

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

FIREFIGHTER BRAD SPEAKMAN, RET.; :
SENIOR FIREFIGHTER TERRANCE TATE, :
RET.; LIEUTENANT JOHN CAWTHRAY; :
KELLI ZULLO as Administratrix of the Estate :
of LIEUTENANT CHRISTOPHER M. LEACH :
and as guardian ad litem of A.L. and M.L.; :
BRENDAN LEACH; LAURA FICKES, :
individually and as Executrix of the Estate of :
SENIOR FIREFIGHTER JERRY W. FICKES, :
JR.; BENJAMIN FICKES; JOSHUA FICKES; :
SIMONE CUMMINGS as Administratrix of the :
Estate of SENIOR FIREFIGHTER ARDYTHE :
D. HOPE; ARYELLE HOPE; ALEXIS LEE; :
and DAVID LEE, as guardian ad litem of A.L., :

C.A.No. 18-_____

Jury Trial Demanded

Plaintiffs,

v.

DENNIS P. WILLIAMS, individually; JAMES :
M. BAKER, individually; ANTHONY S. :
GOODE, individually; WILLIAM PATRICK, :
JR., individually; and THE CITY OF :
WILMINGTON, a municipal corporation, :

Defendants.

COMPLAINT

1. This is a civil action for compensatory and punitive damages brought by the estates and survivors of three deceased Wilmington firefighters who were killed by an avoidable tragedy on September 24, 2016, as well three Wilmington firefighters who were gravely injured but survived that day. This calamity was proximately caused by the policies and actions of the defendants, in violation of the plaintiffs’ rights to substantive due process under the Fourteenth

Amendment of the U.S. Constitution.

2. Defendants enacted the following new formal policies:

- Beginning in 2009, “rolling bypass” where they closed down a fire engine carrying water and hoses rather than authorize overtime whenever there were two or more vacancies per shift, thereby dramatically increasing the risk of death or serious physical injury to firefighters when called to fight fires;
- Making matters worse, beginning in 2013, deliberately understaffing the Wilmington Fire Department by refusing to fill fully funded firefighter positions that had already been authorized, budgeted and paid for by City Council; and
- Beginning in late 2015, nearly doubling the number of uniformed firefighters assigned to desk jobs in administration by stripping fire engine operations of 16 firefighters desperately needed on the fire suppression side to staff the engines necessary to fight fires in the City.

3. As a direct result of these policies, on the night in question, Engine 6 and its 750 gallons of water and hoses was closed and absent from the scene of a house fire less than a mile from its district fire station, causing the firefighter plaintiffs to be killed or gravely injured. Without Engine 6 there was no water available on the scene in time to control and put out the heart of a deadly fire.

I. JURISDICTION

4. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (4), 28 U.S.C. §§ 2201 and 2202, and the Fourteenth Amendment to the U.S. Constitution. The cause of action arises under 42 U.S.C. § 1983. The claims arose in this judicial district.

II. THE PARTIES

A. Plaintiffs

5. Plaintiff Firefighter Brad Speakman (“Ffr. Speakman”) is a citizen of the United States and a resident of New Castle County. He was born in Wilmington in 1978 and graduated from

Hodgson Vocational Technical High School in 1996. He served in the Army Reserve, attended Delaware Technical and Community College, and then served at the fire companies of Talleyville, Wilmington Manor, Claymont and Delaware City before joining the Wilmington Fire Department (“WFD”) in 2013. He has received numerous awards and commendations. Following the events of September 24, 2016, and after a lengthy hospitalization and continued treatment, he attempted to return to firefighting. However, on July 16, 2018, he was forced to retire as a result of the injuries he sustained. He is married to Lauren Speakman and they have two young children.

6. Plaintiff Senior Firefighter Terrance “Terry” Tate (“Sr.Ffr. Tate”) is a citizen of the United States and a resident of New Castle County. He was born in Philadelphia, Pennsylvania in 1973 and graduated from Parkway High School in Mount Airy in 1991. He attended college and then joined the Air Force where he served for four years. He joined the WFD in 1999 and has received numerous awards and commendations throughout his career. Following the events of September 24, 2016, he was treated for his injuries and struggled to return to duty before finally being forced to retire in November 2017 as a result of the injuries he sustained. He has two adult children and one teenage child. He is married to Tabitha Tate.

7. Plaintiff Lieutenant John Cawthray (“Lt. Cawthray”) is a citizen of the United States and a resident of New Castle County. He was born in Wilmington in 1973 and graduated from Saint Elizabeth High School in 1992. He attended Delaware Technical and Community College for several years and joined the WFD in 1997 and has received numerous awards and commendations. Following the events of September 24, 2016, he received seven weeks of treatment and was eventually able to return to duty where he continues to serve. He is married to Gena Cawthray and they have twelve year old twins.

8. Plaintiffs Brendan Leach, A.L. and M.L. are the children of Lieutenant Christopher M. Leach (“Lt. Leach”). They are citizens of the United States and residents of New Castle County, as was their father.

9. Lt. Leach was born in Wilmington in 1975 and graduated from Salesianum High School in 1994. He received an associate degree from Delaware Technical and Community College in Fire Protection Engineering Technology and a Bachelor of Science degree from Waldorf University in June 2015 in the area of Fire Science Administration. In 1993, he began service at Talleyville Fire Company before being hired at Claymont in 1997. He joined the WFD in 2002 and received numerous awards and commendations before his death on September 24, 2016.

10. Lt. Leach provided emotional and financial support to his children throughout their lives and continued to do so at the time of his death.

11. Plaintiffs Brendan Leach, an adult, and A.L. and M.L., both minors, bring this § 1983 wrongful death action.

12. Plaintiff Kelli Zullo brings this action in a dual capacity: first as the guardian ad litem of A.L. and M.L.; and second, as the Administratrix of the Estate of Lt. Leach, she brings this § 1983 survival action on behalf of the Estate for the injuries he suffered prior to his death.

13. Plaintiff Laura Fickes is the widow of Senior Firefighter Jerry W. Fickes, Jr. (“Sr.Ffr. Fickes”). She is a citizen of the United States and a resident of New Castle County, as was her husband.

14. Sr.Ffr. Fickes was born in Glenview, Illinois in 1965. He was raised in Kansas and attended Washburn University in Topeka. While in college he served in the ROTC and, upon graduation in 1987, was commissioned as a Second Lieutenant in the United States Army. He

served with distinction in the Army, rising to the rank of First Lieutenant as an airborne infantry officer with special training in chemical warfare. He volunteered for Operation Desert Storm.

15. He moved to Delaware in 1990 and began working in the financial world. Although successful there, Sr.Ffr. Fickes also began to volunteer at Aetna Hose, Hook & Ladder Company. In 2003 he joined the WFD where he received numerous awards and commendations before his death on September 24, 2016.

16. Sr.Ffr. Fickes and Laura were married in September 1990. They have two adult sons, Benjamin Fickes and Joshua Fickes, who are both citizens of the United States and residents of New Castle County.

17. Sr.Ffr. Fickes provided emotional and financial support to his children throughout their lives and continued to do so at the time of his death.

18. Plaintiffs Laura Fickes, Benjamin Fickes and Joshua Fickes all bring this § 1983 wrongful death action.

19. Plaintiff Laura Fickes also is the Executrix of the Estate of Sr.Ffr. Fickes and brings this §1983 survival action on behalf of the Estate for the injuries he suffered prior to his death.

20. Plaintiffs Aryelle Hope, Alexis Lee and A.L. are the daughters of Senior Firefighter Ardythe “Ardy” D. Hope (“Sr.Ffr. Hope”). They are citizens of the United States and residents of New Castle County, as was their mother.

21. Sr.Ffr. Hope was born in Wilmington in 1968 and graduated from Howard Vocational Technical High School in 1986 where she was a star athlete and cross country champion. She attended Barbara Scotia College and the University of Pittsburgh. In 1993, she joined the WFD where she received numerous awards and commendations before her death in December 2016 from injuries she sustained on September 24, 2016.

22. Sr.Ffr. Hope provided emotional and financial support to her children throughout their lives and continued to do so at the time of her death.

23. Plaintiffs Aryelle Hope and Alexis Lee, both adults, and A.L., a minor, all bring this § 1983 wrongful death action.

24. Plaintiff David Lee brings this action in his capacity as the guardian ad litem of plaintiff A.L.

25. Plaintiff Simone Cummings is the Administratrix of the Estate of Sr.Ffr. Hope and brings this § 1983 survival action on behalf of the Estate for the injuries suffered by Sr.Ffr. Hope prior to her death.

B. Defendants

26. Defendant Dennis P. Williams (“Williams”) formerly was the duly elected Mayor of the City of Wilmington, Delaware, who assumed office in January 2013 and was replaced in January 2017 by current Mayor Michael S. Purzycki. The Mayor is the chief executive officer of the City, exclusively vested with power over and responsibility for all executive and administrative authority of the City (except for the functions of the City Treasurer), including the Fire Department and other City departments, and for the enforcement of all laws within its boundaries. Defendant Williams is sued only in his individual capacity.

27. Defendant James M. Baker (“Baker”) formerly was the duly elected Mayor of the City, who assumed office in January 2001 and was replaced in January 2013 by defendant Williams. Defendant Baker is sued only in his individual capacity.

28. Defendant Anthony S. Goode (“Goode”) formerly was the Chief of Fire (“Chief”) of the WFD. He served in that capacity from January 2013 until January 2017, when he was replaced by current Chief Michael Donohue and allowed to assume the rank of senior firefighter

by current Mayor Purzycki. The Chief is appointed by the Mayor and serves at his pleasure. The Chief is responsible for the administration and operation of the WFD, including the duties to: (1) extinguish all fires within the City; (2) train, equip, maintain and supervise a sufficient number of firefighters to allow for the WFD's safe and effective operation; and (3) implement the orders and policies of the Mayor to the extent they involve the WFD. Defendant Goode is sued only in his individual capacity.

29. Defendant William Patrick, Jr. ("Patrick"), formerly was the Chief of Fire of the WFD. He served in that capacity from approximately July 2007 until January 2013, when he was replaced by defendant Goode. He is sued only in his individual capacity.

30. Defendant the City of Wilmington ("City") is a municipal corporation organized under the laws of the State of Delaware, which operates the WFD as one of its municipal departments.

III. FACTS GIVING RISE TO THE ACTION

A. Firefighters in the WFD

1. The Local 1590 Union

31. The Wilmington Fire Fighters Association, International Association of Fire Fighters, Local 1590 ("Local 1590" or "Union"), is the exclusive bargaining agent for all Wilmington firefighters up to and including the rank of Battalion Chief.

32. Each firefighter plaintiff was a member of this bargaining unit at the time of the events of September 24, 2016.

a. The Union Contract

33. The Collective Bargaining Agreement ("CBA" or "Union contract") is between the City and Local 1590. It covers the period of time from July 1, 2012 to June 30, 2016. Due to

longstanding problems related to contract negotiations between the City and its unions, the CBA was approved by City Council on July 14, 2016, and signed by the City Clerk and Assistant City Solicitor on that same date. It was signed by defendant Williams, the President of Local 1590 and others on July 28, 2016.

34. By mutual agreement between both the City and the Union, this CBA was in effect on September 24, 2016, despite the earlier expiration date.

35. On information and belief, all previous Union contracts had provisions similar if not identical to those discussed below.

36. Section 11.6 of the CBA is a minimum manning provision, requiring that “[n]o on-duty piece of apparatus will be manned at the start of a shift by less than one (1) Officer and three (3) Firefighters.” This means, for example, that every fire engine truck in service must have a minimum of four firefighters operating it, including an officer.

37. Section 12.1 states that the CBA’s reservation of inherent managerial rights “is not intended to cover ... a fixed and established past practice of the parties that has been unequivocally accepted by both parties over a reasonable period of time but has not been reduced to writing in this Agreement.”

38. Section 17.1 provides that all firefighters working on the fire suppression side of the WFD work a schedule of 24 hours on duty, followed by 72 hours off duty. The effect of this schedule is that there are four shifts, or platoons, on the fire suppression side of the WFD.

39. Section 19.1 states that “[i]n the event any ordinances or statutes relating to the members of the [WFD] provide or set forth benefits or terms in excess of or more advantageous than the benefits or terms of this Agreement, the provisions of such ordinances or statutes shall prevail.”

40. Section 20.1 provides that the employer will not discriminate against any Union member because of Union activities or affiliations.

41. Section 23.1 provides that “all conditions of employment ... shall be maintained at not less than the highest standards in effect at the time of the signing of this Agreement.”

2. NFPA 1710 Workplace Safety Standards

42. The National Fire Protection Association (hereinafter “NFPA”) is a international nonprofit organization, established in 1896, devoted to eliminating death, injury, property and economic loss due to fire and related hazards. Originally established by leaders of the insurance industry in the United States and Canada, it presently consists of more than 50,000 individuals and more than 80 national and international trade and professional organizations. Its mission is to reduce the worldwide burden of fire and other hazards on the quality of life by developing and publishing scientifically based consensus codes and standards, research, training and education, all intended to minimize the possibility and effects of fire and other risks. More than 300 NFPA codes and standards are used around the world, all of which were developed under the approved process of the American National Standards Institute. These are created through a consensus-based committee process bringing together representatives of all interested stakeholders to allow a balanced representation of affected interests.

43. In 2001, the NFPA issued its first edition of the Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments (hereinafter “NFPA 1710”). It sets the health and safety standards for career fire departments, like the WFD, and it has been subsequently amended from time to time. The current edition was approved and made effective on September 7, 2015.

44. NFPA 1710 is built upon the fact that fire growth and behavior are scientifically measurable, as are the specific resource requirements to control fires and prevent deaths, as well as the expected outcomes associated with injuries resulting from fire exposure.

45. Since the time NFPA 1710 was issued in 2001, every Chief of Fire for the WFD has consistently, uniformly, and repeatedly testified to City Council, publicly stated or otherwise admitted that it sets the health and safety standards that the WFD must follow and does follow.

46. For example, during their tenures as Chief of Fire for the WFD, encompassing the time frame of approximately July 2007 until January 2017, and covering two separate Mayoral administrations, defendant Patrick and defendant Goode each repeatedly and publicly stated, admitted or testified that the WFD follows the workplace health and safety standards set forth in NFPA 1710.

47. On information and belief, this is consistent with the policies and practices followed by their predecessors in their positions, such as former Chief James Ford who served from January 2002 to July 2007.

48. Adherence to NFPA 1710 has become a fixed and established practice in the WFD.

49. Each firefighter plaintiff was aware of all of the statements of defendant Goode, defendant Patrick and Chief Ford in this regard and relied upon them to their detriment when applying for and accepting employment by the WFD.

50. Each firefighter plaintiff was aware of all of the statements of defendant Goode, defendant Patrick and Chief Ford in this regard and relied upon them to their detriment in deciding whether to continue employment with the WFD or to pursue other employment opportunities elsewhere.

51. NFPA 1710 § 5.2.2 Staffing - requires that “[t]he number of on-duty fire suppression

members shall be sufficient to perform the necessary fire-fighting operations given the expected fire-fighting conditions.”

52. NFPA 1710 § 5.2.2.1 - provides “[t]hese numbers shall be determined through task analyses that take the following factors into consideration: ... (2) Provisions of safe and effective fire-fighting performance conditions for the fire fighters.”

53. NFPA 1710 § 5.2.2.2.1 - requires that “the fire department shall identify minimum company staffing levels as necessary to meet the deployment criteria required in 5.2.4 to ensure that a sufficient number of members are assigned, on duty, and available to safely and effectively respond with each company.”

54. NFPA 1710 § 5.2.3 Operating Units - requires that “[f]ire company staffing requirements shall be based on minimum levels necessary for safe, effective, and efficient emergency operations.”

55. NFPA 1710 § 5.2.4.5.1 - requires that fire departments that respond to fires in single family homes with basements or exposures “shall deploy additional resources on the initial alarm.”

56. NFPA 1710 § 5.2.4.1.1, § 5.2.4.1.3, § 3.3.44 and § 5.4.5 - require that a Rapid Intervention Crew (“RIC”) be established at every active fire scene with the sole duty and responsibility of rescuing firefighters who become lost, injured or trapped while fighting the fire.

3. The Allocated and Funded Workforce of the WFD

57. The City Charter has long required that the fire “department shall train, equip, maintain, supervise and discipline an adequate number of firefighters.” (Wilmington City Charter § 5-300(d)).

58. Fiscal years in the City of Wilmington run from July 1st of the current year, until June

30th of the following year. By way of example, fiscal year 2018 runs from July 1, 2018 until June 30, 2019.

59. City Council approves and enacts the City Budget for the next fiscal year, typically, in May of a current year.

60. Since at least fiscal year 2013, the allocated workforce of the WFD, as set forth in the position allocation list attached to the annual operating budget ordinance, was 177, which consists of 172 uniformed firefighters and 5 civilians.

61. Each of these positions are fully funded by City Council and passed into law as part of the enacted budget ordinance each year.

62. As explained in greater detail below, as a result of defendants Williams and Goode refusing to fill these fully funded and allocated positions, City Council eventually responded and amended the City Code in 2014, to make it clear that:

- “The city fire department shall maintain a level of manpower of no fewer than that number of firefighters which is set forth in the position allocation list attached to the annual operating budget ordinance for the applicable fiscal year.” (Wilmington City Code at § 2-233(a)).
- This budgeted number of firefighters is “required.” (*Id.* at § 2-233(b)).
- The budgeted number is a “minimum number,” a floor, not a maximum ceiling. (*Id.* at § 2-233(b)).

4. How Vacancies in the WFD are Filled

63. As recently admitted by current Chief Donohue, a 35 year veteran of the department who also served as Deputy Chief of Operations during defendant Goode’s tenure as Chief, vacancies that arise in the WFD are filled in one of two ways.

64. In his words, the WFD has historically, “hired several ways, certified [and] non-certified. The whole 9 yards.”

65. Both ways are authorized by statute in the City Code.

66. Both ways are long used, fixed and established practices in the WFD.

67. The first way is called hiring from the “certified list” or “current list of qualified applicants,” and sometimes more colloquially referred to as a “fast track academy.” Here, the City creates a list which will be active for a period of several years. On that list are qualified applicants to the WFD who already have earned and obtained all of the various required national certifications as a Pro Board Fire Fighter Levels I and II, as well as a National Register Emergency Medical Technician. It draws applicants who are City residents as well as those who live outside the City. When vacancies arise, the City hires individuals from this list.

68. Those individuals then are put through a two week orientation of “how we operate” in the WFD. Upon completion of their orientation, they become full fledged firefighters of the WFD and are placed into an engine or ladder company.

69. This is called a “fast track academy” because of how quickly it allows a vacancy to be filled in a short period of time.

70. The second way is called a “non-certified” or an “academy class.” It is accomplished by creating and graduating a class of recruits from the Wilmington Fire Academy (the “Academy”). Here, the City has a lengthy application process, of varying time frames, which attracts hundreds of applicants, few if any of whom have any of the required national certifications as a firefighter or EMT. It draws applicants who are City residents as well as those who live outside the City.

71. After this application process completes, a 16 week process begins to see who of those applicants is qualified for, and also who will survive the winnowing process, for selection to the Academy. If selected by the Chief of Fire, those individuals become WFD recruits and

then receive 14-16 weeks of Academy training, both by instructors in the WFD and at the Delaware Fire School. If they survive to graduation, they will earn all three of the required national certifications. Upon graduation, they are assigned to companies throughout the City and are full fledged firefighters of the WFD.

5. The WFD Under Chief Ford and His Predecessors

72. Under the management of Chief Ford and his predecessors, the WFD was a different place than it became under his successors.

73. The WFD operated within and met the staffing parameters set for it by City Council.

74. The WFD was fully staffed.

75. When vacancies arose, they were filled within a reasonable period of time, using either the certified or non-certified method of hiring.

76. The WFD maintained an adequate number of firefighters, sufficient to safely and securely extinguish all fires within the City and allow for the WFD's safe, effective and efficient operation.

77. The WFD had a sufficient number of firefighters working in fire suppression each shift to allow it to safely, effectively and efficiently protect the public and provide for safe and effective working conditions for the firefighters.

78. The WFD complied with the requirements of NFPA 1710, including those regarding staffing and working conditions.

79. Although firefighting is dangerous, it is considered to be "manageably dangerous."

80. Firefighting is considered to be "manageably dangerous" because, regardless of the cause of a fire, fire growth and behavior are scientifically measurable, as are the specific resource requirements needed to control fires and prevent deaths as evidenced in NFPA 1710.

81. Issues or problems may arise while fighting a “manageably dangerous” fire, but because the physics of fire growth and behavior do not change, application of the specific resource requirements needed to control a fire will inevitably extinguish it.

82. But when these resource requirements are withheld, what would have been a “manageably dangerous” fire becomes an unmanageably dangerous one.

83. Under the management of Chief Ford and his predecessors, the Chief of Fire did not allow politicians to interfere with the WFD’s safe, effective and efficient operations.

84. The Chief of Fire of the WFD took seriously his duties and responsibilities to protect the citizens and firefighters of the City.

85. The WFD operated within the budgeting parameters set for it by City Council.

86. The WFD was open and honest in its representations to City Council.

87. Morale within the WFD was high.

B. Mayor Baker’s Administration Begins in 2001

88. Defendant Baker was sworn in as Mayor in January 2001.

89. Chief James Ford was appointed Chief of Fire by defendant Baker and served from approximately January 2002 to July 2007.

1. Baker Orders Rolling Bypass

90. During his term as Mayor, defendant Baker decided to explore a new policy called rolling bypass.

91. As it is relevant to this case, rolling bypass is a policy by which a fire apparatus of some kind is shut down and taken out of service for the rest of a shift if a certain number of vacancies on that shift require the use of overtime to fully staff the shift.

92. The idea is that rather than paying off-duty firefighters to come in and work an

overtime shift, the department instead will reduce the number of firefighters needed to staff the shift by closing, for example, a fire engine truck.

93. Stated another way, rather than paying off-duty firefighters to come in and work an overtime shift, the department instead will shut down a fire truck for that shift, which reduces:

- the number of engine trucks, ladder trucks or other fire apparatus in service on the shift; and
- the need to spend any money on overtime to staff the closed truck.

94. So at its core, the idea is that it is supposedly more cost effective to shut down a truck, not pay any overtime and make the rest of the trucks on duty cover the shuttered truck's geographic areas of responsibility than it is to pay overtime.

95. Although the terminology varies, rolling bypass is otherwise substantively identical to policies known as "brownouts," "rolling brownouts" and "conditional company closures."

96. These terms are used interchangeably, both locally and around the country.

97. Defendant Goode has used these terms interchangeably in writing.

98. Nevertheless, despite the different terminology, the policies are substantively the same thing.

99. In Wilmington, defendant Baker decided that rolling bypass would be imposed and an engine truck closed (instead of a ladder truck or other fire apparatus) whenever two overtime slots had to be filled each shift.

100. Engine companies perform the function the general public traditionally associates with firefighting. An engine carries hoses to put water on a fire in order to bring it under control and extinguish it. Engines carry water themselves for quick and immediate usage and then connect to fire hydrants for the remainder. Depending on the truck, engines in the WFD carry

anywhere from 500-750 gallons of water in their internal tanks.

101. Ladder companies ventilate a building but do not put water on or extinguish fires. They are not equipped with hoses. They do not carry water. They have no capability to connect to hydrants.

102. If an engine is the “first due” engine to a fire scene, the closure of that engine due to rolling bypass:

- increases the time it will take to get water to a fire scene to extinguish the fire;
- removes 500-750 gallons of immediately available water from a fire scene;
- requires another engine to respond from a more distant different station and so travel a greater distance to reach the fire, which all the while increases in intensity; and
- causes a cascade effect as what would normally be the second due engine becomes the first due, the third due engine becomes the second due, and so forth.

103. Even if a ladder truck arrives at the fire scene first, because it has no water or hose capability, it is impossible for it to extinguish a fire.

a. Chief Ford Refuses Baker’s Order

104. Defendant Baker ordered Chief Ford to impose rolling bypass on the WFD.

105. Chief Ford refused to comply with defendant Baker’s order because he believed it to be illegal.

106. Chief Ford explained that rolling bypass is unnecessarily dangerous and that its implementation would result in the needless and avoidable deaths of firefighters and civilians.

107. Chief Ford explained he would quit his job and retire as Chief rather than cause the uncalled for and preventable deaths of firefighters and civilians by implementing rolling bypass.

108. Chief Ford explained that this new policy endangered public safety and refused to implement it.

109. In doing so, Chief Ford fought to save firefighter and civilian lives from improper political meddling.

110. Due to Chief Ford's stature, reputation and experience, defendant Baker eventually backed down.

111. However, Chief Ford retired as Chief in July 2007.

b. Defendant Patrick Becomes the New Chief

112. He then was replaced as Chief by defendant Patrick.

113. Upon becoming Chief, defendant Baker immediately began to discuss with defendant Patrick whether rolling bypass should be instituted.

114. Defendant Patrick then agreed to institute rolling bypass.

115. On the separate issue of staffing, defendant Patrick contemporaneously admitted that the key underlying factor in protecting the health and safety of Wilmington firefighters and citizens throughout the City was for the WFD to be fully staffed, with all of the positions allocated by City Council for the WFD being filled.

2. The Union Warns of the Dangers

116. When the Union learned that defendants were considering enacting the new policy of rolling bypass, the leadership of Local 1590 sounded the alarm and began to warn defendants and the public about the dangers of this new policy.

117. For example, in May 2009, the Union President publicly stated that rolling bypass will have "catastrophic results."

118. The Union also warned that this policy would significantly increase the risk of

serious injury or death to citizens and firefighters, above and beyond what the danger had been previously.

3. But Defendants Mislead the Public and City Council

119. In response, defendants sought to assure the public that no new dangers would be created by this new policy.

120. In answer to questions from the media and the public, as well as numerous questions from City Council, defendants and their appointees repeatedly and falsely explained there would be no increased risk or danger to firefighters or citizens caused by the rolling bypass policy.

121. For example, shortly before the new policy was enacted, defendant Patrick publicly stated “[w]e’re going to make up for having fewer people and on less trucks by reorganizing how and where we staff the platoons in the different stations.”

122. He also publicly stated there would be no change or compromise when it comes to “[r]esponse times and safety.”

123. City Council had long expressed concern over anything which increased the risk to the safety of the firefighters in the WFD and the citizens who they protect.

124. For example, as one City Councilperson explained to defendant Patrick, “we have a right and you have a responsibility to see that firefighters are protected in terms of doing their job and that the citizens are protected.”

4. Defendants Then Enact Their New Policy of Rolling Bypass Anyway

125. Despite many warnings from the Union, defendants Baker and Patrick enacted their new rolling bypass policy on July 1, 2009, whereby an engine truck carrying water and hoses was closed whenever two overtime slots had to be filled each shift, thereby increasing the time before

water arrived on the scene of any fire.

a. Their Rationale

126. Defendant Patrick repeatedly explained, in numerous venues and contexts, that the underlying rationale for rolling bypass was to cut overtime costs.

127. Defendants, and their appointees, repeatedly explained to the public and to City Council that the rolling bypass policy would save the City a great deal of money.

128. For example, in 2011, defendant Baker's Chief of Staff William Montgomery publicly stated that the rolling bypass policy would save the City at least \$1 million each year.

129. Defendant Patrick also explained that when the WFD is fully staffed with no vacant positions, there is little need for overtime and thus no need or reason to have rolling bypass.

130. He explained that the more firefighters hired to fill vacant positions, the less overtime will be necessary to fill those vacant positions.

131. Defendant Baker's Chief of Staff Montgomery also repeatedly admitted that having vacancies in the WFD filled would have a significant effect on the use of rolling bypass because there will be less need for overtime and thus less use of rolling bypass.

5. The Union Repeatedly Warns Baker & Patrick

132. After evaluating the impact and effects of rolling bypass for six months, in January 2010, the Union President of Local 1590 wrote what was described by the *Wilmington News Journal* as a "scathing" letter to defendants Baker and Patrick, warning about the dangers of rolling bypass.

133. Among other things, the letter stated:

- "since the inception of rolling bypass, firefighter injuries have increased, ... response times have increased;"

- “firefighters and residents are less safe now than they were before July 1, [2009,] when the rolling bypasses began;”
- “Things are ... more dangerous now;”
- there has been a “significant reduction” in the level of fire protection in the city; and
- Patrick and Baker have “callously ignored” repeated requests to end this dangerous practice.

134. Local 1590 continued to sound the alarm and warn defendants of these many dangers in regular small meetings.

135. For example, during his administration, defendant Baker met quarterly with the Union leadership of Local 1590.

136. During those meetings, the Union President and its other elected Union officials repeatedly warned him of the significantly increased hazards and dangers caused by his new policy of rolling bypass.

137. Defendant Baker has admitted that he was warned by the Union that there were not enough firefighters to safely protect the City.

138. In the same way, defendant Patrick and his Deputy Chiefs met with the same Union leadership once a month during his tenure.

139. During those meetings, these same Union officials repeatedly warned him of the significantly increased hazards and dangers caused by his new policy of rolling bypass.

140. Even outside the context of these regularly scheduled meetings, Local 1590 repeatedly met with defendants’ top aides, such as the Mayor’s Chief of Staff, the Deputy Chiefs of the WFD and others to warn them of the same.

141. The Union leadership also continued to sound the alarm and warn defendants and

the public of these many dangers.

142. For example, in December 2010, the Union President publicly warned:

- “I’m tired of all the spin being put on this by the Mayor’s office ... we’re going to get somebody killed, whether it’s a citizen of this city or a firefighter, somebody’s going to get killed” (emphasis added);
- “we can’t do more with less, we can only do less with less;” and
- “this rolling bypass ... threatens the citizens of this city and the firefighters of this city.”

6. High Ranking Firefighters Speak Out

143. In December 2010, a high ranking officer in the WFD, Captain Richard Lamb, broke ranks and publicly warned defendants that “we’re rolling the dice” by using rolling bypass and “[i]t’s starting to catch up to us” as he noted numerous fires in the City where the closest engine was closed because of rolling bypass.

144. Captain Lamb also warned that the changes defendants were making would leave the WFD with an insufficient number of firefighters on a fire scene to fulfill its health and safety requirements under NFPA 1710 to have a dedicated RIC team of firefighters whose sole job is to be able to move at a moment’s notice to rescue firefighters who become injured, lost or trapped in the fire they are fighting.

145. As Captain Lamb asked, “who’s going to rescue us if I’m in a jam or if our guys are in a jam” at a fire? “We see it all the time.”

146. Similarly, in December 2010, the New Castle County Fire Chief’s Association also warned defendants that their actions will “jeopardize the City and the County.”

7. Widespread Media Attention

147. Throughout the tenure of defendants Baker and Patrick, there was widespread

attention throughout the Delaware news media about: the WFD in general; the new rolling bypass policy in particular; the Union's many safety warnings about rolling bypass; as well as the defendants' false and repeated public assurances that the residents and firefighters of the City were not endangered by this new policy.

148. Defendants actually read, listened, reviewed and otherwise were aware of this media coverage.

8. Defendants Deliberately Mislead the Public and Council

149. In response to the flood of media attention devoted to these many warnings about the grave dangers of their new rolling bypass policy, defendants repeatedly assured the public about the safety, necessity and fiscal responsibility of their new policy.

150. Defendants gave these assurances to the public despite knowing them to be false.

151. For example, in 2010, defendant Patrick publicly stated that "safety has not been compromised" by the rolling bypass policy, neither that of the residents nor that of the firefighters.

152. In the same way, defendant Patrick repeatedly assured City Council that although "response times" are "critical," they are "not going to be compromised" by the use of rolling bypass.

153. Indeed, defendants repeatedly wrongfully assured both the public and City Council that the WFD's response times to fires had actually decreased as a result of there being fewer engines in service and with those engines being located in stations farther away.

154. For example, in 2011, defendant Baker's Chief of Staff Montgomery testified that response times had actually decreased with rolling bypass.

155. This is despite the fact that, in defendant Patrick's words in one media story, "some

engine trucks have had to travel farther to some fires since the rolling bypasses began.”

156. It is illogical that firefighters in fewer engines located farther away can reach a fire more quickly than firefighters on additional engines located in stations closer to a fire.

157. Defendants also repeatedly assured the public and Council that not only had response times decreased as a result of rolling bypass, but that response times were within the NFPA health and safety standards.

158. Numerous persons and parties, however, repeatedly debunked defendants’ claims as deceptive, misleading and false.

159. For example, when WFD Captain Lamb broke ranks, he explained that defendants failed to tell the public that it often was a Battalion Chief driving a Chevy Tahoe, equipped with a clipboard and pen, who was arriving on scene in the response time cited, and not a fire engine equipped with hoses and water with the ability to extinguish the fire, which is what the NFPA standard actually requires.

160. In the same way, the President of Local 1590 also repeatedly explained that the figures cited by defendants were false because they measured the response times by the arrival of a Battalion Chief or a ladder truck that does not carry water or hoses, rather than an engine truck as the NFPA dictates.

161. So, for example, as explained to the news media by the President of the New Castle County Fire Chiefs’ Association, those cited figures “don’t tell the full story.”

162. City Councilpersons began to take note of this disconnect as well.

163. As one fire expert contemporaneously observed in reference to the rolling bypass policy, “the current administration has been misleading the citizens of Wilmington when it comes to fire-rescue protection.”

164. That defendants Baker and Patrick were willfully misleading and deceiving the public and City Council was later admitted by defendant Goode when, speaking as Chief of the WFD in an on-the-record media interview in 2014, he admitted that defendants Baker and Patrick's rolling bypass policy had increased response times and that this fact had been intentionally hidden from the public and City Council.

165. As he explained in part, "it did increase our response times" and "when it happened, it was something that we didn't want to go out and tell people necessarily. But we can't sit back idly and just tell people that it's not happening, it is happening."

166. As he later explained in 2015, the WFD under his predecessor lacked "the capability of providing even minimum service safely."

9. Overtime Costs Increased Anyway

167. Yet despite the long-term and near daily use of rolling bypass by defendants Baker and Patrick, overtime costs did not decrease as they had promised.

168. Overtime costs did not stay the same either.

169. Instead, overtime costs increased significantly in the WFD, despite the constant use of rolling bypass.

170. Defendants Baker and Patrick, as well as their subordinates, were aware of this fact.

171. This major increase in the use of overtime directly contradicted and undermined the rationale given by these defendants for the use and adoption of rolling bypass.

10. Council Criticizes the Approach

172. This fact was not lost on City Council.

173. City Council repeatedly criticized defendants Baker and Patrick, accused them of being dishonest in their budget numbers and rationale for rolling bypass and observed it was

impossible to get a straight and honest answer out of them.

174. As one City Councilperson observed, defendants' approach to this was akin to "trying to put chewing gum in the dike that's leaking."

11. Defendant Williams' Pre-Mayoral Admissions

175. During the Mayoral campaign to succeed defendant Baker, defendant Williams based his campaign on a public safety platform.

176. As that public safety platform related to the WFD, defendant Williams repeatedly and publicly attacked rolling bypass as an unsafe and unreasonably dangerous policy that improperly gambled with the lives of firefighters and city residents and increased the risk to all of them to unsafe levels.

177. He made termination of the rolling bypass policy a cornerstone of his agenda.

178. As noted above, defendant Williams was subsequently elected Mayor.

179. That same day, he promoted defendant Goode to Chief.

C. The Williams Administration Increases the Dangers Even More

180. Throughout the Williams Administration, the policies and actions of defendants Williams and Goode continued to make, and by themselves independently made, the WFD an unmanageably dangerous place, and an even more dangerous place than it previously had been under defendants Baker and Williams.

1. Goode's Admissions Regarding the Necessity of Full Staffing and the Dangers of Rolling Bypass

181. As explained above, for the entirety of the Mayoral administration under defendant Williams and his new Chief defendant Goode, the allocated strength of the WFD as set forth in the position allocation list attached to the annual operating budget ordinance was 172 uniformed

firefighters.

182. Throughout his tenure as Chief, defendant Goode repeatedly admitted, in numerous venues and contexts, that maintaining the status quo of 172 fully filled positions was key and the crucial factor in allowing Wilmington firefighters to safely perform their jobs.

183. For example, in early 2013 he admitted that we need all “172 firefighters of the WFD. I say 172 because ... we’re trying to maintain that number as much as we possibly can” because “we need the bodies on scene to make things happen.”

184. He also repeatedly admitted that without this number of firefighters, the WFD could not safely execute its duties.

185. On another occasion in 2013, defendant Goode admitted that the combination of rolling bypass together with the WFD operating with fewer than 172 firefighters would have a “devastating effect” on firefighting in Wilmington.

186. Defendant Goode’s words would later come true on September 24, 2016, when defendants’ policy of rolling bypass together with the WFD operating with fewer than 172 firefighters caused the deaths of three firefighter plaintiffs and as well as severe injuries to the three other firefighter plaintiffs.

187. During the summer of 2014, he admitted that closing fire engines “creates coverage gaps and increases response times” and “will have an adverse effect on fire services throughout Wilmington.”

188. That summer, defendant Goode also admitted that “[c]losing a unit will result in increased response times and places lives and property in danger.”

189. In May 2016, defendant Goode also admitted that the policy of rolling bypass “increases risk.”

190. He then admitted that the impact of rolling bypass “is felt in the event of a large fire where several companies are called.”

191. This is what happened on September 24, 2016.

192. In the same way, he admitted that keeping fire engines open allows the WFD to “have the appropriate manning and staffing so we can fight fires” because, without them, this cannot be done.

193. Throughout this time frame, defendant Goode similarly admitted that any vacancies which arose in the WFD’s authorized strength needed to be filled.

194. As his predecessors in the Baker administration had done, he also admitted that filling vacancies was key to reducing the amount of overtime and thus lessening the use of rolling bypass or eliminating it entirely.

195. As defendant Goode succinctly stated, “less bodies, more overtime.”

196. Current Chief Donohue of the WFD was Deputy Chief of Operations during this same time frame. He also has admitted that filling vacancies is the key to stopping the “exorbitant” amounts of overtime occurring within the WFD.

2. Williams and Goode Decide To Further Understaff the WFD

197. Despite these many admissions by Chief Goode, defendants Williams and Goode nevertheless made a decision not to fill fully funded vacant positions in the WFD and instead to rely on overtime and rolling bypass.

198. In doing so, they decided to enact a policy requiring that vacant positions be left open for as long as possible.

199. Defendants justified this as a money saving measure.

3. Defendants Change the Terminology to Deceive the Public and Council

200. However, defendants Williams and Goode had to sell this policy to the public and City Council.

201. To do so, defendants made a conscious decision to deceive City Council and the public by keeping the substance of the rolling bypass policy in place, but changing the terminology by simply calling it something else.

202. The new name, for the same previous rolling bypass policy, was “conditional company closures.”

203. Defendants announced that rolling bypass had been terminated, allowing defendant Williams to keep his campaign promise.

204. They then announced the new policy of “conditional company closures,” which took a fire engine out of service at either Station 6 or Station 1 if two or more firefighters were needed for overtime.

205. Defendants assured both City Council and the public that no new dangers would be created by this new policy.

206. In response to questions from the media, as well as numerous questions from City Council, defendants repeatedly explained that there would be no increased risk to firefighters or citizens caused by the conditional company closures policy and that response times would not increase.

4. The Union Sees Through the Ruse and Sounds the Alarm

207. The Union, however, saw through the ruse and soon realized that despite the change in terminology, conditional company closures and rolling bypass were one in the same.

208. For this reason, and as already explained above, the terms are used interchangeably hereafter.

209. For example, as the Union President publicly stated on one representative occasion, “[w]hatever you want to call it this week, rolling bypass or conditional company closures, it is all the same thing ... What it does is it puts a district in the City of Wilmington without a fire engine.”

210. As they had during the Baker administration, the Union continued to sound the alarm to the public and City Council about the dangers of this policy.

211. As written in the *Wilmington News Journal* on one occasion in 2013, and attributed to the President of Local 1590, “[f]irefighters have long contended that the rolling bypass put their safety, as well as that of the residents they protect, at risk.”

212. As the Union President repeatedly warned, “this policy just ups the ante on us and the citizens of Wilmington.”

213. As they had during the Baker administration, Union officials regularly met with defendant Williams or his Chief of Staff, as well as with defendant Goode and his Deputy Chiefs, warning them about the dangers of their new policy.

214. They similarly met with members of City Council and spoke to the news media and the public about the same.

215. In these many varied settings, they consistently and regularly warned, for example, that this policy:

- endangers the lives of residents and firefighters;
- increases the risk to firefighters above and beyond what they signed up to do; and
- is like playing “Russian Roulette” because “one day, somebody is gonna get hurt.”

216. Continuing, in at least one letter to defendant Williams, which defendant Goode

also received, the Union pleaded that:

- this policy is “gambling with the lives of firefighters and all that live, work and recreate in the City of Wilmington;”
- the “health and safety of our citizens and visitors are too important to put at risk;” and
- the “use of this deployment strategy doesn’t save money and its continued use is nothing but a disaster ready to happen.”

5. Understaffing and Rolling Bypass Cause Overtime Costs To Skyrocket

217. As time went by it became clear that the impact of conditional company closures on overtime spending in the WFD was actually greater under defendants Williams and Goode than it had been under their predecessors.

218. In late 2014, Goode admitted that “we are using astronomical amounts of overtime right now.”

219. As an example of those “astronomical” numbers, for fiscal year 2015, the allocated WFD overtime budget was \$297,500.

220. However, defendant Williams and Goode’s new policies of not filling vacant positions combined with conditional company closures resulted in the actual overtime bill and expenditure being \$1.37 million in fiscal year 2015, more than 4 ½ times the budgeted allocation.

221. Two years later, then Chief of Staff to City Council Tanya Washington (who presently serves as Chief of Staff to current Mayor Purzycki), harshly criticized defendants and explained that the WFD’s overtime numbers under Williams and Goode had “increased by almost two-fold” over those in the Baker and Patrick administration.

222. City Council leveled similar criticism, for example, finding that in the first four months of a new fiscal year, defendant Goode had blown through and already spent 50% of his

overtime budget.

223. In this same time frame, defendant Goode was forced, begrudgingly, to admit that the overtime figures had been “driven pretty high” during his tenure, despite promises that these new policies would bring them under control.

224. Members of City Council repeatedly expressed frustration and sometimes anger at the number of unfilled vacancies in the WFD as well as the unexplained and unbudgeted overtime spending.

225. As one City Councilperson would explain, such overtime has long caused a “huge hit” on the budget but Council would not have to deal with such overtime problems if the WFD actually filled the vacant, yet funded, firefighter positions.

6. City Council Reacts and Enacts a New Statute

226. By July 2014, City Council was fed up with the astronomical amounts of unbudgeted taxpayer funds being spent on overtime which was caused by defendants’ policies in refusing to fill fully funded vacant firefighter positions.

227. As a result, a decision was made to bring City Council into the process in its oversight role to enable it to more closely monitor the out-of-control understaffing and overtime situation in the WFD.

228. Accordingly, City Council decided to enact new legislation which was intended to place limits on defendants’ ability to defy legislatively mandated staffing levels and thus ensure the safety of both City firefighters and residents.

229. In the words of then Chief of Staff to City Council Washington, this statute was intended to ensure that “we will not be put behind the eight ball again” when it comes to vacancies in the WFD.

230. In the contemporaneous words of one member of City Council, “we’re concerned about safety” and this new statute was being enacted to ensure “accountability” of the WFD in keeping Council informed about why numerous vacancies were not being filled.

231. As revealed by the plain text of the statute, now codified at Wilmington City Code § 2-233, as well as the statements of the City Councilpersons who enacted it, the intent of the statute was to require the WFD to maintain the legislatively mandated manpower levels and ensure that the many longstanding vacancies were filled by several means, including:

- requiring quarterly reports to the Public Safety Committee of City Council on the manpower levels of the WFD. (Id. at § 2-233(c));
- making clear that the budgeted number of 172 firefighters is “required.” (Id. at § 2-233(b));
- making clear that this statute does not “prohibit or preclude” the Chief from hiring from the longstanding “current list of qualified applicants before the manpower level falls below 95%.” (Id. at § 2-233(b));
- making clear that the budgeted number is a “minimum number,” a floor, not a maximum ceiling. (Id. at § 2-233(b));
- requiring the Chief to formally notify City Council if the actual manpower levels fall below 95% of the budgeted number. (Id. at § 2-233(b)); and
- requiring the mandatory start of a fire academy class if this occurs. (Id. at § 2-233(b)).

232. The statute was intended to bring City Council into the process to enable it to actively monitor a specific City department where the spending of taxpayer dollars was out of control.

7. But Defendants Refused to Comply With the City Code

233. Defendants Williams and Goode were unhappy that this new law was enacted.

234. So they made a policy decision to refuse to comply with any of this law’s legal

requirements.

235. Defendants Williams and Goode did this in order to deceive City Council and hide from it the serious problems caused by their policies of not filling vacant positions, the use of conditional company closures and the abuse of the overtime process.

236. For example, defendant Goode refused to submit to the Public Safety Committee the quarterly reports on the manpower levels of the WFD.

237. This was done to hide the severity of the understaffing from City Council.

238. As another example, defendant Goode also flatly refused to notify City Council when the manpower levels fell below 95% of the budgeted number.

239. This also was done to hide the severity of the problems from City Council.

240. Former Chief of Staff to City Council Washington has affirmed this and admitted that defendant Goode flatly refused to comply with or otherwise abide by any of this law's legal requirements.

241. Defendant Goode also repeatedly and affirmatively misrepresented the requirements of this statute to the Union, individual firefighters, the media and members of the public, falsely stating that his hands were tied as he was unable to fill longstanding vacancies until the 95% threshold was reached.

242. This was done to deceive these persons in order to hide where the responsibility lay for failing to fill these vacant positions.

243. This was not the first time defendant Goode had spread false factual information. In early 2016, he was criticized by City Council for giving "misinformation" to firefighters under his command.

8. Goode Transfers 16 Additional Firefighters Off

of Fire Trucks and into Desk Jobs

244. During his tenure as Chief, defendant Patrick had 17 uniformed firefighters serving in administrative positions in desk jobs. Such positions work regular daytime hours, do not fight fires, do not rescue those trapped in fires, do not work out of the fire stations located throughout the City, and do not operate fire apparatus, such as engines or ladders.

245. Such administrative positions are separate from firefighters who serve in the field in fire suppression where they work 24 hour shifts, fight fires or rescue those trapped in fires, work out of the fire stations throughout the City and ride fire engines or ladders.

246. Defendant Goode's successor as Chief, current Chief Donohue, has only 16 firefighters serving in administrative positions in desk jobs.

247. On information and belief, it is believed that such a level of staffing is consistent with historical practice in the WFD.

248. However, defendant Goode made a policy decision to depart from the historical practice followed by his predecessors as Chief, as well as by his successor.

249. In approximately late 2015 or early 2016, defendant Goode created and issued a new official deployment plan. Combined with other staffing actions he contemporaneously took, the result was the near doubling of the number of uniformed firefighters assigned to administrative positions.

250. In doing so he transferred 16 additional firefighters out of fire suppression positions and into administrative positions in desk jobs.

251. He did not replace these firefighters he was taking out of fire suppression with those previously working in administrative positions.

252. Instead, he consciously and intentionally almost doubled the number of uniformed

firefighters serving in such administrative positions by adding 16 firefighters to them.

253. Thus, with the existing 17 firefighters already in such positions, he now had a total of 33 firefighters working in administrative positions.

254. The net loss to the fire suppression side of the department was 16 firefighters, who were not replaced by actual assigned firefighters.

255. The effect of this transfer was as follows:

- As noted above, the WFD operates on four, 24 hour shifts.
- By transferring 16 firefighters out of the fire suppression side of the department and into the administrative desk side, each of these four shifts was deprived of four firefighters.
- Pursuant to the CBA between the City of Wilmington and Local 1590, each piece of firefighting apparatus, such as an engine truck or a ladder truck, requires four firefighters to operate and staff it.
- Thus, each of the four shifts on the fire suppression side were deprived of the personnel necessary to man one piece of fire apparatus.
- So each shift started already down four firefighters, even before vacation time, sick time, union time and other types of authorized leave were taken into account.

256. So the WFD under defendants Williams and Goode had to deal with a two-fold staffing crisis. First was the policy of not filling the many longtime vacancies. Second was Goode's new policy of doubling the number of uniformed firefighters in administrative desk jobs.

257. As current Chief Donohue, who served as Deputy Chief under defendant Goode, succinctly admitted to the news media, "four firefighters are needed to operate an engine. With the loss of 16 positions, the city would experience rolling bypass 'more often than not.'"

258. This is what actually occurred as the City began to experience rolling bypass "more

often than not.”

a. Overtime Problems Get Worse

259. As a result of defendant Goode’s newly instituted deployment plan, the overtime problem in the WFD got worse.

260. And so, as Chief Donohue had explained, this then increased the need for and use of rolling bypass and its identical twin of conditional company closures.

261. This also increased the public criticism of both defendants Goode and Williams by the Local 1590 Union.

b. City Council Questions the Rationality of This Approach

262. That this new deployment plan would drastically increase the need for overtime was not lost on City Council which harshly criticized defendant Goode for this.

263. One Councilperson cut to the quick and pointedly said to defendant Goode, you are taking firefighters from fire suppression duties “and basically putting them on desk jobs, which also become day jobs, so right there that should have been the ringing of the bells that this just was not going to work, especially when it came to overtime.”

264. Among other things, City Council:

- called defendant Goode’s budgeting “nonsense;”
- described his attempts to explain as “a whole lot of excuses;” and
- told him that he “uses a lot of words,” but says nothing.

9. Widespread Media Attention

265. All of the aforementioned official policies of understaffing, rolling bypass, overtime, endangering of public safety and increasing the danger to firefighters and civilians received widespread media attention throughout the Williams administration, just as they had

throughout the Baker administration.

10. Defendant Goode's Admissions of Malice, Bad Faith, Ill Will and Intent

266. As defendant Goode explained in 2014, “[i]f I have nothing else in life, I have my word and I am truly a man of my word.”

267. As noted above, defendant Goode regularly met with Union officials, as well as with firefighters in the various stations, and sometimes in meetings at WFD headquarters with the entire on-duty shift.

268. At one such shift meeting, defendant Goode was directly questioned by several firefighters who pointed out that his newly instituted policies were going to cause the deaths of firefighters and civilians in the City.

269. Defendant Goode responded to them, and stated, “I don’t care if you die in a fire.”

270. Stunned, several firefighters spoke up and expressed that such a response was inappropriate in every way and every sense.

271. Then to remove any doubt about his feelings towards the dedicated men and women under his command, defendant Goode repeated and amplified his sentiment, this time profanely stating:

- “I don’t give a fuck if you die;” and
- “I don’t give a fuck about you or your families.”

272. In other meetings with smaller groups, as well as in meetings with individual firefighters, defendant Goode also stated, among many other things:

- “I hate all of you motherfuckers;”
- “My wife hates you too;”
- “You are a bunch of bitches, I wouldn’t kick dirt on your graves;”

- “I only answer to and take my direction from Dennis P. Williams;”
- “I don’t care about you and your family, I’m gonna get mine.”

273. He often alluded to powerful friends who would protect him no matter what he did as Chief.

274. He also often bragged he did not care how many complaints were lodged or lawsuits were filed against him because, “it’s not my fucking money” that will be used to settle them.

275. Defendant Goode regularly repeated all of these statements, and made ones expressing similar sentiments: in visits to fire stations throughout the City; in meetings with Union officials; in meetings with individual concerned firefighters; and in shift-wide meetings with on duty firefighters.

a. His Motive for Doing So - Anger Over Criticism of His Policies

276. Defendant Goode regularly expressed and verbalized that he was angry with the Union for, among other things, exposing to the public and to City Council that his newly enacted policies had increased the risk to the lives of firefighters and citizens throughout the City.

277. For example, in the fall of 2014, one of defendant Goode’s top subordinates angrily told the Union President that defendant Goode was going to start playing “hardball” with the Union.

278. On another occasion, defendant Goode angrily told Union officials that they needed to “pick and choose” their battles with him or else.

279. In November 2014, Goode sent a department-wide e-mail in which he stated that the “direction” of his relationship with the Union was going to change because of allegations that he was engaged in “union retaliation” by punishing Union officials because of their opposition to his policies. Later that evening, defendant Goode took to his online Twitter account and posted

that the "world [is] aligned against" him, and that "if they mean to have a war, let it begin here!"

280. On another occasion, defendant Goode stated that if the Union wanted to "cry about" these and other issues, he would see to it that all overtime and paid details would be taken away from the Union membership.

281. As he stated on another occasion, "y'all are eating well, I can make it all go away."

282. In another meeting with an entire on-duty shift of firefighters, defendant Goode responded to concerns they raised and said that they can "blame the fucking union" for their problems.

283. From at least late summer of 2014 until January 2017, defendant Goode regularly verbally expressed, wrote in intra-departmental e-mails, publicly posted as part of his prolific online social media presence, as well as visibly demonstrated, his anger, antagonism and hostility towards the Union and its elected officers for their opposition to his policies.

284. On at least one occasion, at a Public Safety Committee of City Council meeting, one Councilperson expressed concern to defendant Goode that any firefighters who were caught being critical of him or his new policies were being transferred in retaliation for that criticism.

b. Goode's Policy of Collective Punishment

285. Defendant Goode also regularly expressed that he would punish a group of firefighters if an individual firefighter within that group made him unhappy or otherwise displeased him.

286. Stated another way, defendant Goode stated that he believed in punishment for all because of the actions of one or more than one.

287. Defendant Goode regularly expressed this command policy of collective punishment in small meetings and sometimes also in meetings at WFD headquarters with the

entire on-duty shift of firefighters.

288. For example, he regularly expressed that if he was unhappy or displeased with something a firefighter had said or done, he would hold that firefighter's engine or ladder company, station and sometimes even the entire shift, responsible and would punish all of them in some way.

c. Goode's Threat That Things Would Change in 2016

289. In early 2016, defendant Goode stated to several firefighters and Union officials that "in 2016, I'm all bite, no bark."

290. In light of his numerous prior statements detailed above, one of the ways in which that statement was interpreted was that defendant Goode was done expressing himself through the verbal and written word, and now he was going to take some sort of action to hurt the firefighters in the WFD as a whole.

11. January 2016 - Children Die When the Closest Engine is Closed

291. As had been repeatedly warned of and predicted by the Union, in January 2016 conditional company closures caused the death of two young City residents.

292. The fire engine at the fire station closest to the fire was closed due to conditional company closures.

293. Two young girls died as that fire grew in size and intensity.

294. The Local 1590 Union has, in writing, attributed the cause of these deaths to the conditional company closures policy of defendants Williams and Goode.

12. February 2016 - Notice That the Policy Had Failed Across the Country

295. By early 2016, the horrible results of the implementation and use of rolling bypass had become widely known and accepted throughout the country as a result of the experiences in

cities which had adopted it and studied its results.

296. It had become widely known and accepted that rolling bypass was inconsistent with and a direct threat to public safety.

297. It had become widely known and accepted that rolling bypass was an operational and fiscal failure.

298. It had become widely known and accepted that rolling bypass caused major fiscal problems in cities where it was joined with longstanding problems in filling, or refusing to fill, vacant firefighter positions. In these situations, rather than saving money, it caused overtime costs to increase significantly.

299. Defendants Williams and Goode had actual knowledge of all of this.

a. The Rolling Bypass Disaster in Philadelphia

300. For example, in February 2016, following a devastating, detailed analysis and Report by the City Controller (“the Report”), the Philadelphia Fire Department (“PFD”) ceased using rolling bypass, or as the PFD called it, rolling brownouts.

301. The Report found:

- “On August 2, 2010 the PFD implemented its controversial rolling ‘brownout’ policy. In general a brownout involves taking an engine or ladder company out of service temporarily and re-distributing the staff.” (Report at 4).
- “PFD management has asserted this temporary re-distribution of staff is done ... to fill in personnel gaps in other companies.” (Id. at 5).
- “Management also stated the brownout policy would reduce overtime costs. It rationalized that when there had been a need for personnel in other fire companies, the PFD would call firefighters into work and pay them overtime. PFD management indicated that brownouts would allow the department to redistribute its personnel and pay everyone with ‘straight time’ (normal shift pay), thus reducing the need for overtime and saving the city an estimated \$3.8 million in the general fund budget.” (Id. at 5).

- The policy had been the subject of “enormous controversy,” with the union for PFD firefighters questioning its connection to the fire deaths of young children, and that the policy had dominated all discussions in the City Council budget hearings. (Id. at 5).
- “Trends in Philadelphia response time data suggest that the PFD’s decisions to implement a brownout policy as a way to cut overtime costs during tough economic times ... only exacerbated the department’s already underachieving response to fire emergencies.” (Id. at 7; see also Exec. Summary).
- It “negatively impacted travel time to fires, ha[s] jeopardized public safety, and may have contributed to the actual loss of lives. Moreover, despite the PFD’s assertions that the brownout policy would lead to reduced overtime costs, in reality, the opposite occurred.” (Id. at 7; see also Exec. Summary).

302. It found that PFD had lied to both the public and City Council in its claims that response times were not impacted by rolling brownouts:

- “Although the PFD asserts that its fire emergency response - from dispatch to on-scene arrival time - fell below the national standard established by the National Fire Protection Association (NFPA) and adopted by the department, our analysis of the data going as far back as 2008 shows otherwise.” (Id. at 7) (internal footnote omitted).
- “the response rate dropped to its lowest rate ... after the PFD adopted the brownout policy in August 2010.” (Id. at 7-8).

303. It found that public safety was being jeopardized because:

- “When the PFD temporarily closes a fire station, it leaves a gap in coverage, thus increasing the distance a responding engine must travel. This can add minutes to the response time when a matter of seconds could mean the difference between life and death.” (Id. at 9).
- “When a fire station is temporarily closed, surrounding station fire engines must travel greater distances leading to longer response times.” (Id. at 9).
- “Delays in response time can lead to more dangerous fires than would be encountered without the brownouts, ultimately increasing the risks for more injuries and possible deaths to firefighters and civilians.” (Id. at 11).

304. The report analyzed internal PFD records in conjunction with media accounts of instances where “the closest engine was temporarily closed due to being browned-out” (id. at 12), and found:

- “These fires resulted in both firefighter and civilian injuries, as well as civilian deaths.” (Id. at 12).
- “Slower travel times would suggest a high risk of injury and loss of life.” (Id. at 12).
- “the severity of a fire can be controlled when an engine arrives on scene in the least amount of time.” (Id. at 12).

305. The report also analyzed the injuries suffered when fire engines had to travel increased distances to cover for closure of the closed engine because of rolling brownouts, including:

- a 12 year old child who died in a fire when the first due engine was a mere two-tenths of a mile away, but was closed, and the next due engine was 1.2 miles from the fire scene. (Id. at 12).
- two more young children who died and eight others who were injured when the first due engine was 1.2 miles away, but was closed, so the next due engine was 1.6 miles from the fire scene. (Id. at 12).
- three firefighters were injured when the first due engine was .6 miles away, but was closed. The next due engine arrived from 1.3 miles away within the NFPA’s national benchmark on timing, but the Report suggested those injuries may have been avoided if water had been put on the fire by an engine arriving “in under half the time.” (Id. at 12-13).

306. The Report found that, rather than save millions of dollars in overtime costs as promised, the rolling brownouts had actually increased overtime costs by millions of dollars, to more than double what it was before:

Upon announcing the implementation of brownouts, the PFD asserted the city would save about \$3.8 million in overtime costs. However, since the inception of brownouts, city records show that overtime for the PFD firefighters more than doubled at its peak in fiscal year 2014.... [S]ince the brownouts began in 2010,

overtime costs climbed from \$15.7 million in fiscal year 2010 to \$34.2 million in fiscal year 2014. (Id. at 15; see also Exec. Summary).

307. The Report concluded that:

- “The PFD’s brownout ... policies jeopardized public safety by negatively impacting the department’s ability to provide efficient and effective fire protection and emergency rescue to the citizens and visitors of Philadelphia.” (Id. at 15-16).
- “Travel to fire emergencies can take greater times because of longer distances traveled by fire engines covering for others in browned-out fire stations.” (Id. at 16).
- “And finally, while the impetus of the brownout policy was financial, the costs savings projected never materialized.” (Id. at 16).

308. The Report recommended that “PFD management and members of the mayor’s administration should cease the practice of ‘Browning-Out’ stations on a rotating basis as a way to reduce overtime costs.” (Id. at 16).

309. It concluded, “[a]s we stressed throughout this report, slower responses to fire emergencies can mean the difference between life and death. In our opinion, PFD management and the mayor’s administration need to let public safety be the main driving force behind its decision making.” (Id. at 20).

310. In response, the PFD terminated the practice of rolling brownouts but continued to insist that its response times consistently met or exceeded national standards. (Id. at 31-32).

311. The City Auditor formally replied to the PFD’s response, finding the PFD’s claims were not “valid” because, among other things, it was manipulating the response time numbers to improperly exclude emergency incidents which increased its response time numbers. (Id. at 60).

13. The Union Continues to Sound the Alarm

312. Throughout this time frame, the Union continued to sound the alarm to defendants

Williams and Goode about the increased dangers caused by their policies and warn that it was clear that these policies were failures.

313. Union officials also repeatedly raised to defendants Williams and Goode the issues of the lessons learned and conclusions drawn from the PFD Report, explaining how it paralleled the WFD experience and reinforced the Union's longtime warnings about the increased dangers and fiscal irresponsibility caused by their policies, including conditional company closures.

314. The Union also took their concerns over defendant Goode's verbal, written and other threats, and actions, directly to defendant Williams.

315. The Union did so verbally as well as in writing.

316. Despite actually knowing about defendant Goode's threats, defendant Williams ignored them and refused to take action.

14. Defendants Refuse to Fill Vacancies and Continue Closing Engines

317. Nevertheless, in accord with their official policies, defendants Williams and Goode: continued to refuse to fill the many vacant positions; kept the 16 additional firefighters off the line and refused to return them to trucks from their desk jobs; and continued the practice of conditional company closures despite actual knowledge that it was an operational and fiscal failure and was inconsistent with and a direct threat to firefighters, citizens and overall public safety.

15. The Statute is Triggered But Defendants Refuse to Comply

318. In August 2016, the authorized strength of the WFD was 172 uniformed firefighters, as it had been in every fiscal year since at least 2012.

319. As explained above, since the enactment of Wilmington City Code § 2-233 in July 2014, defendant Goode refused to comply with its various provisions.

320. Defendant Williams was aware of defendant Goode's refusal to comply with this City law but made a policy decision to ignore this non-compliance and not enforce the law's mandatory requirements.

321. This was done either because defendant Williams had explicitly authorized and ordered Goode not to comply with it or because when he learned of it after the fact, defendant Williams sanctioned or approved of Goode's actions and adopted or ratified his non-compliance.

322. By August 3, 2016 at the latest, the WFD's official vacant positions number exceeded 5%. Stated another way, the uniformed strength of the WFD fell below 95%. That is, it fell below 163.4 uniformed firefighters.

323. However, as explained in a section below, defendant Goode has admitted that the WFD's official vacant position numbers did not accurately reflect the true number of firefighters available for duty and this method of under-reporting violated a provision of the City Code. As a result, the true date by which the WFD's actual manpower levels fell below 95% is believed to have occurred even earlier.

324. Irrespective of the specific date when this occurred, as he had for more than two years, defendant Goode refused to comply with his mandatory statutory duties.

325. He refused to submit his mandatory quarterly staffing report to City Council notifying them of the actual understaffed manpower levels of the WFD.

326. He refused to notify City Council that the 95% trigger line had been crossed.

327. He refused to begin the hiring process to fill these many vacancies.

328. Defendant Williams was aware of and had actual knowledge of this.

329. Together, defendants Williams and Goode continued to abide by their pre-statute policy of refusing to fill vacant firefighter positions.

330. They refused to follow the longstanding practice of hiring firefighters from the certified list.

331. They also refused to begin an Academy class, even though they were long past the emergency floor and statutory trigger mandating one.

332. As the Chair of the Public Safety Committee stated more than seven months later while investigating the situation surrounding this longstanding non-compliance, “it was the previous administration and the previous chief who was responsible for calling this class and chose not to, and the previous mayor ... so sins are all over the place on this one.”

333. As noted above, current Chief Donohue was the Deputy Chief of Operations while defendant Goode was Chief of Fire.

334. He admitted that in August 2016, when he was Deputy Chief, he was aware the statutory line had been crossed, the WFD was required by law to hire firefighters to fill these vacancies and that he had notified his superiors to do so but that they had refused.

335. In his own words, Chief Donohue testified that “I knew the staffing was low ... and I knew we should have started something. Why it wasn’t started, that was above me ... and I notified my superiors that we’re down and we need to hire.” After “the trigger hit,” he explained he did not know why defendants refused to hire.

336. Deputy Chief Donohue’s “superiors” and the only persons above him at the time in the WFD chain of command were defendant Goode, the Chief, and defendant Williams, the Mayor.

337. Nevertheless, despite being explicitly warned by Deputy Chief Donohue, as well as being warned by numerous others, such as the Union, defendants officially refused to hire firefighters to fill the long empty vacancies, and refused to comply with their other mandatory

statutory duties, such as notifying City Council.

D. The Row House Fire on September 24, 2016

338. The chickens came home to roost on September 24, 2016 and defendant Goode's earlier admission that the impact of rolling bypass would be "felt in the event of a large fire where several companies are called" was a prophecy for the deaths of three firefighters and severe injuries to three more.

339. As he also had predicted, the combination of rolling bypass together with operating with fewer than 172 firefighters would have a "devastating effect" on the WFD.

1. Understaffing Levels

340. At the beginning of the 24 hour shift which began at 8:00 a.m., Friday morning, September 23, 2016 and ran until 8:00 a.m., Saturday morning, September 24, 2016, the authorized uniformed strength of the WFD was 172, as it had long been.

341. The WFD's official staffing numbers on that same date are believed to have been 158 uniformed firefighters, which is 91.86% of the authorized strength of 172.

342. However, as noted above and explained below, the true and actual manpower levels were even lower because defendants Williams and Goode had intentionally long been under-reporting staffing levels and refusing to comply with the statutory mandate enacted by City Council to report the actual manpower strength, both through the quarterly notifications as well as through the 95% trigger.

2. Introduction

343. Early on Saturday morning, September 24, 2016, a residential fire occurred in a brick row home at 1927 Lakeview Road, Canby Park, Wilmington, DE.

344. Lt. Chris Leach died on the scene following a structural collapse. Sr.Ffr. Jerry

Fickes was pulled from the collapse but pronounced dead at a trauma center soon afterwards. Sr.Ffr. Ardy Hope, Ffr. Brad Speakman, Sr.Ffr. Terry Tate, and Lt. John Cawthray, suffered serious injuries. On December 1, 2016, Sr.Ffr. Hope died due to her injuries. Ffr. Speakman spent 40 days hospitalized, suffered through a long attempt at rehabilitation but, in July 2018 was forced to retire because of his injuries. Sr.Ffr. Tate suffered burns during the fire, struggled to return to duty but eventually was forced to retire in late 2017 due to his injuries. Lt. Cawthray also suffered burns, was treated for seven weeks but was able to return to duty.

345. The closest engine to the scene of the fire, Engine 6, was closed due to rolling bypass that shift.

346. Had Engine 6 not been closed, none of these firefighters would have been injured or killed. Instead, the fire would have been extinguished quickly and the only damage suffered would have been to the property at 1927 Lakeview itself.

347. Lt. Leach was the experienced commander of Engine 6 that shift. He was widely known as a firefighter's firefighter, with a reputation for expertly and aggressively attacking and extinguishing any fire. He was a firm believer in the firefighting maxim, "you put water on a fire, the problems go away."

348. However, because defendants' rolling bypass policy closed Engine 6 that shift, Lt. Leach was moved and assigned to command Ladder 2 instead.

3. Summary Overview

349. Station 6 is the closest fire station to the fire scene and is located at 224 N. Union Street. It is a straight shot down Union Street until the left turn into the neighborhood of the fire. By driving distance, it is located exactly 1.0 mile from 1927 Lakeview Road. If one drives against traffic in the final stretch within the Canby Park neighborhood, it is .9 miles.

350. Both Engine 6 and Ladder 2 are stationed at Station 6.

351. Engine 6 is 36 feet long, weighs under 27 tons and carries 750 gallons of water. It is the newest, most modern engine in the WFD.

352. Using a 2 inch hose attack line attached to the truck, the 750 gallons of water it carries can be immediately put on a fire by a firefighter at 180 gallons a minute for 4.16 minutes.

353. Within this interval, the engine itself is connected to a nearby fire hydrant using a 5 inch hose supply line, guaranteeing a steady and constant flow of water for any fire.

354. One of the benefits of fighting a fire in a city such as Wilmington is the availability of numerous fire hydrants nearby to any fire scene.

355. Connection of a 5 inch supply line to the engine truck enables the firefighters to switch the water supply source for the 2 inch attack line already being used to put water on the fire over from the 750 gallon internal tank to the inexhaustible water supply provided by the fire hydrant. This then increases the water pressure, allowing the existing 2 inch attack line to increase the water flowing onto the fire from the initial 180 gallons per minute up to 350 gallons per minute.

356. If an even greater flow of water is deemed necessary by the engine officer, the deck gun mounted on the engine itself can be used to attack the fire, increasing the available flow up to 1,000 gallons per minute.

357. It is a fundamental, oft-repeated and scientifically proven tenet of firefighting that “you put water on a fire, the problems go away.”

358. But for that 24 hour shift, Engine 6 had been closed and taken out of service because of defendants’ understaffing and rolling bypass policies.

359. So when a fire was called in at 2:56 a.m. that Saturday morning only Ladder 2 could

respond to the fire just down the street from the station.

360. Ladder 2 is a 60 foot long, 38+ ton behemoth, requiring two independent drivers, one in the front cab of the truck, and the tillerman driving the independent back end. It carries no water or hoses and cannot connect to a hydrant or extinguish a fire. It only carries ladders.

361. An engine truck, especially the modern Engine 6, is smaller, lighter and much more maneuverable than a ladder truck such as Ladder 2.

362. All other conditions remaining the same, an engine truck will always arrive at the scene of a fire more quickly than a ladder truck.

363. As noted, Ladder 2 arrived first on the scene of the fire, instead of Engine 6, at about 3:01:30.

364. Had it not been closed, Engine 6 would have arrived on the scene even earlier since, as a shorter, smaller truck, it would not have had trouble trying to carefully maneuver the numerous turns off of South Union Street and into the narrow, crowded Canby Park neighborhood with cars packed on both sides of its streets.

365. Ladder 2 turned left to the East off of South Union Street, onto Prospect Road which runs East down to Rodman Road. Turning right on Rodman Road, Ladder 2 passed the wide street-like alley or driveway which runs the entire length of the block between and parallel to Prospect Road and Lakeview Road, back West to South Union Street.

366. Passing East on Prospect Road to Rodman Road, there are several places where the heavy fire in the rear of 1927 Lakeview Road was in fact viewed: the second and third breaks between row houses on Prospect Road and at the turn onto Rodman Road to the East.

367. On arrival at Canby Park, Lt. Leach, the experienced commanding officer of Ladder 2 (who would have been commanding Engine 6 but for the rolling bypass closure), immediately

saw there was “heavy fire” in the rear of the home. Although his truck was the first to arrive, no ladder company carries water or hoses or can connect to a hydrant, so he immediately reported in by radio that there was “heavy fire” “in the rear” of the home and called for an “engine” truck with water and hoses to be dispatched there immediately. He then proceeded to the front of the home to attempt to rescue trapped civilians.

368. Had Engine 6 not been closed that day, it would have arrived with water on the scene first and much earlier than Ladder 2 and those minutes and seconds would have made a difference. Engine 6 would have been commanded by the same Lt. Leach, who would have seen the same visible “heavy fire” he saw when arriving in Ladder 2. But because he would have been commanding an engine truck with water and hose capabilities, rather than a ladder truck with no such capabilities, he would have navigated to the rear of the home, onto the wide street-like alley or driveway which runs the entire length of the block between and parallel to Prospect and Lakeview Roads and aggressively attacked and extinguished the “heavy fire” he saw there.

369. Immediately attacking visible heavy fire in the rear of a building, rather than proceeding to the front door, routinely occurs in the WFD. For example, about a week prior, the first arriving engine at a Wilmington fire was directed by its commanding officer to attack visible heavy fire coming from the rear of the home, rather than proceeding to the front door.

370. Defendant Goode regularly wrote and admitted that the firefighters under his command were “aggressive” in their approach to fighting fire.

371. Being a firefighter’s firefighter, well known for expertly and aggressively attacking and extinguishing any fire, this is what Lt. Leach would have done had he been commanding Engine 6 that night, rather than Ladder 2.

372. Lt. Leach on Engine 6 would have taken command of the fire and would have

begun immediately putting 180 gallons of water per minute on the heart of the fire, soon increased to 350 gallons per minute, until it was extinguished. Water would flow first from Engine 6's own 750 gallon tank, as hoses were quickly connected to the nearby hydrants, from which an inexhaustible flow at higher pressure would be obtained.

373. The heart of the fire was in the ground level basement at the rear of the home which was accessible by two glass doors at ground level leading into the basement. One firefighter would have broken through the glass doors with his ax while another ran hose from the engine to the nearby fire hydrant to the West at the top of the rear wide street-like alleyway or driveway behind the home, guaranteeing a continuous flow of 180 gallons and then 350 gallons of water per minute on the heart of the fire in the basement.

374. Alternatively, even if Engine 6 had been commanded by a less aggressive officer who had seen the "heavy fire" in the rear, Engine 6 also could have simply parked at the front of the home, connected hose to the fire hydrant 300 feet away and run its hose around three row homes to the East and then to the back of the home on fire, three homes to the West.

375. But Engine 6 was closed due to defendants' rolling bypass policy and its experienced officer was transferred to command Ladder 2. There was no water to put on the fire from the first arriving truck to quickly extinguish the fire. Instead, Lt. Leach and his crew from Ladder 2 bravely entered the front door of the burning home to search for trapped civilians.

376. At about 3:06 a.m., 10 minutes after fire apparatus was dispatched to the scene earlier at 2:56 a.m., still no water had been applied to the rear of the building and the heart of the fire. If Engine 6 had been there instead, water already would have been applied to the rear of the building now for at least 5 minutes.

377. At about 3:09 a.m., 13 minutes after equipment was dispatched, the first floor

collapsed trapping three firefighters. If Engine 6 had been there at 3:01:30 a.m., at least 7.5 minutes of water, or about 1,770 gallons, already would have been applied previously to the heart of the fire in the rear and basement, preventing this collapse.

378. At about 3:16 a.m., 20 minutes into the fire, still no water had been applied to the rear of the fire. If Engine 6 had been there at least 14.5 minutes of water at 180 gallons and then 350 gallons per minute, or about 4,220 gallons, already would have been applied previously to the fire.

379. At about 3:19 a.m., 23 minutes after the dispatch of equipment, another collapse occurred, eventually killing two firefighters in the basement. If Engine 6 had been there at least 17.5 minutes of water at 180 gallons and then 350 gallons per minute, or about 5,270 gallons, already would have been put on the heart of the fire in the rear and basement, preventing both collapses and sparing the lives of three firefighters and injuries to three others.

4. The Details

380. At about 2:56 a.m., Ladder 2, Engine 1, Engine 5, Squad 4, Battalion 2, and Battalion 1 were dispatched to 1927 Lakeview Road, in the area known as Canby Park, upon the report of a residential structure fire in a brick row home with persons trapped.

381. Additional resources were not dispatched on the initial alarm.

382. The “first due” engine was Engine 6, located right down the street from the fire, but as noted above, it was closed and out of service due to defendants’ understaffing and rolling bypass policies.

383. The next closest fire stations tasked to respond with engine capabilities were Stations 1, 5 and 4. Station 1 is located in Quaker Hill at 400 West 2nd Street, which is 2.0 miles driving distance from 1927 Lakeview, over twice the distance from Station 6 where Engine 6 was

housed. Station 5 is located in the Forty Acres behind Trolley Square, at 1806 N. DuPont Street, which is 2.1 miles driving distance from 1927 Lakeview, again twice the distance from Station 6. Station 4 is located near Brandywine Village at 2200 Tatnall Street, which is 3.7 miles driving distance away, almost four times the distance from Station 6.

384. Ladder 2 arrived at about 3:01:30 a.m. and reported as it passed “heavy fire” was showing “in the rear” of the home. The officer of Ladder 2, Lt. Leach, stopped and could see the “heavy fire” in the rear. He requested that Dispatch “respond” there with an “engine.”

385. The masonry and brick home in question is in the middle of a group of eight row houses with a walk out ground level basement with sliding glass doors in the rear of the home and another adjacent separate steel door basement exit also.

386. Engine 1 and Engine 5 arrived several minutes later at the front of the home facing South and positioned themselves on separate sides of Ladder 2 while both connected hose to fire hydrants 300 and 600 feet away. The front door was open but the storm door was closed and smoke was coming out. When the storm door was opened, fire came out.

387. Engine 1 and Engine 5 started flowing water on the fire several minutes later and so water was being applied to the front of the home facing South but there was no water being applied on the rear facing North. The fire was heaviest at this time in the rear of the home where Lt. Leach had first reported “heavy fire” and asked for an engine to be sent there as soon as possible. The heart of this fire was always in the rear of this row home.

388. Crews from Engine 1 including Ffr. Speakman, Engine 5 including Lt. Cawthray and Sr.Ffr. Hope, and Ladder 2 including Lt. Leach, went to the front door and entered the 1st floor to rescue any trapped civilians.

389. There were problems with Sr.Ffr. Hope’s protective equipment and she had to

quickly exit. Another firefighter helped her adjust and she immediately reentered to fight the fire.

390. Lt. Cawthray had an attack hose line at the landing to the 2nd floor.

391. Behind him and to his left was Lt. Leach who was heading to the second floor to search for civilians. About 10 feet into the living room the floor became soft and someone shouted that everyone was to get out of the house.

392. The first floor then collapsed on the South side of the home.

393. As the collapse occurred, firefighters struggled to get out the front door. Ffr. Speakman fell backward into the basement. The Lieutenant of Engine 1 grabbed him but Ffr. Speakman let his rescuer go so that he would not pull the officer down into the basement with him.

394. Lt. Leach, Ffr. Speakman and Sr.Ffr. Hope all fell into the basement. A Mayday was transmitted for a floor collapse with firefighters in the basement, and everyone rushed to rescue their endangered comrades.

a. Squad 4 Arrives

395. A short while before, Squad 4 also arrived on the scene. As it was required to do by the internal policies and procedures of the WFD, it parked to the South on Rodman Road, at its intersection with the wide street-like alleyway or driveway that runs the entire length of the block between and parallel to Lakeview Road and Prospect Road, so that it was out of the way and would not block access to the front of the fire scene by any additional fire or rescue vehicles, such as ambulances.

396. Squad 4 normally serves as the vent, enter, search team responsible for search and rescue of civilians at a fire scene. Under the internal policies and procedures of the WFD, it does

not act as an engine company when responding to fires outside of its first due district, as it was here.

397. On this night however, Squad 4 was broken into two teams. The first team, consisting of the officer and two firefighters, was directed to the front of the home.

398. The second team of Squad 4 firefighters, Sr.Ffrs. Fickes and Tate, were ordered to hurriedly proceed down the alley to check adjacent exposures, or homes, in order to see if the fire was spreading to them.

399. Accordingly, Sr.Ffrs. Fickes and Tate proceeded past the fire blazing out of the rear of 1927 Lakeview and entered through the rear door of the adjoining house at 1929 Lakeview to check and see if the fire had burned through the shared wall in any spot and was spreading to the neighboring home. They had proceeded up the stairs from the basement to the first floor kitchen landing when they heard the Mayday call go out over the radio.

400. Sr.Ffrs. Fickes and Tate quickly exited the building and rushed to the rear entrance of 1927 Lakeview.

b. Ffr. Speakman and Lt. Cawthray

401. Because no RIC team had been assigned or designated due to the lack of available firefighters on the scene caused by the rolling bypass closure of Engine 6, after the collapse Command assigned Squad 4 the duties to serve as the new RIC team to locate and rescue the missing firefighters.

402. In the front of the property, the officer and two firefighters from Squad 4 immediately grabbed a hose attack line and went in the front door.

403. At the same time, Lt. Cawthray also grabbed a hose attack line and flowed water into the front of building to aid in the rescue of his comrades.

404. Ffr. Speakman was eventually rescued from the front. An attic ladder was brought into the first floor and placed in the hole to the basement. A firefighter from Squad 4 went down the attic ladder, found Ffr. Speakman, helped him to the ladder and up to the first floor where he was turned over to EMS.

405. After Ffr. Speakman was rescued, it was noticed that Lt. Cawthray had sustained 2nd degree burns and he was ordered off the line to seek immediate medical attention.

c. Sr.Ffr. Hope

406. An off-duty firefighter went into the basement trying to find Sr.Ffr. Hope. He heard her calling for help, he found her and she was trapped. He worked to remove a great deal of debris that had fallen onto her from the first floor collapse and was able to move enough to free her.

407. Firefighters were able to get Sr.Ffr. Hope to the ground ladder in the basement, but due to a change of rescue crews exiting and entering the basement because of lack of air supply, she moved about and she was lost in the smoke.

d. Lt. Leach, Sr.Ffr. Fickes and Sr.Ffr. Tate

408. After they rushed towards the rear of 1927 Lakeview from the house next door, Sr.Ffrs. Fickes and Tate could hear Lt. Leach calling for help.

409. Sr.Ffrs. Fickes and Tate entered the utility room in the basement through its separate doorway and saw the basement stairs located toward the front of the home. They found Lt. Leach, who was still on his air supply, in the North/East corner of the basement who said, "my back is broken, I can't move my legs." Without a stokes basket both firefighters instead grabbed Lt. Leach's air pack harness and began pulling him out to the rear. While pulling, Sr.Ffr. Tate fell backward and Lt. Leach landed on him. Sr.Ffr. Fickes helped get Lt. Leach up and off. Jointly, Sr.Ffr. Tate pulled as Sr.Ffr. Fickes pushed Lt. Leach towards the rear doors of the basement.

410. The fire conditions got worse and they got within 4-6 feet of the doorway. But then there was an additional structural collapse due to the fire, as the first floor collapsed into the basement and onto Sr.Ffr. Fickes and Lt. Leach. As the collapse occurred, another firefighter on the outside was able to get his hands on Sr.Ffr. Tate and pull him out.

411. Other firefighters crawled across the collapse looking for their firefighter brethren. They started digging and found Sr.Ffr. Fickes. He was face down on his left side and wearing everything but his helmet. They got him to the alley where his gear was removed and CPR was started. He was transported to a trauma center and pronounced dead from asphyxiation and thermal burns.

e. Sr.Ffr. Hope is Rescued

412. Soon thereafter firefighters entered the basement from the rear alley, crawled over the rubble and eventually could hear Sr.Ffr. Hope.

413. Two firefighters climbed over the debris and found Sr.Ffr. Hope on the floor without her protective gear. Firefighters carried her over the rubble to a stretcher in the rear. She was conscious and talking. She then was airlifted to a local trauma center and later died on December 1st from complications from thermal body burns.

f. Lt. Leach is Found

414. The search for Lt. Leach continued after the collapse as they searched through the rubble. Lt. Leach was eventually found and a paramedic pronounced him dead in the basement from asphyxiation and thermal burns. He was covered with an American flag and removed from the building.

g. The Fire is Extinguished

415. The fire was declared out at about 5:50 a.m.

416. Sr.Ffr. Tate and Lt. Cawthray were treated and eventually released for burn injuries, and continue to suffer from other injuries sustained during the fire.

E. The Aftermath of the Deadly Fire

1. Defendants Suspend Engine Closures

417. Later that same day, the Union again pleaded and begged defendants Goode and Williams to stop closing engines and end the conditional company closure policy that had injured and killed their brothers and sister in uniform.

418. Mere hours later, in an e-mail to his Battalion Chiefs, defendant Goode ordered that the policy of conditional company closures was suspended until further orders.

419. It is believed that defendant Goode did so on orders from defendant Williams because of the public uproar and outcry over the death of these brave firefighters when the closest fire engine was closed due to their policies.

2. Goode Reduces the Number of Desk Jobs

420. Not long thereafter, defendant Goode transferred a number of uniformed firefighters out of administrative positions and back to the fire suppression operations side of the WFD.

421. The exact number of uniformed firefighters so transferred is unclear.

422. Accordingly to published media reports, this was done “in an effort to combat the impact of overtime spending.”

423. This was an effort to reverse the disastrous effects of defendant Goode’s decisions in late 2015 or early 2016 to nearly double the number of uniformed firefighters working in desk jobs, which, as had been predicted by City Council, had caused the need for overtime to skyrocket.

424. This was done in response to widespread media attention and public pressure to look into the causes of the Canby Park fire.

425. This also was done as members of City Council began to question and look into whether defendants Goode and Williams had violated the law and acted illegally in their stewardship of the fire department.

3. Defendants Resume Rolling Bypass and Continue to Refuse to Fill Vacant Positions

426. In November 2016, defendant Goode issued an order resuming conditional company closures.

427. He justified this by explaining that the City did not have the money to pay the overtime necessary to keep the fire engines open.

428. Yet this rationale is undercut by the fact that defendants Goode and Williams continued to abide by their longtime policy of refusing to hire firefighters, by either the certified or non-certified methods, to fill the many vacant yet fully funded positions, which would have eliminated the need for this overtime spending.

429. In other words, despite the devastating impact of the Canby Park fire on the WFD, in terms of lives lost, injuries sustained and the bottoming out of morale, defendants Goode and Williams continued to refuse to begin the hiring process, despite a mandatory statutory duty to do so.

430. This rationale also is undercut by defendant Goode's history of using budgeted overtime funds for improper purposes.

431. For example, defendant Goode paid himself overtime to attend the funerals of Lt. Leach and Sr.Ffr. Fickes.

4. Goode's Admissions That the WFD's Staffing Numbers Are Not Accurate

432. In late 2016, defendant Goode admitted that his official vacant position numbers for

the WFD did not accurately reflect the true number of firefighters available for duty.

433. This is because those numbers did not count or include firefighters not otherwise available to work their shifts due to being: called up to active duty military service; out on long term sick or injury leave; out on terminal leave; or otherwise held out of duty because of suspension, disciplinary or criminal concerns.

434. In other words, while he was still Chief of Fire, defendant Goode admitted that his official staffing numbers did not reflect the actual manpower levels.

F. January 2017 - the Current Administration

435. In early January 2017, defendant Williams' term as Mayor ended and he was succeeded by current Mayor Mike Purzycki.

1. Defendant Goode is Removed as Chief

436. Mayor Purzycki promptly removed defendant Goode as Chief, and promoted then Deputy Chief Donohue and made him Chief of Fire. Other individuals filled the two positions of Deputy Chief.

437. Mayor Purzycki placed defendant Goode into an undefined limbo status.

2. Chief Donohue Restores the Status Quo

438. One of Chief Donohue's first official acts was to further reduce further the number of firefighters in administrative positions to 16. In doing so, he more than cut in half the number of firefighters serving in desk jobs from what defendant Goode had during his earlier tenure as Chief.

3. Mayor Purzycki Demonstrates that the Financial Rationale for Rolling Bypass Under His Predecessors Was a Sham

439. As referenced above, during his tenure as Chief, defendant Goode often bragged to firefighters that he could do whatever he wanted and get away with it, because he was protected by

powerful friends.

440. As he often bragged, “I’m gonna get mine.”

441. The reality and extent of his protection and powerful friends soon became clear.

442. When defendant Goode was removed as Chief, he was 43 years old and had only been in the employ of the WFD for approximately 19 years and 3 months. As such, he did not qualify to collect an early pension under 11 Del.C. § 8813(a). Accordingly, he would not be eligible to collect his pension until age 62.

443. Under the terms of the Union contract, firefighters only receive its job protections up to the rank of Battalion Chief. Upon accepting promotion to the rank of Deputy Chief or Chief of Fire, they give up the protections of the Union contract and instead become political appointees, subject to at-will removal by whomever occupies the Mayor’s office.

444. Defendant Goode gave up these Union contract protections when he accepted promotion to the rank of Chief by defendant Williams.

445. It has been a requirement, as well as the fixed and established past practice in the WFD, that upon removal from the appointed position of Chief or Deputy Chief, that person no longer occupies any position in the position allocation list of the City budget as enacted by City Council and, after running out his accumulated vacation time, must retire immediately due to no longer having a job.

446. In early January 2017, the Union was asked by soon to be Mayor Purcyki to authorize and sign off on the unprecedented retention of defendant Goode on “special assignment,” in the position of “senior firefighter,” a specifically defined status explicitly covered by the Union contract, for seven months after his removal as Chief. After those seven months passed, the Union was told that defendant Goode would then retire and thus immediately qualify to receive an early

yearly pension in the amount of \$55,000, which he would not have otherwise been eligible to receive until he turned 62.

447. This would amount to an unearned, financial gift to Goode of approximately \$1,000,000, not counting benefits.

448. The Union refused to sign off on such a backroom deal which bestowed a position of senior firefighter on someone without going through the normal hiring process, finding it to be, among other things, a violation of: (1) the Union contract; (2) the long established past practice of the WFD; (3) the budget enacted by City Council; and/or (4) the City Code.

449. The Union vigorously objected because if the City had the funds to pay a firefighter on “special assignment” for seven months and then give an unearned million dollar gift to a political appointee, then those funds should instead be legally spent to hire a firefighter to be placed into operations and fire suppression and thus reduce the number of vacant positions, the need for overtime, the alleged need for rolling bypass and, in doing so, better protect the health and safety of all those in the City.

450. The Union also vigorously objected because the rationale long relied upon by all defendants was that rolling bypass and its identical twin of conditional company closures were required because the City did not have the money to pay for the overtime necessary to keep fire engines open.

451. The Union vigorously objected and refused to sign off on this agreement because if the City had money for a sweetheart deal and political payoff to defendant Goode, then it had the money to keep engines open, rather than close them under the rolling bypass policy.

452. As one City Councilperson stated, this deal is many “years of taxpayers paying for a pension that they wouldn’t need to.”

453. Despite the Union's objections and refusal to sign off on the deal, Mayor Purcyki subsequently placed defendant Goode on special assignment anyway, at the rank of senior firefighter, and allowed him to stay on the WFD until he qualified for his early pension, at a cost of approximately \$1,000,000 to the taxpayers of the City of Wilmington.

454. The legal basis for this action is unknown and, it is believed to have been a violation of: (a) the Union contract; (b) the long established past practice of the WFD; (c) the budget enacted by City Council; and/or (d) the City Code.

455. Thus, defendant Goode's predictions had come true, powerful friends in high places would take care of him.

4. Chief Donohue's Admissions

456. In the fall of 2017, Chief Donohue admitted that overtime was so consistently high because the WFD had "waited until we needed to hire 20 guys and that made the overtime go way up."

457. By this, Chief Donohue was referring to the fact that defendant Goode would not hire firefighters until the WFD was 20 below their manpower levels and until that hiring began and could be completed, those 20 positions required overtime funding to fill them, which made the overtime budget skyrocket.

5. Defendant Goode is Indicted

458. It is unclear or unknown if or when defendant Goode ceased to be an employee of the City.

459. In December 2017, defendant Goode was indicted by a State of Delaware Grand Jury on four felony charges, including criminal racketeering and theft. Those criminal charges are pending.

G. DAMAGES

460. As a direct and proximate result of the actions of the defendants, as detailed herein, plaintiffs have suffered or will suffer damages including, but not limited to, the full panoply of damages available under federal common law rules for damages, as well as those available under state law for a survival action and for a wrongful death action. These include death, physical and emotional pain and suffering, mental anguish, emotional distress, loss of enjoyment of life, humiliation, embarrassment, injury to reputation, disappointment, anger, inconvenience and other non-pecuniary losses and injuries.

461. Physical injuries suffered by plaintiffs include, but are not limited to: death; broken bones, such as a broken back; burns, such as thermal body burns; asphyxiation; as well as other physical injuries.

462. Psychological, emotional or mental injuries include, but are not limited to: fear; terror; post-traumatic stress disorder; acute stress disorder; adjustment disorder; anxiety; flashbacks; trouble sleeping; recurring nightmares; fear of crowds; decreased energy and motivation; as well as other psychological, emotional and mental injuries.

463. Economic damages include, but are not limited to: burial costs and funeral expenses; loss of wages; loss of earnings; loss of benefits; loss of pension benefits; loss of retirement benefits; decreased earning capacity; decreased pension and retirement benefits; and other pecuniary losses.

IV. ALLEGATIONS REGARDING THE DEFENDANTS' CONDUCT

464. All the actions of the defendants described both above and below were taken pursuant to policies, practices and/or customs of the City of Wilmington and were authorized, sanctioned, implemented, permitted and/or ratified by officials functioning at a policymaking level.

465. By the policies, practices and/or customs of officials functioning at a policymaking level, the City of Wilmington has denied plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution.

466. The individual defendant's actions violated clearly established federal constitutional rights of which any official would have known.

467. At all times material hereto the individual defendants participated in, implemented, authorized and/or sanctioned the federal constitutional deprivations described above.

468. At all times material hereto the individual defendants and their agents were acting under color of law. The federal constitutional deprivations described herein are fairly attributable to the City.

469. The defendants either knew or showed a negligent or reckless disregard for the matter of whether their conduct violated federal constitutional rights.

470. The actions of the defendants and their agents or employees were deliberately, intentionally, willfully, purposefully, and knowingly done in violation of federal constitutional rights and because of the exercise of those rights.

471. Their actions were malicious, outrageous, wanton, and taken with evil motive, in bad faith, out of personal animus and without any reasonable grounds to support them.

472. The exercise of rights under the U.S. Constitution made a difference in all actions adverse to plaintiffs.

473. The exercise of these rights was a motivating, substantial or determinative factor in all actions adverse to plaintiffs.

474. The defendants did not reasonably believe that the actions they took were necessary to accomplish any legitimate governmental purpose.

475. The defendants' actions were motivated by bias, bad faith, and improper motive.

476. The defendants' actions constitute an abuse of governmental power.

477. The defendants' actions do not further any narrowly drawn important, substantial or compelling governmental interest.

478. The defendants' actions are not so reasonable as to further any governmental interest asserted and do not closely fit the goal of serving those governmental interests.

479. The defendants' actions were capricious, irrational, arbitrary, egregious and outrageous.

480. The defendants' actions shock the conscience.

COUNT I - (Fourteenth Amendment - Substantive Due Process - State Created Danger)

481. Plaintiffs repeat and reallege paragraphs 1-480 set out above.

482. Defendants had actual knowledge of the risk of harm to plaintiffs and other firefighters in the WFD caused by their policies and actions, because it was repeatedly brought to their attention by the Union, individual firefighters, Chief Ford, the New Castle County Fire Chiefs' Association, fire experts, the Philadelphia City Controller Report, the media and others.

483. Using ordinary common sense and experience, the harm and dangers caused by defendants' policies and actions were foreseeable and direct. Closing a fire engine and thereby removing the ability to quickly put water on a fire significantly increases the risk to firefighters responding to a fire in that shuttered engine's district because: fire engines from other parts of the City will have to travel further to reach the fire scene; it then will take longer to put water on the fire than it otherwise would have; and the fire will grow exponentially in the meantime. For each minute a fire is allowed to burn its intensity increases many times.

484. The firefighter plaintiffs were not random members of the public but instead, as

Wilmington firefighters, it was foreseeable that they would be exposed to the health and safety risks created by defendants' policies of deliberately understaffing the WFD and creating gaps in coverage by closing fire engines, thereby increasing the risks to firefighters as they respond to fires.

485. As set forth at length above, defendants were not faced with a situation where they had to make split second decisions, they were not operating in a hyperpressurized environment in which they were being forced to act quickly or with urgency, nor did they have only minutes or hours to act.

486. Instead, for over seven years, defendants had: the opportunity to proceed in a deliberate fashion; the luxury of thinking about the issues; the chance for repeated reflection; and extended opportunities to do better. They were faced with a situation where they had the time to make unhurried and considered judgments.

487. In failing to do so, defendants consciously disregarded a substantial and a great risk of serious harm, which was obvious, apparent and grave. They were actually aware of these risks of harm because it was brought to their attention by Chief Ford and the Union, among others.

488. Defendants' actions demonstrated a protracted failure even to care. They failed to act upon these great risks of harm due to deliberate indifference, gross negligence and recklessness. Additionally, they acted intentionally and arbitrarily.

489. Defendant Goode acted with malice.

490. Defendants' actions shock the conscience.

491. Defendants' affirmative actions created certain dangers for plaintiffs and rendered plaintiffs more vulnerable to other dangers than if defendants had not acted at all.

492. Defendants created the risks of some harms to plaintiffs, increased the risks of other harms to them, as well and caused them to be more vulnerable to these harms than if the

defendants had not acted at all.

493. Defendants misused their authority to create an opportunity and increase the opportunity for a foreseeable danger from private persons but then failed to protect plaintiffs from them.

494. Defendants' affirmative acts include, but are not limited to, policies that they authorized, created and implemented, such as:

- the policies of rolling bypass and conditional company closures;
- policies which refused to fill, and instead left vacant, numerous firefighting positions that were fully funded by City Council and mandated by law;
- policies which took 16 firefighters out of fire suppression duties and did not replace them, thereby depriving each of the four WFD suppression shifts of the personnel necessary to operate a fire engine;
- policies which at the same time nearly doubled the number of uniformed firefighters working in desk jobs;
- policies which increased the response time to fires;
- policies which (1) delayed the time it will take to get water to a fire scene to extinguish a fire; (2) removed 500-750 gallons of immediately available water from a fire scene; and (3) required other engines to respond from a different station and travel from a distance further away all while the fire increased in intensity.
- policies which repeatedly refused to comply with their statutory duty to keep the actual manpower level at 172 uniformed firefighters;
- policies which repeatedly refused to hire from the certified list when actual manpower levels dropped below 172;
- policies which repeatedly refused to hire from the Fire Academy when actual manpower levels dropped below 172;
- policies which on nine separate occasions since the enactment of the oversight and notification statute in July 2014, refused to comply with their statutory duty to notify and submit a report to the Public Safety Committee of City Council at the end of each quarter setting forth the actual manpower

level of the WFD;

- policies which repeatedly refused to comply with their statutory duties to notify City Council and begin a Fire Academy when the actual manpower level of the WFD fell below 95%;
- policies which failed to comply with their contractual duties in the CBA to abide by the health and safety staffing standards set forth in NFPA 1710, including:
 - (1) having a “sufficient” number of “on-duty fire suppression” personnel to provide for “safe and effective fire-fighting performance conditions for the fire fighters;”
 - (2) that “a sufficient number of members are assigned, on duty, and available to safely and effectively respond with each company;”
 - (3) having available to “deploy additional resources on the initial alarm” to fires in single family homes with basements or adjoining buildings or homes; and
 - (4) having a dedicated RIC team on standby to immediately spring into action and rescue any firefighters who become injured, lost or trapped.

495. There is a direct causal relationship between defendants’ actions and the harm plaintiffs have suffered.

496. Defendants’ actions were the but for cause of the dangers faced by plaintiffs.

497. As a direct and proximate result of defendants' actions, plaintiffs have been injured.

498. Plaintiffs’ constitutional right to substantive due process has been denied under the Fourteenth Amendment of the U.S. Constitution and 42 U.S.C. § 1983.

COUNT II (Fourteenth Amendment - Substantive Due Process - Shocks the Conscience)

499. Plaintiffs repeat and reallege paragraphs 1-498 set out above.

500. Defendants’ actions shock the conscience.

501. As a direct and proximate result of defendants' actions, plaintiffs have been injured.

502. Plaintiffs' constitutional right to substantive due process has been denied under the Fourteenth Amendment of the U.S. Constitution and 42 U.S.C. § 1983.

COUNT III - (Fourteenth Amendment - Substantive Due Process - Maintenance of Policies, Practices and Customs)

503. Plaintiffs repeat and reallege paragraphs 1-502 set out above.

504. All decisions made by the Mayor defendants were policies, practices and/or customs fairly attributable to the City.

505. For example, defendants Baker and Williams had final authority as Mayor and established such City policies when they ordered the creation, implementation and execution of the policies of rolling bypass and conditional company closures.

506. In the same way, defendant Williams had final authority as Mayor to order the creation, implementation and execution of an understaffing policy of refusing to fill vacant firefighter positions which already were fully funded by City Council.

507. Similarly, all decisions made by the Chief of Fire defendants also were such policies, practices and/or customs fairly attributable to the City. This is so either as a result of their actual creation of and subsequent orders to their subordinates to abide by such policies, or through implementation of those policies created and ordered by their own Mayoral superiors.

508. For example, in their capacity as Chief of Fire, defendants Patrick and Goode implemented the City policies of rolling bypass and conditional company closures.

509. In the same way, defendant Goode implemented the City policies of refusing to fill vacant firefighter positions which were already fully funded by City Council.

510. Defendants Patrick and Goode each had final authority to establish City policy regarding the internal workings and structure of the WFD.

511. For example, defendants Patrick and Goode established City policy regarding staffing and deployment of firefighters within the WFD.

512. Alternatively, it is the custom of the City to allow the Chief of Fire to do so.

513. For example, defendant Goode's decision to change the status quo and issue an official order, in the paramilitary organization that is the WFD, to nearly double the number of uniformed firefighters assigned to desk jobs at the expense of the fire suppression side, is one example of the making of such a policy.

514. As a direct and proximate result of defendants' policies, practices and/or customs, plaintiffs have been injured.

515. Plaintiffs' constitutional right to substantive due process has been denied under the Fourteenth Amendment of the U.S. Constitution and 42 U.S.C. § 1983.

Wherefore, Plaintiffs pray that the Court:

- A. Enter separate judgments against each of the individual capacity defendants and the City.
- B. Enter a declaratory judgment declaring the acts of each of the defendants to be a violation of the decedents' constitutional rights, as well as the constitutional rights of each and every other plaintiff.
- C. Enter a judgment against the individual capacity defendants and the City, jointly and severally, for compensatory damages, including but not limited to loss of life, lost wages, back pay, pension and other benefits, for future or front pay, loss of earning capacity, physical and emotional injuries, pain and suffering, emotional distress, humiliation, embarrassment, injury to reputation and other damages.
- D. Enter separate judgments against the individual capacity defendants for punitive damages.
- E. Issue a reparative injunction directing that each of the individual capacity defendants write letters of apology to each of the plaintiffs, apologizing for their illegal violations of plaintiffs' constitutional rights.

- F. Award plaintiffs attorney's fees, costs and pre and post judgment interest for this action.
- G. Require such other and further relief as the Court deems just and proper under the circumstances.

Respectfully Submitted,

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