformed division and a civilian division. The uniformed division is overseen by the Chief of Department. Beneath the Chief of Department are different bureaus overseen by Staff Chiefs, who supervise the rank and file uniformed personnel. The civilian division is overseen by the First Deputy Commissioner. Beneath the First Deputy Commissioner are deputy commissioners, who oversee civilian personnel.

25. Although the Chief of Department is the leader of the uniformed division, he or she is assisted by a Chief of Operations, and approximately 18 Assistant Chiefs and Deputy Assistant Chiefs (the “Staff Chiefs”).

II. APPOINTMENT OF DEFENDANT KAVANAGH AS FDNY COMMISSIONER

26. On February 16, 2022, Mayor Eric Adams announced the appointment of Defendant Kavanagh as acting Commissioner of FDNY following the retirement of former Commissioner Daniel A. Nigro, who led the department for eight years.²

² “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/>.

27. Upon becoming acting Fire Commissioner, Defendant Kavanagh was placed at the top of 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.³

28. As such, Defendant Kavanagh has been tasked with ensuring that 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 daily.⁴

29. Prior to joining FDNY in 2014, Defendant Kavanagh primarily worked on political campaigns and in local government.

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

31. In 2015, Commissioner Nigro promoted Defendant Kavanagh to Deputy Commissioner for Government Affairs and Special Projects, a role she kept until 2018.⁵

32. On January 31, 2018, Commissioner Nigro promoted Defendant Kavanagh to First Deputy Commissioner.⁶ It was the first time her official titles expanded beyond External Affairs or Government Affairs.

³ "Laura Kavanagh, Fire Commissioner," NYC.gov, available at <https://www.nyc.gov/site/fdny/about/overview/leadership/fire-commissioner.page>.

⁴ "FDNY Overview," NYC.gov, available at <https://www.nyc.gov/site/fdny/about/overview/overview.page>.

⁵ "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>.

⁶ "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/>.

33. On February 16, 2022, Defendant Kavanagh assumed the position of Acting Fire Commissioner.

34. Defendant Kavanagh had worked only on the civilian side of FDNY before her appointment.⁷

III. DEFENDANT KAVANAGH'S RISKY DECISIONMAKING

35. Since her promotion to First Deputy Commissioner on January 31, 2018, Defendant Kavanagh has made many critical decisions without the benefit of the advice of her Staff Chiefs, the operational leaders of FDNY. Her practice of ignoring their advice is a departure from customary practice at FDNY. Unlike prior Commissioners, Defendant Kavanagh refused to meet with them. Dozens of witnesses will attest to this, both uniformed and civilian.

36. More, Defendant Kavanagh's hostile reaction to the Staff Chiefs' mere expressions of concern over various plans she devised—concerns based on legal requirements, FDNY policies, collective-bargaining agreements, safety, and/or experience—was neither customary at FDNY nor appropriate for the head of a safety and crisis-management agency. She branded the Staff Chiefs' expressions of concern as misogynistic insubordination, which effectively cancelled the Staff Chiefs and their significant experience.

37. Ironically, Defendant 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 saw 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.⁸

⁷ “Laura Kavanagh, Fire Commissioner,” NYC.gov, available at <https://www.nyc.gov/site/fdny/about/overview/leadership/fire-commissioner.page>.

⁸ “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>.

38. FDNY attributed the decreases to many factors, including enhanced fire safety education and outreach programs, improved technology and equipment, and better training for firefighters.

39. Instead of concentrating on preserving and maintaining the safety of New York City residents and the firefighters within its ranks, Defendant Kavanagh focused her efforts on “revolutionizing” FDNY, including by repeatedly demanding undefined and unquantified “out-of-the-box thinking,” “fresh ideas,” and decrying “old thinking”—all classic hallmarks of ageist language—from her Staff Chiefs. She decried the “old guard.”

40. While it is natural for a new leader—male or female—to introduce new ideas and innovations to improve an organization, Defendant Kavanagh’s actions were bereft of any substance and merely intended to humiliate her older subordinates. Defendant Kavanagh’s constant criticisms were generalized disparagements colored by ageist biases that were not tethered to promoting specific improvements. She masked her discriminatory comments in the guise of transforming FDNY, but the context of her critiques was painfully obvious to those who witnessed them.

41. Although Defendant Kavanagh has publicly blamed Plaintiffs for insubordination as a basis for her decisions to act adversely toward them, this is patently false. **Indeed, Defendant Kavanagh has never identified a single order of hers that any of the Plaintiffs defied, nor were any Staff Chiefs disciplined for any such defiance (since there was none).**

42. To make matters even more difficult for the Staff Chiefs, including Plaintiffs, they were aware of decisions Defendant Kavanagh made that were either unethical or ill-advised, which sensitized them to the need to make sure she “understood the rules” and matters of safety, as she often seemed either oblivious of, uninterested in, or disdainful of those rules and safety issues:

- a. **Misleading a Court-Appointed Monitor:** For several years, FDNY has been under a court-appointed monitor, after the settlement of a lawsuit brought by the Vulcan Society, a fraternal organization of Black firefighters in New York.⁹ Among other things, the settlement requires the submission of data to the Monitor.
- i. In the lead-up to the 2017 open competitive entrance exam, Defendant Kavanagh led the effort to recruit diverse test takers.
 - ii. Based on two metrics—the number of diverse candidates who took the test and the number of women and Hispanic firefighters who were recruited—that test was a success.
 - iii. But the test was a failure from a number of other perspectives.
 1. First, fewer diverse candidates passed the test (with a score of 70%) than the prior test.
 2. Second, even fewer diverse candidates achieved a score likely to qualify them for admission to the probationary class, i.e., a “reachable score” (98%).
 3. Third, as of December 2022, the test resulted in approximately 20% fewer African American firefighters being hired, which is an outcome contrary to the Vulcan Society’s aims in filing the lawsuit.
 4. Fourth, the recruitment campaign Defendant Kavanagh led cost a whopping \$40 million—significantly higher than the cost for the recruiting campaign for the prior test.

⁹ See generally *U.S. v. City of New York*, No. 07 CV 2067 (E.D.N.Y. filed May 21, 2007).

- iv. In various ways, Defendant Kavanagh has put pressure on staff to keep these facts from the media and the court-appointed monitor. This resulted in a number of FDNY employees resigning because they were concerned about misleading the monitor and the public.
- b. **Self-Contained Breathing Apparatus (“SCBA”) Purchasing Decision.** The SCBA is the most important piece of equipment that protects the men and women of FDNY from smoke, toxic gas, and harmful particulates as they fight fires. FDNY’s SCBA equipment is at the end of its lifecycle, and so the Department will soon purchase new units at a cost of \$50-\$100 million. Because this equipment is so critical, FDNY created a special SCBA Committee, comprising experts in fire safety, operations, and Research & Development (“R&D”), which has been meeting for years to test and develop the next generation SCBA apparatus for FDNY. Upon becoming Commissioner, Defendant Kavanagh sidelined these experts and put the decision primarily in the hands of her civilian staff.
- c. **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 Defendant 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.
- d. **Taking Fire-Code Inspection Out of Fire Department Purview.** Defendant Kavanagh sought to reassign FDNY’s fire prevention responsibilities to the NYC Department of Buildings and permit buildings to self-certify their fire alarm systems. This move alarmed experienced members of FDNY, including Plaintiff

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.

- e. **Ending Practice of Meeting with Chiefs.** For nearly a year since she took office, from February 2022 to February 2023, Defendant Kavanagh held no meetings with the full group of Staff Chiefs, who serve as 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). The one meeting she held with the Staff Chiefs, on February 3, 2023, was a mockery. She berated the Staff Chiefs, accused them of incompetence, made sure it was recorded (contrary to FDNY policies) and then leaked to her favored media outlet.

43. The Staff Chiefs and other senior officers and personnel raised concerns with these and other decisions to Defendant Kavanagh, occasionally directly but often through her staff (because she wouldn't meet with them).

44. The reaction was usually the same: instead of taking the advice of her experienced senior officers, Defendant Kavanagh cynically labeled their genuinely held opinions as insubordination and used it as a trope to cancel them.

45. Some media reporters lapped it up when Defendant Kavanagh's proxies leaked adverse (and false) information. The first major victim, shortly after Defendant Kavanagh became First Deputy Commissioner, was Chief James E. Leonard.

IV. ATTEMPTED COUP AGAINST CHIEF LEONARD

46. Former Chief of Department James E. Leonard served valiantly throughout his 40-year career. On 9/11, he served as a Battalion Chief in Battalion 2 at Houston Street and 6th Avenue

in Manhattan, a house that lost every member of the Engine Company, every member of the Ladder Company, and one of the four Battalion Chiefs serving that day. He spent much of the next year working at Ground Zero and consoling the families of the many firefighters and officers lost. Commissioner Nigro promoted him to Chief of Department—the head of all uniformed personnel—on November 1, 2014.

47. From his start at FDNY in 1979 until his departure in 2018, he was promoted from the lowest to the highest uniformed rank—a total of seven levels. That happened while serving seven different Commissioners. Literally, more than fifty officers and civilians senior to him weighed in on his worthiness for these promotions—representing more than 1,000 years of FDNY experience. If there was some aspect of his character that made him unworthy of command, it is hard to fathom how he rose so high and was so widely acclaimed among women and men, civilian and uniformed, alike.

48. Chief Leonard had no disciplinary history and no substantiated EEO complaints against him during his career.

49. Despite Chief Leonard’s long, storied and then-unblemished career, Defendant Kavanagh had special animus for him. While Defendant Kavanagh complained to several others at FDNY about the basis of her animus, the complaints were a pretext and proxy for her bias and animus toward his age and experience, including the importance he placed on the Chain of Command and Unity of Command¹⁰—core tenants of a quasi-military organization tasked with saving lives. Defendant Kavanagh never did, and still does not, understand the critical importance

¹⁰ “Chain of command refers to the orderly line of authority within the ranks of the incident management organization. Unity of command means that each individual only reports to one person. This clarifies reporting relationships and reduces confusion caused by multiple, conflicting directives, enabling leadership at all levels to effectively direct the personnel under their supervision.” FEMA, Resources for Senior Officials, May 2019, at 12.

of these concepts in a firefighting organization.¹¹ Many, many women within FDNY do. Indeed, she and Defendant Augier both shared a special disdain for those concepts.

50. Soon after Defendant Kavanagh was appointed First Deputy Commissioner on January 31, 2018, she employed three schemes to have Chief Leonard removed.

51. First, Defendant Kavanagh approached several people in Operations, attempting to find disgruntled lower-level officers who would speak out against Chief Leonard. After getting what she wanted (a few people with grievances), Defendant Kavanagh approached Commissioner Nigro in or around March 2018, asking him to remove Chief Leonard as Chief of Department. Commissioner Nigro rejected the suggestion, saying words to the effect of, “as long as I am here, Jimmy Leonard will be my Chief of Department.”

52. When this first strategy failed, Defendant Kavanagh attempted a riskier ploy in Summer 2018: she attempted to entice other senior officers, including Staff Chiefs, into an insurrection, pulling together a group who would demand Chief Leonard’s resignation.

53. Defendant Kavanagh convinced two others to join her scheme, Deputy Chief Daniel Donoghue and Defendant Augier. Her plans later fell apart when she attempted to convince a third officer, Chief James Booth, to join their coup. Seeing Defendant Kavanagh’s suggestion as an act of insubordination and a blatant violation of the Chain of Command, Chief Booth told her he wanted no part of the scheme. What’s more, he disclosed the plot to both Chief Leonard and Commissioner Nigro.

54. As a result, Commissioner Nigro forced Chief Donoghue to retire.

¹¹ See Intermediate Incident Command System for Expanding Incidents, March 2018, at 8, available at <https://training.fema.gov/emiweb/is/icsresource/assets/ics%20review%20document.pdf>.

55. Although Chief Leonard could have demanded Defendant Kavanagh's termination and filed a complaint against her for violation of FDNY rules, he took the high road.

56. This proved to be a mistake, for which he paid a terrible price.

V. **KAVANAGH'S BROADER CAMPAIGN AGAINST SENIOR OFFICERS**

57. After her first two attempts to defrock Chief Leonard failed, Defendant Kavanagh adopted a more audacious plan: to force the termination or retirement—even through acts of humiliation and disgrace—of FDNY's oldest and most experienced Staff Chiefs and other senior leaders. Seeing older officers and civilians as a threat and loyal to Chief Leonard, she devised an ambitious plan to get rid of them all by any means necessary. To accomplish this plan, she decided to weaponize her contacts with and influence over City Hall. The ensuing plan had three steps, all with ageist aims.

58. **Step One**: The first step in this plan was to find another way to oust Chief Leonard, then-aged 59. To accomplish this, Defendant Kavanagh orchestrated the leak of anonymous allegations to media sources, which resulted in articles accusing Chief Leonard of "mistreatment."

- a. There were no actual complaints filed against Chief Leonard, with the EEO or otherwise, just anonymous sources in a media campaign, orchestrated by Defendant Kavanagh.
- b. Immediately after publication of the articles, on December 6, 2018, Defendant Kavanagh (a) convinced Commissioner Nigro to suspend Chief Leonard pending an investigation (which he did), and (b) arranged, through her City Hall contacts, for the N.Y.C. Law Department (the "Law Department") to "investigate" the claims in the media, rather than the Department of Investigation ("DOI"). This was highly

unusual as DOI is charged with such investigations of alleged wrongdoing, not the Law Department.

- c. **Although the Law Department could not substantiate any of the anonymous allegations against Chief Leonard, it refused to issue a public exoneration. To this day, the unproven allegations reside on his Wikipedia page.**¹²
- d. While the Law Department investigated the unfounded allegations against Chief Leonard, Defendant Kavanagh's plan started to backfire: many others in FDNY began to revolt over his mistreatment and posted about it online. Needing a figurehead to blame for the resulting backlash, Defendant Kavanagh convinced Commissioner Nigro that it was Chief Leonard's doing. Chief Leonard was then threatened with demotion if he did not retire.
- e. Despite these events, Commissioner Nigro told others, words to the effect of "Jimmy is in the right, Laura is in the wrong, but I have to fire Jimmy anyway," intimating that Defendant Kavanagh went over his head to City Hall to procure Chief Leonard's removal.
- f. In short, Defendant Kavanagh succeeded with Step One of the conspiracy—the removal of Chief Leonard.

59. Defendant Augier, elated by Chief Leonard's ouster, later told another, words to the effect of, "Leonard is gone, Nigro is next."

60. **Step Two:** Angered by the difficulty of ousting Chief Leonard, Defendant Kavanagh decided to teach senior officers and civilians—who she viewed as either loyal to Chief

¹² https://en.wikipedia.org/wiki/James_E._Leonard.

Leonard, fixated on rules and regulations, or simply “stuck in their ways”—a lesson: she would rid FDNY of as many as possible, and replace them with younger and more pliable substitutes.

61. Part of Defendant Kavanagh’s pattern and plan was to manufacture grievances against FDNY’s most senior officers and civilian leaders, make their jobs increasingly difficult to perform, and then deride them based on mischaracterizations of their performance or competence, which were belied by their years of experience, accomplishments, and unblemished records. In other words, **“tell a lie until it becomes the truth.”** This overview, as described below, impacted Plaintiffs and other victims.

62. Defendant Kavanagh employed similar methods and means to target Plaintiffs and other seniors, which included:

- a. refusing to meet or confer with Plaintiffs and other targeted seniors (“Other Victims”);
- b. excluding Plaintiffs from meetings necessary for firefighting or administrative operations, or to re-enforce the Chain of Command and Unity of Command;
- c. falsely blaming, as a pretext for adverse action, Plaintiffs and Other Victims for problems not of their making, and sometimes problems of Defendant Kavanagh’s own making;
- d. using various forms of deception and intrigue to prompt Plaintiffs’ and Other Victims’ ouster or retirement;
- e. ordering Plaintiffs and Other Victims off doctor-approved medical leave;
- f. withholding earned and customary benefits related to compensatory and vacation time;
- g. cutting off computer access, and

h. leaking defamatory and untrue information to the press and other third parties.

63. **Step Three:** The final step was to deploy her conspirators, including but not limited to Defendant Augier, to take acts in support of her ageist ends, including targeting each victim of the conspiracy.

64. When Defendant Kavanagh's and her conspirators' actions failed to force all the victims into retirement, her actions became even more harsh, demoting and terminating a number of the oldest and most experienced officers and civilians within FDNY.

65. Although Defendant Kavanagh sought to justify her actions as "picking her own team," this was a lie: she sought to target the oldest people to install younger people, believing they were more likely (given their more limited experienced and younger age) to disregard applicable rules and laws, normal FDNY practices, customary accommodations, and core principles of Chain of Command and Unity of Command.

VI. DEFENDANT KAVANAGH TARGETS PLAINTIFFS AND OTHER VICTIMS

66. Defendants' targeting campaign of seniors included, among others, the following (in alphabetical order):

67. **Chief Richard Blatus:**

- a. Chief Blatus, age 63, has dedicated his entire professional life to protecting the people of New York City, serving as a firefighter for the past 42 years.
- b. Chief Blatus has no history of disciplinary infractions whatsoever.
- c. Chief Blatus has never had an EEO complaint lodged against him. He has never had an EEOC complaint lodged against him.
- d. Chief Blatus is a 9/11 first responder. He arrived at the site after the collapse of the second tower.

- e. As one of FDNY's most experienced Chiefs, Blatus was targeted by Defendant Kavanagh not long after she became Acting Fire Commissioner in February 2022, because she felt threatened by his age and experience.
- f. Chief Blatus' targeting began, as with others, when he expressed two concerns about Defendant Kavanagh's intended actions. Defendant Kavanagh received neither concern well.
 - i. First, Defendant Kavanagh wanted to change FDNY policy that governed a tenure-based system for the transfer of firefighters; she wanted to force this change without consulting their union, which Chief Blatus commented would result in litigation.
 - ii. Second, Chief Blatus and others expressed concerns about Defendant Kavanagh's decision to appoint Defendant Augier to the SCBA Committee (see paragraph 42(b)). This committee is comprised of fire safety experts, operations experts, and R&D experts who are tasked with developing the next generation of SCBA, the most important piece of safety equipment used by firefighters. Defendant Kavanagh nonetheless inserted Defendant Augier onto the committee despite his complete lack of expertise.
- g. By the end of June 2022, Defendant Kavanagh began her retaliation campaign by excluding Chief Blatus from departmental meetings and high-level policy decisions. This was a deviation from customary practice.
- h. Defendant Kavanagh's hostility toward Chief Blatus was painfully obvious in her handling of a fatal boat crash on Friday, June 17, 2022, when a retired captain of FDNY activated FDNY's Marine 1 Bravo and took civilians on a ride without

authorization. A visiting Belgian firefighter on the boat was killed in the resulting crash.

- i. Chief Blatus was the Acting Chief of Operations, and the crash was within his responsibilities. He promptly received reports of the accident and spent hours on phone calls with other Chiefs and commanders to manage the crisis. The normal FDNY practice would be to immediately remove potentially responsible officers from active duty pending further investigations.
 - i. However, Chief Blatus did not receive any calls from Defendant Kavanagh or any information on the deliberative process occurring until the following Monday, when he learned from a senior Chief that Defendant Kavanagh held calls over the weekend and made decisions without any input from Chief Blatus.
 - ii. A senior Chief who participated in those calls later told Chief Blatus that Defendant Kavanagh “did not want [Chief Blatus] on the call.”
 - iii. Defendant Kavanagh also excluded FDNY’s Chief of Safety from the calls and the decision-making process. The Chief of Safety is responsible for any incident of this kind. It is highly unusual for the Chief of Safety to be excluded in this way.
 - iv. The responsible officers involved in the incident were not disciplined until July 2022, after the press published the story and questioned the mismanagement by FDNY.

- j. Less than a month after Defendant Kavanagh's clear mismanagement of the fatal boat crash, she summarily and unilaterally removed Chief Blatus from his position of Acting Chief of Operations.
- k. However, Defendant Kavanagh was not content with merely demoting Chief Blatus, and next sought to remove him from the ranks of FDNY entirely.
- l. On July 28, 2022, Chief Blatus underwent surgery for injuries suffered in the line of duty and took extended medical leave to recuperate and rehabilitate.
- m. On December 12, 2022, while Chief Blatus was still on medical leave, and during an appointment with his doctor in FDNY, the doctor informed Chief Blatus that his medical leave had been terminated and he was being put on "light duty" beginning on January 2, 2023. The "light duty" required Chief Blatus to be at work for 5 days a week, from 8 am until 4 pm.
- n. The doctor told Chief Blatus that the instruction came from her supervisor in FDNY. When Chief Blatus appealed the decision to two higher-level supervisors, each said that "there is nothing we can do."
- o. A senior Chief subsequently told Chief Blatus that Defendant Kavanagh ordered the removal from medical leave, trying to force Chief Blatus to retire so she could replace him with a younger Chief.
- p. Defendant Kavanagh employed the same tactic against Chiefs Richardson and Sudnik, both in their 60s, who were taken off medical leave and placed on light duty within days of Chief Blatus' removal. As with Chief Blatus, Defendant Kavanagh removed them despite their doctors' medical opinions to the contrary.

- q. The retaliation did not stop there. Later that month, in mid-December 2022, Chief Blatus was advised that he would have to surrender his departmental vehicle on January 18, 2023. This was contrary to normal practice, which allows Staff Chiefs to retain a vehicle for a year to facilitate doctor visits while on medical leave or light duty, which, in Chief Blatus' case, would be until July 2023.
- r. When Chief Blatus refused to retire, Defendant Kavanagh's efforts to force him into retirement only became more flagrant.
- s. On January 13, 2023, Defendant Kavanagh directed members of her staff—including Acting First Deputy Commissioner Lizette Christoff and Chief of Staff Luis Martinez (who was in the process of joining Defendant Kavanagh's staff) to meet with the personnel manager of the New York City Police Department ("NYPD").
- i. Defendant Kavanagh called the meeting based on misinformation from Martinez who claimed that NYPD had ways to force its unwanted officers to retire.
 - ii. However, at the meeting, a NYPD representative said words to the effect of "we don't do that—especially with officers injured in the line of duty; we take care of our people." Christoff was visibly upset over the response.
- t. Defendant Kavanagh was not done, however. Her final act of retaliation was refusing to sign Chief Blatus' request to "bank" his unused vacation time for 2022.
- i. Staff Chiefs can "bank" 1,000 hours of unused vacation time and receive buyouts when they retire.

- ii. Out of approximately 18 requests submitted to Defendant Kavanagh to “bank” vacation time in December 2022, she selectively refused to sign requests from Chief Blatus, as well as requests by four other Chiefs whom she was trying to force into retirement.
- iii. A Commissioner refusing to approve “banking” of vacation time is unprecedented in FDNY, and thus another violation of custom and practice.
- iv. Two senior chiefs in FDNY advised Chief Blatus that this decision was part of Defendant Kavanagh’s continued campaign to force his retirement.
- u. Part of the reason behind Defendant Kavanagh’s efforts to force Chief Blatus (and other Chiefs) to retire is to create budget lines that would allow her to promote younger Chiefs.
- v. Chief Blatus ultimately decided to retire. His retirement was placed on a fast track. His retirement is now scheduled for final approval on March 30, 2023.

68. **Chief James Booth:** As noted above (see paragraph 53), Chief Booth, age 59, refused to engage in blatant insubordination by joining Defendant Kavanagh’s coup against Chief of Department Leonard. Shortly thereafter, Defendant Kavanagh orchestrated his demotion, and he then retired from FDNY.

69. **Terryl Brown:** On March 19, 2023, Defendant Kavanagh fired Terryl Brown, age 61, FDNY’s Chief Legal Counsel. She was the highest ranking African American at FDNY at the time. A former partner of the Harris Beach law firm, Brown was fired without notice and without cause. She was replaced by a younger lawyer. Brown’s firing was an act of retaliation, since Brown pushed back in various ways against Defendant Kavanagh’s scheme.

70. **Chief Kevin Brennan:** Defendant Kavanagh twice reassigned Chief Brennan, age 57, 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 or force his retirement.

71. **Deputy Commissioner Edward Dolan:** On or about November 28, 2022, Defendant Kavanagh ordered the termination of Deputy Commissioner Dolan, age 63, blaming him for a problem not of his making and, indeed, arguably of Defendant Kavanagh's making. Specifically, FDNY was attempting to procure a new computer-aided dispatch system, and Dolan knew the system Defendant Kavanagh preferred would not work. When, in 2016, the prototype model failed to work, as Dolan predicted, Defendant Kavanagh blamed him, and took over his responsibilities. After becoming Acting Commissioner in 2022, she transferred him to support services, and subsequently terminated him. Deputy Commissioner Dolan, who worked in the Department of Homeland Security and on President Obama's White House staff, was ultimately allowed to retire in lieu of termination.

72. **Plaintiff Michael Gala:**

- a. Plaintiff Gala is the longest-serving member of the Staff Chiefs. Plaintiff Gala became Chief of Uniformed Personnel in October 2009 under former Commissioner Nicholas Scopetta. Plaintiff Gala continued to serve under the administrations of Commissioner Salvatore Cassano, Commissioner Nigro, and Defendant Kavanagh.
- b. Plaintiff Gala has no history of disciplinary infractions whatsoever.
- c. Plaintiff Gala has no substantiated EEO complaints against him.

- d. After the Vulcan Society's settlement with the City, Plaintiff Gala was instrumental in facilitating the Firefighter's Entrance Exam to be more fair and more job-related when he served as Chief of Personnel. This process lasted from 2010 through 2012. Plaintiff Gala poured himself into this effort, working tirelessly to help facilitate and administer a new exam that successfully screened for the most qualified firefighter candidates regardless of race, ethnicity, nationality, sex, or other non-job-related characteristic. Plaintiff's invaluable contribution to the overhaul process was widely acknowledged, including by Mary Jo White, the court-appointed special master overseeing the process.¹³
- e. Chief Gala responded to the terrorist attack on the World Trade Center on September 11, 2001 and participated in recovery efforts in the aftermath of the attack.
- f. Between 2014 and 2018, Plaintiff Gala worked cordially with Defendant Kavanagh, when she was in positions in external affairs and intergovernmental affairs. Things changed around the time Defendant Kavanagh became First Deputy Commissioner on January 31, 2018.
- g. On January 9, 2018, Plaintiff Gala was summoned to a meeting by then-Commissioner Nigro. In the presence of three others, Commissioner Nigro accused Plaintiff Gala of spreading a rumor that Defendant Augier was having an extramarital affair with Defendant Kavanagh. This accusation against Plaintiff Gala was completely untrue: he had no reason to believe they had an affair, had

¹³ See, e.g., *U.S. v. City of New York*, No. 07 CV 2067 (E.D.N.Y. filed May 21, 2007), ECF No. 691 at 7 ("The Special Master thanks the parties, experts, Amici, and Chief Gala of the FDNY for their past and continued assistance and cooperation.").

never before heard it, and had never made any such suggestion to another. Defendant Kavanagh contrived this story.

- h. When this ploy failed, Defendant Kavanagh used a pretext to convince then-Commissioner Nigro to deny Plaintiff Gala a promotion to 3-star Chief, for which he was qualified. Beginning on September 15, 2018, Plaintiff Gala was twice passed over for a promotion to Assistant Chief (third star), once in favor for people with less seniority, and once without anyone being promoted. Both decisions were unusual.
- i. Defendant Kavanagh persisted. On September 26, 2019, Plaintiff Gala was passed over for a promotion to Assistant Chief for a third time, despite that fact that four vacancies existed. This occurred despite the request of Gala's direct supervisor, Chief of Operations Richardson, that Gala be promoted. Only one member was promoted to Assistant Chief, which is highly unusual.
- j. Two days later, on September 28, 2019, Plaintiff Gala spoke to then-Commissioner Nigro, who assured Gala that he had done nothing wrong and that he was Commissioner Nigro's hardest worker. Commissioner Nigro assured Gala that he would receive the third star.
- k. Between November 2019 and April 2020, FDNY held several promotion ceremonies with no Assistant Chief promotions despite vacancies, which again was unusual.
- l. Plaintiff Gala subsequently learned that the decision to deny his promotion was retaliation for protected First Amendment speech he had uttered years before. When Defendant Kavanagh used this as a pretext to advocate for the denial of his

promotion, Plaintiff Gala brought suit. On the eve of depositions in the case, including those of Commissioner Nigro and Defendant Kavanagh, the City agreed to settle the case.

- m. On June 17, 2021, Plaintiff Gala and the City entered into a settlement agreement under which the City agreed to promote Plaintiff Gala to Assistant Chief, effective retroactively to May 23, 2020.
- n. On October 27, 2022, Defendant Kavanagh was appointed and sworn in as Fire Commissioner.
- o. In the Fall of 2022, shortly after being sworn in as Fire Commissioner, Defendant Kavanagh approached Terryl Brown, then FDNY's Chief Legal Counsel and Deputy Commissioner for Legal Affairs, and inquired about the terms of Plaintiff Gala's settlement agreement with the City.
- p. On November 28, 2022, Plaintiff 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 FDNY's outfitting department, providing firefighters with uniforms. It is run by a civilian outside vendor and staffed by only FDNY civilian employees. Further, the Quartermaster is located in Fort Totten in Northeastern Queens, far away from FDNY Headquarters in the MetroTech Center in Brooklyn, where Plaintiff Gala had previously worked.
- q. By making him "*Chief* Quartermaster," overseeing no uniformed personnel and with no real role in managing the FDNY store, Defendant Kavanagh was quite openly trying to humiliate Plaintiff Gala and compel him to retire. In fact, during the meeting in which Kavanagh's deputy, Lizette Christoff, informed Plaintiff Gala

of his reassignment, as soon as Plaintiff Gala left the room, Christoff said words to the effect of: “He is going to retire.”

- r. In other words, this was an unambiguous, and admitted, attempt at constructive discharge.
- s. The adverse actions continued unabated, despite Plaintiff Gala’s dogged performance even in his new, reduced role. On December 3, 2022, Plaintiff Gala was informed that his remote access to FDNY’s computer systems was removed. Plaintiff Gala had remote access since November 2009 when he became Chief of Personnel. Defendant Augier was responsible for orchestrating this adverse act.
- t. On February 3, 2023, Plaintiff Gala was instructed to meet with Defendant Kavanagh’s Chief of Staff, Luis Martinez. During that meeting, Martinez thanked Plaintiff Gala for his service and informed him that effective March 4, his rank would revert to Deputy Chief—two ranks below his current rank.
- u. Plaintiff Gala asked Martinez to send him an email documenting the substance of this conversation and the reasons for his demotion. Gala never received the email he requested.
- v. Thus, among many other acts, Defendant Kavanagh violated the terms of a federal settlement agreement.
- w. On the night of February 3, 2023, Chief of Operations John Esposito texted the Staff Chiefs to inform them that effective immediately, Plaintiff Gala, along with Plaintiff Jardin and Chief Fred Schaaf, were taken off the Citywide Command Schedule.

- x. On March 4, 2023, Chief Esposito informed Plaintiff Gala that, although Esposito asked for Plaintiff Gala's reassignment to Division 15 as he requested, and as Esposito had approved (as he was the customary decision-maker on Deputy Chief reassignments within Operations), Defendant Kavanagh refused to honor the request. This was another violation of custom and practice, and an act of retaliation.
- y. On March 13, 2023, Plaintiff Gala received a text message from Battalion Chief Steve Mickiewicz, Chief Esposito's executive officer, stating that "we have been instructed to pick up your Dept vehicle, when and where would it be convenient for you?" Plaintiff Gala replied that the car was in front of his house.
- z. An hour later, Timothy Ramos, Director of Fleet Services, showed up with another individual to collect Plaintiff Gala's car. Staff Chiefs are provided Department vehicles because they are expected to be available and quickly mobilize to, among other things, respond to the scene of major fires and accidents and go to the hospital or morgue in the case of a firefighter's injury or death.

73. **Arlene Hoffman:** In or about December 2018, Defendant Kavanagh passed Director of Bureau of Operations Arlene Hoffman, who was approximately age 62 at the time, over for a promotion, for which she was qualified, in favor of a less experienced, younger, male candidate, Defendant Augier. Defendant Kavanagh then forced Director Hoffman to resign. After Director Hoffman threatened to sue, FDNY settled the matter out of court.

74. **Plaintiff Joseph Jardin:**

- a. Plaintiff Jardin has no history of disciplinary infractions whatsoever.
- b. Plaintiff Jardin has no substantiated EEO complaints against him.

- c. Plaintiff Jardin is a 9/11 first responder. He arrived at the site after the collapse of the second Tower.
- d. Between 2014 and 2018, Plaintiff Jardin did not work with Defendant Kavanagh. His only meaningful interaction occurred on a single day during which Plaintiff Jardin, working in the Rescue Battalion, gave her a tour of Rescue Operations firehouses. There were no adverse interactions on that date.
- e. Plaintiff Jardin's relationship with Defendant Kavanagh began to deteriorate after he was promoted to Deputy Chief on June 1, 2017. Plaintiff Jardin thereafter made a number of suggestions to Defendant Kavanagh and her staff for improvements to safety or efficiency. Defendant Kavanagh was displeased with his suggestions, and began her now-common pattern of targeting.
- f. First, Defendant Kavanagh interfered with Plaintiff Jardin's execution of his professional responsibilities, to the detriment of others. In the fall of 2017, Defendant Kavanagh quashed Plaintiff Jardin's plan—approved by Commissioner Nigro—to add an additional "Rehabilitation and Care" vehicle to treat firefighters for exposure at the scene of a fire. Assistant Fire Commissioner of the Fleet Services Bureau Mark Aronberg even offered Jardin a suitable vehicle, but then rescinded the offer, telling Jardin that Defendant Kavanagh, through intermediaries, had interceded.
- g. On April 11, 2019, Commissioner Nigro re-designated Plaintiff Jardin as Chief of Fire Prevention to lead the Bureau of Fire Prevention ("BFP"), where he oversaw the BFP's review of fire-safety plans for new buildings and subsequent inspections. Defendant Kavanagh's targeting continued. She refused to act on his staffing

requests, which had caused long delays in FDNY review of safety plans for newly constructed buildings, and then blamed him for the delays. Defendant Kavanagh reassigned other resources to Defendant Augier.

- h. On February 3, 2023, Plaintiff Jardin was instructed to meet with Chief of Staff Martinez. During that meeting, Martinez thanked Plaintiff Jardin for his service and informed him that effective March 4, his rank would revert to Deputy Chief—two ranks below his current rank. On March 4, 2023, Chief Esposito informed Plaintiff Jardin that, although Esposito asked for Plaintiff Jardin’s reassignment to Division 13, as he requested, and as Esposito had approved (as he was the customary decision-maker on Deputy Chief reassignments within Operations), Defendant Kavanagh refused to honor the request. This was another violation of custom and practice and an act of retaliation.

75. **Chief Frank Leeb:** In November 2022, Defendant Kavanagh reassigned Chief Leeb, age 53, from his position as acting Chief of Training to Chief of Safety.¹⁴ As a result, instead of being in line for a promotion to a three- or four-star chief as Chief of Training, he was passed over. 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 Defendant Kavanagh could reassign and retaliate against Chief Michael Meyers, who was very vocal about the SCBA project, and Defendant Kavanagh needed someone to take his job. Accordingly, this was an attempt to constructively discharge Chief Leeb.

¹⁴ Chief 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 FDNY firefighters receive, affecting not only the firefighters’ readiness, but also the quality of the work they conduct while out in the field.

76. **Chief James Leonard:** Defendants' conduct against Chief Leonard, age 63, is described above in Sections IV and V.

77. **Jose Maldonado:** In 2016, Mr. Maldonado, age 68, was asked to leave FDNY after serving as Counsel to the Commissioner, all because he complained that FDNY was not promoting enough Hispanic and Asian personnel. Defendant Kavanagh was responsible for his termination.

78. **Plaintiff Michael Massucci:**

- a. Plaintiff Massucci has no history of disciplinary infractions whatsoever.
- b. Plaintiff Massucci has never had an EEO complaint lodged against him. Plaintiff Massucci has never had an EEOC complaint lodged against him.
- c. Plaintiff Massucci is a 9/11 first responder. He arrived at the site shortly after the collapse of the second tower.
- d. Plaintiff Massucci had no contact with Defendant Kavanagh until she became the Acting Fire Commissioner on February 16, 2022.
- e. In the period between February 16, 2022 and June 2022, Plaintiff Massucci had no adverse interaction with Defendant Kavanagh. That would change when Plaintiff Massucci opposed Defendant Kavanagh's actions that were contrary to FDNY policy.
- f. Plaintiff Massucci's first negative interaction with Defendant Kavanagh came in June 2022. He was responsible for the Bureau of Personnel, which handled personnel transfers.
- g. On or about June 13, 2022, Plaintiff Massucci received a request to transfer an officer from the 3rd Division in Manhattan, which had low staffing and had

historical retention problems. Plaintiff Massucci contacted the commanding officer of the 3rd Division, who objected to the transfer on grounds of safety, and Plaintiff Massucci did not approve the transfer.

- h. On or about June 16, 2022, another officer, who was not Plaintiff Massucci's superior officer, came to Plaintiff Massucci's office and demanded the transfer. The officer said that then-Acting Commissioner—Defendant Kavanagh—wanted it done. Thereafter, the transfer was effectuated.
- i. Plaintiff Massucci had no further interaction with Defendant Kavanagh until July 1, 2022, when he greeted her at a ceremony at Randall's Island. Defendant Kavanagh did not respond, rolled her eyes at Plaintiff Massucci, and walked away. Another officer who was standing next to Plaintiff Massucci witnessed this interaction and expressed surprise to Plaintiff Massucci at how Defendant Kavanagh had treated him.
- j. On September 2, 2022, Plaintiff Massucci had a scheduled day off, but had to attend a promotion ceremony. After the ceremony, he went fishing. When he returned, he realized he had missed a request on behalf of Defendant Kavanagh for a spreadsheet of newly promoted officer assignments, although he checked in and was told the request was moot.
- k. On September 6, 2022, Plaintiff Massucci was called to a meeting with Defendant Kavanagh. The meeting was attended by Defendant Kavanagh and two of her staff. Defendant Kavanagh was visibly upset about never having received the spreadsheet. When Plaintiff Massucci attempted to explain the circumstances, she accused him of both insubordination and lying. At bottom, Defendant Kavanagh

was upset that Plaintiff Massucci had placed an officer in the 15th Division, which is in Southeast Brooklyn, instead of the officer's requested location in Southwest Queens (the 13th Division). This was particularly odd, as four days earlier, Defendant Kavanagh had countermanded Plaintiff Massucci's placement of the officer in the 15th Division and placed him in the 13th Division anyway.

1. On October 24, 2022, Plaintiff Massucci took medical leave because of a health problem. The conduct of Defendants Kavanagh and Augier then became particularly wanton. Plaintiff Massucci was excluded from a series of meetings between Defendant Kavanagh and Plaintiff Massucci's executive officer regarding the Bureau of Personnel's operations, despite the fact that Plaintiff Massucci was still running the day-to-day of the Bureau while on medical leave.
- m. On November 17, 2022, Plaintiff Massucci was cleared for full-time duty beginning November 21, 2022. That same day, he went to FDNY Headquarters, planning to attend two important meetings. Plaintiff Massucci encountered Captain Brendan Deehan, who expressed surprise that Plaintiff Massucci was back at work. Plaintiff Massucci explained that he had been medically cleared.
- n. Minutes later, Plaintiff Massucci received an email from Defendant Kavanagh's executive officer, asking about Plaintiff Massucci's medical status. Plaintiff Massucci responded that he had been cleared for full-time duty.
- o. On Monday morning, November 21st, Plaintiff Massucci was summoned to Defendant Kavanagh's office. He appeared as requested.
- p. Defendant Kavanagh advised Plaintiff Massucci that he was relieved of his duties as Chief of Personnel. She further advised that Plaintiff Massucci's executive

officer—who was almost 10 years younger and had no experience with personnel management—would take over Plaintiff Massucci’s position.

- q. Defendant Kavanagh stated that Plaintiff Massucci would be reassigned to the Bureau of Operations. No reason was given for this action. Defendant Kavanagh advised him, “clean out your office.”
- r. The next day, Plaintiff Massucci’s superior officer advised him that Defendant Kavanagh took the action of relieving Plaintiff Massucci of his responsibilities as Chief of Personnel without consulting him.
- s. Plaintiff Massucci then received a notification to attend a meeting with the Chief of Department on November 28, 2022, concerning the apparent reassignment of him to the Bureau of Operations. Plaintiff Massucci appeared as instructed. The Chief of Department and Chief of Operations were in attendance, as well as Acting First Deputy Commissioner Christoff, which was unusual. Christoff informed Plaintiff Massucci of his reassignment to the Tech Services Toolroom located in Long Island City with no responsibilities, subordinates, or direct reports.
- t. Defendant Kavanagh hoped that Plaintiff Massucci’s demotion would render his position meaningless and untenable, thus forcing him to retire. Plaintiff Massucci, however, refused to do so. Because he also had to endure the consequences of Defendant Kavanagh’s unsafe decision making, Plaintiff Massucci was constructively discharged.
- u. On December 1, 2022, Defendant Augier directed that Plaintiff Massucci’s computer access be cut off. As a result, he could not access email through his desktop computer, nor could he access any documents or information from FDNY’s

computer system. At this time, Plaintiff Massucci still had citywide incident command responsibilities, such as responding to serious fires.

- v. That same day, Plaintiff Massucci spoke with Technical Support at FDNY Headquarters, and learned that his desktop login, remote login, and access to each FDNY application had been cut off. Two technicians and a supervisor were required to restore his access, and all three said they had “never seen” such an occurrence before.
- w. Defendant Augier later told others that he had “shut [Plaintiff Massucci] down.”
- x. On February 10, 2023, Chief Massucci sent an email to Defendant Kavanagh and others noting his long meritorious service with FDNY. His email concluded, “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 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. . . . I can no longer function as a Deputy Assistant Chief under your administration. I respectfully request that I be returned to a field assignment in my Civil Service rank of Deputy Chief.” Chief Massucci’s request was denied.

79. **Chief Fred Schaaf:** On November 21, 2022, Defendant Kavanagh unceremoniously removed Chief Schaaf, age 60, from his position as Queens Borough Commander. He was given no clear role or responsibilities. This was an attempt to constructively discharge Chief Schaaf or force his retirement. Because Chief Schaaf was a plaintiff in a prior lawsuit challenging his demotion, Defendant Kavanagh further retaliated against him by deviating

from normal practice, rejecting his request for transfer to the 14th Division (which had been approved by the Chief of Operations), and instead placing him in the 11th Division.

80. **Chief Thomas Richardson:** In December 2022, Defendant Kavanagh forced Chief Richardson, age 63, off medical leave (contrary to his doctor’s medical advice). Defendant Kavanagh also refused to approve his request to bank his 2022 vacation time, all in an effort to force him to retire.

VII. DEFENDANTS’ CONSPIRACY MAKES FDNY AND THE PUBLIC LESS SAFE

81. 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.¹⁵ They serve an indispensable role in keeping city residents and other firefighters safe.

82. Despite the crucial role the Staff Chiefs play as Incident Commanders for serious fires, Defendant Kavanagh and her conspirators put the health and safety of both the public and firefighters at risk by gutting the ranks of the Staff Chiefs.

83. Defendant Kavanagh demoted (actually and constructively) eleven of her most senior Incident Commanders without cause and with no explanation. Of these eleven, three were actual demotions and eight were constructive: these Staff Chiefs requested demotion and reassignment because, based on Defendant Kavanagh’s reckless actions, they believed in good faith that she was making FDNY less safe and interfering with their ability to do their jobs.¹⁶

¹⁵ FDNY Regulations, Chapter 5.

¹⁶ 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*, No. 02 CV 4195, 2006 WL 132073, at *5 (E.D.N.Y. Jan. 17, 2006). In

84. In recognition of the capricious nature of Defendant Kavanagh's actions, City Hall had to step in, telling the eight Incident Commanders that City Hall would not permit the demotion requests to proceed. This is another violation of customary practice. Indeed, FDNY routinely accepts and implements demotion requests. City Hall's actions fundamentally recognize that Defendant Kavanagh's actions made FDNY unsafe.

85. When Chiefs Richardson, Blatus, and McSweeney retire on March 30, 2023, FDNY will be below the minimum number of required Incident Commanders. Indeed, Defendant Kavanagh has thus far been unable to replace the demoted and retiring Staff Chiefs with qualified candidates, who have seen the war she waged on distinguished fellow officers and fear the same fate.

86. Indeed, this is precisely what Defendant Kavanagh did to former Chief of Department John Sudnik. Defendant Kavanagh advocated for his promotion to replace Chief Leonard and, later, took away his medical leave as a way of forcing his retirement, just as she had with other senior chiefs.

87. In other words, promotion is no guarantee Defendant Kavanagh will not later target someone who is both senior and also has any diverging opinions based on his or her professional experience.

his paperwork requesting demotion, Chief Esposito wrote 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." Plaintiff Massucci's request for demotion expressed similar sentiments. *See supra* ¶ 77(x).

VIII. IN RESPONSE TO PUBLIC BACKLASH, THE DEFENDANTS LAUNCH SMEAR CAMPAIGN

88. Facing negative media attention from the culmination of her scheme, Defendant Kavanagh, directly and indirectly, made defamatory, false, and malicious, comments to the media and other third parties about Plaintiffs. Defendant Augier, Kavanagh's senior staff, and the aforementioned former Deputy Commissioner (see paragraph 9) all participated in this smear campaign.

89. Numerous examples attest to this campaign. Each of these smears is provably false. Examples include:

- a. Claiming that "there are too many Jimmy Leonards" among the Staff Chiefs, seeking to channel Defendants' earlier defamation against Chief Leonard as a bully and misogynist.
- b. Describing Plaintiffs as "bad apples."
- c. Falsely claiming EEO/EEOC allegations had either been made or substantiated against Plaintiffs.
- d. Falsely describing Plaintiffs as insubordinate.
- e. Falsely claiming Plaintiffs are a "divisive element in the department."
- f. Falsely claiming that Plaintiffs mistreat and undermine colleagues.
- g. Falsely claiming Plaintiffs "wreaked havoc" on FDNY.
- h. Falsely claiming Plaintiffs pass up non-white and female employees for promotions.

90. Defendant Kavanagh either made or authorized each of these acts of slander against Plaintiffs.

CONCLUSION

91. Based on the above, Defendant Kavanagh, Defendant Augier, and their other conspirators have deployed, and continue to execute on, a cynical and hypocritical scheme based on age discrimination.

92. They have targeted, harassed, harmed, and retaliated against the oldest and most senior—and some of the most talented and experienced—officers and civilians at FDNY.

93. And, to make it worse, their whisper campaign—which some media reporters have blindly accepted—accuses Plaintiffs and others of bullying and discrimination, when it is Defendants who are brutally using those tactics.

94. The scheme has been a long and highly damaging act of misdirection. Plaintiffs seek the relief below, including reinstatement, to bring this scheme to an end.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Age Discrimination in Violation of New York State Human Rights Law § 296 (Against All Defendants)

95. Plaintiffs repeat and reallege each and every allegation made in the above paragraphs of this complaint as if fully set forth herein.

96. After Plaintiffs took action to protect themselves from Defendants' discriminatory treatment, Defendants subjected them to a pattern of discrimination due to the fact that they were at, above, or close to the age of 60, which led to adverse employment actions in violation of NYSHRL § 296.

97. The conduct of Defendants constituted an unlawful discriminatory practice. Plaintiffs were subjected to inferior terms, conditions, or privileges of their employment due to their membership in a protected class, including but not limited to Defendants: (a) withholding or

threatening to withhold benefits from them; (b) undermining their efforts to meet their responsibilities; (c) excluding them from meetings; (d) improperly cutting off their computer access; (e) leaking false information about them to the press; (f) subjecting them to humiliating reassignments; (g) demoting them; and (h) further disparaging them both in the press and during internal FDNY meetings, resulting in emotional distress. Defendants' conduct constituted a serious and pervasive, but at the least, unlawful discriminatory practice that significantly harmed Plaintiffs in the terms, conditions, or privileges of their employment.

98. Defendants are liable as "employers" under the NYSHRL.

99. To the extent Defendants are not "employers" under the NYSHRL, they are liable as aiders and abettors of age discrimination against Plaintiffs.

100. As a direct and proximate cause of the foregoing acts, Plaintiffs have suffered and continue to suffer economic, reputational, and emotional harm for which they are entitled to damages.

101. The individual Defendants' unlawful and discriminatory actions against Plaintiffs due to their ages were willful and malicious and in violation of the New York State Human Rights Law and, therefore, Plaintiffs are entitled to an award of punitive damages.

SECOND CAUSE OF ACTION

Hostile Work Environment in Violation of New York State Human Rights Law § 296 (Against all Defendants)

102. Plaintiffs repeat and reallege each and every allegation made in the above paragraphs of this complaint as if fully set forth herein.

103. After Plaintiffs took actions to protect themselves from Defendants' discriminatory treatment, Defendants subjected Plaintiffs to a pattern of discrimination due to the fact that they

were at, above, or close to the age of 60, which led to adverse employment actions in violation of NYSHRL § 296.

104. The conduct of Defendants constituted an unlawful discriminatory practice. Plaintiffs were subjected to inferior terms, conditions, or privileges of their employment due to their membership in a protected class, including but not limited to Defendants: (a) withholding or threatening to withhold benefits from them; (b) undermining their efforts to meet their responsibilities; (c) excluding them from meetings; (d) improperly cutting off their computer access; (e) leaking false information about them to the press; (f) subjecting them to humiliating reassignments; (g) demoting them; and (h) further disparaging them both in the press and during internal FDNY meetings, resulting in emotional distress. Defendants' conduct constituted a serious and pervasive, but at the least, unlawful discriminatory practice that significantly harmed Plaintiffs in the terms, conditions, or privileges of their employment.

105. Defendants FDNY and Kavanagh are liable as "employers" under the NYSHRL.

106. To the extent Defendants FDNY and Kavanagh are not "employers" under the NYSHRL, they are liable as aiders and abettors of the creation of a hostile work environment against Plaintiffs.

107. As a direct and proximate cause of the foregoing acts, Plaintiffs have suffered and continue to suffer economic, reputational, and emotional harm for which they are entitled to damages.

108. The individual Defendants' unlawful and discriminatory actions against Plaintiffs due to their ages were willful and malicious and in violation of the New York State Human Rights Law and, therefore, Plaintiffs are entitled to an award of punitive damages.

THIRD CAUSE OF ACTION

Retaliation in Violation of New York State Human Rights Law § 296 (Against all Defendants)

109. Plaintiffs repeat and reallege each and every allegation made in the above paragraphs of this complaint as if fully set forth herein.

110. Plaintiffs engaged in protected activity by objecting to the Defendants' discriminatory actions which they considered to be contrary to legal requirements, FDNY policies, collective-bargaining agreements, safety, and experience.

111. Defendants were made aware of the actions Plaintiffs took to protect themselves from Defendants' discriminatory treatment.

112. Following the actions Plaintiffs took to protect themselves, Defendants subjected Plaintiffs to a pattern of retaliatory actions due to Plaintiffs' opposition to unlawful employment practices in violation of the NYSRHL.

113. The conduct of Defendants constituted an unlawful discriminatory practice. Plaintiffs were subjected to inferior terms, conditions, or privileges of their employment due to their membership in a protected class, including but not limited to Defendants: (a) withholding or threatening to withhold benefits from them; (b) undermining their efforts to meet their responsibilities; (c) excluding them from meetings; (d) improperly cutting off their computer access; (e) leaking false information about them to the press; (f) subjecting them to humiliating reassignments; (g) demoting them; and (h) further disparaging them both in the press and during internal FDNY meetings, resulting in emotional distress. Defendants' conduct constituted a serious and pervasive, but at the least, unlawful discriminatory practice that significantly harmed Plaintiffs in the terms, conditions, or privileges of their employment.

114. The adverse employment actions that Plaintiffs suffered follow a pattern of retaliation by Defendants. Each time that Plaintiffs have engaged in protected activity, Defendants have immediately attempted to silence them.

115. Defendants are liable as “employers” under the NYSHRL.

116. To the extent Defendants are not “employers” under the NYSHRL, they are liable as aiders and abettors of the retaliation against Plaintiffs.

117. As a direct and proximate cause of the foregoing acts, Plaintiffs have suffered and continue to suffer economic, reputational, and emotional harm for which they are entitled to damages.

118. The individual Defendants’ unlawful and discriminatory actions against Plaintiffs due to their ages were willful and malicious and in violation of the New York State Human Rights Law and, therefore, Plaintiffs are entitled to an award of punitive damages.

FOURTH CAUSE OF ACTION

Age Discrimination in Violation of New York City Human Rights Law § 8-107 (Against all Defendants)

119. Plaintiffs repeat and reallege each and every allegation made in the above paragraphs of this complaint as if fully set forth herein.

120. Following the actions Plaintiffs took to protect themselves from Defendants’ discriminatory treatment, Defendants subjected Plaintiffs to a pattern of discrimination due to the fact that they were at, above, or close to the age of 60, which led to adverse employment actions in violation of NYCHRL § 8-107.

121. The conduct of Defendants constituted an unlawful discriminatory practice. Plaintiffs were subjected to inferior terms, conditions, or privileges of their employment due to their membership in a protected class, including but not limited to Defendants: (a) withholding or

threatening to withhold benefits from them; (b) undermining their efforts to meet their responsibilities; (c) excluding them from meetings; (d) improperly cutting off their computer access; (e) leaking false information about them to the press; (f) subjecting them to humiliating reassignments; (g) demoting them; and (h) further disparaging them both in the press and during internal FDNY meetings, resulting in emotional distress. Defendants' conduct constituted a serious and pervasive, but at the least, unlawful discriminatory practice that significantly harmed Plaintiffs in the terms, conditions, or privileges of their employment.

122. Defendants are liable as "employers" under the NYCHRL.

123. To the extent Defendants are not "employers" under the NYCHRL, they are liable as aiders and abettors of age discrimination against Plaintiffs.

124. As a direct and proximate cause of the foregoing acts, Plaintiffs have suffered and continue to suffer economic, reputational, and emotional harm for which they are entitled to damages.

125. The individual Defendants' unlawful and discriminatory actions against Plaintiffs due to their ages were willful and malicious and in violation of the New York City Human Rights Law and, therefore, Plaintiffs are entitled to an award of punitive damages.

FIFTH CAUSE OF ACTION

Hostile Work Environment in Violation of New York City Human Rights Law § 8-107 (Against all Defendants)

126. Plaintiffs repeat and reallege each and every allegation made in the above paragraphs of this complaint as if fully set forth herein.

127. Following the actions Plaintiffs took to protect themselves from Defendants' discriminatory treatment, Defendants subjected Plaintiffs to a pattern of discrimination due to the

fact that they were at, above, or close to the age of 60, which led to adverse employment actions in violation of NYCHRL § 8-107.

128. The conduct of Defendants constituted an unlawful discriminatory practice. Plaintiffs were subjected to inferior terms, conditions, or privileges of their employment due to their membership in a protected class, including but not limited to Defendants: (a) withholding or threatening to withhold benefits from them; (b) undermining their efforts to meet their responsibilities; (c) excluding them from meetings; (d) improperly cutting off their computer access; (e) leaking false information about them to the press; (f) subjecting them to humiliating reassignments; (g) demoting them; and (h) further disparaging them both in the press and during internal FDNY meetings, resulting in emotional distress. Particularly in light of the historical pattern of discrimination, as alleged above, Defendants' conduct constituted a serious and pervasive, but at the least, unlawful discriminatory practice that significantly harmed Plaintiffs in the terms, conditions, or privileges of their employment.

129. Defendants are liable as "employers" under the NYCHRL.

130. To the extent Defendants are not "employers" under the NYCHRL, they are liable as aiders and abettors of the creation of a hostile work environment against Plaintiffs.

131. As a direct and proximate cause of the foregoing acts, Plaintiffs have suffered and continue to suffer economic, reputational, and emotional harm for which they are entitled to damages.

132. The individual Defendants' unlawful and discriminatory actions against Plaintiffs due to their ages were willful and malicious and in violation of the New York City Human Rights Law and, therefore, Plaintiffs are entitled to an award of punitive damages.

SIXTH CAUSE OF ACTION

Retaliation in Violation of New York City Human Rights Law § 8-107 (Against all Defendants)

133. Plaintiffs repeat and reallege each and every allegation made in the above paragraphs of this complaint as if fully set forth herein.

134. Plaintiffs engaged in protected activity by objecting to the Defendants' discriminatory actions which they considered to be contrary to legal requirements, FDNY policies, collective-bargaining agreements, safety, and experience.

135. Defendants were made aware of the actions Plaintiffs took to protect themselves from Defendants' discriminatory treatment.

136. Following the actions Plaintiffs took to protect themselves, Defendants subjected Plaintiffs to a pattern of retaliatory actions due to Plaintiffs' opposition to unlawful employment practices in violation of the NYCRRHL.

137. The conduct of Defendants constituted an unlawful discriminatory practice. Plaintiffs were subjected to inferior terms, conditions, or privileges of their employment due to their membership in a protected class, including but not limited to Defendants: (a) withholding or threatening to withhold benefits from them; (b) undermining their efforts to meet their responsibilities; (c) excluding them from meetings; (d) improperly cutting off their computer access; (e) leaking false information about them to the press; (f) subjecting them to humiliating reassignments; (g) demoting them; and (h) further disparaging them both in the press and during internal FDNY meetings, resulting in emotional distress. Particularly in light of the historical pattern of discrimination, as alleged above, Defendants' conduct constituted a serious and pervasive, but at the least, unlawful discriminatory practice that significantly harmed Plaintiffs in the terms, conditions, or privileges of their employment.

138. The adverse employment actions that Plaintiffs suffered follow a pattern of retaliation by Defendants. Each time that Plaintiffs have engaged in protected activity, Defendants have immediately attempted to silence them.

139. Defendants are liable as “employers” under the NYCHRL.

140. To the extent Defendants are not “employers” under the NYCHRL, they are liable as aiders and abettors of retaliation against Plaintiffs.

141. As a direct and proximate cause of the foregoing acts, Plaintiffs have suffered and continue to suffer economic, reputational, and emotional harm for which they are entitled to damages.

142. The individual Defendants’ unlawful and discriminatory actions against Plaintiffs due to their ages were willful and malicious and in violation of the New York City Human Rights Law and, therefore, Plaintiffs are entitled to an award of punitive damages.

RELIEF REQUESTED

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

- (a) Restoring Plaintiffs to their duly earned titles and positions;
- (b) an award of compensatory damages, including for lost salary and benefits, reputational injury, emotional distress, and pain and suffering, as well as punitive damages, in an amount to be determined at trial;
- (c) an award of such interest as is allowed by law;
- (d) an award of reasonable attorneys’ fees and costs; and
- (e) such other relief as the Court deems appropriate.

JURY DEMAND

Plaintiffs demand a trial by jury in this action.

Dated: March 23, 2023
New York, New York

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