

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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ERICA SPENCER-EL, AMY SMITH,  
and JESSICA CERONE :

Plaintiffs, :

-against- :

ROOSEVELT ISLAND OPERATING  
CORPORATION; SHELTON HAYNES,  
Individually and in his Official Capacity as  
President and CEO of RIOC; GRETCHEN  
ROBINSON, Individually and in her Official  
Capacity as Vice President and General  
Counsel of RIOC; and TAJUNA SHARPE,  
Individually and in her Official Capacity as  
Assistant Vice President for Administration  
of RIOC, ALTHERIA JACKSON, Individually  
and in her Official Capacity as Assistant Vice  
President of Programs and Operations :

Defendants. :

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**SUMMONS**

Index No.:

To All Defendants:

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

Dated: New York, New York  
February 13, 2023

**THE LAW OFFICES OF NEAL BRICKMAN, PC**  
/s/ Neal Brickman  
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To: Roosevelt Island Operating Corporation  
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Shelton Haynes  
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Gretchen Robinson  
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Tajuna Sharpe  
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Altheria Jackson  
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New York, New York 10044

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Capacity as Vice President and General :  
Counsel of RIOC; and TAJUNA SHARPE, :  
Individually and in her Official Capacity as :  
Assistant Vice President for Administration :  
of RIOC, ALTHERIA JACKSON, Individually :  
and in her Official Capacity as Assistant Vice :  
President of Programs and Operations :

Defendants. :

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**VERIFIED COMPLAINT WITH  
JURY DEMAND**

Index No.:

COMES NOW Plaintiffs, Erica Spencer-EL ("Spencer-EL"), Amy Smith ("Smith"), Jessica Cerone ("Cerone" and collectively with Spencer-EL and Smith, "Plaintiffs"), by and through their undersigned counsel, The Law Offices of Neal Brickman, P.C., located at 420 Lexington Avenue, Suite 2811, New York, New York 10170, and as and for their complaint against Defendants, Roosevelt Island Operating Corporation ("RIOC"), Shelton Haynes, Individually and in his Official Capacity as President and CEO of RIOC ("Haynes"), Gretchen Robinson, Individually and in her Official Capacity as Vice President and General Counsel of RIOC ("Robinson"), Tajuna Sharpe, Individually and in her Official Capacity as Assistant Vice President for Administration of RIOC ("Sharpe"), and Altheria Jackson, Individually and in her

Official Capacity as Assistant Vice President of Programs and Operations (“Jackson”, and with RIOC, Haynes, Robinson, and Sharpe collectively “Defendants”), state and allege as follows:

**NATURE OF THE ACTION**

1. This is an action for illegal workplace retaliation caused by Defendants against Plaintiffs for their whistleblower complaints made to report corruption, misconduct, and violations of law made internally and later externally to the New York State Office of Inspector General and to the New York State Office of the State Comptroller. As a direct result of Plaintiffs’ good-faith whistleblower complaints each of the three Plaintiffs were improperly and impermissibly subjective to a hostile work environment before ultimately being terminated from RIOC in violation of, *inter alia*, New York Labor Law § 740.

**THE PARTIES, JURISDICTION and VENUE**

2. Spencer-EL is, and was at all times relevant hereto, an individual citizen of the United States with principal residence at 181 Bergen Avenue, Bergenfield, New Jersey.

3. Smith is, and was at all times relevant hereto, an individual citizen of the United States with principal residence at 2032 47<sup>th</sup> Street, Astoria, New York 11105.

4. Cerone is, and was at all times relevant hereto, an individual citizen of the United States with principal residence at 25-30 30<sup>th</sup> Road, Apt # 5I, Astoria, New York 11102.

5. RIOC is a public benefit corporation duly authorized and operating under the laws of the State of New York within the City of New York.

6. Haynes is the President and CEO of RIOC who, upon information and belief, is, and was, an individual citizen of the United States and the State of New York, with primary residence in the City and State of New York. Haynes qualifies as an "employer" for



purposes of individual liability under New York Executive Law § 296, and New York City Administrative Code §§ 8-107 and 8-502 because he participated directly in the discriminatory conduct at issue in this case and as an "employer" under § 296 of the Executive Law by virtue of his ability to affect the terms and conditions of Plaintiffs' employment.

7. Robinson is the General Counsel of RIOC who, upon information and belief, is, and was, an individual citizen of the United States and the State of New York, with primary residence in the City and State of New York. Robinson qualifies as an "employer" for purposes of individual liability under New York Executive Law § 296, and New York City Administrative Code §§ 8-107 and 8-502 because she participated directly in the discriminatory conduct at issue in this case and as an "employer" under § 296 of the Executive Law by virtue of her ability to affect the terms and conditions of Plaintiffs' employment.

8. Sharpe is the Assistant Vice President of Administration of RIOC who, upon information and belief, is, and was, an individual citizen of the United States and the State of New York, with primary residence in the City and State of New York. Sharpe qualifies as an "employer" for purposes of individual liability under New York Executive Law § 296, and New York City Administrative Code §§ 8-107 and 8-502 because she participated directly in the discriminatory conduct at issue in this case and as an "employer" under § 296 of the Executive Law by virtue of her ability to affect the terms and conditions of Plaintiffs' employment.

9. Jackson was the Assistant Vice President of Programs and Operations of RIOC who, upon information and belief, is, and was, an individual citizen of the United States and the State of New York, with primary residence in the City and State of New York.

Sharpe qualifies as an "employer" for purposes of individual liability under New York Executive Law § 296, and New York City Administrative Code §§ 8-107 and 8-502 because she participated directly in the discriminatory conduct at issue in this case and as an "employer" under § 296 of the Executive Law by virtue of her ability to affect the terms and conditions of Plaintiffs' employment.

10. This Court has jurisdiction over this matter because (1) as set forth more fully herein, Smith, Cerone, Haynes, Robinson, Sharpe and RIOC all reside within the State and each of the Plaintiffs entered into employment contracts with Defendant RIOC within the State; (2) as set forth more fully herein, the claims asserted herein arose, in part, in this City, County and State; and (3) the amounts in question do not exceed the jurisdictional maximum of this Court.

11. Venue is properly laid in this Court because as set forth more fully herein, the relationship and actions which are the subject of the claims and asserted by the Plaintiffs were effected in this County and the damages arose in this County. Moreover, RIOC has its principal place of business in this County, and all individual parties work or worked in this County.

12. Prior to the commencement of this action and within 90 days after the causes of action accrued herein, and more than 30 days prior to the commencement of this action, Plaintiffs duly presented and served Notices of Claim on the said claims herein in due form upon Defendants and this action was commenced within one (1) year after said causes of action accrued.

13. Prior to the commencement of this action Plaintiffs duly complied with all of the conditions precedent to the bringing of this action against RIOC and has complied with the provisions of the statute in such cases made and provided, and that Defendants neglected and refused to make any adjustment on said claim and said claim remains unadjusted and unpaid, although the Plaintiffs have duly demanded that same be paid and adjusted.

## **FACTUAL BACKGROUND**

### I. Background Facts and Allegations Relevant to All Plaintiffs

14. At all relevant times, the Plaintiffs held different positions within the Communications team at RIOC. Spencer-EL was Director of the Communications & Community Affairs department. Smith, under Spencer-EL's supervision held the position of "Public Information Officer," and Cerone worked under Spencer-EL as "Manager, Communications & Community Affairs." Over the years, Spencer-EL and Cerone frequently collaborated and supported one another on tasks and assignments. Upon Smith being hired, it became common for all three of the Plaintiffs to work together in various capacities on projects. Plaintiffs, in their respective positions and throughout their tenures at RIOC, separately, but simultaneously, flagged improprieties in RIOC's executive decisions both internally and to the appropriate external, public agencies.

15. Only after numerous alarming signs did Plaintiffs, individually and collectively, each engage in protected whistleblowing activities by disclosing to supervisor(s) and/or public bodies activities, policies and practices of RIOC which constituted violations of laws, rules and regulations, including those which created and presented substantial and specific danger to public health and safety.

16. Specifically, the three plaintiffs in this action observed an increasingly reckless pattern of corruption, unethical conduct, and dangerous behavior coming from RIOC's leadership group and which peaked in the period of time when government mandated shutdowns due to COVID-19 began to lift in mid-2020.

17. Smith and Cerone, for their part, noticed operational concerns regarding the COVID-19 Rapid testing site on Roosevelt Island that opened in January 2021 known as Swift Emergency (“Swift”). Initially, these concerns were expressed by Smith and Cerone to their direct supervisor Spencer-EL, Smith also mentioned that RIOC website’s COVID-19 data collection document reflected altered and inaccurate figures.

18. Spencer-EL and Smith, whose positions afforded them greater access to the Executive Team, raised their respective concerns along with the concerns reported by Cerone and made internal complaints to the various Defendants on multiple occasions between late 2020 and March of 2021.

19. Due to the Swift testing site receiving continuing special exemptions and priority treatment from RIOC leadership and the lack of response received from internal complaints about the issue, Smith and Spencer-EL’s concerns about violations of law grew, and, on or about March 4, 2021, Spencer-EL formally submitted reports to the New York State Office of Inspector General and the New York State Comptroller’s Office reflecting Plaintiffs’ legitimate concerns.<sup>1</sup>

20. Spencer-EL’s March 4, 2021, reports centered around RIOC’s fraudulent purchasing activities related to COVID-19, and, in particular, Hayne’s and RIOC leadership’s push for non-compliance with certain laws, rules and regulations concerning directives and actions being handed out regarding the Swift testing site.

21. Thereafter, on May 4, 2021, a drowning incident occurred at the RIOC Sportspark facility. Following the Sportspark drowning incident, RIOC leadership engaged in a similar pattern

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<sup>1</sup> Both Smith and Cerone were involved in the drafting of Spencer-EL’s formal written complaints to the New York State Office of Inspector General and the New York State Comptroller’s Office and contributed information contained therein.

of misconduct. Plaintiffs Smith and Cerone made multiple internal complaints with respect to RIOC leadership's actions and directives in the handling of the investigation of the drowning incident and the dissemination of information about the incident and the Swift testing site, based on their accrued reasonable belief that RIOC's Executive Team were condemning such unlawful practices.

22. For weeks following the drowning, the community consistently inquired as to what exactly occurred during the incident, however, RIOC withheld from RIOC staff and the public for nearly a year information about the Medical Examiner's findings as to the victim's cause of death.

23. In addition to the numerous internal complaints made to and ignored by Defendants by the Plaintiffs regarding policies and directives concerning the Swift Site and the Sportspark pool drowning, Smith also anonymously reported her concerns to the New York State Office of the Inspector General.

24. In her report to the Inspector General, Smith i) outlined her previous concerns with the COVID-19 testing site, ii) explained that she saw video footage of the Sportspark drowning and that the drowning was a result of negligence arising under Haynes and Jackson's supervision and direction, and iii) expressed how she was asked to operate in a way that was aiding in nefarious matters, covering up wrong-doings, or having to feel bullied and harassed into supporting improper conduct and/or misconduct being perpetrated by leadership or the "Executive Team."

25. Cerone, for her part, in addition to contributing to Spencer-EL's formal complaints, also made complaints to RIOC Human Resources, her supervisor Spencer-EL, and to Smith. Additionally, Cerone made an external health and safety complaint to Occupational Safety and

Health Administration (“OSHA”) regarding health and safety concerns within RIOC’s office located at 524 Main Street on Roosevelt Island.<sup>2</sup>

26. Upon information and belief, Robinson was made aware of each of the formal external complaints made against RIOC by Plaintiffs and shared that information with Haynes.

27. Following Plaintiffs’ external complaints, mistreatment by Haynes and other RIOC executives against the Plaintiffs escalated to new heights.

28. RIOC’s leadership proceeded to engage in retaliatory conduct by changing the Plaintiffs working conditions including the way the Plaintiffs were treated, taking actions to frustrate Plaintiffs ability to perform their assignments, baselessly moving Plaintiffs around and separating those from the same department into different buildings, asking individuals to remain working remotely without any stated reason and generally attempting to intimidate the Plaintiffs through day-to-day conduct and invasive questioning.

29. RIOC further engaged in management by chaos by engaging in a purported “restructuring” whereby RIOC temporarily changed Plaintiffs’ titles, redefined roles and responsibilities, refused to provide clarifications of those changes, and refused to answer basic questions for the entire duration of these purported “restructurings.”

30. Shortly after, the “restructuring” decision was “reversed,” and RIOC executives began its terminations of the Plaintiffs.

31. On or about March 21, 2022, an open letter was sent to the elected officials who oversee Roosevelt Island. This open letter was stated as coming from RIOC employees and outlined, in about 15 pages, many of the improper occurrences happening under Haynes’

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<sup>2</sup> 524 Main Street was the same store-front location which had been used as the SWIFT COVID-19 testing site and was only later converted into offices for RIOC staff.

supervision and direction. The letter included the issues which Plaintiffs had raised whistleblower complaints around including the COVID-19 testing site and the drowning at Sportspark pool.

32. On or about March 25, 2022, Spencer-EL was terminated from RIOC and was told her termination was due to an alleged discrepancy on a historical resume found in her personnel file.

33. On the afternoon that Spencer-EL, was terminated, Smith and Cerone were told to leave the office and from that day forward, Smith and Cerone were no longer permitted back into their office and were told by Jackson to work from home indefinitely.

34. On Sunday, March 27, 2022, co-plaintiffs Smith and Cerone were directed via email by Jackson not to return to the RIOC offices and to work remotely, without any notice or explanation.

35. Two weeks later, on April 15, 2022, Smith was terminated via email and was told that her firing was due to a “restructuring.”

36. After Smith’s termination, all communications account passwords were changed and the Executive team, led by Haynes, took over all communications. This was done without any notice to Cerone.

37. On April 18, 2022, days after Smith’s termination, Cerone contracted COVID-19 and on May 3, 2022, Cerone requested FMLA leave due to both physical and mental stress placed on her by RIOC. While having discussed a variety of issues with HR throughout her leave, no one from RIOC checked in with Cerone leading up to her expected return on August 4, 2022.

38. On the day of her return, Cerone received an email from Ms. Jackson asking her to come into the Warehouse office at 10 AM on Friday, August 5, 2022. Upon arriving on August

5<sup>th</sup>, Cerone was met by Ms. Jackson and HR head/AVP of Administration, Sharpe, and was notified that her position was being eliminated with no other reason given for her termination.

## II. Facts and Allegations Relevant to Spencer-EL

39. Spencer-EL was employed by RIOC for over fifteen years and at the time of her termination held the title of Director, Communications & Community Affairs.

40. During her tenure with RIOC, Spencer-EL was regularly promoted and given increasing amounts of responsibility. Spencer-EL started working with RIOC as a Community Relations Specialist and was promoted to Community Relations Manager and later promoted to a Director role in April of 2018.

41. Spencer-EL routinely received praise for her work with RIOC and received positive employment reviews during the course of her tenure.<sup>3</sup>

42. In her Director role, Spencer-EL regularly interfaced with the executive management team and individual Defendants Haynes, Robinson, and Sharpe, as well as with various members of the Roosevelt Island community.

43. Following the onset of the COVID-19 pandemic which occurred in March of 2020, Spencer-EL's position required her to be involved in efforts to provide important COVID-19 related services and information about those services to the Roosevelt Island community.

44. As the COVID-19 pandemic continued beyond its initial days and following the lifting of the government induced lockdowns, Spencer-EL played an essential role of providing information about local COVID-19 resources to the Roosevelt Island community.

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<sup>3</sup> In fact, Haynes would send messages to Spencer-EL on how he was impressed with her and her leadership with the Communications & Community Affairs teams that she oversaw as well as the Youth Center staff.



45. Beginning on or around October of 2020, Spencer-EL became aware of an effort spearheaded by Haynes to have a pop-up COVID-19 testing site located at 524 Main Street on Roosevelt Island.

46. Spencer-EL became increasingly concerned about the means and actions which Haynes was employing in connection with his efforts to open this pop-up COVID-19 testing site.

47. Specifically, Spencer-EL had a good faith belief that Haynes was violating New York State statutes and the rules and regulations which govern RIOC's operations.

48. These concerns were driven in part by a number of directives which she received and based upon reports from other co-workers, including but not limited to Smith and Cerone, about directives that they had received from the executive management team.

49. Spencer-EL's concerns about violations of law were ignored when she internally raised her concerns, and they continued in such a way that that she felt, in good faith, that it was her obligation to act as a whistleblower and to report her concerns to the New York State Office of Inspector General and the New York State Comptroller's Office.

50. Specifically, on or around March 4, 2021, Spencer-EL initiated complaints with the aforementioned agencies in connection with RIOC leadership's push for non-compliance with certain laws, rules and regulations concerning directives and actions promulgated by the executive staff regarding a COVID-19 Rapid testing site, Swift Emergency ("Swift"), on Roosevelt Island that opened in January 2021.

51. Specifically, Spencer-EL made complaints that RIOC, and specifically Haynes, had bypassed required NYS Public Benefit Corporation procurement guidelines and had engaged in fraudulent purchasing activities related to COVID-19 and, in particular, the allowance of the Swift COVID-19 Rapid testing site.

52. Spencer-EL's report centered around Swift, an entity that was not at the time a registered testing site, being chosen by RIOC to provide Rapid COVID-19 testing on Roosevelt Island. Spencer-EL's complaint detailed a bevy of concerns that she either observed first-hand and/or gathered from co-workers and community members in her position as Director, Communications & Community Affairs. Among the complaints raised by Spencer-EL was that Swift, through Respondents, was afforded unfair and special treatment; Swift was initially appointed through an "emergency" exception to the normal procurement procedures despite the availability of free services through City and State opportunities; Swift's selection was not subjected to Board review; Swift received a Minority and Women Owned Business Enterprises waiver; and the storefront was listed as a private home, not as a business.<sup>4</sup>

53. Spencer-EL further complained that it was improper for RIOC to have been handling the opening of this location rather than Swift going through normal channels such as leasing space through Roosevelt Island Main Street Corridor's real estate retail broker Hudson/Related. The circumvention of RIOC's established broker further gave rise to accusations that Swift was not paying rent for the space. It was reported to Spencer-EL, and she in turn reported within her whistleblower complaints, that the owner/doctor of Swift was, and is a personal friend of Haynes, then Acting President and CEO of RIOC.

54. Furthermore, Spencer-EL raised complaints regarding RIOC staff being misappropriated to renovate the Swift storefront space prior to occupancy without remuneration from Swift and that a substantial amount of RIOC funds had been dedicated to the site.

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<sup>4</sup> The services for SWIFT were first identified as an "emergency" to bypass normal procurement procedures (competitive pricing) despite RIOC having additional avenues to receive free services through City and State opportunities. MWBE was later received to continue services and to take advantage of the higher threshold as a certified MWBE but without going to the Board for approval.

55. It was shared with Spencer-EL, and she included within her whistleblower report, that “Emergency Funds” were approved for use in connection with all activities necessary to operate the Swift site. Purchases in furtherance of the site were placed under different line items in the budget, including, but not limited to, under the “RI Branch library (NYPL).” It was announced that Swift would be providing vaccinations even though the existing pharmacy, Duane Reade, was already doing so. Nonetheless, RIOC purchased a freezer solely for Swift’s use for the preservation of vaccines. Spencer-EL complained in her whistleblower complaints that RIOC’s finance department was fully aware of, and ignored, these improprieties.

56. Furthermore, Spencer-EL reported that several departments had been pulled into the effort to open and support the Swift location. For example, staff members were asked to find federal related funding for COVID related testing to be directed to Swift. Haynes also actively pushed for weekly communications, promotions, and accommodations in favor of the Swift site. Spencer-EL complained that RIOC was in essence running the site as if it were a personal business and prioritized the site’s operations over everything else. Spencer-EL complained that multiple departments were heavily involved in promoting the site, including being made to dedicate time to make and purchase signage for Swift. Additionally, The Roosevelt Island Public Safety Department which was initially used to monitor lines outside of the site later transitioned inside to assisting the healthcare staff with the operations of the testing site.

57. Spencer-EL’s whistle-blower complaint included a report that, “[t]he Acting President openly shared that the Division of Budget approved the expenditures as emergency spending knowing that there are other low-cost options to get COVID testing for communities through NYC and NYS. Elected officials were involved with these efforts previously, bringing mobile testing units to the island. RIOC partnered with these efforts. Elected [officials] had not

been involved in any of the activities involving the testing site and vaccination efforts with Swift Emergency.”

58. The whistle-blower complaint went on to detail that “after several weeks of offering free rapid testing since its opening due to free kits given to RIOC from NYS, Swift now offers PCR testing, requesting a \$200 upfront fee from the uninsured. Several residents have questioned the reasoning behind this, and the inconsistency compared to other sites in NYC.”

59. Spencer-EL’s written complaints made on or around March 4, 2021, were followed up with telephone calls and in-depth discussions with Inspector General investigators Jean Carsey and Donnalynn Gazza which took place on March 17 and April 2, 2021.

60. At the time that Spencer-EL spoke with the investigators, she was told that it was normal for the course of an investigation to last several months and, at times, well over a year before a finding or report might be issued.

61. Spencer-EL’s whistle-blower complaint was not made anonymously, and she specifically stated within the complaint that she feared retaliation by the executive management team for making these complaints.<sup>5</sup>

62. Spencer-EL was advised by her colleagues and co-workers that complaints against RIOC investigated by outside agencies would normally result in RIOC’s General Counsel, who at all relevant times was individual Respondent Robinson, being notified of the complaint and that inquiries by the investigating agency for documents, records, and/or interviews would be handled by the General Counsel.

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<sup>5</sup> Based upon the breadth and substance of the allegations within her complaint, Spencer-EL felt it would be readily apparent to the executive team that these complaints came from someone on the RIOC Communications & Community Affairs Team.

63. Upon information and belief, individual Respondent Robinson, RIOC's General Counsel, was made aware of Spencer-EL's whistle blower complaints and then shared that information with individual Respondent Haynes, RIOC's President and CEO.

64. Upon information and belief, individual Respondent Robinson, RIOC's General Counsel, was caused to respond to requests for information made by the New York State Office of Inspector General and the information then shared would again made it readily apparent that the whistleblower complaint came from someone on the RIOC Communications & Community Affairs Team.

65. Upon information and belief, individual Respondent Robinson, RIOC's General Counsel shared all information related to the New York State Office of Inspector General's investigation with individual Respondent Haynes, RIOC's President and CEO.

66. In April of 2021, Haynes called Spencer-EL to discuss the fact that a report had been filed about the Swift COVID site with the New York State Office of Inspector General.

67. Shortly after making the whistle-blower complaints, Spencer-EL noticed a series of changes with respect to how she was being treated in the workplace. Select staff began treating the Communications & Community Affairs Team in a negative way, delaying responding to emails or ignoring them completely. The team was marginalized overall.

68. After Spencer-EL's complaint to the Inspector General and the NYS Office of the Comptroller Investigations, her communications with the executive team became noticeably limited despite the need to be aware of matters relating to the community and RIOC projects and initiatives. Critical information pertaining to the Island was delayed, and Spencer-EL would be excluded from important conversations pertaining to the community, usually receiving the information second-hand from someone other than her supervisor Jackson, or Haynes. Rather, she

would learn important information mainly from the Public Safety Director, Kevin Brown, the Deputy Director of Public Safety, Anthony Amorosso, or the Assistant Director of Capital Planning & Projects, Prince Shah, as those individuals met with Haynes regularly and had direct access to him to receive updates and to ask questions on RIOC matters. Additionally, Robinson, the General Counsel, would completely ignore any correspondence from Spencer-EL unless it was a task that Haynes had tasked her to do.

69. Selective communication became an issue on multiple occasions. One such example was when guidance was needed to complete critical components of obtaining a license (School-Age Childcare, SACC license) to operate the youth center in order to stay in compliance with the Office of Children & Family Services (OCFS), and Spencer-EL's requests were effectively ignored or deprioritized.

70. Another example of selective communications with Spencer-EL pertained to Spencer-EL being marginalized during the investigation and responding to the tragic death of a swimmer at the Roosevelt Island Sportspark pool.

71. The New York State Office of Inspector General's Office has not yet issued a report or findings in connection with the investigation arising from Spencer-EL's allegations and upon information and belief, the investigation is active and remains ongoing.

72. Upon information and belief Haynes and/or Robinson, in retaliation against Spencer-EL for having made whistle blower complaints directed Sharpe, then the RIOC Human Resources Director, to develop a pre-text upon which to terminate Spencer-EL's employment.

73. As a direct result of this edict, on or about February 18, 2022, a meeting about an internal "re-organization" took place and a plan was set forth which provided that Spencer-EL's

department would be separated such that she would be removed completely from communications and re-assigned a previous title that she had held, "Director of Programs & Partnerships." Additionally, the Public Information Officer (PIO), Smith—also a member of the Communications Team--was to be removed from Spencer-EL's oversight and Smith was to report directly to RIOC's CEO Haynes on a forward going basis.<sup>6</sup>

74. On or about February 26, 2022, RIOC opened a position for Assistant Vice President of Communications. This position was posted after Spencer-EL had a meeting with Sharpe, AVP of Administration, and with RIOC's now-former Chief Operating Officer, Debra Kutska, regarding a re-organization of the corporation.

75. Spencer-EL was told that three roles would open (AVP of Communications, Director of Communications, and an Inter-Agency and Governmental Affairs Liaison) and would be posted. Sharpe shared that Spencer-EL and her team were welcome to apply. Roughly three weeks later, the change was reverted to the previous reporting structure purportedly due to organizational demands and a lack of staff to support the re-organization.

76. Spencer-EL proceeded to inquire internally about the position, as in the past, she had been told by Haynes that, if the position of Assistant Vice President of Communications opened up, she would be promoted into that position. Prior to any discussion of a re-organization, Haynes on multiple occasions, told Spencer-EL that she would be a perfect fit for the AVP of Communications role, stating that she had the required skillset but that the opening for the role was not available yet.<sup>7</sup>

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<sup>6</sup> This meeting was the first mention of any such "re-organization" for her team and came with absolutely no notice or context. Notably, Spencer-EL's direct supervisor, Jackson, AVP of Programs & Operations, was not present for the meeting. Smith has also since been terminated by RIOC.

<sup>7</sup> As the Chief Operating Officer and the President, Haynes would often times ask Spencer-EL if she would be interested in the role of AVP of Communications, a title that did not previously exist and that Haynes said that

77. In accordance with her internal discussions and based upon the past encouragement of Haynes, Spencer-EL proceeded to submit her updated resume as part of an application for the opening for RIOC's Assistant Vice President of Communications.<sup>8</sup>

78. On the morning of March 25, 2022, Spencer-EL with no advanced notice was emailed by Sharpe and asked if she could attend a meeting concerning her application for the Assistant Vice President of Communications position.

79. Spencer-EL asked if the meeting could be postponed until the following business day so that she could better prepare for the meeting but was told that the meeting must take place that day as Sharpe told Spencer-EL that she had to complete this particular task today.<sup>9</sup>

80. Spencer-EL appeared at the meeting and was immediately confronted about her over a decade old resume. Specifically, Sharpe showed Spencer-EL's what Sharpe claimed was Spencer-EL's original resume which had purportedly been submitted in connection with her original employment application to RIOC back in 2007 some 15 years prior. Sharpe then asked Spencer-EL about a job title dating back to 2004 and inquired as to why the 2007 resume contained a job title which stemmed from Spencer-EL's work with a non-profit in Houston, Texas which was different from the job title shown for the same time period and same non-profit organization shown on her current resume.<sup>10</sup>

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Spencer-EL would be a good candidate for. After informing him that she would be interested, Haynes repeatedly promised Spencer-EL the AVP role during regular check-ins and impromptu meetings.

<sup>8</sup> Two other AVP roles were created during Haynes tenure as CEO: 1) AVP of Programs & Operations (Jackson) and, 2) AVP of Administration (Sharpe). Notably, neither position was posted or formally approved by the Board, and both were given to the named individuals as promotions.

<sup>9</sup> Upon information and belief, the task that Sharpe was instructed to complete on that day was the wrongful and retaliatory termination of Spencer-EL.

<sup>10</sup> The difference between the two resumes was Spencer-EL being listed a Coordinator of Education for a non-profit on the "alleged disingenuous resume" when in fact she was and always had represented herself as a Director of Education at that non-profit. Spencer-EL cannot fathom—other than by some improper means employed by



81. Spencer-EL explained that her current resume matches the resume which was provided in connection with her 2018 promotion, and she freely admitted that she never held the title which was shown on the purported 2007 resume. Spencer-EL further explained to Sharpe that this information was readily verifiable through public filings and that she did not know why Sharpe would be in possession of a resume showing a different title than the position which she had held.<sup>11</sup>

82. Sharpe ended the meeting advising that she would look into the matter further and that she would need to perform her due diligence.

83. Approximately four hours later, Sharpe approached Spencer-EL and notified her that she was being terminated based upon the discovered discrepancy concerning a job title from 2004 found in a resume that was purportedly submitted by Spencer-EL back in 2007 and her allegedly being “untruthful” in that submission.<sup>12</sup>

84. Upon information and belief, Sharpe and/or other individual Respondents engaged in the manipulation and alteration of Spencer-EL’s 2007 resume as part of a scheme so as to develop a pretextual basis to terminate Spencer-EL; all in retaliation for Spencer-EL having made whistle-blower complaints against members of executive management as detailed hereinabove.

85. Clearly, the basis for the termination was pretextual, and, just as clearly, Respondents wanted Spencer-EL gone, as Haynes and Robinson had determined based—albeit

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Respondents—how or why the “Coordinator” title would show up on her resume submitted to RIOC, as Spencer-EL herself was involved with the founding of the non-profit and was aware that her title could easily be verified through on-line databases. In any event, Director would constitute a higher position with more responsibility than that of Coordinator.

<sup>11</sup> Sharpe also mentioned another discrepancy on Spencer-EL’s submitted resume for the timeline and title for her current role. Spencer-EL informed Sharpe that it was a typo/formatting issue and that she could easily correct that. Despite that, Sharpe was more concerned about the 2004 “discrepancy” related to Spencer-EL’s time in Houston some 15 plus years prior.

<sup>12</sup> Haynes was purportedly out of the country while this meeting took place on March 25, 2022.

improperly— on Spencer-El’s good faith reporting of illegal activities by the individual respondents at RIOC to, inter alia, the New York Inspector General’s office.

III. Facts and Allegations Relevant to Smith

86. Smith was hired as a Public Information Officer by RIOC with a start date of January 4<sup>th</sup>, 2021, and an annual salary of \$75,000.

87. Upon being hired, Haynes, without any discussion or explanation, had the Human Resources specialist, Leonela Startseva (hereinafter “Startseva”), communicate to Smith that her salary was to be increased to \$80,000.

88. Smith’s role for which she was hired entailed, among other things, attracting tourism and tram ridership in light of the loss of revenue during COVID-19, raising public awareness of Roosevelt Island as a whole, elevating the social media profiles of RIOC, improving transparency in communications, and aiding in the rebranding of the RIOC Public Service Department.

89. Upon commencing work for RIOC, Smith met with Haynes and his Executive Assistant, Aida Morales, every day, and, at times, multiple times a day. During those meetings, Haynes and Ms. Morales would constantly spew negative sentiments about RIOC’s social media channels. Furthermore, Haynes often discussed his personal vision for RIOC and RIOC’s upcoming projects with Smith, as well as trying to have her undermine her supervisor and other RIOC team members through veiled references to possible promotions, such as Haynes suggesting to Smith that he should appoint her to Director of the Communications Department.

90. Moreover, upon her arriving at RIOC, Haynes also explained to Smith that RIOC was opening a COVID-19 testing site, under the name of SWIFT Emergency Care, which was set to open later in January of 2021.

91. Accordingly, Smith prepared a plan from the best COVID-19 public communications practice guides of well-known communication and PR entities and sent the report along with a subsequent plan to her supervisor, Spencer-EL. Although Spencer-EL remained impressed by Smith's efforts, Haynes directed the Communications & Community Affairs team ("C&CA") to "put up 'coming soon' signs on the door" and hardly recognized the importance of informing the community about the SWIFT Emergency Care COVID-19 testing center and what resources would be made available to them.

92. Smith immediately noticed operational concerns regarding the SWIFT Emergency Care COVID-19 testing site and expressed these concerns internally to her direct supervisor Spencer-EL. By way of example, the phone number provided on the website was Dr. Bannerman's (owner of SWIFT Emergency Care) personal cell phone. When expressing how unprofessional this was, Smith was directed by Haynes to express all her concerns to Mary Cunneen (hereinafter "Cunneen") and the C&CA team in regard to anything related to the website or the testing site, however, her access to information – as the Public Information Officer – was cut off.

93. Smith also voiced concerns about the website's data collection to her direct superior Spencer-EL.<sup>13</sup> After Spencer-EL convinced Cunneen to share the data sharing information with Smith, Smith noticed that while she could look at the data, it was hardly ever updated.

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<sup>13</sup> Notably, Spencer-EL was terminated shortly before Smith, in a similarly retaliatory manner to the way which Smith was terminated.

94. In reviewing the data collection document, Smith also realized that the numbers that she was seeing in the document were being improperly and factiously altered. Smith also duly reported this impropriety to her supervisor, Spencer-EL.

95. Upon the opening of the testing site on or about January 20, 2021, Smith secured coverage from several well-known local media outlets including amNY, FOX5 NY, Spectrum NY1, and NBC4 NY. Haynes was required to speak about the testing site with these outlets, and, despite Smith providing him with common materials such as talking points, messaging, and probable Q&As, he was woefully unprepared. Following this flurry of interviews, Haynes asked that Smith not conduct media outreach for the site and focus, rather, on “pushing promotions to the community.” However, Haynes’ directives were once again to perform tasks Smith was not hired to do, such as raising awareness and the profile of Roosevelt Island and RIOC.

96. In approximately March of 2021, as operations of the COVID-19 testing center evolved, local bloggers started asking general questions as to funding, location, vendor credibility, cost, and more. Smith was called into Haynes’ office, with Jackson present, and was interrogated about the blogger's questions, including if she deemed the questions to be unreasonable and if she had any idea about any ongoing investigation regarding the COVID-19 site. Upon Smith denying any knowledge of such an investigation, Haynes senselessly tried shifting the blame to Smith for the incoming inquiries by sarcastic means, sniping: “Maybe it’s the bloggers.”

97. When hired, Smith was also informed that RIOC was following a protocol of performing 30, 60, and 90-day reviews for new hires. Although Smith’s 30-day review was rather uneventful and superficial, during the 60-day review she expressed to Sharpe how chaotic, unclear, and ever-changing her directives from Haynes were. While she also expressed trust in Haynes’ decision-making at the time, she noted that the constantly changing protocols without reasonable,

if any, notice made the directives unclear. Following the internal complaints made by Smith to her superior, Spencer-EL, in the course of her 60-day review Smith also made additional complaints about Haynes and *inter alia* his handling of the opening of the SWIFT Emergency Care COVID-19 testing center. Following those complaints about Haynes, Smith's relationship with HR became bitter, and Smith had to request -- several times -- copies of the forms Sharpe was filling out as part of the 60-day review. In an additional act of retaliation, her 90-day review was canceled and never rescheduled.

98. Following her 60-day review, when Smith's complaints went from internal to her supervisor to more formal documented complaints to HR, Haynes began ignoring Smith's development plans, cancelled meetings, and missed presentations given by Smith regarding the social media overhaul that Smith was hired to performed and which she had been planning to enact. After over two months of Smith requesting a meeting to present Haynes with the framework of the overhaul of the social media account, Haynes instead had his Executive Assistant Morales, along with Jackson, take the meeting even though neither of them had any knowledge or understanding of social media. There was never a follow-up meeting with Haynes, and it became noticeably obvious to Smith that Haynes was mistreating and ostracizing her from the time of her legally protected complaints to HR.

99. After ignoring Smith's social media overhaul plan, Haynes began a campaign of escalating retaliation which included appointing Smith with tasks even farther outside of the scope of the responsibilities for which she had been hired to perform. For example, Haynes asked Smith to implement, company-wide, a standard company email signature. This entailed Smith stepping out of her duties to create a "How-To Guide" instructing employees on how to update their signature, something more appropriately delegated to RIOC's IT department. Furthermore, Smith

had to alert approximately 150 employees to update their signature and provide them with the State's guidelines regarding email signatures. These were all tasks outside the responsibilities she was hired to perform.

A. Smith's Delayed Permanent State Employee Status

100. Amongst the included work benefits for Smith's position was a contractual right to retain permanent employment status with the State which came with numerous benefits. Since Smith was hired, however, she was told several times that, due to COVID-19, reaching permanent status with the State would take longer than the ordinary three months, but that she should still be on the lookout for communications from the State regarding fingerprinting and a background check.

101. At about five months since being hired, Smith inquired again to HR and her supervisor Spencer-EL about her permanent status, however, her inquiries to HR went unanswered. The timing of the refusal to process the paperwork to confer Smith with permanent status combined with the absence of a *bona fide* basis for such a delay, as well as RIOC's continued prevarications in this regard, demonstrate that this adverse action was part of the campaign of retaliation waged against Smith following her complaints made during the 60-day review.

102. In the fall of 2021, eight to ten months after Smith's hiring and after numerous unanswered inquiries from Smith about her permanent status, Aida Morales sent an email alerting Smith and others that the State would be reaching out for fingerprinting and background checks. RIOC, contrary to prior statements, was only then – if indeed it actually was -- starting the permanent status process for Smith. Thereafter, Smith never received any communications from the State or any further response to her and Spencer-EL's additional inquiries regarding the topic.

103. During a February 18, 2022 meeting with RIOC's Vice President of Operations, Debra Kustka (hereinafter "Kustka"), Smith asked when she would receive her permanent status. Kustka, seemingly surprised at this question, took note of the fact it had been over a year at that point since Smith had been waiting for permanent status and expressed that she would look into it, given that it seemed odd that Smith had still not been awarded those benefits yet.

104. The clear and deliberate delays in this process could only have been effectuated with the knowledge and imprimatur – and likely under the direct instruction – of Haynes.

B. Sportspark Pool Drowning Incident and Fatality

105. On Sunday May 16, 2021, Spencer-EL called Smith to communicate that a swimmer at RIOC's Sportspark Pool had been taken away in an ambulance and had possibly died.

106. Because this tragic news would require some crisis communications, the news should have been relayed to Smith by either Haynes or the Chief of RIOC's Public Safety Department (hereinafter "PSD"), Kevin Brown (hereinafter "Brown"), however, it was not and rather, came to Smith second-hand from Spencer-EL. Upon getting in touch with Brown, Smith was able to learn the facts as he knew them and she began drafting a statement to put out immediately, sending it to "the executive team" for review. The statement, however, was stripped of numerous relevant facts and was cut down to just a few sentences.

107. On or around the following Monday, May 17, 2021, the heavily edited statement regarding an incidental drowning at RIOC's Sportspark Pool was released to local media by Smith as directed by the Executive Team.

108. Also, on or around Monday, May 17, 2021, Smith organized a meeting with key individuals that were instrumental in rapid response, as it related to the communications sector,

including Brown, PSD officers on the scene, pool staff, Human Resources, Jackson, Haynes, and the Legal team.

109. At that time, Jackson conveyed a directive from the Executive Team to the communications department to put nothing about the incident in writing.

110. Haynes cancelled the meeting that was organized by Smith with instrumental players in rapid response. He also sent an email mentioning a new protocol in place by which, if information from a department outside of C&CA was needed, Smith would have to request permission from him first.

111. Also, on or about Monday, May 17, 2021, Karline Jean (hereinafter “Jean”) emailed C&CA and the executive team to notify them that the family of the deceased wanted to meet with RIOC. Smith responded to the email expressing her opinion that RIOC should certainly have a representative meet with the family. Following her response, Smith was verbally reprimanded for responding to that email as she had been instructed not to put anything about the “incident” in writing, and only phone calls were allowed.

112. At around 1:50pm that day, Jackson called Smith’s supervisor, Spencer-EL, to notify her that the victim’s family was at Blackwell House. Later that same afternoon, Haynes called Spencer-EL to have her ask Smith for messaging surrounding the event, even though Haynes had the rapid response team meeting canceled and cut off any inquiries about the “incident.” Regardless of these informational barriers set by Haynes himself, Smith followed orders even with no information to use to craft the messaging he requested.

113. On or around May 21, 2021, Smith and Spencer-EL were called into the first authorized meeting pertaining to the drowning at Blackwell House with Haynes, Jackson,



Robinson, Brown and other RIOC staffers, Alvaro Santamaria, Anthony Amoroso, and Mehdi Omrani. On their way to Haynes' office, Spencer-EL and Smith noticed that their key cards which were supposed to work in all facilities, instead, did not work at two access points—suggesting that RIOC had already begun to plan the retaliatory terminations of Spencer-EL and Smith. Once in the meeting, the conversation only centered around how to quickly reopen the pool to avoid losing revenue and upsetting the community, and not about the incident.

114. In the weeks following the drowning, the community consistently inquired as to what exactly occurred during the incident. Brown continuously repeated to Smith and the rest of the community in Public Safety Committee meetings that medical examiner's ("ME's") office was still reviewing everything related to the matter and that he did not have any information at the moment.

115. It was not until approximately the end of March or early April of 2022 that Brown would say that the ME's office had found in the days following the incident that the boy had a heart arrhythmia and that condition was what caused his drowning. This discovery, made in the days after the unfortunate incident but withheld from Smith for nearly a year, demonstrates the abject falsity of Brown's prior statements that he did not have any information.

116. Smith and Brown held weekly meetings to strategize how RIOC could improve public sentiment towards the PSD. During one of those meetings in the weeks following the drowning, Brown asked Smith if she wanted to view the video footage. Smith agreed and was immediately alarmed by the video footage which showed that the lifeguards were not at their assigned posts; that the victim was in distress for an incredibly long time; that members of the public, and not RIOC lifeguards or staff, were the ones who noticed that the boy had sunk to the bottom of the pool; that once the boy was removed from the pool, again, it was members of the

public, rather than RIOC lifeguard staff, that first performed CPR on the victim; and, lastly, that RIOC lifeguards appeared frantic, unorganized, unskilled, and untrained for the moment.

117. Having seen that the video displayed clear negligence; having been harshly reprimanded by Smith, Robinson, and Jackson not to put anything in writing as to the drowning; and hearing that leadership wanted to reopen the pool without assessing safety protocols; Smith expressed to her superior Spencer-EL that she felt extremely uncomfortable with the situation and that she wanted to raise a flag of concern.

118. After being informed by her superior of her options on where and how to report such a concern, and after complaints were ignored by Human Resources during and after her 60 day review, Smith decided to anonymously report her concerns to the Investigator General online, sharing only her personal cell phone number as a means of contact.

119. In her report to the Inspector General, Smith outlined her concerns with the COVID-19 testing site, as well as the drowning at Sportspark Pool. Furthermore, Smith also specifically named Jackson, Robinson, and Sharpe, explaining that she felt that Haynes was engaged in fraud with the testing site and that the drowning was a direct result of negligence under Haynes and Jackson's supervision and direction. Smith also expressed how she was asked to operate in a way that was aiding in nefarious matters, covering up wrong-doings, or having to feel bullied and harassed into supporting improper conduct and/or misconduct being perpetrated by the "executive team."

120. Notably, following the incident at the pool, and notwithstanding whether they were on duty during the incident or not, all then employed RIOC lifeguards either quit or were fired.

121. Following Smith's complaint to the Inspector General, and specifically during the fall of 2021, mistreatment of Smith by Haynes escalated to new heights. Specifically, a situation occurred as the C&CA team worked on the monthly newsletter. Despite having a platform where Track Changes could be utilized for clarity, Haynes' assistant, Morales, sent back unclear edits via email directed to Smith. When Smith and the rest of the C&CA team incorporated the edits, which they believed to be correct, they sent the draft to the "executive team" for review. When the "Executive Team" revisited the incorporated edits, Jackson then asked Spencer-EL to name a team member responsible for the edits so that person could be reprimanded. Presumably Jackson thought that Spencer-EL would name Smith since the email from Morales was directed to Smith. However, Spencer-EL told Jackson that the newsletter was a team effort and since she was the head of the team, Spencer-EL, if anyone, should be written up. Despite Spencer-EL's efforts to assume blame for this minor infraction, Jackson came back to Spencer-EL and said that Haynes insisted on writing up the entire C&CA team—baselessly—for merely including certain edits into a draft version of the newsletter that, in the first instance, were edits that Haynes and his personal assistant had directed be included.

C. Hayne's Management Creates Chaos Creating Public Hazards

122. One further example of the lack of internal controls that led to legitimate safety issues was Hayne's ever-changing directives that were spurned by his clear favoritism towards some and his bullying and harassment efforts towards others occurred in or about January of 2022 when Smith and her team were in Emergency Response Team (ERT) mode in order to deal with a severe winter weather event. During this operational mode, there are clear processes that the agency is to follow.

123. One of those processes is for situational updates and advisory requests to be sent through the ERT email. The Chief of the PSD, Brown, decided to circumvent that process and emailed Smith asking for C&CA to reissue a parking advisory. Smith responded saying she would be happy to but would need to have this advisory approved by the Executive Team per standard advisory request protocols. Although Haynes was not on the original email, he emailed Smith, with several people in copy, saying he was “confused and concerned” about why Smith would be required to seek approval for an advisory during ERT. Smith immediately responded saying that Brown did not request the advisory request through ERT, and, per the standard advisory request protocol, Smith needed the Executive Team’s review and approval before posting the advisory. These two processes were put in place by Haynes himself, yet he then responded saying Smith should have just known to consider Brown to be a part of the Executive Team, that Brown had the “full support” of the Executive Team, and that Smith should just do as Brown directed him. This despite the fact that Brown was not her supervisor. In fact, they did not even work in the same departments. Haynes’ clear and abusive favoring of employees who did not report problematic behaviors and activities as was their obligation went so far as explicitly ignoring and, in fact, controverting his own instituted policies and protocols when his whim so warranted. All of which created legitimate safety issues.

D. “The Purported Reorganization”

124. On or around February 18, 2022, Smith, her direct supervisor, Spencer-EL, and a colleague, were summoned to a meeting with the VP of Operations and COO, Kustka, and the Assistant Vice President (AVP) of Administration, Sharpe. In this meeting it was stated that Smith’s department would be restructured, moving Spencer-EL and another employee to a newly formed department while Smith’s title and salary would remain the same. It was further stated at

this meeting that RIOC would be hiring for the roles of AVP and Director of Communications and that Sharpe welcomed the idea of Smith applying for the Director of Communications position, as “that would make sense.”

125. In the following weeks after this meeting, Smith submitted her application for the role of Director of Communications.

126. On or about March 15, 2022, the C&CA department was informed by Jackson that it would be put back together as RIOC “paused” the restructure. No further communications regarding the restructuring were sent or discussed after this point.

127. On or about March 22, 2022, Smith received a follow-up email from Startseva stating that the next steps and interviews for the Director of Communications role would resume the week of April 11th, 2022. After that email, Smith never heard anything else regarding the role, and there was no indication that Smith’s role, the Public Information Officer role, was being phased out.

E. Acts of Retaliation Following the Release of Open Letter from RIOC Employees

128. On or about March 21, 2022, an open letter was sent to the elected officials who oversee Roosevelt Island. The letter was stated as coming from RIOC employees and outlined, in about 15 pages, many of the nefarious acts happening under Haynes’ supervision and direction. The letter included, *inter alia*, discussion of the inappropriate conduct surrounding the COVID-19 testing site and the drowning at Sportspark pool, issues about which Plaintiffs had made internal and external complaints.

129. On or about March 25<sup>th</sup>, 2022, Spencer-EL was terminated from RIOC.

130. On the afternoon that Spencer-EL, was terminated, Smith and Cerone were told to leave the office.

131. From that day forward, Smith and Cerone were no longer permitted back into their office and were told by Jackson to work from home indefinitely. While this work from home assignment was framed as Smith being told by Jackson that she was being permitted to work from home, in actuality Smith's access to the premises was already at that point curtailed.

132. In the following weeks, Smith had meetings on Roosevelt Island with NBC for a filming opportunity. However, neither her or her colleague's key cards worked, and, when they asked for assistance to gain access in order to work efficiently, the requests were not responded to.

133. On or about March 31, 2022, Smith had to complete her annual State required employee review process. The review was conducted by Jackson, given that Spencer-EL had by this time been terminated, and, in the end, the review did not contain any negative comments. Overall, Smith received a solid 3 out of 5 with 1 being excellent.

134. Following Spencer-EL's termination, on or about April 1, 2022, Smith requested a meeting with Jackson to discuss the reporting structure and expectations going forward. This "update meeting" occurred virtually during which Jackson assured her "nothing would change."

135. Essentially, Smith was told she would continue to take direction from "the executive," referring to Haynes, but that she was given no guidance on what tasks would be prioritized by the executive team for that quarter. Smith also asked if the executive team still had plans to move forward with hiring a Director of Communications, especially considering Spencer EL's termination, but this question was not answered.

F. Smith's Termination

136. On Thursday, April 14, 2022, Smith unsuccessfully attempted logging on to her work laptop. Recognizing that her password did not work, Smith submitted a ticket to IT to reset her password. After submitting the ticket, IT called, rather than responding via the ticket thread, to say that they could not reset it remotely and that she would have to bring the machine into the office located at 524 Main Street. Smith informed IT that she had been working from home and did not have access to the office and that she was expecting a delivery of medication that would need to be signed for and refrigerated upon receipt, and, as a result, she would bring the laptop in as soon as she was able to. IT then suggested to her to use her personal devices, a suggestion which she refused given it was blatantly against policy.

137. On Thursday, April 14th, 2022, following this phone call with the IT Department, Smith emailed Jackson to acknowledge the situation and let her know that she would be taking a personal day because of it. Smith also set up her out of office reply. Only shortly after Smith sent that email, Jackson responded saying that IT had called her to “inform her of the situation,” that Smith “will be working from 524” and that she had “two tasks for me [Smith] that needed immediate attention.” Following that email, Jackson also responded to Smith’s email about taking a personal day and said, “Bring the laptop tomorrow.”

138. On Thursday, April 14, 2022, at around 4:45 pm, Smith received a call on her work phone from Jackson. There was no voicemail left or follow-up text message. Immediately following that call came another call from Jackson but, again, no voicemail and no follow-up text message. Moments later at 4:46pm, Smith’s personal cell phone rang with a number she did not recognize. She would later realize that it was Jackson who was calling yet again, but again without leaving any voicemail and/or text message. That evening, Smith sent Jackson an email letting her

know that she would be taking a sick day on that Friday due to a bad reaction to the medication she had received and taken earlier that day. However, that same evening at 5:37 pm, Smith received an email on her personal email from Jackson notifying Smith that, effective immediately, her employment at RIOC was terminated.

#### IV. Facts Relevant to Cerone

139. Cerone was hired by RIOC as a Communications and Event Coordinator starting September 28, 2015 and working directly under the Manager of Community Relations, Spencer-EL.<sup>14</sup>

140. At the time of Cerone's hiring, Charlene Indelicato was the RIOC President & CEO, followed within a year by Susan Rosenthal, and then in June 2020 by Haynes.

141. Cerone's initial role as Coordinator included working on planning and execution of community events and activities, communications including RIOC advisories, social media, press releases/statements, and website updates, as well as additional miscellaneous tasks including, but not limited to, island advertising requests, department procurement, and general community outreach. At that time, RIOC's department office was located at 591 Main St., the Corporation's previous Main Office.

##### A. Department Changes and Promotions

142. In July 2018 Cerone was promoted to Supervisor of the Community Affairs Department, with the department offices then relocated in the Sportspark facility at 250 Main Street.

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<sup>14</sup> It was common for Spencer-EL and Cerone to collaborate and/or partner on projects and to support one another on tasks and assignments.



143. In September, 2019 Cerone was again promoted attaining the position of RIOC's Manager, Communications & Community Affairs.

144. In early January 2020, the Community Affairs department was split up, essentially separating only Cerone from her former department (and Spencer-EL) to work under the Public Information Officer, Terrence McCauley, in the newly created Communications & Public Affairs department. In this role, Cerone continued all event planning/management and community outreach with increased responsibilities regarding communications, both internal and external.

145. Upon the start of the spread of the COVID-19 pandemic, Cerone as a non-essential RIOC staffer was designated to work remotely from March 2020 until July 13, 2020. Throughout this period of the pandemic, Cerone filled a crucial communications role, gathering rapidly changing health and safety information from NY State government conference calls, sharing updates, as well as tracking CDC updates, and ultimately using this information to create RIOC webpages, advisories, social media posts, internal staff notifications, and more.

146. Unfortunately, her supervisor McCauley was incapable or unwilling to handle his new role in the new department and Cerone did the heavy lifting. In the summer of 2020, roughly six months after the initial move, it was decided to move Cerone's department back under the direction of Spencer-EL. The PIO, Terrence McCauley, was terminated from the Corporation on July 16, 2020, and the department was renamed as "Communications & Community Affairs."

147. In late 2020, Cerone's department was moved to the Warehouse RIOC offices at 680 Main Street, also the office location of the President & CEO Haynes. However, at this time, Spencer-EL, the Communications & Community Affairs department head, was initially kept at the Youth Center office, separate from her team. This became a pattern employed by RIOC leadership

of moving employees around, separating employees from the same department, and asking individuals to remain working remotely without good reason or justification.

148. In January 2021, Smith was promoted into the Communications & Community Affairs department as the new “Public Information Officer” and was working alongside Cerone at 680 Main Street. In April 2021, the Communications & Community Affairs department was moved to the newly renovated Roosevelt Island Youth Center at 504 Main Street, with Spencer-EL. Shortly thereafter, the President & CEO, along with his assistant, moved into new offices in the historical landmark building Blackwell House, located at 500 Main Street.

B. Cerone’s Complaints

149. As stated herein above, Cerone made internal complaints to Spencer-EL and Smith with respect to RIOC leadership’s actions and directives in the handling of the investigation of the drowning incident and the dissemination of information about the incident and the Swift testing site and contributed to Spencer-EL’s formal written complaints to the New York State Office of Inspector General and the New York State Comptroller’s Office.

150. Cerone also made an external health and safety complaint to Occupational Safety and Health Administration (“OSHA”) regarding health and safety concerns within RIOC’s office located at 524 Main Street on Roosevelt Island.

151. Cerone’s OSHA complaint was made in approximately January or February of 2022 and was submitted via OSHA’s online portal concerning the RIOC offices housed in the storefront at 524 Main Street on Roosevelt Island.

152. The OSHA complaint was made as to the health and safety conditions at 524 Main Street, including, but not limited to, the lack of an emergency egress with the back exit being

blocked off and only one front entrance being available to enter or exit the space; a lack of sufficient bathroom facilities for the number of people that were working in the office space (one single toilet shared bathroom); a lack of a kitchen space for employees to prepare and store foods resulting in having to use the bathroom sink for food preparation purposes and to clean food/food storage containers; and a lack of adequate air filtration and unaddressed mold issues.

153. As noted above, 524 Main Street was the same store-front location which had been used as the SWIFT COVID-19 testing site and was only later converted into offices for RIOC staff.

154. RIOC's maintenance staff performed the renovations changing 524 Main Street from the COVID-19 testing center into RIOC staff offices.

155. Upon information and belief, those renovations were not performed to code and there were a number of health and safety violations in the space.

156. Upon information and belief, a member of the RIOC maintenance staff was electrocuted while the renovation work was performed.

157. Several weeks after Cerone made her complaint to OSHA, new signage showed up on the front door of 524 Main Street stating that the space was a "work in progress."

C. "Department Restructuring"

158. On or about February 18, 2022, newly hired Chief Operating Officer, Kustka, who arrived in December 2020 while most staff were working remotely, was directed to meet with the Communications & Community Affairs department (along with Sharpe, AVP of Administration) to inform the department that it was going to be restructured, with Communications becoming a

separate department and Cerone's role becoming Manager, Programs & Partnerships. Cerone received an emailed new job description which included new and unexplained duties.

159. In addition to the change in titles of Cerone and her department, including Smith and Spencer-EL, they were also notified that three new communications department job openings would be listed and open for application. Although Cerone, Smith, and Spencer-EL's questions regarding their new roles were not answered, they were assured that they would receive correspondence with clarifications. However, in effect, nothing in the department changed.

160. Kustka left RIOC March 11, 2022, after only three months. No more than two weeks later, the restructuring decision was reversed. After Kustka's departure, Jackson made a point to comment that the changes were made by Kustka herself and that they did not make sense, essentially blaming Kustka for the idea and mistakes made, coming to the realization that they now left Smith as the sole communications representative shouldering the entirety of the corporation's messaging.

D. Department Terminations

161. On March 21, 2022, Aida Morales, Haynes' Chief of Staff, requested the passwords for all RIOC social media accounts from Smith.

162. On March 25, 2022, Spencer-EL was terminated by RIOC for an alleged discrepancy on her resume.

163. On Sunday, March 27, 2022, Smith and Cerone were directed via email by Jackson, to return to working remotely until further notice.

164. No information from anyone at RIOC was relayed to Smith and Cerone regarding

the reason for returning to remote working, the reasoning behind terminating their department Director or a plan presenting the next steps of the department.

165. At this time, Jackson, the AVP of Programs & Operations, became the department's sole supervisor, with all non-HR related matters necessitating confirmation from her.

166. Shortly thereafter, on April 15, 2022, Smith was terminated via email. Prior to Spencer-EL and Smith's terminations, all communications including advisories, social media posts, website updates, press releases, etc. were the responsibility of the Communications & Community Affairs department, however, after Smith's termination, all communications account passwords were changed and the Executive team, led by Haynes, took over all communications. No conversations were ever had with Cerone regarding this change.

E. COVID & FMLA Leave and Termination

167. Just after Smith's termination, on April 18, 2022, Cerone contracted COVID-19 and was cleared for medical leave until recovery. On May 3, 2022, she requested FMLA leave due to both physical and mental stress related directly to the pressure, anxiety, and insecurity stressors placed on her by RIOC. At this stage, Cerone commenced taking prescribed antidepressants.

168. Cerone's leave was granted on May 13, 2022, retroactive to May 4, 2022. Prior to her leave, Cerone submitted via email an out of office responsibilities report to Jackson providing status updates on her work and outlining the tasks needing to be completed during her leave. However, this communication was neither responded to, nor acknowledged by, any RIOC staff.

169. In mid-May of 2022, upon going to the new RIOC main office at 524 Main Street and submitting completed FMLA leave paperwork, Cerone requested access to her office at the Youth Center at 504 Main Street to pick up some personal items. Upon arriving at the C&CA

office while escorted by the AVP of Administration, Sharpe, it was discovered that Cerone's personal items had been moved out of her desk, her desk cabinet was locked, and the key removed from her desk. Ms. Sharpe indicated she did not know why or when claimant's items were moved or where they were currently located. Only after repeatedly requesting updates multiple times during her FMLA leave, did Cerone receive correspondence that her items were "in storage". Nonetheless, no explanations were ever provided as to why Cerone's items were packed and moved without her knowledge, particularly, while she was still working full time and prior to her FMLA and COVID leave. To this day, Cerone is unsure whether all her personal items were returned.

170. Claimant's leave was scheduled to end on August 3, 2022. While having discussed a variety of issues with HR throughout her leave, including pay discrepancies, timesheets, location of her office items, and more, no one from RIOC checked in with her leading up to her expected return on August 4, 2022. Consequently, Cerone reached out at the start of work hours on that date via email to her presumed supervisor, Jackson, informing her that she returned to working remotely, as she did prior to her leave, that she would be catching up on emails and other communications, and finally requesting a time to meet to discuss status updates to continue her work. Sometime later that day Cerone received an email from Jackson asking her to come into the Warehouse office at 680 Main Street by 1 PM, which was later rescheduled to 10 AM on Friday, August 5, 2022.

171. Upon arriving at the warehouse on August 5<sup>th</sup>, Cerone was asked to wait by Ms. Jackson while she presumably awaited the arrival of the HR head/AVP of Administration, Sharpe. Once Sharpe arrived and the three individuals gathered in the conference room, Cerone was

notified that her position was being eliminated. She was provided no other specific reason for her termination.

172. Claimant's packed personal items were taken from storage at the Public Safety Department and brought into the conference room for her review. Still unclear on how it was determined what was RIOC property compared to her own, Cerone remained skeptical as to whether all her items were returned since no one had notified her when they were packing up the items prior to her termination and she had not been given a chance of seeing her desk office beforehand. Sharpe reassured her that none of claimant's items were missing, and Jackson offered to take and send Cerone photos of her former office, but Jackson never sent those photos.

173. Throughout her leave, Claimant heard about the quality decline in the events and other community outreach aspects of her position from both community members and other staff a circumstance that has continued in the months since. This also included C&CA department bills being unpaid, advertising requests left ignored, and no clear indication about who was now responsible for many of these ongoing needs. In fact, from the time she took her leave and since after her termination, community contacts were not notified of either change until rumors began to trickle down by word of mouth and through local bloggers.

**FIRST CAUSE OF ACTION PURSUANT TO NEW YORK LABOR LAW § 740**

*(Illegal Whistleblower Retaliation as perpetrated by Defendants against Spencer-EL)*

174. Plaintiff Spencer-EL repeats and re-alleges each and every allegation contained in paragraphs "1" through "173" of this Complaint as if fully set forth at length herein.

175. Under NY Labor Law § 740 employees are offered protection against retaliation from employers if they disclose or threaten to disclose to a supervisor or public body "an activity, policy or practice of the employer that the employee *reasonably believes* is in violation of law,

rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety.”

176. An employee is also protected from retaliation if they provide information to or testify before a public body conducting an investigation, hearing or inquiry into any such activity, policy or practice by the employer, or if they object or refuse to participate in any such activity, policy or practice.

177. Spencer-EL had reasonable grounds to believe that RIOC was violating the law through its improper practices and procedures concerning the Swift COVID-19 rapid testing site. Specifically, Spencer-EL believed that RIOC had failed to adhere to state laws and regulations, *inter alia*, in selecting, approving and providing exemptions and exceptions for the Swift COVID-19 rapid testing site.

178. Spencer-EL initially made internal complaints and later formally submitted reports to the New York State Office of Inspector General and the New York State Comptroller’s Office concerning the Swift COVID-19 rapid testing site.

179. The New York State Office of Inspector General proceeded to commence an investigation based, at least in part, upon Spencer-EL’s complaints.

180. Spencer-EL was subsequently terminated in retaliation for engaging in protected activity including making both internal and external complaints about RIOC’s misconduct surrounding the Swift COVID-19 rapid testing site.

181. Spencer-EL has suffered injury and harm, including, but not limited to, lost back pay and benefits, lost future earnings and benefits, damages to reputation, psychological and mental damages and hardship, in an amount to be determined at trial, but in no event less than



\$1,000,000.00, as well as entitlement to the costs and expenses of this action, including reasonable attorneys' fees; all warranting, in addition, the imposition of a punitive damages award.

**SECOND CAUSE OF ACTION PURSUANT TO NEW YORK LABOR LAW § 740**  
*(Illegal Whistleblower Retaliation as perpetrated by Defendants against Smith)*

182. Plaintiff Smith repeats and re-alleges each and every allegation contained in paragraphs "1" through "181" of this Complaint as if fully set forth at length herein.

183. Under NY Labor Law § 740 employees are offered protection against retaliation from employers if they disclose or threaten to disclose to a supervisor or public body "an activity, policy or practice of the employer that the employee *reasonably believes* is in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety."

184. An employee is also protected from retaliation if they provide information to or testify before a public body conducting an investigation, hearing or inquiry into any such activity, policy or practice by the employer, or if they object or refuse to participate in any such activity, policy or practice.

185. Smith had reasonable grounds to believe that RIOC was violating the law and was posing substantial and specific danger to the public health or safety through its improper practices and procedures.

186. Smith made numerous internal complaints concerning the Swift COVID-19 rapid testing site, believing that RIOC had failed to adhere to state laws and regulations in selecting, approving and providing exemptions and exceptions for the Swift COVID-19 rapid testing site.

187. Smith also made numerous internal complaints concerning the Sportspark pool drowning incident and particularly that RIOC's prolonged and extended silence concerning the incident was creating a substantial and specific danger to the public health and safety.

188. After personally viewing the video of the Sportspark incident, Smith reasonably believed that the video showed that RIOC staff was wholly incapable and was culpable for the incident. She reasonably believed that depriving the public of such knowledge furthered the public health and safety risks.

189. Consequently, Smith provided information to the New York State Office of the Inspector General and continued expressing concerns internally to both her supervisor, Spencer-EL, and to RIOC's HR department concerning RIOC's misconduct and improper practices.

190. The New York State Office of Inspector General proceeded to commence an investigation based, at least in part, upon Smith's complaints.

191. Upon information and belief, Defendants were made aware of the investigation being conducted by the New York State Office of Inspector General.

192. Upon further information and belief, Defendants were aware of Smith's role as a whistleblower to the Inspector General based upon the scope and nature of the Inspector General's investigation and Smith's prior internal complaints regarding those same topics.

193. Smith was subsequently terminated in retaliation for engaging in protected activity including making both internal and external complaints about RIOC's misconduct surrounding the Swift COVID-19 rapid testing site and the Sportspark pool.

194. Smith has suffered injury and harm, including, but not limited to, lost back pay and benefits, lost future earnings and benefits, damages to reputation, psychological and mental damages and hardship, in an amount to be determined at trial, but in no event less than \$1,000,000.00, as well as entitlement to the costs and expenses of this action, including reasonable attorneys' fees; all warranting, in addition, the imposition of a punitive damages award.

**THIRD CAUSE OF ACTION PURSUANT TO NEW YORK LABOR LAW § 740**

*(Illegal Whistleblower Retaliation as perpetrated by Defendants against Cerone)*

195. Plaintiff, Cerone, repeats and re-alleges each and every allegation contained in paragraphs “1” through “194” of this Complaint as if fully set forth at length herein.

196. Under NY Labor Law § 740 employees are offered protection against retaliation from employers if they disclose or threaten to disclose to a supervisor or public body “an activity, policy or practice of the employer that the employee *reasonably believes* is in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety.”

197. An employee is also protected from retaliation if they provide information to or testify before a public body conducting an investigation, hearing or inquiry into any such activity, policy or practice by the employer, or if they object or refuse to participate in any such activity, policy or practice.

198. Cerone had reasonable grounds to believe that RIOC was violating the law and was posing substantial and specific danger to the public health or safety through its improper practices and procedures.

199. Cerone made numerous internal complaints to her supervisor Spencer-EL, and to Smith concerning the Sportspark pool drowning incident.

200. Cerone made an external health and safety complaint to Occupational Safety and Health Administration (“OSHA”) providing information around the conditions at RIOC’s offices located at 524 Main Street.

201. Upon information and belief, Defendants were made aware of Cerone’s complaint to OSHA as signage indicating “work in progress” appeared in the window at 524 Main Street, despite no actual work being in progress shortly after her complaint was made.

202. Upon further information and belief, Defendants were aware of Cerone's role as the OSHA whistleblower based, in part, upon Cerone having previously made internal complaints concerning the SWIFT COVID-19 testing center.

203. Cerone has suffered injury and harm, including, but not limited to, lost back pay and benefits, lost future earnings and benefits, damages to reputation, psychological and mental damages and hardship, in an amount to be determined at trial, but in no event less than \$1,000,000.00, as well as entitlement to the costs and expenses of this action, including reasonable attorneys' fees; all warranting, in addition, the imposition of a punitive damages award.

#### **FOURTH CAUSE OF ACTION**

*(Hostile Work Environment under New York City Administrative Code §8-107, et seq. and the New York State Executive Law §296, et seq. on behalf of All Plaintiffs)*

204. Plaintiffs repeats, reiterates and realleges each and every allegation set forth in paragraphs "1" through "203" with the same force and effect as if fully set forth herein at length.

205. Both the New York Executive Law and the New York City Administrative Code prohibit a hostile work environment.

206. A hostile work environment is one that is sufficiently severe or pervasive enough that a reasonable person would find it hostile or abusive, and the victim must subjectively perceive the work environment to be abusive.

207. Here, Plaintiffs were subjected to a sufficiently severe and pervasive work environment where they were verbally abused, ignored, subjected to disparate treatment, subjected to undue shifts of duties and assignments, had work responsibilities taken away, and were otherwise treated in an intolerable and abusive manner. This mistreatment escalated as the Plaintiffs made internal complaints and escalated once Spencer-EL, Smith, and Cerone filed their

respective external complaints, and culminated in each of the Plaintiffs being subjected to unjustified and unlawful terminations.

208. There was no legitimate basis for this hostile work environment, which began when Plaintiffs internally made complaints about the executive leaderships improper conduct and continued throughout the remainder of their employment.

209. As a direct result of this improper hostile and abusive work environment, Plaintiffs have suffered injury and harm in an amount to be determined at trial and request a judgment inclusive of compensatory damages; punitive damages; the costs and disbursements of this action, including reasonable attorneys' fees; all relevant interest; and any such other relief to Plaintiffs as this Court deems just and proper.

#### **JURY DEMAND**

210. Plaintiffs respectfully request a jury trial as to all issues so triable.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs demand the following relief against Defendants:

- (a) compensatory damages in an amount to be determined at trial;
- (b) punitive damages in an amount to be determined at trial;
- (c) the costs and disbursements of this action;
- (e) attorneys' fees;
- (f) all relevant interest; and
- (g) any such other relief to Plaintiffs as this Court deems just and proper.

Dated: New York, New York  
February 13, 2023

/s/ Neal Brickman  
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Altheria Jackson  
Roosevelt Island Operating Corporation  
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New York, New York 10044

VERIFICATION

STATE OF NEW JERSEY )  
 ) ss.:  
COUNTY OF Bergen )

Erica Spencer-EL, being duly sworn, deposes and says:

I am a plaintiff in this action. I have read the foregoing complaint. The allegations contained therein are true to the best of my personal knowledge and information, except for those allegations which are alleged upon information and belief, and as to those allegations, I believe them to be true.

*[Handwritten signature]*

Subscribed and sworn to before me this  
9 day of February, 2023:

*[Signature]*  
Notary Public



**VERIFICATION**

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

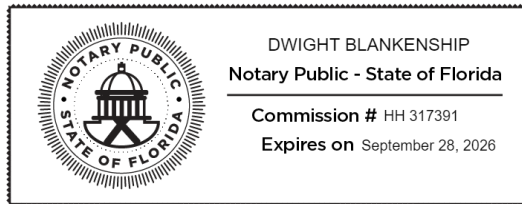
    Amy Elizabeth Smith    , being duly sworn, deposes and says:

I am a plaintiff in this action. I have read the foregoing complaint. The allegations contained therein are true to the best of my personal knowledge and information, except for those allegations which are alleged upon information and belief, and as to those allegations, I believe them to be true.

*Amy Elizabeth Smith*  
Amy Elizabeth Smith

Subscribed and sworn to before me this  
  11th   day of February, 2023:

*Dwight Blankenship*  
Notary Public            DWIGHT BLANKENSHIP



Notarized online using audio-video communication



VERIFICATION

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

J. Perone being duly sworn, deposes and says:

I am a plaintiff in this action. I have read the foregoing complaint. The allegations contained therein are true to the best of my personal knowledge and information, except for those allegations which are alleged upon information and belief, and as to those allegations, I believe them to be true.

J. Perone

Subscribed and sworn to before me this  
10 day of February, 2023:

[Signature]

Notary Public

D NNY CHEN  
Notary Public State of New York  
No 01CH6404317  
Qualified in Queens County  
Commission Expires February 10 2024