

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

JAMES BOOTH,
MICHAEL GALA,
JOSEPH JARDIN,
FRANK LEEB,
MICHAEL MASSUCCI,
CARLA MURPHY, and
FRED SCHAAF,

Plaintiffs,

-against-

THE CITY OF NEW YORK, PHILIP BANKS III,
as Deputy Mayor for Public Safety and in his
individual capacity, LAURA KAVANAGH, as
Commissioner of the New York City Fire
Department and in her individual capacity, JOSEPH
PFEIFER, as First Deputy Commissioner and in his
individual capacity, LUIS MARTINEZ, as Chief of
Staff and in his individual capacity, and JONPAUL
AUGIER, as Deputy Commissioner of FDNY
Infrastructure & Innovation and in his individual
capacity,

Defendants.

Index No. 509034/2023

Hon. Patria Frias-Colón

**SECOND AMENDED
COMPLAINT**

DEMAND FOR JURY TRIAL

“The narrative being told by the Commissioner—that the Staff Chiefs are bucking her leadership because of her gender—is a lie. Commissioner Kavanagh’s administration is hurting all of us with ageist harassment and retaliation, and making terrible decisions that negatively impact safety and readiness.”

- Plaintiff Carla Murphy

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 the 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 further public disparagement.

4. Although six Plaintiffs are white males, Defendants' campaign affected many women and people of color, including Plaintiff Murphy, as well as the highest-ranking Black woman in the Fire Department, who Defendant Kavanagh unceremoniously fired without cause on or about March 1, 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 FDNY because of her role in the 2017 open competitive entrance exam, but, as of December 2021, that test resulted in the hiring of significantly fewer Black candidates 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,¹ who:
- i. lacked any meaningful experience;
 - ii. was much younger;
 - iii. had been disciplined for “conduct reflecting discredit on the Department”;
 - iv. had a substantiated Equal Employment Opportunity claim against him while he had been serving Defendant Kavanagh in another role;
 - v. had, while at Engine 35/Ladder 14 in East Harlem, allegedly harassed two Black firefighters, including by hanging a noose in the firehouse, which allegations had been relayed to Defendant Kavanagh by a senior officer;²
 - vi. had allegedly referred to community residents at that firehouse as “animals,” which the officer also relayed to Defendant Kavanagh;

¹ Susan Edelman, “Troubled FDNY lieutenant was once handed unlisted \$219K job,” N.Y. Post, Jan. 5, 2019, available at <https://nypost.com/2019/01/05/troubled-fdny-lieutenant-was-once-handed-unlisted-219k-job/>.

² Defendant Kavanagh replied to the reporting officer: “he’s not like that anymore.”

- vii. said, on September 10, 2018, after a suspicious package was sent to Chief James Leonard,³ words to the effect of “We could only hope it is a real bomb and it goes off”; and
 - viii. is a white male.
 - d. To place Defendant Augier in this new, lofty position, Defendant Kavanagh 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 victims for misconduct, bias, or bullying on their part.
- a. Defendants have used this ploy with respect to several of the Plaintiffs who have no disciplinary record or substantiated EEO claims against them.
 - b. Each Plaintiff served with distinction during and/or in the aftermath of the 9/11 terrorist attack in New York City.
 - c. The use of slander against these heroes shows the wanton depravity of Defendants’ scheme.
 - d. 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 own

³ Julianne Cuba, “FDNY: Suspicious package delivered to HQ day before 9-11 is safe,” Brooklyn Paper, Sept. 10, 2018, available at <https://www.brooklynpaper.com/fdny-suspicious-package-delivered-to-hq-day-before-9-11-is-safe/>.

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, as described in detail below. The conspirators included Defendants Joseph Pfeifer (FDNY's First Deputy Commissioner), Luis Martinez (Defendant Kavanagh's Chief of Staff), and JonPaul Augier (Deputy Commissioner of FDNY Infrastructure & Innovation).

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.

12. This Amended Complaint is organized as follows:

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PARTIES

13. **Plaintiff James Booth**, age 59, served the Bureau of Emergency Medical Services (“EMS”) and the New York City Fire Department (“FDNY” or the “Department”) for a total of 36 years. He started his public service in the Health and Hospitals Corporation, specifically in EMS. Chief Booth served there in various capacities from August 1983 until

March 1996, when EMS and FDNY merged. When he retired on May 17, 2019, he was the highest uniform rank, Chief of EMS. He held that role for approximately 4 years. In that role, he reported to FDNY's then-Chief of Department, James Leonard. He also served as an incident commander in several mass-casualty events. He was a first responder on 9/11. He served as part of the response team to the Oklahoma City bombing in 1995. He participated in FDNY missions to the Dominican Republic following Hurricane George and New Orleans following Hurricane Katrina. Chief Booth studied Emergency Management at the John Jay College of the City University of New York, and graduated from the FDNY Fire Officers Management Institute, as well as FDNY's Advanced Leadership Course.

14. **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 FDNY, 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.

15. **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.

16. **Plaintiff Frank Leeb**, age 54, has served in FDNY for nearly 31 years and achieved the rank of Deputy Assistant Chief. He currently serves as the Chief of Safety. Until reassigned by Defendant Kavanagh for illicit reasons, as described below, he was the acting Chief of Training, and previously the Chief of the FDNY Fire Academy. He started as a firefighter in 1992. He holds a bachelor's degree in fire service administration from SUNY Empire State and a master's degree in security studies from the Naval Postgraduate School, Center for Homeland Defense and Security. He is an authority on firefighter training, having taught courses nationally and internationally and written dozens of articles on the topic.

17. **Plaintiff Michael Massucci**, age 60, 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.

18. **Plaintiff Carla Murphy**, age 56, has served EMS and FDNY for a total of 29 years and achieved the rank of Deputy Director. She has managed the EMS Computer Aided Dispatch ("CAD") system for delivering first-response vehicles through 9/11, Hurricane Sandy, and thousands of city emergencies. She managed Fire and EMS Computer Operations during the 1996

merger of FDNY and EMS. As a result of her service at the World Trade Center site after 9/11, she contracted thyroid cancer, which has caused numerous other health conditions and disabilities.

19. **Plaintiff Fred Schaaf**, age 60, 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.

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

21. **Defendant Philip Banks III** is New York City's Deputy Mayor for Public Safety. He previously served as Chief of Department for the New York City Police Department. Although he had agreed to serve as the First Deputy Police Commissioner, he resigned four days after accepting that position, leaving a 28-year career at NYPD, after learning he was the target of a corruption investigation, in which he was alleged to have accepted hundreds of thousands of dollars in exchange for various favors.⁴ He is sued here in his official and individual capacities.

22. **Defendant Laura Kavanagh** is the 34th Fire Commissioner of FDNY. Prior to joining FDNY in 2014, 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 official and individual capacities.

⁴ Michael Rothfeld, William K. Rashbaum, and Jan Ransom, "Bribery Case Casts a Shadow Over Eric Adams's Public Safety Chief," N.Y. Times, Jan. 27, 2022, available at <https://www.nytimes.com/2022/01/27/nyregion/philip-banks-corruption-investigation.html>.

23. **Defendant Joseph Pfeifer** currently serves as the FDNY First Deputy Commissioner. In 2018, he retired from FDNY as an Assistant Chief and worked for McKinsey & Company and Columbia University. In February 2023, Defendant Kavanagh appointed him First Deputy Commissioner, reportedly due to FDNY's loss of experience resulting from Defendant Kavanagh's demotions and constructive demotions of Staff Chiefs.⁵ He is apparently the highest-paid "double dipper" city employee with a combined salary and pension of over half a million dollars.⁶ He is sued here in his official and individual capacities.

24. **Defendant JonPaul Augier** currently serves as the FDNY Deputy Commissioner of Infrastructure & Innovation. He obtained his Deputy Commissioner role by leaping nine ranks over a female candidate for the position. He is sued here in his official and individual capacities.

25. **Defendant Luis Martinez** currently serves as FDNY Chief of Staff. Prior to joining FDNY in January 2023, Martinez was a Sergeant with the New York City Police Department ("NYPD"). Defendant Martinez was subsequently promoted to Lieutenant. He is sued here in his official and individual capacities.

VENUE AND JURISDICTION

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

27. 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.

⁵ "Embattled FDNY Commissioner names decorated, retired hero chief as second-in-command," N.Y. Post, Feb. 18, 2023, available at <https://nypost.com/2023/02/18/fdny-commissioner-names-retired-chief-second-in-command/>.

⁶ Susan Edelman, "FDNY first deputy commish Joseph Pfeifer to take home \$521K a year as double dipper," N.Y. Post, Mar. 11, 2023, available at <https://nypost.com/2023/03/11/fdny-deputy-commish-joseph-pfeifer-to-get-521041-in-pay/>.

28. 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

29. 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”).

30. 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) (citations 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.*

31. **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, 1118, 117 N.Y.S.3d 280 (2d Dep’t 2020) (internal quotation omitted).
- 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

32. 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.

33. 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.

34. 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

35. 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.⁷

36. 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.⁸

37. 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.⁹

38. 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.

39. In 2015, Commissioner Nigro promoted Defendant Kavanagh to Deputy Commissioner for Government Affairs and Special Projects, a role she kept until 2018.¹⁰

⁷ "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/>.

⁸ "Laura Kavanagh, Fire Commissioner," NYC.gov, available at <https://www.nyc.gov/site/fdny/about/overview/leadership/fire-commissioner.page>.

⁹ "FDNY Overview," NYC.gov, available at <https://www.nyc.gov/site/fdny/about/overview/overview.page>.

¹⁰ "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>.

40. On January 31, 2018, Commissioner Nigro promoted Defendant Kavanagh to First Deputy Commissioner.¹¹ It was the first time her official titles expanded beyond External Affairs or Government Affairs.

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

42. Defendant Kavanagh had worked only on the civilian side of FDNY before her appointment.¹²

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

III. DEFENDANT KAVANAGH'S RISKY DECISIONMAKING

44. 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.

45. 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'

¹¹ "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/>.

¹² "Laura Kavanagh, Fire Commissioner," NYC.gov, available at <https://www.nyc.gov/site/fdny/about/overview/leadership/fire-commissioner.page>.

expressions of concern as misogynistic insubordination, which effectively cancelled the Staff Chiefs and their significant experience.

46. 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.¹³

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

48. 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.”

49. 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

¹³ “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>.

transforming FDNY, but the context of her critiques was painfully obvious to those who witnessed them.

50. 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).**

51. 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. **Inaction on Lithium-Ion batteries (“LIB”):** Despite Defendant Kavanagh’s recent media campaign concerning the dangers of LIB, for years she suppressed and did not support action within FDNY to press for regulations and bans, and even suppressed a campaign to promote greater awareness of the risks.
 - i. As the Chief of Fire Prevention, Plaintiff Jardin was particularly vocal about educating the public, other City agencies, other fire departments, and even politicians, about the serious risks caused by LIB.
 - ii. This became particularly true after a LIB caught fire during a blaze at the Twin Parks Apartment building in the Bronx on January 8, 2022. Seventeen people died in the blaze. The fire’s acceleration based on the LIB blocked FDNY access to the building’s main entrance for hours.¹⁴

¹⁴ Chris Sommerfeldt and Thomas Tracy, “Lithium-ion battery found in Bronx apartment that sparked deadly Twin Parks fire, FDNY marshals report says: EXCLUSIVE,” N.Y. Daily News,

- iii. Although a LIB was involved in the Twin Parks fire, it was not the cause. However, as the City has experienced in the past several years, the involvement of the LIB may have contributed to rapid fire growth.
- iv. Additionally, in 2021 the Bureau of Training (“BOT”) issued 3 training tips specific to LIB’s and in 2022 BOT issued 5 LIB training tips. These one-page bulletins are frequently distributed and discuss critical issues and topics to keep members informed and safe. This further highlights FDNY’s knowledge of the dangers LIB present and the attempts to educate responders.
- v. In December 2021, Plaintiff Jardin convinced then Commissioner Dan Nigro to ban LIB (other than those used in wheelchairs) from FDNY Headquarters because of the risks. Nigro understood the imperative of the issue because, right after Plaintiff Jardin urged the action, one person was killed, and two teenagers narrowly escaped, a LIB-caused fire in a New York City Housing Authority (“NYCHA”) building in lower Manhattan.¹⁵
- vi. In August 2022, NYCHA proposed a similar ban within its buildings, which Defendant Kavanagh opposed.¹⁶ After she became Acting Commissioner,

Dec. 20, 2022, available at <https://www.nydailynews.com/new-york/ny-lithium-batteries-found-twin-parks-fire-bronx-twin-parks-apartment-complex-20221220-goos5sjjovh65mil6vopr5mzam-story.html>.

¹⁵ Gabriela Miranda, “Two teenagers caught on video escaping fire in Manhattan building,” USA Today, Dec. 18, 2021, available at <https://www.usatoday.com/story/news/nation/2021/12/18/teens-escape-nyc-apartment-building-fire/8952029002/>.

¹⁶ “NYCHA proposes new policy that would ban e-bikes, lithium-ion batteries from buildings,” ABC News, Aug. 15, 2022, available at <https://abc7ny.com/lithium-ion-batteries-fire-e-bike-nycha/12127433/>.

she refused Plaintiff Jardin's request to publicly support the ban, which would have made NYCHA's properties safer. She justified her actions based on the concern about the "political winds," because such a ban would negatively impact, among others, low-income delivery persons.

- vii. Plaintiffs Jardin and Leeb organized a symposium, which was scheduled for September 6 and 7, 2022, to educate FDNY personnel, other fire departments, and even members of the New York City Council about these dangers. Defendant Kavanagh refused to invite the Council, and even threatened to cancel the symposium. Defendant Kavanagh skipped the symposium altogether—despite the presence of fire commissioners from across the country and Canada—because she did not want FDNY “out in front” of the issue.
- viii. Defendant Kavanagh started meeting with other City agencies to discuss safety risks, which she did not completely understand, and she excluded Plaintiff Jardin from those meetings.
- ix. Even when officials from the United States Products Safety Commission came to FDNY to discuss the dangers of LIB, Defendant Kavanagh skipped the meeting too.

- x. In 2021, there were 104 New York City fires caused by LIB, resulting in 79 injuries and 4 deaths.¹⁷ In 2022, LIB-fires caused 6 deaths and 147 injuries.¹⁸ So far in 2023, LIB has caused 108 fires, resulting in 13 deaths.¹⁹
- xi. Defendant Kavanagh's decision to place politics over safety was deeply concerning to Chief Jardin and the other Chiefs.

b. **Misleading a Court-Appointed Monitor:** For several years, FDNY has been under a court-appointed Special Master (the "Monitor"), after the settlement of a lawsuit brought by the United States in which the Vulcan Society, a fraternal organization of Black firefighters in New York, intervened.²⁰ Among other things, the settlement requires the submission of hiring 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—the 2017 test was a success as compared to the 2012 test.
- iii. But the 2017 test was a failure from a number of other perspectives.

¹⁷ James Barron, "The Growing Risk of Battery Fires in New York," N.Y. Times, Feb. 21, 2023, available at <https://www.nytimes.com/2023/02/21/nyregion/lithium-ion-battery-fires.html>.

¹⁸ "FDNY: New York Fire Department links more deaths to lithium-ion battery fires," Bicycle Retailer, June 5, 2023, available at <https://www.bicycleretailer.com/industry-news/2023/06/05/fdny-more-deaths-linked-lithium-ion-battery-fires-all-last-year>.

¹⁹ Laura Ly and Samantha Kelly, "Fire that killed 4 at NYC e-bike store was caused by lithium ion batteries, fire commissioner says," CNN, June 20, 2023, available at <https://www.cnn.com/2023/06/20/us/nyc-ebike-store-fire-lithium-ion-batteries/index.html>.

²⁰ See generally *U.S. v. City of New York*, No. 07 CV 2067 (E.D.N.Y. filed May 21, 2007).

1. First, a lower percentage of Black candidates achieved a score likely to qualify them for admission to the probationary class, i.e., a “reachable score” (98%).
 2. Second, as of December 2021, the 2017 test resulted in approximately 20% fewer Black firefighters being hired as compared to the 2012 test, which is an outcome contrary to the plaintiffs’ aims in filing the lawsuit.
 3. Third, the recruitment campaign Defendant Kavanagh led cost a whopping \$40 million—significantly higher than the cost for the recruiting campaign for the prior test.
- iv. In various ways, Defendant Kavanagh has put pressure on staff to keep these facts from the media and the Monitor. Instead, Defendant Kavanagh focused on showing how Black applicants scored higher on the 2017 test than on the prior test, even if those scores were not high enough to be offered a position in the FDNY Academy.²¹
- v. Worse, Defendant Kavanagh’s actions will set back the recruitment of Black firefighters for years to come, as former members of the FDNY’s Management Analysis and Planning group (“MAP”) know well.
1. After the onset of the COVID pandemic prevented steps in the hiring process, Defendant Kavanagh requested approval from the Monitor to “extend” the potential candidate class from the 2017 test, which

²¹ John Marzulli, “Scores for blacks and Hispanics soar on newly revamped FDNY test,” N.Y. Daily News, Sept. 26, 2012, available at <https://www.nydailynews.com/new-york/scores-blacks-hispanics-soar-newly-revamped-fdny-test-article-1.1168399>.

- essentially allowed FDNY to fill new classes of probationary firefighters from this test, rather than administering a new test.
2. To date, the 2017 test has been extended to cover new classes for 7 years, which has never happened in FDNY history.
 3. But, as Defendant Kavanagh knew, this artifice will not result in more Black firefighters because applicants will continue to be drawn from the same pool of test-takers that has resulted in reduced Black candidate hiring.
 4. Indeed, before Defendant Kavanagh asked to extend the 2017 test (meaning candidates would come only from the same pool), the MAP group had never estimated the number of diverse candidates that would “drop out” of consideration as time passed (because, for example, they took other employment).
 5. When MAP made the estimate on its own, it found that—in most likely scenarios—the number of Black candidates would continue to drop, meaning fewer hires. Only with the most generous set of assumptions could FDNY even match Black candidate hiring from the 2012 test.
 6. Despite this, at Defendant Kavanagh’s direction, the Monitor was never told the truth on the impact of extending the 2017 list.
- vi. Frustrated with unrelenting manipulations and misinterpretation of data, more than 12 members of the MAP team left for other employment opportunities, including the head of the group, Assistant Commissioner

Kathleen “Kat” Thomson, as well as almost all the data scientists. Those who resigned or left the MAP Group include John Does 1 through 9, and Jane Does 1 through 3.

- vii. The MAP team’s departures were also partly motivated by Defendant Kavanagh’s decision to have Defendant Martinez, a former NYPD Sergeant with no experience whatsoever in data science, oversee MAP. Defendant Kavanagh appointed Defendant Martinez, despite his lack of qualifications, both because he connected with Defendant Kavanagh through Columbia after she attended the university’s FDNY Fire Officers Management Institute program and because he would comply with Defendant Kavanagh’s desires to mislead the Monitor.
- viii. In short, because the 2017 test resulted in significantly lower Black candidate hiring, and because the extension of the test essentially freezes the candidate pool, Defendant Kavanagh’s misjudgment and misconduct will set hiring of Black firefighters back significantly, as younger generations get hired by other agencies and employers.

c. Self-Contained Breathing Apparatus (“SCBA”) Purchasing Decision.

Defendant Kavanagh has badly mismanaged the process for selecting and obtaining SCBA, which she told Maureen Dowd was one of her top priorities.²² 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.

²² Maureen Dowd, “A Tale of Fire and Ice,” N.Y. Times, April 8, 2023, available at <https://www.nytimes.com/2023/04/08/opinion/fire-department-laura-kavanagh.html>.

- i. 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.
- ii. 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.
- iii. Upon becoming Commissioner, Defendant Kavanagh sidelined these experts and put the decision primarily in the hands of her civilian staff, reporting to Defendant Augier.
- iv. When the Chief of Safety, Michael Meyers, strongly opposed having the SCBA Committee report to Augier, Defendant Kavanagh removed him as Chief of Safety, replaced him with Plaintiff Leeb, and then Defendants Kavanagh, Augier, and Martinez retaliated further by evicting Safety Command from Building 134 at Fort Totten.
- v. Although Defendant Augier told Plaintiff Leeb that Building 134, which housed critical Safety Command functions, was needed immediately for another FDNY group, the building has sat idle.
- vi. Building 134 was also the locus of Safety Command’s investigation into the death of EMS Lieutenant Alison Russo-Elling (posthumously promoted to Captain), who was murdered while on duty on September 29, 2022.
- vii. Plaintiff Leeb specifically informed Defendants Kavanagh, Augier, and Martinez that relocating Safety Command out of Building 134 would delay

the investigation, and he asked them to delay the decision to eject the team to avoid that delay.

- viii. They would not change the deadline for Safety Command to vacate the building. As a result, the investigative report on Captain Russo-Elling's death was delayed by two to three weeks.
- ix. Nevertheless, on October 5, 2022, Defendant Kavanagh had even given a eulogy at Captain Russo-Elling's funeral.
- x. An affidavit from Plaintiff Leeb concerning these events is attached hereto as Exhibit A and incorporated herein.

- d. **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.
- e. **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. An affidavit from Plaintiff Jardin detailing the concerns he expressed to Defendant Kavanagh is attached hereto as Exhibit B and incorporated herein.

- f. **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).
- i. 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 excerpts of the recording to her favored media outlet.²³
 - ii. Although Defendant Kavanagh subsequently began attending some Staff Chief meetings, at least one such meeting, held on April 6, 2023 and discussed more fully below, (*see* Paragraph 96), was nothing short of a debacle.

52. The Staff Chiefs and other senior officers and personnel raised concerns about these and other decisions to Defendant Kavanagh, occasionally directly but often through her staff (because she would not meet with them).

53. 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.

²³ Indeed, in an attempt to cover-up her role in leaking the recording, Defendant Kavanagh falsely accused Frank Dwyer, FDNY's then-Deputy Commissioner for Public Information and External Affairs, of leaking it and had him fired. Kavanagh fully knew Dwyer neither made (since he did not attend the meeting) nor leaked the recording.

54. 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

55. 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.

56. 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.

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

58. 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 Command²⁴—core tenants of a quasi-military organization tasked with saving lives. Defendant Kavanagh never did, and still does not, understand the critical importance of these concepts in a firefighting organization.²⁵ Many, many women within FDNY do. Indeed, she and Defendant Augier both shared a special disdain for those concepts.

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

60. **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.”

61. **Second**, when her 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.

62. Defendant Kavanagh convinced two others to join her scheme, Deputy Assistant Chief Daniel Donoghue and Defendant Augier. Her plans later fell apart when she attempted to

²⁴ “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.

²⁵ 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>.

convince a third officer, Chief James Booth, a Plaintiff in this suit, 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. An affidavit from Chief Booth, detailing these events, is attached hereto as Exhibit C and incorporated herein.

63. As a result, Commissioner Nigro pressured Chief Donoghue to retire. He capitulated, and his retirement was processed and approved in record time.

64. 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.

65. This proved to be a mistake, for which he paid a terrible price, as Defendant Kavanagh then launched her third ploy.

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

66. 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.

67. **Step One:** The first step in this plan was to find another way to oust Chief Leonard, then-aged 59. To accomplish this, on December 4, 2018, Defendant Kavanagh orchestrated the

leak of anonymous allegations to media sources, which resulted in articles accusing Chief Leonard of “mistreatment.”²⁶

- 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 approached City Hall and convinced them to place Chief Leonard on modified duty, and 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.**²⁷
- d. Strikingly, the Law Department could not substantiate the allegations despite the fact that one allegation was directly from Defendant Kavanagh herself²⁸: she alleged that Chief Leonard called her the “C” word in front of another witness, John

²⁶ See, e.g., Ginger Otis, “Top FDNY chief could lose job in power struggle with agency’s top female commissioner,” N.Y. Daily News, Dec. 4, 2018, available at <https://www.nydailynews.com/new-york/ny-metro-power-shake-up-fdny-20181203-story.html>.

²⁷ https://en.wikipedia.org/wiki/James_E._Leonard.

²⁸ “FDNY’s top uniformed officer ‘known for his sharp tongue’ is relieved of duties for ‘inappropriate behavior after hurling insulting language’ at staffer,” Daily Mail, Dec. 6, 2018, available at <https://www.dailymail.co.uk/news/article-6468875/Top-uniformed-FDNY-officer-pulled-duty-hurling-insulting-language-civilian-staffer.html>.

Doe 10. That witness did not corroborate Defendant Kavanagh's story when interviewed by the Law Department.²⁹

- e. Defendant Augier also made an allegation subject to the Law Department's investigation, which the Law Department also found to be unsubstantiated.³⁰
- f. 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.
- g. 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.
- h. Indeed, the initial decision to place Leonard on modified duty was not made by Commissioner Nigro, but was made by Laura Anglin, the Deputy Mayor for Operations in the De Blasio Administration.
- i. Ironically, the President of the Vulcan Society, Regina Wilson, publicly defended Leonard as being fair-minded. She said, "It's critical that Chief Leonard get due process free of politics with complete transparency. It has been my direct experience with Chief Leonard that he was open to hear what we had to say and

²⁹ See Exhibit D (letter dated Apr. 1, 2019).

³⁰ See Exhibit E (letter dated Oct. 10, 2019).

that even if he didn't agree initially, he would fairly investigate the issue we raised and take the required action even if it meant he got backlash for doing so."³¹

j. As another twist of irony, a media watchdog—iMediaEthics—published an article criticizing the *Daily News* for its reliance on anonymous sources in the December 4th article, saying “Anonymous source policies typically advise journalists not to use such sources to attack others. The reason? Anonymous sources can use a news outlet to unfairly take public shots in a private battle without any accountability.”³² The article was highly critical of the *Daily News* for its several breaches of journalistic ethics.

k. Putting aside the irony, Defendant Kavanaugh succeeded with Step One of the conspiracy—the removal of Chief Leonard.

68. Defendant Augier, elated by Chief Leonard's ouster, later told another, words to the effect of, “Leonard is gone, Nigro is next.” Augier's statement made its way to Commissioner Nigro, who was furious.

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

³¹ Richard Steier, “Top FDNY Chief Leonard Relieved of His Duties,” *The Chief Leader*, Dec. 7, 2018, available at <https://www.thechiefleader.com/stories/top-fdny-chief-leonard-relieved-of-his-duties,5759>.

³² Sydney Smith, “Who are anonymous sources that used NY Daily News to attack FDNY Chief Leonard?,” *iMediaEthics*, Dec. 6, 2018, available at <https://www.imediaethics.org/who-are-anonymous-sources-that-used-ny-daily-news-to-attack-fdny-chief-leonard/>.

70. 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.

71. 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.

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

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

74. 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 the Chain of Command and Unity of Command.

75. Indeed, City Hall's own actions suggest serious concerns over Defendants' misconduct. On February 27, 2023, Plaintiffs Gala, Jardin, and Massucci commenced a hybrid Article 78 proceeding in this Court alleging retaliation against them by Defendant Kavanagh.³³ Only two days later—on March 1, 2023—legal counsel for the Mayor reportedly met with City Hall staffers and "coach[ed]" them on "how to avoid unwanted public scrutiny of government information."³⁴ A recording of the meeting was leaked to a media outlet. According to the article, "The lawyers also warned of the potential pitfalls of creating a paper trail paved with emails, texts or chats that could later be obtained by news organizations or sucked up as part of law enforcement investigations."

³³ *Gala et al. v. Kavanagh, et al.*, No. 506192/2023. The City removed the action to the Eastern District of New York, and plaintiffs voluntarily dismissed the action without prejudice.

³⁴ Joe Anuta, "Adams lawyers urge City Hall staff to watch their words," Politico, April 20, 2023, available at <https://www.politico.com/news/2023/04/20/adams-new-york-city-hall-staffers-00092828>.

VI. DEFENDANT KAVANAGH TARGETS PLAINTIFFS AND OTHER VICTIMS

76. Defendants' targeting campaign of seniors included, among others, the following:

77. **Janet Kimmerly:** Kimmerly, a woman and approximately age 60, was one of the earliest known victims of Kavanagh's retaliation. Beloved within FDNY, Kimmerly served for over 20 years as editor of FDNY's official publication, *WNYF Magazine*; FDNY's annual Medal Day Books; and countless other FDNY publications. She also volunteered with the Port Washington Fire Department for over 30 years. In 2020, Kavanagh convinced Commissioner Nigro to remove Kimmerly from her FDNY roles because Kavanagh did not like one remark Kimmerly made during an FDNY WebEx call. FDNY had been Kimmerly's life. On April 5, 2021, she died broken-hearted.

78. **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 51(c)). 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.
 - ii. 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.
 - iii. A senior Chief who participated in those calls later told Chief Blatus that Defendant Kavanagh “did not want [Chief Blatus] on the call.”
 - iv. 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.
 - v. 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.
- i. 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 as Acting Chief of Operations.

- j. However, Defendant Kavanagh was not content with merely demoting Chief Blatus, and next sought to remove him from the ranks of FDNY entirely.
- k. 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.
- l. 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.
- m. 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.”
- n. 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.
- o. 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.
- p. 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.

- q. When Chief Blatus refused to retire, Defendant Kavanagh's efforts to force him into retirement only became more flagrant.
- r. On January 13, 2023, Defendant Kavanagh directed members of her staff—including the Chief of Staff, Defendant Martinez (who was in the process of joining Defendant Kavanagh's staff), and the then-Acting First Deputy Commissioner, Lizette Christoff, to meet with the personnel manager of the New York City Police Department.
 - i. Defendant Kavanagh called the meeting based on misinformation from Defendant 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.
- s. 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.
- t. Part of the reason behind Defendant Kavanagh’s efforts to force Chief Blatus (and other Chiefs) to retire was to create budget lines that would allow her to promote younger Chiefs.
- u. Chief Blatus ultimately decided to retire for his own reasons, and never succumbed to Defendant Kavanagh’s pressure campaign. But, pleased with his decision to retire, Defendant Kavanagh placed the retirement process on a fast track. Chief Blatus retired on March 30, 2023.

79. **Chief James Booth:** As noted above (*see* Paragraph 62), and as reflected in Exhibit C (Booth Affidavit), Plaintiff Booth, age 59, refused to engage in blatant insubordination by joining Defendant Kavanagh’s coup against Chief of Department Leonard. Shortly thereafter, Defendant Kavanagh attempted to orchestrate his demotion, and he then retired from FDNY rather than be relieved as Chief of EMS.

80. **Terryl Brown:** On or about March 1, 2023, Defendant Kavanagh fired Terryl Brown, age 61, FDNY’s Chief Legal Counsel. She was the highest-ranking Black woman 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.

81. **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.

82. **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.

83. **Chief 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 Scoppetta. 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.³⁵

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

³⁵ 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.”).

- 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, 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. Defendant Kavanagh sought to demean Plaintiff Gala into retiring.
- 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, Defendant 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 Defendant 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. After Plaintiff Gala was demoted, he was no longer the Chief Quartermaster and returned to an FDNY Division. Since then, no one has been named to fill the Chief Quartermaster position, proving that it was created for no purpose other than to humiliate Gala into retiring.

- x. 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 Plaintiff Schaaf, were taken off the Citywide Command Schedule.
- y. 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.
- z. 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.
- aa. 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.
- bb. Finally, not content with merely retaliating against Plaintiff Gala, Defendants next retaliated against his family.
 - i. On April 3, 2023, Plaintiff Gala's son Robert Gala—a former FDNY Emergency Medical Technician ("EMT") and admitted addict—was sentenced to time served after being convicted of stealing a bottle of pills.

Robert resigned his position as an EMT in May 2019. At the time of his sentencing, he was four years removed from FDNY employment.

- ii. Nevertheless, on April 4, 2023, a news article regarding Robert's sentencing was posted to the FDNY intranet's daily news feed, visible to all FDNY personnel. The article was listed in the feed despite an article far more relevant to FDNY not being listed in the feed.
 - iii. On April 5, 2023, the article regarding Robert appeared on EMS1, an online resource for emergency medical services employees.
 - iv. On April 6, 2023, the article reappeared in the FDNY news feed.
 - v. On April 12, 2023, the article appeared in the FDNY daily media digest, which typically lists only that day's news, while older stories are listed in a week in review section.
 - vi. The improbable reappearance of the article—when a more relevant FDNY article never even made it into the feed—demonstrates that this was an act of retaliation against Plaintiff Gala by Defendant Kavanagh.
- cc. Recently, Plaintiff Gala has been unable to log into the FDNY Emergency Notification System ("ENS"). When he attempts to log in, he receives a prompt stating, "Access Denied! You don't have necessary role to access this application." This is the first time Chief Gala has been denied access to ENS since he was a lieutenant, indicating it is yet another retaliatory act by Defendants.
- dd. The foregoing campaign of retaliatory actions against Plaintiff Gala caused him actual physical harm.

- i. From October 6, 2020 to December 4, 2020, Plaintiff Gala was on medical leave due to situational stress. During that time, Plaintiff Gala was repeatedly seen by an FDNY physician.
 - ii. Plaintiff Gala also regularly met with an FDNY counselor during that time period.
 - iii. Beginning in May 2023, Plaintiff Gala again sought regular counseling through the FDNY to deal with the stress caused by Defendants' actions.
 - iv. Plaintiff Gala is further in the process of seeing a physician as a result of the situational stress.
- ee. An affidavit from Chief Gala, detailing these events, is attached hereto as Exhibit F and incorporated herein.

84. **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.

85. **Chief 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 Alarm Plans for new buildings and subsequent inspections.
- h. It was in Plaintiff Jardin's role as Chief of BFP that he encountered corruption in favor of major real estate developers, and his refusal to acquiesce to it led to retaliation by the Defendants.

- i. When Jardin became Chief of the BFP, there was a growing backlog of Fire Alarm Plan safety inspections dating back to the de Blasio administration.
- ii. The backlog resulted from FDNY engineer staffing shortages. FDNY paid engineers who performed the inspections lower salaries relative to comparable positions with other City agencies and private employers.
- iii. Plaintiff Jardin and Assistant Chief Kevin Brennan performed their own analysis of how FDNY engineer salaries were low relative to other employers.
- iv. In March 2020, Plaintiff Jardin and Chief Brennan presented their analysis to then-First Deputy Commissioner Kavanagh and others detailing the understaffing problem. Kavanagh, who oversaw FDNY's budget and Human Resources, did not take steps to permit BFP to offer increased salaries. Jardin subsequently heard from at least two people that Kavanagh was nevertheless blaming BFP for the backlog.
- v. In or about 2021, as the pandemic was coming to an end, the "Cutting Red Tape" initiative ("CRT") was formed. CRT was intended as a multi-agency plan to help small businesses get back on their feet. Kavanagh, as First Deputy, oversaw CRT. She missed most meetings.
- vi. As part of CRT, the Deputy Mayor of Operations ("DMO") list was created.
- vii. Although CRT was intended to help small businesses, Plaintiff Jardin and others learned that the DMO list—at the behest of the Real Estate Board of New York—was being used to fast-track inspections for "friends" of City Hall. These "friends" were prominent and influential real estate developers.

- viii. The DMO list became a mechanism to force FDNY to permit politically connected developers to cut the inspection line. Developers with access to City Hall—or with access to Defendant Kavanagh and her staff—could get their development projects onto the DMO list.
- ix. In early 2022, Defendant Kavanagh and her subordinates went even further. Plaintiff Jardin learned that Kavanagh was meeting with City Hall officials about delegating BFP plan approval responsibilities to the New York City Department of Buildings (“DOB”). BFP should have been included in these meetings but was excluded.
- x. Defendant Kavanagh and her subordinates tried to convince Plaintiff Jardin and others within BFP to support the idea of delegating BFP plan approval to DOB. They also pushed the idea of permitting buildings to self-certify their fire alarm systems.
- xi. Plaintiff Jardin was deeply troubled by these ideas because other City agencies did not have FDNY’s Fire Alarm Plan review expertise. Also, in the past many building self-certifications have been fraudulent, and fires in self-certified buildings have led to the deaths of firefighters.
- xii. Plaintiff Jardin opposed these plans and told Kavanagh’s subordinates that FDNY should retain ultimate certification authority.
- xiii. On July 18, 2022, Plaintiff Jardin was called to a meeting with the Chief of Department and Chief of Fire Operations. Jardin was informed that he was being reassigned to a role within the Bureau of Operations. Defendants Banks and Kavanagh coordinated on this retaliatory action.

- i. On February 3, 2023, Plaintiff Jardin was instructed to meet with Defendant 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.
 - j. 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.
 - k. The forgoing campaign of retaliatory actions against Plaintiff Jardin caused him actual physical harm.
 - i. On May 14, 2022, Chief Jardin’s wife tragically passed away due to cancer.
 - ii. She was first diagnosed in 2015, and as she underwent treatment Chief Jardin began attending counseling by the FDNY Counseling Services Unit.
 - iii. Chief Jardin later stopped attending counseling.
 - iv. However, around the time that Chief Jardin was removed as Chief of Fire Prevention, and as the stress caused by Defendants’ actions continued to mount, he recommenced counseling.
 - v. Chief Jardin has periodically attended counseling ever since.
86. **Chief Frank Leeb:**
- a. Chief Leeb has no history of disciplinary infractions whatsoever.
 - b. Chief Leeb has never had an EEO complaint filed against him.
 - c. Chief Leeb is a 9/11 first responder.

- d. In 2022, Chief Leeb served as acting Chief of Training. He shared responsibility for scheduling admission of new classes of probationary firefighters into the FDNY Fire Academy. FDNY was forced to delay scheduling a new Academy class because certain bureaus within FDNY that reported to then-First Deputy Commissioner Kavanagh had not processed enough candidates to fill a full Academy class.
- e. In early 2022, Chief Leeb attended a routine Staff Chiefs meeting. Kavanagh was also present. During the meeting, Chief Leeb stated that it was a failure of the FDNY organization that scheduling the next Academy class was delayed.
- f. Soon after the meeting, Chief Leeb was told by Chief Blatus that Defendant Kavanagh directed that Chief Leeb be told she did not appreciate his comments during the meeting.
- g. In retaliation, in November 2022, Defendant Kavanagh reassigned Plaintiff Leeb, age 54, from his position as acting Chief of Training to Chief of Safety.³⁶ 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.
- h. Another reason why Plaintiff Leeb 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,

³⁶ Plaintiff Leeb's reassignment is particularly concerning. He is recognized nationally and internally as an authority on training, 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.

who had opposed a proposal to have the SCBA Committee report to Defendant Augier, and Defendant Kavanagh needed someone to take his job.

i. This was not the extent of Defendants' retaliation against Plaintiff Leeb.

i. On January 30, 2023, Plaintiff Leeb had his first meeting as Chief of Safety with Defendants Kavanagh, Augier, and Martinez. During the meeting, Augier told Plaintiff Leeb that FDNY Research & Development—which includes the SCBA Committee—would soon report to a new civilian position called Deputy Director of Technology. That new position would report to Augier.

ii. During the same meeting, Augier told Plaintiff Leeb that Safety Command had to immediately vacate Building 134 in Fort Totten. This delayed the report on EMS Captain Allison Russo-Elling's line of duty death investigation (*see* Paragraph 51(c)(vi-x)).

87. On February 7, 2023, Plaintiff Leeb emailed Defendants Kavanagh, Martinez, and others requesting a demotion to Deputy Chief. In his email, Plaintiff Leeb stated in part, “[S]everal changes have led me to believe that our organizational priorities are shifting away from the cornerstones of safety and training which have long protected the citizens and visitors of New York City as well as the members of our great organization. Additionally, breaches of trust coupled with a lack of communication and transparency have further led me to this difficult decision.” Accordingly, Plaintiff Leeb's reassignment was an attempt to constructively discharge him.

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

89. **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.

90. **Chief 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. 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.
- e. 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.
 - i. 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.

- ii. 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.
- f. 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.
- g. 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.
- h. On September 6, 2022, Plaintiff Massucci was called to a meeting with Defendant Kavanagh.
 - i. The meeting was attended by Defendant Kavanagh and two of her staff. Defendant Kavanagh was visibly upset about never having received the spreadsheet.
 - ii. When Plaintiff Massucci attempted to explain the circumstances, she accused him of both insubordination and lying.

- iii. 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.
- iv. 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.
- i. 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.
- j. 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.
- k. Minutes later, Plaintiff Massucci received an email from Defendant Kavanagh's executive officer, Lieutenant Tracy Lewis, asking about Plaintiff Massucci's medical status. Deehan had undoubtedly warned them of Plaintiff Massucci's unexpected presence. Plaintiff Massucci responded that he had been cleared for full-time duty.

1. On Monday morning, November 21st, Plaintiff Massucci was summoned to Defendant Kavanagh's office.
 - i. He appeared as requested.
 - ii. 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.
 - iii. Defendant Kavanagh stated that Plaintiff Massucci would be reassigned to the Bureau of Operations.
 - iv. No reason was given for this action.
 - v. Defendant Banks was advised of, and approved, the removal and reassignment of Plaintiff Massucci, including the plan to replace him with a younger officer.
 - vi. Defendant Kavanagh advised him, "clean out your office."
- m. 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.
- n. 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.
 - i. Plaintiff Massucci appeared as instructed.

- ii. The Chief of Department and Chief of Operations were in attendance, as well as Acting First Deputy Commissioner Christoff, which was unusual.
- iii. Christoff informed Plaintiff Massucci of his reassignment to the Tech Services Toolroom located in Long Island City with no real responsibilities and no subordinates or direct reports.
- iv. Defendant Kavanagh—as she had done to Plaintiff Gala by reassigning him to work as a “Chief Quartermaster” in Fort Totten—tried to demean Plaintiff Massucci into retiring. Plaintiff Massucci, however, refused to do so.
- v. Because he also had to endure the consequences of Defendant Kavanagh’s unsafe decision making, Plaintiff Massucci was constructively discharged.
- o. On December 1, 2022, Defendant Augier directed that Plaintiff Massucci’s computer access be cut off.
 - i. 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.
 - ii. 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.

- iii. Defendant Augier later told others that he had “shut [Plaintiff Massucci] down.”
- p. Defendant Kavanagh also openly disparaged Plaintiff Massucci, as well as Plaintiffs Gala and Jardin, in front of their longtime colleagues.
- i. Only weeks after Defendant Kavanagh reassigned Plaintiffs Gala, Jardin, and Massucci, a routine Battalion Commanders meeting was held at the FDNY Training Facility on Randall’s Island. Defendant Kavanagh attended the meeting, which was unusual.
- ii. Defendant Kavanagh solicited questions from those in attendance. One Battalion Chief, Keith Cartica, stood up and asked Defendant Kavanagh why she reassigned Plaintiffs Gala, Jardin, and Massucci to meaningless roles.
- iii. Defendant Kavanagh stated to those in attendance that Plaintiffs Gala’s, Jardin’s, and Massucci’s skill sets were being better used in their new roles.
- iv. Defendant Kavanagh, by claiming that the highly experienced and decorated Gala, Jardin, and Massucci were better suited to useless roles like the Chief Quartermaster or working in the Tool Room, insultingly disparaged Plaintiffs Gala, Jardin, and Massucci.
- v. Moreover, Defendant Kavanagh, by uttering this disparaging remark during a meeting FDNY Commissioners do not typically attend, and in front of Battalion Chiefs who were longtime colleagues of Plaintiffs Gala, Jardin, and Massucci, compounded the disparagement and sent a warning to those present that they had better fall in line or suffer the same fate.

- q. Defendants next escalated from demeaning Plaintiff Massucci to attempting to threaten him into swearing fealty to Defendant Kavanagh.
- i. On December 7, 2022, Plaintiff Massucci attended a meeting at the invitation of Defendant Martinez.
 - ii. During the meeting, Martinez suggested that Plaintiff Massucci was refusing to perform his new role, which was false.
 - iii. Martinez added that “City Hall” was aware of this and said that Defendant Kavanagh could demote him.
 - iv. Martinez then intimated that if Plaintiff Massucci became a Kavanagh loyalist, in six months he might be “back in the mix.”
 - v. Plaintiff Massucci was later told that, after the February 3, 2023 Staff Chiefs meeting, Defendant Kavanagh remarked that Plaintiff Massucci was in the process of “redeeming himself.”
- r. On February 10, 2023, Plaintiff Massucci sent an email to Defendant Kavanagh and others noting his long meritorious service with FDNY.
- i. 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.”

- ii. At the direction of Defendant Banks, Chief Massucci's request was denied.
 - iii. On March 5, 2023, Defendant Kavanagh finally responded to Chief Massucci's February 10 email requesting demotion.
 - iv. Defendant Kavanagh's email stated that Chief Massucci's request was "held in abeyance" until his position was filled. This was a decision made by Defendants Banks and Kavanagh jointly.
 - v. She also defended the reassignments, stating, "Every decision . . . has been made with the intention and in service of optimizing the Department's resources and fulfilling our mission."
 - vi. Once again, Defendant Kavanagh insultingly disparaged Plaintiffs Gala, Jardin, and Massucci by claiming that their roles serving as the Chief Quartermaster or working in the Tool Room "optimiz[ed]" FDNY resources.
- s. The forgoing campaign of retaliatory actions against Plaintiff Massucci caused him actual physical harm.
- i. On the evening of March 3, 2023, Plaintiff Massucci was having coffee with three retired FDNY Chiefs.
 - ii. Just after Plaintiff Massucci told the other Chiefs about the Defendants' retaliatory campaign against he and others, Plaintiff Massucci suffered an episode and underwent testing at New York Presbyterian Hospital's Emergency Room.
 - iii. Plaintiff Massucci subsequently met with the FDNY's cardiologist, who advised him to undergo testing at New York University Hospital ("NYU").

iv. On April 12, 2023, Plaintiff Massucci underwent cardiac testing at NYU.

The tests were negative.

v. After undergoing the NYU testing, Plaintiff Massucci met with the FDNY's cardiologist, who stated that the March 3 episode was likely stress-related.

vi. Subsequently, Plaintiff Massucci experienced additional health problems and was placed on medical leave.

t. An affidavit from Plaintiff Massucci, detailing these events, is attached hereto as Exhibit G and incorporated herein.

91. **Deputy Director Carla Murphy:**

a. Plaintiff Murphy, age 56, has dedicated her professional life to ensuring public and first responder safety by designing, implementing, and managing critical technologies utilized by first responders in emergencies.

b. Plaintiff Murphy has received numerous accolades for her service to the public, including the FDNY Community Mayors Nicholas DeGaeta Award and the FDNY Fire Commissioner's Award for Meritorious Service, which she received twice in 2009 and 2019.

c. In 1997, Plaintiff Murphy joined FDNY EMS to manage its Computer Aided Dispatch ("CAD") system. In this role, Plaintiff Murphy is on call 24/7 to handle technological emergencies impacting public and first responder safety, responds to major emergencies that require technological support, and is responsible for the testing of mobile technology installed in ambulances.

d. During the aftermath of the 9/11 terrorist attack, Plaintiff Murphy spent weeks at the scene providing technology and systems for first responders. Like many of

those who responded to the 9/11 attack and worked on the recovery efforts, Plaintiff Murphy later developed cancer. In June 2019, Plaintiff Murphy's cancer was certified as a World Trade Center-Related Health Condition under the James Zadroga 9/11 Health and Compensation Act of 2010. Since 2019, Plaintiff has experienced stamina and fatigue issues as a result of her cancer treatment.

- e. In or around the fall of 2016, Defendant Augier became involved in the technology group and started attending meetings, asking questions, and being included on communications. In the beginning, Defendant Augier seemed receptive to hearing Plaintiff Murphy's ideas and listening to her expertise. In recent years, however, it has become apparent that under the leadership of Augier, Chief Information Officer ("CIO") Benny Thottam, and Deputy CIO Kamal Deol, the integrity of FDNY and EMS critical technology is at risk. Not only have they failed to take the criticality of the EMS CAD system into account on numerous projects, but also, they have excluded experts from important meetings where their input is necessary.
- f. Between 2019 and 2021, Plaintiff Murphy objected to a number of decisions that were made by Defendant Augier, Thottam, and Deol, which she felt were ill-advised and created safety risks for both first responders and the public. Included among their ill-advised decisions were, (1) rushing to meet an aggressive deadline to develop an interface between the current EMS CAD system and a new FireCAD system that was being implemented; (2) upgrading all systems to Windows 10 in under two months, which would put the integrity of the EMS CAD system at risk; and (3) activating an unstable temporary load balancing feature to the EMS CAD

system. An affidavit from Plaintiff Murphy, detailing these events, is attached hereto as Exhibit H and incorporated herein.

- g. Although Plaintiff Murphy did her best to implement their instructions, she advised Defendant Augier, Thottam, and Deol that two of the system upgrades (the interface and the load balancing) would likely not work effectively. Ample email evidence demonstrates that Plaintiff Murphy repeatedly warned management about the dangers of their decisions. For example, in a July 2022 email, she wrote, in part, **“I’ve been asking for years for root causes, investigations and remediation of all of these issues. I have been asking once or twice a week for months. You’ve all been cc’d. No one responds, as far as I can tell this is no one’s priority and no one is at all interested in the fact that the CAD system’s biggest problem is not being addressed. In 5 years, we’ve had 18 unplanned outages, 17 were caused by network issues or network related latency. We have had more network related downtime in the past year than in the prior 5 years combined. . . .”** In a series of meetings, calls, and emails, Defendant Augier, Thottam, and Deol expressed their frustration for—what they perceived as—pushback.
- h. By the fall of 2021, Plaintiff Murphy suffered a series of adverse actions in retaliation for not “going along” with unsafe conditions.
- i. On September 27, 2021, Plaintiff Murphy, who had been working from home due to her medical conditions, was instructed to return to the office full time. Despite the fact that her Department vehicle had previously been taken away, Plaintiff Murphy was still expected to respond to emergencies as necessary to provide crucial technical support.

- j. On December 3, 2021, Plaintiff Murphy learned that a job opening with her title of EMS CAD Manager had been posted by FDNY. This position was ultimately given to a younger male employee who did not have Plaintiff Murphy's experience or technical expertise. The new EMS CAD Manager does not report to Plaintiff Murphy and has since been tasked with overseeing the EMS CAD upgrade project, despite his inexperience.
- k. On January 5, 2022, Plaintiff Murphy was called into a surprise disciplinary conference by Deol, who accused her of inappropriate behavior during the hiring of the new EMS CAD Manager and informed Plaintiff Murphy that she would no longer be involved in the crucial EMS CAD upgrade project.
- l. On February 10, 2022, Plaintiff Murphy attended a telephone call with Defendant Augier, Thottam, Deol, and others during which Defendant Augier tried to blame her numerous times for the network problems that were plaguing the CAD system and for failing to alert management to the risk to the system posed by the load balancing project. Augier berated Plaintiff Murphy and muted her when she tried to respond. Despite this treatment, Plaintiff Murphy answered all his questions and after the call sent ample documentation to all participants showing that she advised him, Thottam, and Deol repeatedly of the network problems and the load balancing issues.
- m. Shortly after Defendant Kavanagh became acting Fire Commissioner, in or around March 2022, Plaintiff Murphy was informed that her work location was being changed from 11 Metrotech to 9 Metrotech. Plaintiff Murphy was given no reason for this move. Plaintiff Murphy's staff, technical support personnel, critical

stakeholders, and the emergency systems she supports are all located in 11 Metrotech.

- n. On April 7, 2022, Plaintiff Murphy submitted a reasonable accommodation request to prevent her office move because requiring her to walk back and forth between buildings in order to do her job and perform her emergency responsibilities would make her job more physically taxing.
- o. Plaintiff Murphy's request was denied on the grounds that she would no longer need to go back and forth between the two buildings to do her job and was moved as part of an organizational restructuring. A year later, Plaintiff Murphy still travels back and forth between buildings to access the technology and resources she needs to perform her job and no restructuring has occurred. This has exacerbated her fatigue and health issues. Further, this poses a threat to public safety by delaying Plaintiff Murphy's ability to respond to technological issues and interact with critical personnel during emergencies. Later that spring, her reasonable accommodation appeal was denied.
- p. On April 22, 2022, Plaintiff Murphy was informed by her manager that she was no longer allowed to work from home when not well enough to commute to work, despite her medical issues.
- q. In May 2022, Plaintiff Murphy's supervisor began refusing to sign her medical leave requests without documentation even when not required under FDNY or City policy.
- r. On August 19, 2022, Plaintiff Murphy was served with 46 disciplinary charges dating back to December 3, 2021. Many of the charges allege there are issues with

Plaintiff Murphy's time sheets, including instances where she used medical leave and/or lunch time to attend doctors' appointments.

- s. On December 6, 2022, Plaintiff Murphy submitted a second reasonable accommodation request to work from home when physically unable to commute. This request was denied on the grounds that Plaintiff Murphy has unlimited sick leave under the Zadroga Act.
- t. On December 13, 2022, the disciplinary charges against Plaintiff Murphy were amended to include an additional 5 charges. Among the new charges was a citation for going outside the chain of command by copying Defendant Augier on an email where she raised concerns about issues with the EMS CAD system.
- u. On January 31, 2023, a Step 1 Conference on Plaintiff Murphy's disciplinary charges was held before FDNY Hearing Officer Carol Moran.
- v. On February 9, 2023, FDNY Hearing Officer Carol Moran found that the charges served upon Plaintiff Murphy were likely to be sustained at a formal evidentiary proceeding and recommended that her employment be terminated. Plaintiff Murphy is awaiting a hearing on her charges with the Office of Administrative Trials and Hearings.

92. **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.

- a. On February 3, 2023, Plaintiff Schaaf was instructed to meet with Defendant Kavanagh's Chief of Staff, Defendant Martinez. Martinez thanked Chief Schaaf

for his service but told Schaaf that he was being reassigned as a Deputy Chief effective March 4, 2023. Martinez stated, in sum and substance, that FDNY was going in another direction, unless Schaaf chose another option—meaning retirement.

- b. Because Chief Schaaf was a plaintiff in a prior lawsuit challenging his demotion, Defendant Kavanagh further retaliated against him in early March 2023 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. This act of retaliation was so unprecedented and obvious that Chief of Operations John Esposito was required to file an EEO complaint on Chief Schaaf's behalf.

93. **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. EVEN AFTER SUIT IS FILED, FDNY CONTINUES TO DEVOLVE

94. On March 23, 2023, Plaintiffs initiated this lawsuit. The timeline since then shows a department in free fall.

95. Defendants' acts of retaliation have left Staff Chief morale festering. Events since the filing of the lawsuit have made matters worse.

96. On April 6, 2023, a routine Staff Chiefs meeting was held at FDNY Headquarters. Only 6 of the 18 Staff Chiefs attended. Deputy Commissioner Pfeifer, Chief of Department John

Hodgens, and representatives of EMS also attended. The meeting began with a discussion about EMS issues, after which Pfeifer asked the EMS representatives to leave the room.

- a. Pfeifer then began obtusely speaking to the handful of Staff Chiefs present about new initiatives, prompting one Staff Chief, Charles Downey, to shake his head in frustration.
- b. Defendant Kavanagh, who had just entered the room, challenged Chief Downey by asking whether he had “something to say.”
- c. Chief Downey said words to the effect of “there is an elephant in the room.” He then went on an extended explication of the deteriorating culture, the depletion of the ranks of experienced incident commanders, and the Commissioner’s failure to find any solutions.
- d. Defendant Kavanagh did not immediately respond, but angrily stared at Chief Downey.
- e. A second Staff Chief, Malcolm Moore, spoke up, criticizing Defendant Kavanagh’s complete failure to even address the turmoil she and her staff created. Looking at Defendant Kavanagh’s seat from the February 3rd Staff Chiefs meeting (which she recorded and leaked to the media), Chief Moore (referencing Kavanagh’s pink outfit on that day), said words to the effect of “there is a pink elephant in the room and it’s doing jumping jacks.”

97. Matters got worse after Defendants brazenly tried to prop up Defendant Kavanagh’s flagging reputation with a slanted *New York Times* piece. On April 8, 2023, the *New York Times*

ran a column by Maureen Dowd defending Kavanagh.³⁷ Dowd quoted Kavanagh, First Deputy Commissioner Pfeifer, and an anonymous Kavanagh aide. Defendant Kavanagh had only recently brought Defendant Pfeifer back to FDNY in February 2023, reportedly to quell the turmoil caused by her own actions. He quickly proved willing to join in Kavanagh's pattern of age-based retaliation, even though he is a member of that class.³⁸

98. As described below, Dowd's column—and Defendant Pfeifer's remarks in particular—created serious additional turmoil. Although the column was apparently intended to portray Kavanagh as an innovator taking on archaic and entrenched alpha-male forces, it instead confirmed the Kavanagh regime's age-based discrimination and retaliation against Plaintiffs and other Staff Chiefs.

- a. Dowd's column included additional ageist remarks by Kavanagh's staff. Regarding Kavanagh's demotions of Plaintiffs, Dowd wrote that "an aide said the commissioner wanted to shake things up and send a message that she didn't want to play **'the same old game.'**"
- b. The column characterizes Deputy Commissioner Pfeifer as indicating that the "upper ranks" of FDNY could be "**invigorate[d]**" with "**fresh blood.**" Dowd wrote that Pfeifer agreed the Staff Chiefs were motivated by sexism, adding, "I've

³⁷ Maureen Dowd, "A Tale of Fire and Ice," N.Y. Times, April 8, 2023, available at <https://www.nytimes.com/2023/04/08/opinion/fire-department-laura-kavanagh.html>.

³⁸ "The Supreme Court has rejected the idea that one member of a protected class cannot discriminate against another member of that same class." *Jones v. N.Y.C. Dep't of Educ.*, 2021 WL 602695, at *2 (E.D.N.Y. Feb. 16, 2021) (citing *Oncala v. Sundowner Offshore Servs.*, 523 U.S. 75, 78 (1998); see also *Feingold v. New York*, 366 F.3d 138, 155 (2d Cir. 2004) (rejecting "the district court's suggestion that an inference of discrimination cannot be drawn because [plaintiff] was fired by another [member of the same protected class]").

never experienced anything like that in my entire career.” Defendant Pfeifer suggested that the Staff Chiefs could be easily replaced.

- c. Dowd’s column also unwittingly—but perfectly—describes Kavanagh’s intent in leaking the recording of the Staff Chief meeting to the media. Dowd wrote, “Kavanagh can be heard [on the recording] complaining that she had gotten little response to her requests for innovative suggestions, while chiefs can be heard asking about vacation time and the use of personal cars—**making them look like** entitled crybabies **and the commissioner look like** a forward-looking leader.”
- d. It is unclear whether Dowd was actually provided with another leaked copy of the recording (to which Defendant Kavanagh has access), or whether she was reporting based on the earlier *Daily News* coverage. Either way, her words were clearly intended to publicly humiliate the Staff Chiefs and portray them as old and resistant to progress.
- e. In a final touch of revealing irony and veiled ageism, Dowd’s column—which quotes an unnamed Kavanagh aide and unnamed critics of the Staff Chiefs—noted that Kavanagh’s master’s thesis “examined the role of **gossip and rumor** in organizations that are **clinging to the status quo.**”
- f. Dowd’s column confirms that Defendant Kavanagh discriminated and retaliated against Plaintiffs and other Staff Chiefs to rid FDNY of its most experienced, knowledgeable, and accomplished Staff Chiefs and replace them with younger, less experienced, and—most importantly—more compliant chiefs.

99. The Dowd column had a predictable effect. On April 10, 2023, FDNY Deputy Assistant Chief Thomas Currao had a fiery exchange with Defendant Pfeifer on the 8th Floor of

FDNY's headquarters. Several people heard the exchange. Currao demanded to see the list of those Chiefs who could "easily replace" the Staff Chiefs. Pfeifer had no such list. Chief Currao—who has been described as a Kavanaugh ally and someone she promoted—demanded a demotion in writing. Chief Currao was the tenth Staff Chief to request a demotion.³⁹

100. On April 15, 2023, Commissioner Kavanaugh attended a charity hockey event, which pitted FDNY's team against NYPD's team. When Defendant Kavanaugh was introduced in the pre-game ceremony, the audience loudly booed her.⁴⁰ Deputy Assistant Chief Malcom Moore, the only Black man among the Staff Chiefs, approached Defendant Kavanaugh during the game, asking what she could do to move FDNY past the acrimony. Defendant Kavanaugh curtly said words to the effect of "What am *I* gonna do? What are *you* gonna do?" Then she turned away. Witnesses observed this encounter.

101. On April 20, 2023, First Deputy Commissioner Pfeifer attended a series of meetings with the Staff Chiefs which, in total, lasted almost 3 hours. At the meetings, after securing everyone's promise to consider the meetings as secret, he claimed that the *Times*'s Maureen Dowd was at fault for misquoting him and taking his words out of context. He explained that—although Dowd intimated that he had accused the Staff Chiefs of sexism—his comment was directed at the entire FDNY.⁴¹ When one Chief complained that Defendant Augier remained as a Deputy

³⁹ Susan Edelman, "10th FDNY chief requests demotion in mutiny: 'Stabbed in the back.'" N.Y. Post, April 15, 2023, available at <https://nypost.com/2023/04/15/tenth-fdny-chief-requests-demotion-in-mutiny/>.

⁴⁰ Patrick Reilly, Susan Edelman, and Larry Celona, "FDNY commissioner Laura Kavanaugh booed at FDNY vs. NYPD hockey game amid department turmoil," N.Y. Post, April 15, 2023, available at <https://nypost.com/2023/04/15/fdny-commissioner-laura-kavanaugh-booed-at-fdny-vs-nypd-hockey-game-amid-department-mutiny/>.

⁴¹ Susan Edelman, "FDNY Commissioner Laura Kavanaugh absent at parking-garage collapse for 'medical' reasons," N.Y. Post, April 22, 2023, available at <https://nypost.com/2023/04/22/fdny-commish-laura-kavanaugh-absent-at-parking-garage-collapse/>.

Commissioner despite his alleged history of abusing Black firefighters, Defendant Pfeifer said words to the effect of: “I have known JP for many years, he has reformed.”

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

102. 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.⁴² They serve an indispensable role in keeping city residents and other firefighters safe.

103. 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.

104. 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.⁴³

⁴² FDNY Regulations, Chapter 5.

⁴³ 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 his paperwork requesting demotion, Chief Esposito wrote, “The events of these 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 that ‘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* Paragraph 90(r).

105. In recognition of the capricious nature of Defendant Kavanagh's actions, City Hall had to step in, telling the Incident Commanders that City Hall would not permit the demotion requests to proceed. This is another violation of customary practice. FDNY routinely accepts and implements demotion requests. Faced with the many requests for demotions, Defendant Banks directed Defendant Kavanagh to reject those requests, and in March he communicated directly with a number of the constructively demoted Staff Chiefs to impart the need for a 90-day "cooling off period."⁴⁴

106. Defendant Banks's actions fundamentally recognize that Defendant Kavanagh's actions made FDNY unsafe. However, Banks's "cooling off" period was marked by the *Times*'s Dowd column in which Defendant Pfeifer accused the Staff Chiefs—and later the entire FDNY—of sexism, prompting a tenth Staff Chief to request demotion. Pfeifer also reportedly asked the Staff Chiefs to retract their demotion requests without offering any concession—or even an expression of regret—for Defendants' pattern of retaliation against them.⁴⁵

107. When Chiefs Richardson, Blatus, and McSweeney retired on March 30, 2023, FDNY was below the minimum number of required Incident Commanders. Defendants have attempted to place a band-aid over this gaping personnel wound. According to an affidavit filed by Christoff, on February 7, 2023 there were two promotions to the rank of Staff Chief.⁴⁶ Christoff claimed that the overall Staff Chief headcount thus was "minimally impacted." These promotions

⁴⁴ Larry Celona, Joe Marino, and Jorge Fitz-Gibbon, "FDNY brass denying chiefs' requests for demotion as turmoil spreads: sources," N.Y. Post, Mar. 12, 2023, available at <https://nypost.com/2023/03/12/fdny-brass-denying-chiefs-requests-for-demotion-amid-spreading-turmoil-sources/>.

⁴⁵ Susan Edelman, "FDNY Commissioner Laura Kavanagh absent at parking-garage collapse for 'medical' reasons," N.Y. Post, April 22, 2023, available at <https://nypost.com/2023/04/22/fdny-commish-laura-kavanagh-absent-at-parking-garage-collapse/>.

⁴⁶ *Gala et al. v. Kavanagh, et al.*, No. 23 CV 1543 (E.D.N.Y. filed Feb. 28, 2023), ECF No. 6-1.

did not even replace all three demoted Staff Chiefs, much less resolve the ten demotion requests or retaliation against other Staff Chiefs.

108. 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.

109. 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.

110. 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.

111. Deputy Chiefs in line for promotions know this. In April 2023, FDNY conducted an informal survey of 65 Deputy Chiefs to determine whether they would accept promotions to Staff Chief—a highly prestigious position with attendant increases in salary and benefits. **Every single Deputy Chief responded that they would reject any such promotion.** Six responded that they would consider accepting a promotion, but only after another year passes.⁴⁷

IX. IN RESPONSE TO PUBLIC BACKLASH, DEFENDANTS LAUNCH A SMEAR CAMPAIGN THAT BACKFIRES

112. 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.

⁴⁷ “Dozens of Deputy Chiefs Wouldn’t Accept Promotions Under Commissioner: FDNY Source,” NBC New York, April 14, 2023, available at <https://www.nbcnewyork.com/news/local/dozens-of-deputy-chiefs-wouldnt-accept-promotions-under-commissioner-fdny-source/4242356/>.

113. Defendants Pfeifer, Augier, and Martinez participated in this smear campaign.

Examples include, but are not limited to:

- i. 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.
- ii. Describing Plaintiffs as “bad apples.”⁴⁸
- iii. Falsely claiming EEO/EEOC allegations had either been made or substantiated against Plaintiffs.
- iv. Falsely describing Plaintiffs as insubordinate.⁴⁹
- v. Falsely claiming Plaintiffs are a “divisive element in the department.”⁵⁰
- vi. Falsely claiming that Plaintiffs mistreat and undermine colleagues.⁵¹
- vii. Falsely claiming Plaintiffs “wreaked havoc” on FDNY.⁵²
- viii. Falsely claiming Plaintiffs pass up non-white and female employees for promotions.⁵³
- ix. Falsely claiming that Plaintiffs’ actions were motivated by sexism.⁵⁴

⁴⁸ Tracy, Gartland, and 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>.

⁴⁹ See, e.g., 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>.

⁵⁰ See *supra* note 48 (Tracy, Gartland, and Rayman article).

⁵¹ Celona, Moore, Marino, and 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/>.

⁵² See *supra* note 49 (Freeman article).

⁵³ See *supra* note 49 (Freeman article).

⁵⁴ Maureen Dowd, “A Tale of Fire and Ice,” N.Y. Times, April 8, 2023, available at <https://www.nytimes.com/2023/04/08/opinion/fire-department-laura-kavanagh.html> (“Asked if

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

CONCLUSION

115. Based on the above, Defendant Kavanagh and her coconspirators have deployed, and continue to execute on, a cynical and hypocritical scheme based on age discrimination.

116. 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.

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

118. 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)**

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

120. 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

this firestorm was simply a case of misogyny, Pfeifer said other commissioners had made major staff changes, but none got the pushback Kavanagh did. ‘I’ve never experienced anything like that in my entire career,’ he said.”)

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

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 NYSHRL.

123. To the extent Defendants are not "employers" under the NYSHRL, 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 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)

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

127. 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.

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. 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 NYSHRL.

130. To the extent Defendants are not "employers" under the NYSHRL, 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 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)**

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 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 NYSRHL.

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. 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 NYSHRL.

140. To the extent Defendants are not “employers” under the NYSHRL, they are liable as aiders and abettors of the 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 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)

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

144. 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.

145. 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.

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

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

148. 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.

149. 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)

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

151. 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.

152. 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.

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

154. 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.

155. 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.

156. 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)**

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

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

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

160. 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 NYCRHL.

161. 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.

162. 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.

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

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

165. 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.

166. 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: July 10, 2023
New York, New York

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