

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

SARAH-ELIZABETH L. TIERNEY,
as Administratrix of the Estate of JASON D. ARNO,
66 Frontenac Avenue
Buffalo, New York 14216,

Plaintiff,

vs.

**VERIFIED
COMPLAINT**

Index No.:

JP CONTRACTING OF WNY LLC,
701 Seneca Street
Suite 202
Buffalo, New York 14210,

743 MAIN STREET LLC
701 Seneca Street
Suite 200
Buffalo, New York 14210,

CITY OF BUFFALO,
City Hall
65 Niagara Street
Buffalo, New York 14202,

CITY OF BUFFALO FIRE DEPARTMENT,
195 Court Street
Buffalo, New York 14202,

Defendants.

Plaintiff, SARAH-ELIZABETH L. TIERNEY, as Administratrix of the Estate of JASON D. ARNO, by her attorneys, GIBSON, McASKILL & CROSBY, LLP, for the causes of action against defendants, JP CONTRACTING OF WNY LLC, 743 MAIN STREET LLC, CITY OF BUFFALO and CITY OF BUFFALO FIRE DEPARTMENT, herein allege as follows:

1. At all times hereinafter mentioned, plaintiff, SARAH ELIZABETH L. TIERNEY, as Administratrix of the Estate of JASON ARNO, was and is a resident of the County of Erie, State of New York.

2. At all times hereinafter mentioned, JP CONTRACTING OF WNY LLC (hereinafter

referred to as “JP CONTRACTING”) was and is a domestic limited liability company with its primary place of business located at 701 Seneca Street, Suite 202, in the City of Buffalo, County of Erie, State of New York.

3. At all times hereinafter mentioned, defendant, 743 MAIN STREET LLC (hereinafter referred to as “743 MAIN”) was and is a domestic limited liability company with its primary place of business located at 701 Seneca Street, Suite 200, in the City of Buffalo, County of Erie, State of New York.

4. At all times hereinafter mentioned, defendant, CITY OF BUFFALO, was and is a municipal corporation, licensed and authorized to transact business in the County of Erie and State of New York, maintaining offices at 65 Niagara Square, Buffalo, New York.

5. At all times hereinafter mentioned, defendant, CITY OF BUFFALO FIRE DEPARTMENT, was and is a department of defendant, CITY OF BUFFALO, a municipal corporation, duly existing under and by virtue of the laws of the State of New York.

6. Upon information and belief, at all times hereinafter mentioned, defendant, CITY OF BUFFALO, operated and administered defendant, CITY OF BUFFALO FIRE DEPARTMENT, as part of its governmental function.

7. Upon information and belief, on or about March 1, 2023, and for some time prior to March 1, 2023, defendant, 743 MAIN, owned the premises located at 743 Main Street in the City of Buffalo, County of Erie, State of New York.

8. Upon information and belief, on or about March 1, 2023, and for some time prior to March 1, 2023, defendant, 743 MAIN, controlled the premises located at 743 Main Street in the City of Buffalo, County of Erie, State of New York.

9. Upon information and belief, defendant, 743 MAIN, purchased the premises located

at 743 Main Street in the City of Buffalo, County of Erie, State of New York on or about December 15, 2022.

10. Upon information and belief, on or about March 1, 2023, and for some time prior to March 1, 2023, the premises located at 743 Main Street in the City of Buffalo, County of Erie, State of New York was a three-story, mixed-use commercial structure with an attached single-story warehouse.

11. Upon information and belief, the premises located at 743 Main Street in the City of Buffalo, County of Erie, State of New York (hereinafter sometimes referred to as the “743 Main Street premises”) also includes and/or encompasses the 745 Main Street and 747 Main Street addresses.

12. Upon information and belief, the commercial structure located at 743 Main Street in the City of Buffalo, County of Erie, State of New York is sometimes known as 743/745/747 Main Street.

13. Upon information and belief, on March 1, 2023, and for some time prior to March 1, 2023, defendant, 743 MAIN, also owned the portions of the 743 Main Street premises that included and/or encompassed the 745 Main Street and 747 Main Street addresses.

14. Upon information and belief, on March 1, 2023, and for some time prior to March 1, 2023, defendant, 743 MAIN, also controlled the portions of the 743 Main Street premises that included and/or encompassed the 745 Main Street and 747 Main Street addresses.

15. Upon information and belief, on March 1, 2023, and for some time prior to March 1, 2023, defendant, 743 MAIN, was responsible for the upkeep and maintenance at the 743 Main Street premises.

16. Upon information and belief, on March 1, 2023, and for some time prior to

March 1, 2023, defendant, 743 MAIN, was responsible for the upkeep and maintenance of the portions of the 743 Main Street premises that included and/or encompassed the 745 Main Street and 747 Main Street addresses.

17. Upon information and belief, on March 1, 2023, and for some time prior to March 1, 2023, the entity known as “DC Theatricks” utilized the 747 Main Street address.

18. Upon information and belief, on March 1, 2023, and for some time prior to March 1, 2023, the entity known as “DC Theatricks” occupied the 743 Main Street premises as a tenant in the 747 Main Street portion of the commercial structure.

19. Upon information and belief, on March 1, 2023, and for some time prior to March 1, 2023, defendant, 743 MAIN, knew or should have known the entity known as “DC Theatricks” occupied the 743 Main Street premises as a tenant in the 747 Main Street portion of the commercial structure.

20. Upon information and belief, at some time prior to March 1, 2023 defendant, 743 MAIN, entered into a contract with defendant, JP CONTRACTING, for the performance of construction, demolition, renovation, masonry, stonework and/or brickwork at the 743 Main Street premises.

21. Upon information and belief, at some time prior to March 1, 2023 defendant, 743 MAIN, hired defendant, JP CONTRACTING, for the performance of construction, demolition, renovation, masonry, stonework and/or brickwork at the 743 Main Street premises.

22. Upon information and belief, on or before March 1, 2023, defendant JP CONTRACTING, did engage in the construction, demolition, renovation, masonry, stonework and/or brickwork it was contracted to perform at the 743 Main Street premises.

23. Upon information and belief, on or before March 1, 2023, defendant JP

CONTRACTING, did engage in the construction, demolition, renovation, masonry, stonework and/or brickwork it was hired to perform at the 743 Main Street premises.

24. Upon information and belief, on or about March 1, 2023, defendant, JP CONTRACTING's, representatives, agents, appointees, designees, employees, independent contractors, subcontractors and/or servants were present at the 743 Main Street premises performing construction, demolition, renovation, masonry, stonework, and/or brickwork within the course and scope of their employment with defendant, JP CONTRACTING.

25. Upon information and belief, on or about March 1, 2023, and for some time prior to March 1, 2023, Obel Santiago was a representative, agent, designee and/or employee of defendant, JP CONTRACTING.

26. Upon information and belief, on or about March 1, 2023, Emmanuel Tirado was a representative, agent, designee and/or employee of defendant, JP CONTRACTING.

27. Upon information and belief, on or about March 1, 2023, Marc Sabia was a representative, agent, designee and/or employee of defendant, JP CONTRACTING.

28. Upon information and belief, on or before March 1, 2023, Obel Santiago, while working within the course and scope of his employment with JP CONTRACTING, did install ½ inch plywood with screws to the metal doorframe on the north exterior door on the north side of the 743 Main Street premises.

29. Upon information and belief, the north exterior door on the north side of the 743 Main Street premises was the "rear" and/or "north" entrance and/or exit for "DC Theatricks."

30. Upon information and belief, on or about March 1, 2023, Emmanuel Tirado, was working within the course and scope of his employment with defendant, JP CONTRACTING, at the 743 Main Street premises.

31. Upon information and belief, on or about March 1, 2023, Marc Sabia, was working within the course and scope of his employment with defendant, JP CONTRACTING, at the 743 Main Street premises.

32. Upon information and belief, on or about March 1, 2023 between approximately 7:25 a.m. and 8:35 a.m., Emmanuel Tirado and/or Marc Sabia, while working within the course and scope of their employment with defendant, JP CONTRACTING, did use, operate, light, ignite, and/or run, a propane tank with an attached propane torch, together with a leaf blower, at and/or near the east side of the north exterior door and parking lot area on the north side of the 743 Main Street premises.

33. Upon information and belief, the aforementioned use, operation, and/or ignition of the propane tank with the attached propane torch together with the use and operation of the leaf blower at and/or near the east side of the north exterior door and parking lot on the north side of the 743 Main Street premises on March 1, 2023 between 7:25 a.m. and 8:35 a.m. did cause, produce, create, and/or generate an open flame.

34. Upon information and belief, as a result of the aforementioned use, operation, and/or ignition of the propane tank with the attached propane torch together with the use and operation of the leaf blower at and/or near the east side of the north exterior door and parking lot on the north side of the 743 Main Street premises on March 1, 2023 between 7:25 a.m. and 8:35 a.m., which caused, produced, created, and/or generated an open flame, a fire was caused to be created, initiated, commenced, not reduced and/or not extinguished inside the north doorway of the 743 Main Street premises.

35. Upon information and belief, the source of the structure fire at the 743 Main Street premises was the application of an open flame from the propane torch (ignition source) to common

combustibles left inside the north doorway, including, but not limited to bags of cloth material.

36. Upon information and belief, the area of origin of the structure fire at the 743 Main Street premises was located just inside the north doorway of the 743 Main Street premises, also known as the “rear” and/or “north” entrance and/or exit for “DC Theatricks.”

37. Defendant, JP CONTRACTING, as the employer of Obel Santiago, is vicariously liable for any and all acts of negligence, carelessness, and recklessness committed by Obel Santiago during the course and scope of his employment with defendant, JP CONTRACTING, while working at the 743 Main Street premises.

38. Defendant, JP CONTRACTING, as the employer of Emmanuel Tirado, is vicariously liable for any and all acts of negligence, carelessness, and recklessness committed by Emmanuel Tirado during the course and scope of his employment with defendant, JP CONTRACTING, while working at the 743 Main Street premises.

39. Defendant, JP CONTRACTING, as the employer of Marc Sabia, is vicariously liable for any and all acts of negligence, carelessness, and recklessness committed by Marc Sabia during the course and scope of his employment with defendant, JP CONTRACTING, while working at the 743 Main Street premises.

40. Upon information and belief, as a result of the structure fire at the 743 Main Street premises, defendant, THE CITY OF BUFFALO FIRE DEPARTMENT, was dispatched to the 743 Main Street premises.

41. Upon information and belief, on March 1, 2023, Jason Arno was employed as a firefighter with defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT.

42. Upon information and belief, on March 1, 2023, while carrying out, discharging

and/or performing his duties as a firefighter for defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, the plaintiff's decedent, Jason Arno (hereinafter referred to as "Jason Arno"), was dispatched to the 743 Main Street premises, on Engine 2, in response to the structure fire.

43. Upon information and belief, on March 1, 2023, while carrying out, discharging and/or performing his duties as a firefighter for defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, Jason Arno entered the 743 Main Street premises to combat the structure fire.

44. Upon information and belief, at the time Jason Arno entered the 743 Main Street premises, and throughout the time he remained on the 743 Main Street premises, he was lawfully permitted to enter and remain upon said premises.

45. Upon information and belief, it is reasonably anticipated and foreseeable that emergency personnel, including, but not limited to, City of Buffalo firefighters may enter a certain structure or premises within the City of Buffalo to respond to a call for an emergency.

46. Upon information and belief, on March 1, 2023, while carrying out, discharging and/or performing his duties as a firefighter for defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, at the 743 Main Street premises, Jason Arno was performing non-lifesaving measures.

47. Upon information and belief, on March 1, 2023, while carrying out, discharging and/or performing his duties as a firefighter for defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, at the 743 Main Street premises, Jason Arno was working with fellow Engine 2 firefighter, Brandon Ursing, as his "attack" man.

48. Upon information and belief, on March 1, 2023, while carrying out, discharging

and/or performing his duties as a firefighter for defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, at the 743 Main Street premises, Jason Arno's fellow firefighter, Brandon Ursing, was working in the "officer" position.

49. Upon information and belief, on March 1, 2023, while carrying out, discharging and/or performing his duties as a firefighter for defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, at the 743 Main Street premises, firefighter, Brandon Ursing, was working in the "officer" position in close proximity to fellow Engine 2 firefighter, Jason Arno, providing assistance in the operation of the hose line.

50. Upon information and belief, on March 1, 2023, while carrying out, discharging and/or performing his duties as a firefighter for defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, at the 743 Main Street premises, fellow Engine 2 firefighter, Brandon Ursing, did evacuate the 743 Main Street premises, thereby breaking visual/voice contact and compromising firefighter accountability.

51. Upon information and belief, on March 1, 2023, when fellow Engine 2 firefighter Brandon Ursing did evacuate the 743 Main Street premises, thereby breaking visual/voice contact and compromising firefighter accountability, Jason Arno was caused to be left behind inside the 743 Main Street premises as the sole member of the Engine 2 team.

52. Upon information and belief, on March 1, 2023, while carrying out, discharging, and/or performing his duties as a firefighter for defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, as the sole member of the Engine 2 team present inside the 743 Main Street premises, Jason Arno lost contact with the Engine 2 hose line.

53. Thereafter, upon information and belief, on March 1, 2023, while carrying out, discharging, and/or performing his duties as a firefighter for defendants, CITY OF BUFFALO

and/or CITY OF BUFFALO FIRE DEPARTMENT, Jason Arno did become isolated in an environment immediately dangerous to life and health, which did result in a “man down” situation.

54. As a result of the foregoing, while within the course and scope of his employment as a firefighter with defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, Jason Arno was caused to and did suffer conscious pain and suffering, pre-death terror and fear of impending death, as well as serious and grave bodily injuries that ultimately resulted in his death on March 1, 2023.

55. Upon information and belief, as a result of the foregoing, and by reason of the acts, omissions, negligence, carelessness and recklessness of defendants, 743 MAIN, JP CONTRACTING, CITY OF BUFFALO and CITY OF BUFFALO FIRE DEPARTMENT, as set forth in detail below, on March 1, 2023 plaintiff's decedent, Jason Arno, died, leaving certain surviving distributees, including his wife and daughter.

56. On or about April 25, 2023, plaintiff, Sarah-Elizabeth L. Tierney, as Administratrix of the Estate of Jason Arno, served defendants, CITY OF BUFFALO and CITY OF BUFFALO FIRE DEPARTMENT, with a Notice of Claim, setting forth in detail the particulars of the claims herein alleged.

57. More than thirty (30) days have elapsed since service of the Notice of Claim.

58. That plaintiff, Sarah-Elizabeth L. Tierney, as Administratrix of the Estate of Jason Arno, did appear for a General Municipal Law §50-H hearing on May 31, 2023 and to date defendants, CITY OF BUFFALO and CITY OF BUFFALO FIRE DEPARTMENT, have failed, neglected, and/or refused to pay or adjust this claim.

59. As it pertains to defendants, CITY OF BUFFALO and CITY OF BUFFALO FIRE DEPARTMENT, this action is timely commenced within one year and ninety days after the

happening of the events upon which the claims are based, and all requirements precedent to suit contained in the New York General Municipal Law and other laws of the State of New York have been met.

60. Upon information and belief, this action falls within one or more of the exceptions set forth in CPLR Section §1602.

61. The amount of damages sought in this action exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR PLAINTIFF'S FIRST CAUSE OF ACTION AS
AGAINST DEFENDANT, 743 MAIN, PLAINTIFF HEREIN
ALLEGES UPON INFORMATION AND BELIEF:**

62. Plaintiff repeats and realleges the allegations contained in paragraphs "1" through "59" of this Complaint as if more fully set forth herein.

63. As noted above, while within the course and scope of his employment with defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, engaged in his duties as a firefighter at the 743 Main Street premises, Jason Arno, was caused to and did suffer conscious pain and suffering, pre-death terror and fear of impending death, as well as serious and grave bodily injuries that ultimately resulted in his wrongful death on March 1, 2023

64. That Jason Arno's, injuries, including his conscious pain and suffering, pre-death terror, fear of impending death, and ultimately the serious and grave personal injuries that resulted in his wrongful death on March 1, 2023, were caused by defendant, 743 MAIN's, negligence, carelessness and recklessness, in owning, possessing, controlling, maintaining, renovating, and/or repairing the 743 Main Street premises in violation of various statutes, ordinances, rules, codes, regulations and/or charter provisions; in causing and allowing the 743 Main Street premises to be in an unsafe, dangerous, hazardous, defective and/or neglectful condition; in causing and/or allowing

an open flame to exist on or at the 743 Main Street premises; in causing and/or allowing an open flame to exist on or at the 743 Main Street premises without providing a proper fire extinguisher and/or fire pail filled with a fire extinguishing agent within the easy reach of the workers and within the vicinity of combustible materials; in failing to properly and adequately inspect the 743 Main Street premises; in failing to have proper and adequate fire suppression systems; in failing to have proper and adequate fire panels; in failing to have a monitored fire protection system with adequate detection and annunciation throughout the 743 Main Street premises; in failing to have operable pull stations; in failing to have proper and adequate smoke detectors; in failing to properly label inoperable pull stations; in failing to establish and maintain proper ingress and egress emergency exit plans and/or routes; in violating and failing to properly and adequately follow National Fire Protection Association (“NFPA”) and Uniform Fire Prevention and Building Code standards, codes, and guidelines; in causing and allowing its tenant, “DC Theatricks,” to violate applicable NFPA standards, codes and guidelines; in failing to warn of the inadequate, improper, and/or lack of monitored fire protection system with adequate detection and annunciation throughout the 743 Main Street premises; in failing to warn of the inadequate, improper and/or lack of smoke detectors, inoperable pull stations, inoperable fire panel, lack of proper and adequate ingress and egress emergency exit plans and/or routes, etc.; in being aware of the foregoing dangerous, hazardous, unsafe and negligent conditions and failing to remedy same; in failing to correct, repair, and/or remedy the foregoing unsafe, dangerous, hazardous and negligent conditions; in failing to properly and adequately inspect the 743 Main Street premises; in failing to have a valid and current certificate of occupancy; in failing to maintain and keep current its certificate of occupancy; in failing to have proper and adequate building, City of Buffalo and/or New York State code inspections; in failing to obtain proper and applicable City of Buffalo permits; in failing to obtain proper City of Buffalo

inspections before proceeding with construction, demolition, renovation and/or restoration work at the 743 Main Street premises; in failing to properly and adequately train its employees, agents, and/or representatives; in failing to properly and adequately instruct its employees, agents, and/or representatives; in failing to properly and adequately supervise its employees, agents, and/or representatives; and was otherwise negligent, careless and reckless in causing the fire at the 743 Main Street premises, and the resulting injuries, conscious pain and suffering, pre-death terror, fear of impending death, and ultimately the wrongful death, to Jason Arno.

65. As a result of defendant, 743 MAIN's, acts, omissions, negligence, carelessness and/or recklessness, Jason Arno was caused to and did sustain conscious pain and suffering and shock to his nerves and nervous system; was caused to and did sustain pre-death terror and fear of impending death; and was caused to and did sustain serious and grave bodily injuries.

66. Upon information and belief, as a result of the foregoing, Jason Arno suffered pre-death damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, which will be proven at the time of trial.

67. As a result of defendant, 743 MAIN's, acts, omissions, negligence, carelessness and/or recklessness, Jason Arno was caused to and did sustain serious and grave bodily injuries that resulted in his wrongful death on March 1, 2023, leaving behind certain surviving distributees, including his wife and daughter.

68. Upon information and belief, as a result of the foregoing, Jason Arno's distributees were damaged and have necessarily suffered pecuniary losses as a result of his wrongful death on March 1, 2023.

69. Upon information and belief, as a result of the foregoing, including Jason Arno's wrongful death, his wife and daughter have been and will be caused to suffer a permanent loss of

Jason Arno's employment and earning capacity, a permanent loss of Jason Arno's future Social Security benefits and a permanent loss of future pension benefits. Additionally, due to the wrongful death of Jason Arno on March 1, 2023, Jason Arno's wife and daughter will be permanently deprived of the services, support, counseling, guidance, assistance and intellectual, moral and physical training of their husband and father and have suffered damages in an amount which exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

70. Upon information and belief, the damages, including the wrongful death of Jason Arno, were caused by the negligence, carelessness and recklessness of defendant, 743 MAIN, without any negligence on the part of Jason Arno.

**AS AND FOR PLAINTIFF'S SECOND CAUSE OF ACTION
AS AGAINST DEFENDANT, 743 MAIN, PLAINTIFF
ALLEGES UPON INFORMATION AND BELIEF:**

71. Plaintiff repeats and realleges each of the allegations contained in paragraphs "1" through "70" of this Complaint as if more fully set forth herein.

72. That upon information and belief, the aforementioned occurrence and the injuries sustained by Jason Arno as a result thereof were caused by reason of the failure of the defendant, 743 MAIN, its agents, servants and/or employees, appointees, designees, departments, divisions, independent contractors, general contractors and/or subcontractors to provide its agents, servants, and/or employees, appointees, designees, departments, divisions, independent contractors, general contractors and/or subcontractors, and/or persons lawfully upon the 743 Main Street premises with reasonable and adequate protection and safety, including without limiting thereto, failing to construct, equip, arrange, operate and conduct the construction, renovation, demolition, masonry, brickwork and/or stonework projects at the 743 Main Street premises so as to provide reasonable and adequate protection and safety to the agents, servants and/or employees, appointees, designees,

departments, divisions, independent contractors, general contractors and/or subcontractors, together with any and all other persons lawfully upon said premises, including, but not limited to Jason Arno, and was otherwise in violation of its non-delegable duties and obligations to Jason Arno pursuant to §200 of the Labor Law of the State of New York and the applicable provisions of the Industrial Code of the State of New York, the rules, regulations and orders of the Commissioner of Labor and the Industrial Board of Standards and Appeals of the State of New York, the federal Occupational Safety and Health regulations, and other statutory laws, regulations and rules of the Town of Allegany, County of Cattaraugus and State of New York.

73. As a result of defendant, 743 MAIN's, acts, omissions, negligence, carelessness and/or recklessness, Jason Arno was caused to and did sustain conscious pain and suffering and shock to his nerves and nervous system; was caused to and did sustain pre-death terror and fear of impending death; and was caused to and did sustain serious and grave bodily injuries.

74. Upon information and belief, as a result of the foregoing, Jason Arno suffered pre-death damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, which will be proven at the time of trial.

75. As a result of defendant, 743 MAIN's, acts, omissions, negligence, carelessness and/or recklessness, Jason Arno was caused to and did sustain serious and grave bodily injuries that resulted in his wrongful death on March 1, 2023, leaving behind certain surviving distributees, including his wife and daughter.

76. Upon information and belief, as a result of the foregoing, Jason Arno's distributees were damaged and have necessarily suffered pecuniary losses as a result of his wrongful death on March 1, 2023.

77. Upon information and belief, as a result of the foregoing, including Jason Arno's

wrongful death, his wife and daughter have been and will be caused to suffer a permanent loss of Jason Arno's employment and earning capacity, a permanent loss of Jason Arno's future Social Security benefits and a permanent loss of future pension benefits. Additionally, due to the wrongful death of Jason Arno on March 1, 2023, Jason Arno's wife and daughter will be permanently deprived of the services, support, counseling, guidance, assistance and intellectual, moral and physical training of their husband and father and have suffered damages in an amount which exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

78. Upon information and belief, the damages, including the wrongful death of Jason Arno, were caused by the negligence, carelessness and recklessness of defendant, 743 MAIN, without any negligence on the part of Jason Arno.

**AS AND FOR PLAINTIFF'S THIRD CAUSE OF ACTION
AS AGAINST DEFENDANT, 743 MAIN, PLAINTIFF
ALLEGES UPON INFORMATION AND BELIEF:**

79. Plaintiff repeats and realleges each of the allegations contained in paragraphs "1" through "78" of this Complaint as if more fully set forth herein.

80. The aforementioned occurrence and the injuries sustained by Jason Arno as a result thereof were caused by reason of the failure of the defendant, 743 MAIN, its agents, servants and/or employees, appointees, designees, departments, divisions, independent contractors, general contractors and/or subcontractors to provide its agents, servants, and/or employees, appointees, designees, departments, divisions, independent contractors, general contractors and/or subcontractors, and/or persons lawfully upon the 743 Main Street premises, including, but not limited to Jason Arno, with a work area so constructed, equipped, arranged, operated, and/or conducted so as to provide reasonable and adequate protection and safety to its agents, servants, and/or employees, appointees, designees, departments, divisions, independent contractors, general

contractors and/or subcontractors, and/or persons lawfully upon the 743 Main Street premises, including, but not limited to Jason Arno, and was otherwise in violation of its non-delegable duties and obligations pursuant §241(6) of the Labor Law of the State of New York and the applicable provisions of the Industrial Code of the State of New York, the rules, regulations and orders of the Commissioner of Labor and the Industrial Board of Standards and Appeals of the State of New York, the federal Occupational Safety and Health regulations, and other statutory laws, regulations and rules of the Town of Allegany, County of Cattaraugus and State of New York.

81. As a result of defendant, 743 MAIN's, acts, omissions, negligence, carelessness and/or recklessness, Jason Arno was caused to and did sustain conscious pain and suffering and shock to his nerves and nervous system; was caused to and did sustain pre-death terror and fear of impending death; and was caused to and did sustain serious and grave bodily injuries.

82. Upon information and belief, as a result of the foregoing, Jason Arno suffered pre-death damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, which will be proven at the time of trial.

83. As a result of defendant, 743 MAIN's, acts, omissions, negligence, carelessness and/or recklessness, Jason Arno was caused to and did sustain serious and grave bodily injuries that resulted in his wrongful death on March 1, 2023, leaving behind certain surviving distributees, including his wife and daughter.

84. Upon information and belief, as a result of the foregoing, Jason Arno's distributees were damaged and have necessarily suffered pecuniary losses as a result of his wrongful death on March 1, 2023.

85. Upon information and belief, as a result of the foregoing, including Jason Arno's wrongful death, his wife and daughter have been and will be caused to suffer a permanent loss of

Jason Arno's employment and earning capacity, a permanent loss of Jason Arno's future Social Security benefits and a permanent loss of future pension benefits. Additionally, due to the wrongful death of Jason Arno on March 1, 2023, Jason Arno's wife and daughter will be permanently deprived of the services, support, counseling, guidance, assistance and intellectual, moral and physical training of their husband and father and have suffered damages in an amount which exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

86. Upon information and belief, the damages, including the wrongful death of Jason Arno, were caused by the negligence, carelessness and recklessness of defendant, 743 MAIN, without any negligence on the part of Jason Arno.

**AS AND FOR PLAINTIFF'S FOURTH CAUSE OF ACTION
AS AGAINST DEFENDANT, JP CONTRACTING, SURETY,
PLAINTIFF ALLEGES UPON INFORMATION AND BELIEF:**

87. Plaintiff repeats and realleges each of the allegations contained in paragraphs "1" through "86" of this Complaint as if more fully set forth herein.

88. That Jason Arno's, injuries, including his conscious pain and suffering, pre-death terror, fear of impending death, and ultimately the serious and grave personal injuries that resulted in his wrongful death on March 1, 2023, JP CONTRACTING's, negligence, carelessness and recklessness, in owning, possessing, controlling, maintaining, demolishing, renovating, and/or repairing the 743 Main Street premises in violation of various statutes, ordinances, rules, codes, regulations and/or charter provisions; in causing and allowing the 743 Main Street premises to be in an unsafe, dangerous, hazardous, defective and/or neglectful condition; in causing and/or allowing an open flame to exist on or at the 743 Main Street premises; in causing and/or allowing an open flame to exist on or at the 743 Main Street premises without providing a proper fire extinguisher and/or fire pail filled with a fire extinguishing agent within the easy reach its employees, agents,

representatives, appointees, contractors, independent contractors, and/or servants and/or within the vicinity of combustible materials; in failing to properly and adequately inspect the 743 Main Street premises; in violating and failing to properly and adequately follow National Fire Protection Association (“NFPA”) and Uniform Fire Prevention and Building Code standards, codes, and guidelines; in causing and allowing its tenant, “DC Theatricks,” to violate applicable NFPA standards, codes and guidelines; in failing to warn of the inadequate, improper and/or lack of smoke detectors, inoperable pull stations, inoperable fire panel, lack of proper and adequate ingress and egress emergency exit plans and/or routes, etc.; in being aware of the foregoing dangerous, hazardous, unsafe and negligent conditions and failing to warn of and/or remedy same; in failing to correct, repair, and/or remedy the foregoing unsafe, dangerous, hazardous and negligent conditions; in failing to properly and adequately inspect the 743 Main Street premises; in failing to properly and adequately train its employees, agents, and/or representatives; in failing to properly and adequately instruct its employees, agents, and/or representatives; in failing to properly and adequately supervise its employees, agents, and/or representatives; and was otherwise negligent, careless and reckless in causing the fire at the 743 Main Street premises, and the resulting injuries, conscious pain and suffering, pre-death terror, fear of impending death, and ultimately the wrongful death, to Jason Arno.

89. As a result of defendant, JP CONTRACTING’s, acts, omissions, negligence, carelessness and/or recklessness, Jason Arno was caused to and did sustain conscious pain and suffering and shock to his nerves and nervous system; was caused to and did sustain pre-death terror and fear of impending death; and was caused to and did sustain serious and grave bodily injuries.

90. Upon information and belief, as a result of the foregoing, Jason Arno suffered pre-death damages in an amount which exceeds the jurisdictional limits of all lower courts which would

otherwise have jurisdiction, which will be proven at the time of trial.

91. As a result of defendant, JP CONTRACTING's, acts, omissions, negligence, carelessness and/or recklessness, Jason Arno was caused to and did sustain serious and grave bodily injuries that resulted in his wrongful death on March 1, 2023, leaving behind certain surviving distributees, including his wife and daughter.

92. Upon information and belief, as a result of the foregoing, Jason Arno's distributees were damaged and have necessarily suffered pecuniary losses as a result of his wrongful death on March 1, 2023.

93. Upon information and belief, as a result of the foregoing, including Jason Arno's wrongful death, his wife and daughter have been and will be caused to suffer a permanent loss of Jason Arno's employment and earning capacity, a permanent loss of Jason Arno's future Social Security benefits and a permanent loss of future pension benefits. Additionally, due to the wrongful death of Jason Arno on March 1, 2023, Jason Arno's wife and daughter will be permanently deprived of the services, support, counseling, guidance, assistance and intellectual, moral and physical training of their husband and father and have suffered damages in an amount which exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

94. Upon information and belief, the damages, including the wrongful death of Jason Arno, were caused by the negligence, carelessness and recklessness of defendant, JP CONTRACTING, without any negligence on the part of Jason Arno.

**AS AND FOR PLAINTIFF'S FIFTH CAUSE OF ACTION AS
AGAINST DEFENDANT, JP CONTRACTING, PLAINTIFF
ALLEGES UPON INFORMATION AND BELIEF:**

95. Plaintiff repeats and realleges each of the allegations contained in paragraphs "1" through "93" of this Complaint as if more fully set forth herein.

96. That upon information and belief, the aforementioned occurrence and the injuries sustained by Jason Arno as a result thereof were caused by reason of the failure of the defendant, JP CONTRACTING, its agents, servants and/or employees, appointees, designees, departments, divisions, independent contractors, general contractors and/or subcontractors to provide its agents, servants, and/or employees, appointees, designees, departments, divisions, independent contractors, general contractors and/or subcontractors, and/or persons lawfully upon the 743 Main Street premises with a work area so constructed, equipped, arranged, operated, and/or conducted so as to provide reasonable and adequate protection and safety to its agents, servants, and/or employees, appointees, designees, departments, divisions, independent contractors, general contractors and/or subcontractors, and/or persons lawfully upon the 743 Main Street premises, including, but not limited to Jason Arno, and was otherwise in violation of its non-delegable duties and obligations pursuant §200 of the Labor Law of the State of New York and the applicable provisions of the Industrial Code of the State of New York, the rules, regulations and orders of the Commissioner of Labor and the Industrial Board of Standards and Appeals of the State of New York, the federal Occupational Safety and Health regulations, and other statutory laws, regulations and rules of the Town of Allegany, County of Cattaraugus and State of New York.

97. As a result of defendant, JP CONTRACTING's, acts, omissions, negligence, carelessness and/or recklessness, Jason Arno was caused to and did sustain conscious pain and suffering and shock to his nerves and nervous system; was caused to and did sustain pre-death terror and fear of impending death; and was caused to and did sustain serious and grave bodily injuries.

98. Upon information and belief, as a result of the foregoing, Jason Arno suffered pre-death damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, which will be proven at the time of trial.

99. As a result of defendant, JP CONTRACTING's, acts, omissions, negligence, carelessness and/or recklessness, Jason Arno was caused to and did sustain serious and grave bodily injuries that resulted in his wrongful death on March 1, 2023, leaving behind certain surviving distributees, including his wife and daughter.

100. Upon information and belief, as a result of the foregoing, Jason Arno's distributees were damaged and have necessarily suffered pecuniary losses as a result of his wrongful death on March 1, 2023.

101. Upon information and belief, as a result of the foregoing, including Jason Arno's wrongful death, his wife and daughter have been and will be caused to suffer a permanent loss of Jason Arno's employment and earning capacity, a permanent loss of Jason Arno's future Social Security benefits and a permanent loss of future pension benefits. Additionally, due to the wrongful death of Jason Arno on March 1, 2023, Jason Arno's wife and daughter will be permanently deprived of the services, support, counseling, guidance, assistance and intellectual, moral and physical training of their husband and father and have suffered damages in an amount which exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

102. Upon information and belief, the damages, including the wrongful death of Jason Arno, were caused by the negligence, carelessness and recklessness of defendant, JP CONTRACTING, without any negligence on the part of Jason Arno.

**AS AND FOR PLAINTIFF'S SIXTH CAUSE OF ACTION
AS AGAINST DEFENDANT, JP CONTRACTING,
PLAINTIFF ALLEGES UPON INFORMATION AND
BELIEF:**

103. Plaintiff repeats and realleges each of the allegations contained in paragraphs "1" through "101" of this Complaint as if more fully set forth herein.

104. The aforementioned occurrence and the injuries sustained by Jason Arno as a result thereof were caused by reason of the failure of the defendant, JP CONTRACTING, its agents, servants and/or employees, appointees, designees, departments, divisions, independent contractors, general contractors and/or subcontractors to provide its agents, servants, and/or employees, appointees, designees, departments, divisions, independent contractors, general contractors and/or subcontractors, and/or persons lawfully upon the 743 Main Street premises, including, but not limited to Jason Arno, with a work area so constructed, equipped, arranged, operated, and/or conducted so as to provide reasonable and adequate protection and safety to its agents, servants, and/or employees, appointees, designees, departments, divisions, independent contractors, general contractors and/or subcontractors, and/or persons lawfully upon the 743 Main Street premises, including, but not limited to Jason Arno, and was otherwise in violation of its non-delegable duties and obligations pursuant §241(6) of the Labor Law of the State of New York and the applicable provisions of the Industrial Code of the State of New York, the rules, regulations and orders of the Commissioner of Labor and the Industrial Board of Standards and Appeals of the State of New York, the federal Occupational Safety and Health regulations, and other statutory laws, regulations and rules of the Town of Allegany, County of Cattaraugus and State of New York.

105. As a result of defendant, JP CONTRACTING's, acts, omissions, negligence, carelessness and/or recklessness, Jason Arno was caused to and did sustain conscious pain and suffering and shock to his nerves and nervous system; was caused to and did sustain pre-death terror and fear of impending death; and was caused to and did sustain serious and grave bodily injuries.

106. Upon information and belief, as a result of the foregoing, Jason Arno suffered pre-death damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, which will be proven at the time of trial.

107. As a result of defendant, JP CONTRACTING's, acts, omissions, negligence, carelessness and/or recklessness, Jason Arno was caused to and did sustain serious and grave bodily injuries that resulted in his wrongful death on March 1, 2023, leaving behind certain surviving distributees, including his wife and daughter.

108. Upon information and belief, as a result of the foregoing, Jason Arno's distributees were damaged and have necessarily suffered pecuniary losses as a result of his wrongful death on March 1, 2023.

109. Upon information and belief, as a result of the foregoing, including Jason Arno's wrongful death, his wife and daughter have been and will be caused to suffer a permanent loss of Jason Arno's employment and earning capacity, a permanent loss of Jason Arno's future Social Security benefits and a permanent loss of future pension benefits. Additionally, due to the wrongful death of Jason Arno on March 1, 2023, Jason Arno's wife and daughter will be permanently deprived of the services, support, counseling, guidance, assistance and intellectual, moral and physical training of their husband and father and have suffered damages in an amount which exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

110. Upon information and belief, the damages, including the wrongful death of Jason Arno, were caused by the negligence, carelessness and recklessness of defendant, JP CONTRACTING, without any negligence on the part of Jason Arno.

**AS AND FOR PLAINTIFF'S SEVENTH CAUSE OF ACTION
AS AGAINST DEFENDANTS, CITY OF BUFFALO AND/OR
CITY OF BUFFALO FIRE DEPARTMENT, PURSUANT TO
GENERAL MUNICIPAL LAW §205-a, PLAINTIFF HEREIN
ALLEGES UPON INFORMATION AND BELIEF:**

111. Plaintiff repeats and realleges the allegations contained in paragraphs "1" through "110" of this Complaint as if more fully set forth herein.

112. While within the course and scope of his employment with defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, engaged in his duties as a firefighter, Jason Arno was caused to and did suffer conscious pain and suffering, pre-death terror and fear of impending death, as well as serious and grave bodily injuries that ultimately resulted in his wrongful death on March 1, 2023.

113. That on March 1, 2023, defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, violated and departed from certain, specific, direct and immutable rules, regulations, policies and procedures, and practices in fighting and/or responding to the fire.

114. That these violations and departures include, but are not limited to, failing to ensure that all personnel are aware of the dangers of working around a warehouse structure fire; in failing to have, develop and/or enforce a standard operating procedure that addresses strategies and tactics for the type of fire present at the 743 Main Street premises on March 1, 2023; in failing to ensure that the incident commander received interior status reports and perform/continue evaluating risk-versus-gain; in failing to ensure that crew integrity was maintained at all times on the fireground; in failing to ensure that the incident commander received accurate personnel accountability reports so he could account for all personnel operating at the 743 Main Street premises; in failing to ensure that a separate incident safety officer, independent from the incident commander, was appointed; in failing to ensure that firefighters used their self-contained breathing apparatus and were properly trained in emergency procedures with said apparatus; in failing to identify and/or consider the atmosphere of the whole building located at 743 Main Street, Buffalo, New York as being Immediately Dangerous to Life and Health prior to deducing the fire's location on March 1, 2023; in failing to ensure that the proper and adequate equipment was utilized throughout the firefighter process, including, but not

limited the proper and adequate hose length and size; in failing to ensure that each firefighter remained in visual and/or voice contact with one another at all times; failing to adequately and properly train its agents, employees and/or representatives; in failing to provide proper and adequate Front Line Supervisor training; in failing to inform all members of the firefighting team that everyone had been evacuated from the structure and they were performing non-life saving measures; in improperly and/or inadequately providing or fueling the oxygen supply to the fire; in compromising firefighter accountability; in failing to ensure that all City of Buffalo Fire Department employees and personnel were properly and adequately trained and certified; in failing to properly and adequately evaluate the risk versus the expected gain therefrom; in causing, allowing, permitting, requiring, and/or authorizing firefighters to act out of title in the absence of an emergency; in failing to call a lieutenant with proper and/or adequate training to respond to the 743 Main Street premises, and more specifically, to supervise Engine 2 for the relevant and applicable shift on March 1, 2023; in failing to provide proper and adequate lieutenant training to Brandon Ursing and other members of the City of Buffalo Fire Department; in failing to require Brandon Ursing and other members of the City of Buffalo Fire Department to obtain proper New York State certification to serve as a lieutenant; in failing to require Brandon Ursing and other members of the City of Buffalo Fire Department to attend the First Line Supervisor Training Program; in violating Civil Service Law §61.2; in failing to properly and adequately implement and enforce a standard operating procedure to address strategies and tactics for the type of fire facing personnel on March 1, 2023 at the time the incident at issue occurred; in failing to properly and accurately document incident details; in causing and allowing a firefighter to become isolated and distressed requiring rescue; in failing to properly and adequately execute a “mayday” and/or “man down” call; and in failing to provide Plaintiff a place of employment free from recognized hazards likely to

cause death or serious physical harm to employees as required by OSHA Section 5(a)(1) of OSHA and Labor Law Section 27-a (Public Employee Safety and Health Act).

115. That, more specifically, these violations and departures include, but are not limited to, failure to comply with certain federal regulations and standards, including, but not limited to, 29 CFR § 1910.134 and 29 CFR § 1910.156 (e)(4)(i), adopted in New York State by 12 NYCRR §800.3; failure to follow certain National Fire Protection Association standards; failure to comply with and follow relevant and applicable OSHA and Labor Law/Public Employee Safety and Health Act Sections; and failure to comply with certain state regulations and standards, including, but not limited to 29 CFR § 1910.134(d)(1)(iii), 29 CFR § 1910.134(g)(4)(i), 19 NYCRR Part 426, 19 NYCRR Part 427, and CVS § 61.2.

116. That, prior to and on March 1, 2023, defendants, CITY OF BUFFALO and CITY OF BUFFALO FIRE DEPARTMENT, should have complied with, followed, implemented, enforced and/or adopted the aforementioned standards, codes, sections, guidelines, regulations, etc.

117. That, as a result of defendants', CITY OF BUFFALO and CITY OF BUFFALO FIRE DEPARTMENT, above-listed violations, acts, omissions, negligence, carelessness and/or recklessness, Jason Arno was caused to and did sustain conscious pain and suffering and shock to his nerves and nervous system; was caused to and did sustain pre-death terror and fear of impending death; and was caused to and did sustain serious and grave bodily injuries.

118. Upon information and belief, as a result of defendants', CITY OF BUFFALO and CITY OF BUFFALO FIRE DEPARTMENT, above-listed violations acts, omissions, negligence, carelessness and/or recklessness, Jason Arno suffered pre-death damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, which will be proven at the time of trial.

119. As a result of defendants', CITY OF BUFFALO and CITY OF BUFFALO FIRE DEPARTMENT, above-listed violations acts, omissions, negligence, carelessness and/or recklessness Jason Arno was caused to and did sustain serious and grave bodily injuries that resulted in his wrongful death on March 1, 2023, leaving behind certain surviving distributees, including his wife and daughter.

120. Upon information and belief, as a result of the foregoing, Jason Arno's distributees were damaged and have necessarily suffered pecuniary losses as a result of his wrongful death on March 1, 2023.

121. As a result of the foregoing, including Jason Arno's wrongful death, his wife and daughter have been and will be caused to suffer a permanent loss of Jason Arno's employment and earning capacity, a permanent loss of Jason Arno's future Social Security benefits and a permanent loss of future pension benefits. Additionally, due to the wrongful death of Jason Arno on March 1, 2023, Jason Arno's wife and daughter will be permanently deprived of the services, support, counseling, guidance, assistance and intellectual, moral and physical training of their husband and father and have suffered damages in an amount which exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

122. That the aforementioned injuries, including the conscious pain and suffering, pre-death terror, fear of impending death, and serious and grave personal injuries that ultimately resulted in Jason Arno's wrongful death on March 1, 2023 were proximately caused by the neglect, omission, willful or culpable negligence of defendants, CITY OF BUFFALO and/or CITY OF BUFFALO FIRE DEPARTMENT, in failing to comply with the requirements of the above-listed statutes, ordinances, rules, orders, and/or requirements, in violation of General Municipal Law § 205-a, without any negligence on the part of Jason Arno.

WHEREFORE, plaintiff, SARAH-ELIZABETH L. TIERNEY, as Administratrix of the Estate of JASON D. ARNO, by her attorneys, GIBSON, McASKILL & CROSBY, LLP, for the causes of action against defendants, JP CONTRACTING OF WNY LLC, 743 MAIN STREET LLC, CITY OF BUFFALO and CITY OF BUFFALO FIRE DEPARTMENT, as stated herein does demand judgment for sums which exceed the jurisdictional limits of all lower courts, together with the costs and disbursement of this action, along with such other and further relief as this Court may deem just and proper.

DATED: Buffalo, New York
November 8, 2023

GIBSON, McASKILL & CROSBY, LLP

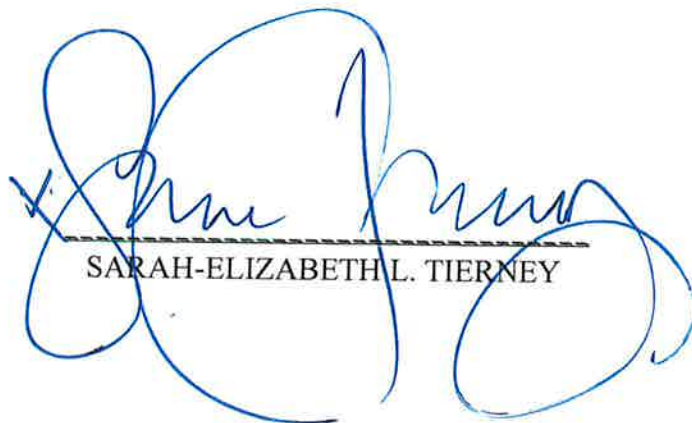
By: *s/ Charles S. Desmond*
Charles S. Desmond, II, Esq.
Attorneys for Plaintiff
69 Delaware Avenue, Suite 900
Buffalo, New York 14202
Telephone: (716) 856-4200

VERIFICATION

STATE OF NEW YORK)
 : ss
COUNTY OF ERIE)

I, SARAH-ELIZABETH L. TIERNEY, am the plaintiff in the above-captioned action and I do hereby state under the penalty of perjury that I have read the foregoing SUMMONS and VERIFIED COMPLAINT and know the contents thereof; the same is true to my own knowledge, except as to the matters alleged upon information and belief, and as to those matters, I believe them to be true.

DATED: Buffalo, New York
 November 8, 2023



SARAH-ELIZABETH L. TIERNEY

Sworn to before me this
8th day of November, 2023.



Notary Public

KRISTIN ANN TISCI
Notary Public, State of New York
No. 02TI0009605
Qualified in Erie County
Commission Expires June 14, 2027