

**IN THE CIRCUIT COURT OF COOK COUNTY
CHANCERY DIVISION
STATE OF ILLINOIS**

15211953

FRATERNAL ORDER OF POLICE)
CHICAGO LODGE NO. 7,)
John Catanzara, Jr., POLICEMEN’S)
BENEVOLENT & PROTECTIVE)
ASSOCIATION OF ILLINOIS,)
UNITS 156 A, B, C – SERGEANTS,)
LIEUTENANTS, CAPTAINS, James Calvino,)
Michael Stiscak, and Kevin Chambers,)

Plaintiffs,)

v.)

CITY OF CHICAGO, CHICAGO POLICE)
DEPARTMENT, LORI LIGHTFOOT, in her)
official capacity as MAYOR of the)
CITY OF CHICAGO, and DAVID BROWN,)
in his official capacity as Superintendent)
of Police,)

Defendants.)

Case No. 2021 CH2021CH05276
Judge:

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, Fraternal Order of Police Chicago Lodge No. 7 (hereafter “Lodge”), John Catanzara, Jr., and Policemen’s Benevolent and Protective Association of Illinois, Units 156A, 156B, and 156C, Sergeants, Lieutenants, and Captains (collectively hereafter “PBPA”), James Calvino, Michael Stiscak, and Kevin Chambers, hereby file this complaint against Defendants, City of Chicago, Chicago Police Department, Lori Lightfoot, in her official capacity as the Mayor of the City of Chicago, and David Brown, in his official capacity as the Superintendent of the Chicago Police Department, to seek injunctive relief in aid of arbitration of grievances alleging a

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refusal to participate interest arbitration and mid-term interest arbitration by and through the City's imposition of a unilateral change that imposes new terms and conditions of employment on the officers represented by Plaintiffs, without completing collective bargaining negotiations and engaging in the impasse resolution procedure of the parties' respective collective bargaining agreements. Plaintiffs state and allege as follows:

NATURE OF THE ACTION

1. This is a suit filed pursuant to the provisions of the Illinois Code of Civil Procedure. Section 5/2-701, 735 ILCS 5/2-701 (declaratory relief) and Section 5/11-101, 735 ILCS 5/11-101 (temporary restraining order) – and the Illinois Uniform Arbitration Act, 710 ILCS 5/1, *et seq.*, (a) to order Defendants to proceed with expedited arbitration of grievances filed by the Lodge and the PBPA alleging violations of their respective collective bargaining agreements, and (b) to enjoin Defendants from failing and refusing to comply with the terms of those agreements, during the pendency of the parties' grievance arbitrations.

JURISDICTION AND VENUE

2. This matter arises under the Illinois Uniform Arbitration Act and this Court has jurisdiction pursuant to Section 16 of that Act, 710 ILCS 5/16. This is a justiciable matter over which this Court has original jurisdiction pursuant to Article VI Section 9 of the Constitution of the State of Illinois. Ill. Const. art. VI, § 9.

3. This Court has general jurisdiction to adjudicate this matter and to issue an order requiring the City of Chicago Department of Police (hereinafter "the CPD") to proceed with the expedited arbitrations of grievances arising under the collective bargaining agreements between the Lodge and the CPD and the PBPA and the CPD, and to aid the arbitration process by enjoining the CPD from failing and refusing to comply with the terms of the parties' agreements during the

pendency of the arbitration proceedings.

4. Venue is proper in this judicial circuit pursuant to Sections 5/2-101 and 5/2-103 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-101 – 5/2-103, and Section 5/17 of the Illinois Uniform Arbitration Act, 710 ILCS 5/17 as one or more of the Defendants reside in or have a principal place of business in Cook County, Illinois. Moreover, all or part of the acts or transactions complained of in this matter occurred in Cook County, Illinois.

5. This suit is filed pursuant to the provisions of the Illinois Code of Civil Procedure, 735ILCS § 5/2-701 (declaratory relief), and 735 ILCS § 5/11-102 (preliminary injunction).

THE PARTIES

6. Plaintiff Fraternal Order of Police Chicago Lodge No. 7 is a labor organization and is the exclusive collective bargaining representative of all sworn personnel below the rank of sergeant employed by the Chicago Police Department. The Lodge has negotiated successive collective bargaining agreements with the City of Chicago for the purpose of establishing wages, hours, other terms, and conditions of employment on behalf of its bargaining unit members and has represented Chicago Police Officers in matters involving discipline and their actions in protecting and serving the citizens of the City of Chicago. The Lodge has its principal office in Cook County, Illinois and conducts business throughout the City of Chicago. The Lodge files this complaint as a class action and as a representative of the Chicago Police Officers, who are too numerous to be identified by name and who have been injured by and through the Defendants' unilateral imposition of several new conditions of employment concerning COVID-19 vaccination, testing protocols, and Defendants' complete disregard for the collective bargaining process, under which the Lodge has proposed multiple layers of protection for Police Officers and citizens from exposure to COVID-19 pathogens.

7. Plaintiff John Catanzara, Jr. is the President and principal executive officer of the Lodge, is a member of the Lodge, and is also a member of the bargaining unit of employees affected by Defendants' failure to comply with the collective bargaining agreement's status quo and other substantive provisions at issue in this case. Plaintiff Catanzara resides in Cook County. Plaintiff Catanzara is a member of a class of Police Officers for whose benefit the Lodge and the City have negotiated a collective bargaining agreement to provide for their wages, hours, and working conditions. He is a representative of the class of Police Officers affected by the actions and inactions of the Defendants alleged herein; all of whom have an interest in this matter.

8. The Lodge represents a class of Police Officers, who are members of the bargaining unit represented by the Lodge and who are responsible for providing protection and safety for the citizens and Police Officers of the City of Chicago. This class of Police Officers is too numerous to name as individuals and consists of Police Officers for whose benefit the Lodge and the City have negotiated a collective bargaining agreement to provide for their wages, hours, and working conditions. The Lodge represents the class of Police Officers who have been (or will be) affected by the actions and inactions of the Defendants alleged herein.

9. Plaintiffs Policemen's Benevolent and Protective Associations, Units 156A, 156B, and 156C are labor organizations, as defined by the Illinois Public Labor Relations Act, 5 ILCS 315/3(i), and are the exclusive collective bargaining representative of all sworn personnel who hold the rank of Sergeant, Lieutenant, or Captain. The PBPA has negotiated successive collective bargaining agreements with the City of Chicago for the purpose of establishing wages, hours, and other terms and conditions of employment, on behalf of its bargaining unit members. The PBPA has represented Chicago Police Officers in matters involving discipline and their actions in protecting and serving the citizens of the City of Chicago. The PBPA maintains offices in Cook

County, Illinois and conducts business throughout the City of Chicago. The PBPA files this complaint as a class action and as a representative of the Chicago Police Officers, who are too numerous to be identified by name and who have been injured by and through the Defendants' unilateral imposition of several new conditions of employment concerning COVID-19 vaccination and testing protocols and Defendants' complete disregard for the collective bargaining process, under which the PBPA has proposed multiple layers of protection for Police Officers and citizens from exposure to COVID-19 pathogens.

10. Plaintiff James Calvino is the President and principal executive officer of the PBPA, Unit 156A. Plaintiff Calvino is a member of the PBPA. Plaintiff Calvino is also a member of the bargaining unit of employees affected by Defendants' failure to comply with the collective bargaining agreement's substantive provisions at issue in this case. Plaintiff Calvino resides in Cook County. Plaintiff Calvino is a member of a class of Police Officers for whose benefit the PBPA, Unit 156A, and the City have negotiated a collective bargaining agreement to provide for their wages, hours, and working conditions. He is a representative of the class of Police Officers affected by the actions and inactions of the Defendants alleged herein; all of whom have an interest in this matter.

11. Plaintiff Michael Stiscak is the President and principal executive officer of the PBPA, Unit 156B. Plaintiff Stiscak is a member of the PBPA. Plaintiff Stiscak is also a member of the bargaining unit of employees affected by Defendants' failure to comply with the collective bargaining agreement's substantive provisions at issue in this case. Plaintiff Stiscak resides in Cook County. Plaintiff Stiscak is a member of a class of Police Officers for whose benefit the PBPA, Unit 156B, and the City have negotiated a collective bargaining agreement to provide for their wages, hours, and working conditions. He is a representative of the class of Police Officers

affected by the actions and inactions of the Defendants alleged herein; all of whom have an interest in this matter.

12. Plaintiff Kevin Chambers is the President and principal executive officer of the PBPA, Unit 156C. Plaintiff Chambers is a member of the PBPA. Plaintiff Chambers is also a member of the bargaining unit of employees affected by Defendants' failure to comply with the collective bargaining agreement's substantive provisions at issue in this case. Plaintiff Chambers resides in Cook County. Plaintiff Chambers is a member of a class of Police Officers for whose benefit the PBPA, Unit 156C, and the City have negotiated a collective bargaining agreement to provide for their wages, hours, and working conditions. He is a representative of the class of Police Officers affected by the actions and inactions of the Defendants alleged herein; all of whom have an interest in this matter.

13. Defendant, City of Chicago, is an incorporated municipality under the Illinois Municipal Code, 65 ILCS 5/1-1-2 and 5/1-1-13. It operates and has its principal place of business in Cook County.

14. Defendant, City of Chicago, is a "public employer" within the meaning of the Illinois Public Labor Relations Act. 5 ILCS 315/3(o).

15. Defendant Lori Lightfoot is the mayor of the City of Chicago, has obligation and authority to follow and comply with the ordinances of the City of Chicago and statutes of the State of Illinois, and any mandamus order that may be issued by this Court.

16. Defendant Chicago Police Department is an executive department of the municipal government of the City of Chicago and operates in Cook County.

17. Defendant David Brown is the Superintendent of the Defendant CPD and is the chief executive officer of the CPD. As such, he has responsibility for the general management and

control of the CPD. He has full and complete authority and responsibility to comply with the provisions of Plaintiffs' respective collective bargaining agreements and any order that may be issued by this Court. He is responsible for administering the CPD in a manner that is consistent with the ordinances of the City of Chicago, the laws of the State of Illinois, and the provisions of Plaintiffs' collective bargaining agreements. On information and belief, Defendant Brown resides in Cook County on an interim basis.

COUNT I
FOP CHICAGO LODGE NO. 7's BARGAINING UNIT

18. Plaintiffs re-allege and incorporate by reference Paragraphs 1-17 as if fully alleged herein.

19. The collective bargaining agreement between the City and Lodge allows the Lodge or an aggrieved Police Officer to present a grievance to state a dispute or difference between the parties to the agreement concerning the interpretation and/or application of the agreement or its provisions. Exhibit A, p. 11.

20. Grievances filed pursuant to the Lodge's collective bargaining agreement may be presented to an arbitrator as follows:

Section 9.2 — Procedures, Steps and Time Limits for Standard Grievances

A grievance may be initiated by the Lodge or an aggrieved Officer. Any Officer shall have the right present a grievance at any time, although it is understood that the Officer should attempt to satisfy his or her concerns on an informal basis before invoking the procedure. In the event an informal resolution proves to be unsatisfactory, a grievance may be filed in a form to be agreed upon between the Lodge and Employer and shall be processed in accordance with this Agreement. Upon request, the grievant shall be represented by an appropriate Lodge representative, provided, however, the grievant Officer may have the grievance adjusted without a Lodge representative, so long as such adjustment is not inconsistent with the provisions of this Agreement.

Step One: Initiating a Grievance. The grievant will first submit his or her grievance in writing to his or her immediate supervisor in his or her unit of assignment within seven (7) of the Officer's working days following the events or circumstances giving rise to the grievance or where first known by the grievant, or thirty-five (35) days, whichever period is shorter. The grievance will be Reduced to writing on a pre-printed, standard grievance form set agreed upon between the Lodge and Employer.

Step Two: Supervisory Responses. Within seven (7) days of receipt of the member's grievance, the supervisor will respond to the grievance on the grievance form set and then immediately present the grievance form set to the Commanding Officer of the unit of assignment. Following the submission of the written grievance, the Commanding Officer shall render a decision in writing

Within fourteen (14) days of receiving the grievance. The response shall be written on the bottom portion of the pre-printed, standard grievance form set. The Commanding Officer must forward one (1) copy of his or her decision to the grievant, one (1) copy to the Lodge's unit representative, and three (3) copies to Management and Labor Affairs Section (MLAS). MLAS will then forward to the Lodge a copy of the Commanding Officer's decision within fourteen (14) days of its receipt. If the grievant is directed by the Employer to meet concerning his or her grievance at a time when the Officer is not scheduled to work, he or she shall be compensated for such time at the applicable rate provided for in this Agreement, including the provisions of Article 20.

Step Three: Mediation. If the response at Step Two is not satisfactory to the grievant and the Lodge, the Lodge and MLAS will meet for the purpose of mediation of the grievance. Either party may request the presence of a Mediator at such meeting, the selection of whom shall be mutually agreed upon. The mediation meeting shall be conducted no less than once each month. between the Lodge Grievance Chairman, Lodge President or his or her designee and a Department representative having authority to resolve the grievance. The parties shall split evenly the cost of the Mediator's expenses and fees.

Step Four: Arbitration. If the parties cannot resolve the grievance at Step Three, either party may at any time demand arbitration.

Section 9.3 — Arbitration of Standard Grievances

If either party proceeds to arbitration, the following procedure shall apply:

A. Within ten (10) days, the Employer and the Lodge shall attempt to mutually agree upon an Arbitrator. If they fail to agree, a list of seven (7) qualified neutrals shall be requested from the American Arbitration Association. Within five (5) days after receipt of the list, the parties shall select an Arbitrator. Both the Employer and

Lodge each shall alternately strike names from the list. The remaining person shall be the Arbitrator.

B. The Employer or the Lodge, by mutual agreement, may submit a grievance involving an issue not otherwise covered under Section 9.6 of this Agreement to expedited arbitration pursuant to the rules set forth in Appendix M or under rules to be determined by the parties by mutual agreement.

C. The parties shall avoid continuances. Requests for continuances are disfavored and shall be granted only upon showing good cause.

Section 9.7 — Authority of the Arbitrator

A. Except as specified in Subsection C below, the Arbitrator shall have no right to amend, modify, nullify, disregard, add to, or subtract from the provisions of this Agreement. The Arbitrator shall only consider and make a decision with respect to the specific issue or issues presented to the Arbitrator and shall have no authority to make a decision on any other issues not so submitted. The Arbitrator shall submit in writing his or her decision to the Employer and to the Lodge within thirty (30) days following the close of hearing unless the parties agree to an extension thereof. The decision shall be based upon the Arbitrator's interpretation of the meaning or application of the terms of this Agreement to the facts of the grievance presented, and shall be final and binding upon the parties.

Section 9.9 — Processing and Time Limits

The resolution of a grievance satisfactory to the Lodge at any step shall be deemed a final settlement, and any grievance not initiated or taken to the next step within the time limit specified herein will be considered settled on the basis of the last answer by management. The time limits specified in this Article may be extended or waived by mutual agreement. Grievances may be initiated at any appropriate step corresponding with the nature of the grievance and the manner in which it arose.

Section 9.10 — Normal Operation

Grievance meetings shall be scheduled at reasonable times and in a manner which does not unreasonably interfere with the Employer's operations. Reasonable duty time shall be allowed the grievant Officer(s) and the watch representative or unit representative under this Article, for the prearbitral steps under Section 9.2.

Section 9.11 — Exhaustion

It is the intent of the parties to this Agreement that the procedures set forth in this Article shall be mandatory as to any grievance unless expressly and specifically excluded by the terms of this Agreement.

Exhibit A, at pgs. 12-18.

21. The term provision of the collective bargaining agreement provides that it will be effective as of July 1, 2012, and shall remain in full force and effect until June 30, 2017. Exhibit B, at p. 47.

22. Section 28.2 of the Lodge's collective bargaining agreement, attached as Exhibit B, provides for the continuing effect of the agreement following its expiration while negotiations or resolution of impasse procedure are continuing:

Notwithstanding any provision of this Article or Agreement to the contrary, this Agreement shall remain in full force and effect after any expiration date while negotiations or Resolution of Impasse Procedure are continuing for a new Agreement or part thereof between the Parties. Section 28.2 — Continuing Effect. Exhibit B, at p. 47.

23. Section 28.3 of the Lodge's collective bargaining agreement discusses the procedure for resolving impasses:

Section 28.3 — Impasse Resolution, Ratification and Enactment

A. If the parties reach a complete agreement as to the items for negotiation at the end of any negotiating period, the following procedure shall apply:

1. The agreement will first be presented to the Lodge membership with the recommendation of the Executive Board for ratification.
2. Within ten (10) days after such ratification by the Lodge membership, the agreement will be submitted to the City Council of the City of Chicago, with the Superintendent of Police and the Mayor's recommendation for ratification and concurrent adoption in ordinance form pursuant to the City's Home Rule authority. The Employer and Lodge shall cooperate to secure this legislative approval.
3. In the event the City Council should reject the recommended agreement, the parties shall meet again within ten (10) days of the Council's vote to discuss the reasons for the Council's rejection and to determine whether any modifications can be made to deal with the problems; but either party may thereafter invoke arbitration in accordance with Section 28.3(B) of this Article upon ten (10) days' written notice to the other party. For purposes of this Article, rejection by the City

Council means affirmative rejection by a three-fifths (3/5) vote of the members of the City Council within thirty (30) days of the date the contract is submitted to it.

B. If complete agreement is not reached between the parties as to the items for negotiation at the end of any negotiating period, the following procedure shall apply:

1. In the event that disputed items cannot be resolved during the negotiation period, all disputed items shall be referred to a three person Arbitration Board, one member to be selected by each of the parties and the third member to be jointly agreed upon by the parties.

2. A Dispute Resolution Board shall be convened and shall be composed of three (3) persons: one appointed by the Employer, one appointed by the Lodge and one impartial member to be mutually selected and agreed upon by the Employer and the Lodge. If, after a period of five (5) days from the date of the appointment of the two representatives of the parties, the remaining Board member has not been selected or otherwise agreed upon, then either representative may request the American Arbitration Association, or its successor in function, to furnish a list of seven members of said service from which the remaining Board member shall be selected. The Association shall be advised that the eligibility for names to be placed upon the list shall include the following: membership in the National Academy of Arbitrators; at least five (5) years' experience in labor relations dispute resolutions in either the private or public sector; United States citizenship; and a commitment by any such individual that, if appointed or selected, said individual agrees to comply with the time limits set forth in subsection 28.3(B)5, below. Upon mutual written agreement of the Employer and the Lodge, the parties' right to appoint any Board members other than the impartial member may be mutually waived.

3. The list shall be immediately published and the representative appointed by the Employer shall within five (5) days after publication of said list eliminate three (3) names from the list. Within two (2) days after such elimination, the representative appointed by the Lodge shall eliminate three (3) names from the list. The remaining individual, plus the individual appointed by the Employer and the individual appointed by the Lodge, shall compose the Dispute Resolution Board.

4. The member of the Dispute Resolution Board selected, pursuant to subsection 28.3(B)3, above, shall act as Chairman. He or she shall be an impartial, competent and reputable individual and shall be administered and subscribe to the constitutional oath or affirmation of office. The Employer and the Lodge shall each pay half of the fees and expenses of the impartial member.

5. The Chairman shall have the authority to convene and adjourn proceedings, administer oaths, compel testimony and/or documents, and employ such clerical or research assistance as in his or her judgment and discretion are deemed warranted. He or she shall convene proceedings on the issues presented to the Dispute

Resolution Board within ten (10) days after his or her appointment and/or selection; and the Board shall make its determination within thirty (30) days after it has convened. The time limits set forth herein may be extended only upon written mutual agreement of both the Board member appointed by the Lodge and the Board member appointed by the Employer.

6. The Employer and the Lodge shall attempt to agree upon a written statement of the issue or issues to be presented to the Board. In lieu of, or in addition to, such mutual statement of issues, each party may also present its own list or statement of issues, provided only that any such issue not mutually agreed upon shall have been an issue previously the subject of negotiations or presentation at negotiations. During the course of proceedings, the Chairman of the Board shall have the authority as necessary to maintain decorum and order and may direct, (absent mutual agreement) the order of procedure; the rules of evidence or procedure in any court shall not apply or be binding. The actual proceedings shall not be open to the public and the parties understand and agree that the provisions of 5 ILCS 120/1 et seq. are not applicable. If, in the opinion of the impartial member of the Board, it would be appropriate in his or her discretion to meet with either the Employer or Lodge for mediation or conciliation functions, the Board may do so, provided only that notice of such meetings shall be communicated to the other party.

7. The compensation, if any, of the representatives appointed by the Lodge shall be paid by the Lodge. The compensation of the representative appointed by the Employer shall be paid by the Employer.

8. The terms decided upon by the Board shall be included in an agreement to be submitted to the City Council for adoption. The terms of this Agreement shall continue to bind both parties hereto during all negotiations and impasse resolution procedures.

9. If the City Council should reject the arbitrated agreement, the parties shall meet again within ten (10) days of the Council's vote to discuss the reasons for the Council's rejection and to determine whether any modifications can be made to deal with the problems; but either party may thereafter terminate this Agreement upon ten (10) days' written notice to the other.

10. There shall be no implementation of any provisions of a successor agreement without Council ratification and adoption in ordinance form of the agreement; except, however, that the terms of this Agreement shall remain in full force and effective until a successor agreement is adopted in ordinance form or this Agreement is terminated pursuant to subparagraph 28.3(B)9.

11. As permitted by 5 ILCS 315/14(p), the impasse resolution procedure set forth herein above shall govern in lieu of the statutory impasse resolution procedure provided under 5 ILCS 315/14, except that the following portions of said 315/14 shall nevertheless apply; Subsections (h),(i), (k) and (m). Exhibit B, at pgs. 47-49.

24. The Lodge and the CPD commenced negotiations for a successor collective bargaining in October 2017 and have since discussed a number of matters involving wages, hours and conditions of employment. The parties have exchanged proposals on a number of issues, including but not limited to the following matters:

a. Bill of Rights issues on written statements of Officers, dissemination of Officer photos, and the requirement that complaints against Officers be supported by sworn affidavits and discipline including the use of arbitration for the discharge of Officers.

b. Modification of the summary punishment system and the use of mediation to reduce the number of summary punishments.

c. The elimination of merit promotions.

d. The creation of a right to submit safety grievances to final and binding arbitration.

e. Overtime issues.

f. Changes in the seniority system.

g. Health insurance

h. Increases in salaries and stipends for Officers with certified skills.

i. Contract duration.

j. A wellness benefit

k. Time off and compensatory time.

l. Body worn camera issues.

m. Problems of the Performance Recognition System, Behavioral Intervention System and the Personnel Concerns Program.

n. Work schedules.

o. Health care and prescription drugs.

p. Benefits for Officers at the time of retirement.

q. Modification of the grievance procedure to expedite the handling of grievances.

r. Holiday compensation.

s. Safety issues.

t. Change of schedule.

u. Educational reimbursement.

- v. Modifications to the impasse procedure.
- w. Employee assistance program and the creation of a last chance agreement.
- x. Lodge accountability issues that cover the use of Officer interview statements, summary punishment, a discipline matrix for Officers, off duty use of lawful products, destruction and use of discipline file material, arbitration of discipline – discharge cases known as the separation of Officers, definition of false statements, removal of official duties of Officers – known as stripping, time limits for investigations of Officers and numerous issues that have arisen under the Chicago Police Department’s unilateral imposition of body worn cameras that have been adjudicated by the Illinois Labor Relations Board in Case Nos. L-CA-20-024 and L-CA-17-037 2021.

25. A number of the issues that were identified by the parties to be negotiated in Phase I of the collective bargaining negotiations were agreed upon and have been ratified by the Lodge and the City of Chicago. A large number of additional issues were excluded by the parties from the agreements reached in Phase I and were reserved for Phase II of the parties’ negotiations. Those include the items listed above. After the ratification of the Phase I issues, the parties then intended to turn their attention to the remaining Phase II issues.

26. While the parties have been preparing for the commencement of the Phase II negotiations, the City initiated a COVID-19 policy on August 25, 2021, and submitted it for discussion with a coalition of police unions that consisted of Plaintiffs Chicago Fraternal Order of Police Lodge No. 7 and PBPA Units 156 A, B, and C.

27. Negotiations over the COVID-19 policy were conducted between these unions and the City of Chicago on August 24, September 27 and 30, and October 7, 2021, and as part of that process, the unions submitted an extensive information request to facilitate the discussions. Exhibit C. At the meeting held on September 30, 2021, the City presented the police unions with a draft proposal for a vaccination policy for the sworn members of the Chicago Police Department, which included, among other things, a requirement for vaccination, discipline for non-compliance with the vaccination requirements, proof of vaccination, testing of employees, and the reporting of tests and exemptions based on accommodations for medical and religious reasons.

28. At the meeting held on October 7, 2021, the coalition of police unions responded to the City's September 30th proposal and identified the matters that could form the basis of a memorandum of understanding on the COVID-19 protocols. In response, the City's representatives stated that they intended to review the unions' responses and thereafter contact the unions within a short period of time.

29. The police unions made a series of multi-layered proposals to protect Police Officers and members of the public from COVID-19 pathogens. These proposals included frequent testing of employees, the provision of facial coverings to Officers on a daily basis, limitations concerning the number of Officers in a class room and buses used to transport Officers to scenes of potential civil disturbances, provisions for ventilation in all areas where Officers work, including interrogation rooms, requirements for cleaning and sanitizing Chicago Police Department facilities, requirements for securing the confidentiality of individual vaccine information, protocols for dealing with Officers who have been exposed to COVID-19, and procedures for Officers to seek medical and religious exemptions from the COVID-19 policy proposed by Defendants.

30. On October 8, 2021, the day after the parties' meeting, and before the City's representatives had even responded to the unions' offers and comments, the City, at 2:31 P.M., unilaterally issued an email statement to all employees addressed as "Dear Colleagues, The Mayor announced on August 25th that all employees must be fully vaccinated against COVID-19 by October 15 unless they have received a medical or religious accommodation. Since that time, we have been working with our labor partners to create a vaccination policy that is effective, fair, and workable. We appreciate your patience as we finalized the policy. The City of Chicago

Vaccination Policy, which is effective today, requires that all City employee must be fully vaccinated by Friday, October 15, 2021.” Exhibit I.

31. The “finalized” COVID-19 vaccination and testing policy, which was attached to the City’s October 8th email, imposes several new terms and conditions of employment that the City did not negotiate or reach an agreement over with its claimed “labor partners.” Exhibit D. These new, unilaterally implemented conditions of employment concern, among other things, (a) a requirement that employees report their COVID-19 vaccination status to Defendants by or before October 15, 2021, (b) a requirement that employees become fully vaccinated against COVID-19 by October 15, 2021 or test twice weekly in accordance with the requirements of the policy, (c) a requirement that all tests be conducted on employees’ own time and at their own cost, (d) the award of one personal day to those who have become fully vaccinated on or before October 15, 2021, (e) conditions on the use of the personal day, (f) a rule removing the testing option for employees who have not received an approved exemption and requiring that all such employees become fully vaccinated by December 31, 2021, (g) a rule requiring that non-exempted employees who have not become fully vaccinated against COVID-19 by December 31, 2021 be placed in a non-disciplinary no pay status until they have become vaccinated, and (g) a rule providing that employees who fail to report their vaccination status on or before October 15, 2021 shall be placed in a non-disciplinary no pay status until they have reported their status. Exhibit D. The City never reached an agreement over these terms with Plaintiffs prior to their implementation.

32. At the time that Defendants implemented their unilateral changes, there were several collective bargaining issues that remained unresolved on the bargaining table; issues that, as noted above, were reserved for the Phase II negotiations.

33. The unilateral changes made by the Defendants have eroded the morale of the Officers. More importantly, they have diminished support for the Lodge as the exclusive collective bargaining agent for the Officers below the rank of sergeant. Further, they constitute a recurring and ongoing breaches of Sections 28.2 and 28.3 of the Lodge's collective bargaining agreement.

34. On October 13, 2021, the Lodge requested that the City engage in an interest arbitration proceeding to resolve the parties' dispute concerning Defendants' unilateral imposition of a COVID-19 policy with respect to the Chicago Police Officers represented by the Lodge. The Lodge requested an answer by the close of business that day in order to expedite the process. As of this Court filing, the City has not responded to this request and has otherwise rejected the use of an interest arbitration proceeding to resolve this dispute.

35. On October 14, 2021, the Lodge filed a grievance protesting the City's unilateral implementation of the COVID-19 vaccination and testing policy as a violation of Sections 28.2 and 28.3 of the parties' collective bargaining agreement on the ground that the City has failed and refused to proceed to interest arbitration as required by the agreement. Exhibit E.

36. By unilaterally implementing several new conditions of employment during the course of negotiations, the City foreclosed further bargaining with the police unions, including, but not limited to, the Lodge and, in so doing, squarely violated the impasse resolution terms of their collective bargaining agreements.

37. The interest arbitration proceeding is required by Section 28.3 of the parties' collective bargaining agreement as the parties' agreed upon method for resolving collective bargaining disputes. Exhibit B.

38. Refusal by the Defendants to participate in the interest arbitration process constitutes a breach of the Defendants' contractually based collective bargaining obligations.

WHEREFORE, the Lodge requests that this Court enter an order:

- (a) Declaring that the Lodge has a right to maintain the status quo and to prevent unilateral changes in the terms and conditions of its collective bargaining agreement pending the expedited arbitration of a grievance filed to protest Defendants’ unilateral changes.
- (b) Restraining Defendants from, in any manner, failing and refusing to perform their obligations under the parties’ collective bargaining agreement, including their obligations under the status quo and impasse resolution provisions of the agreement pending a decision by an arbitrator;
- (c) Compelling Defendants to proceed to an expedited arbitration on the grievance filed by the Lodge.
- (d) Ordering such other appropriate relief which the Court deems to be just and proper.

COUNT II
PBPA’S BARGAINING UNIT 156A/156B/156C

39. Plaintiffs re-allege and incorporate by reference Paragraphs 1-38 as if fully alleged herein.

40. The collective bargaining agreement between the City and the PBPA allows the PBPA or an aggrieved Police Officer to present a grievance to state a dispute or difference between the parties to the agreement concerning the interpretation and/or application of the agreement or its provisions. *See Infra* (Exhibit F, G, H, Section 9.1).

41. The grievances filed pursuant to the CBA may be presented to an arbitrator as follows¹:

Section 9.1 Definition and Scope
 ...
 A grievance is defined as a dispute or difference between the parties to this Agreement concerning the interpretation and/or application of this Agreement or its provisions
 ...
 Section 9.2 Procedures, Steps and Time Limits

¹ These provisions are identical in the respective Unit’s CBA, Unit 156A, Unit 156B, Unit 156C.

A grievance may be initiated by Unit 156-Sergeants or an aggrieved Sergeant. Any Sergeant shall have the right to present a grievance at any time, although it is understood that the Sergeant should attempt to satisfy his/her concerns on an informal basis before invoking the procedure. In the event an informal resolution proves to be unsatisfactory, a grievance may be submitted electronically and shall be processed in accordance with this Agreement. Upon request, the grievant shall be represented by an appropriate Unit 156-Sergeants representative, provided, however, the grievant Sergeant may have the grievance adjusted without a Unit 156-Sergeants representative, so long as such adjustment is not inconsistent with the provisions of this Agreement.

Step One: The grievant will first attempt to resolve the grievance with the first exempt Commanding Officer in his/her chain-of-command. In the event a resolution is not reached and the grievant desires to formalize the dispute, a grievance shall be submitted electronically to the first exempt Commanding Officer in the grievant's chain-of-command and Unit 156-Sergeants within ten (10) of the Sergeant's working days following the events or circumstances giving rise to the grievance or when first known by the grievant, or forty (40) days, whichever period is shorter. A Unit 156-Sergeants representative may accompany the grievant if requested by the grievant to attend any meeting with the exempt Commanding Officer regarding the grievance. The exempt Commanding Officer shall submit his/her decision electronically to the grievant and Unit 156-Sergeants within ten (10) of the exempt Commanding Officer's working days after the grievance was submitted.

Step Two: If the response at Step One is not satisfactory to the grievant, the grievant may pursue an adjustment through his/her designated representative by notifying Unit 156-Sergeants of his/her intent to pursue such grievance within ten (10) days of the Step One response or within ten (10) days of the expiration of the response period in Step One, whichever is sooner. Unit 156-Sergeants shall then determine whether in its opinion a valid grievance exists. Unless Unit 156-Sergeants elects to proceed, there shall be no further action taken under this procedure. If Unit 156-Sergeants chooses to proceed, it may seek a resolution or adjustment of the grievance by submitting the grievance electronically to the Labor Relations Division within twenty (20) days of the Step One response or within twenty (20) days of the expiration of the response period in Step One, whichever is sooner. Following a hearing on the issue, the Labor Relations Division shall submit its decision electronically to Unit 156-Sergeants within ten (10) days of receiving the

grievance. If the grievant is directed by the Employer to meet concerning his/her grievance at a time when the grievant is not scheduled to work, he/she shall be compensated for such time at the applicable rate provided for in this Agreement, provided that he/she shall not be compelled to attend a hearing on his/her regular day off without his/her consent.

Step Three: Within thirty (30) days of the receipt of the Step Two decision or Step Two decision due date, Unit 156-Sergeants may refer the grievance to arbitration.

...

Section 9.4 Authority of Arbitrator

A. Except as specified in subsection (B), the Arbitrator shall have no right to amend, modify, nullify, disregard, add to or subtract from the provisions of this Agreement. The Arbitrator shall only consider and make a decision with respect to the specific issue or issues presented to the Arbitrator and shall have no authority to make a decision on any other issues not so submitted. The Arbitrator shall submit, in writing, his/her decision to the Employer and to Unit 156-Sergeants within thirty (30) days following the close of the hearing, unless the parties agree to an extension thereof. The decision shall be based upon the Arbitrator's interpretation of the meaning or application of the terms of this Agreement to the facts of the grievance presented and shall be final and binding upon the parties.

...

Section 9.5 Expenses of Arbitrator

The fees and expenses of the Arbitrator shall be borne by the party whose position is not sustained by the Arbitrator. The Arbitrator, in the event of a decision not wholly sustaining the position of either party, shall determine the appropriate allocation of his/her fees and expenses. Each party shall be responsible for compensating its own representatives and witnesses. The cost of a transcript, where requested by either party, shall be paid by the party so requesting it. The party requesting a cancellation, rescheduling or other postponement of a set hearing date shall pay the Arbitrator's cancellation fee.

Section 9.6 Processing and Time Limits

The resolution of a grievance satisfactory to Unit 156-Sergeants at any step shall be deemed a final settlement, and any grievance not initiated or taken to the next step within the time limit specified herein will be considered settled on the basis of the last answer by the Employer. The time limits specified in this Article may be extended or waived by mutual agreement. Grievances may be initiated at any appropriate step corresponding with the nature of the grievance and the manner in which it arose.

Exhibit F, p. 12-16. See Also Exhibit G, p. 12-16; Exhibit H, p. 12-17.

42. If at the end of any negotiating period, a complete agreement is not reached, the parties' impasse may be to a Dispute Resolution Board as follows²:

Section 28.3 Impasse Resolution, Ratification and Enactment

...

B. If a complete agreement is not reached between the parties as to the items for negotiation **at the end of any negotiating period**, the following procedure shall apply:

1. In the event that disputed items cannot be resolved during the negotiation period, all disputed items shall be referred to a three- (3-) person Dispute Resolution Board, one (1) member to be selected by each of the parties and the third member to be jointly agreed upon by the parties.

2. The Board shall be convened and shall be composed of the following three (3) persons: one (1) appointed by the Employer, one (1) appointed by Unit 156-Sergeants and one (1) impartial member to be mutually selected and agreed upon by the Employer and Unit 156-Sergeants. If, after a period of five (5) days from the date of the appointment of the two (2) representatives of the parties, the remaining Board member has not been selected or otherwise agreed upon, then either representative may request the American Arbitration Association, or its successor in function, to furnish a list of seven (7) members of said service from which the remaining Board member shall be selected. The American Arbitration Association shall be advised that the eligibility criteria for names to be placed upon the list shall include the following: membership in the National Academy of Arbitrators; at least five (5) years' experience in labor relations dispute resolutions in either the private or public sector; U.S. citizenship; and a commitment by any such individual that, if appointed or selected, said individual agrees to comply with the time limits set forth in subsection (B)(5). Upon mutual written agreement of the Employer and Unit 156-Sergeants, the parties' right to appoint any Board members other than the impartial member may be mutually waived.

² These provisions are identical in the respective Unit's CBA, Unit 156A, Unit 156B, Unit 156C

3. The list shall be immediately published, and the representative appointed by the Employer shall, within five (5) days after publication of said list, eliminate three (3) names from the list. Within two (2) days after such elimination, the representative appointed by Unit 156-Sergeants shall eliminate three (3) names from the list. The remaining individual, plus the individual appointed by the Employer and the individual appointed by Unit 156-Sergeants, shall compose the Board.

4. The member of the Board selected, pursuant to subsection (B)(3), shall act as Chairman. He/she shall be an impartial, competent and reputable individual and shall be administered and subscribe to the constitutional oath or affirmation of office. The Employer and Unit 156-Sergeants shall each pay one-half of the fees and expenses of the impartial member.

5. The Chairman shall have the authority to convene and adjourn proceedings, administer oaths, compel testimony and/or the production of documents and employ such clerical or research assistance as in his/her judgment and discretion are deemed warranted. He/she shall convene proceedings on the issues presented to the Board within ten (10) days after his/her appointment and/or selection; the Board shall make its determination within thirty (30) days after it has convened. The time limits set forth herein may be extended only upon written mutual agreement of both the Board member appointed by Unit 156-Sergeants and the Board member appointed by the Employer.

6. The Employer and Unit 156-Sergeants shall attempt to agree upon a written statement of the issue or issues to be presented to the Board. In lieu of, or in addition to, such mutual statement of issues, each party may also present its own list or statement of issues, provided only that any such issue not mutually agreed upon shall have been an issue previously the subject of negotiations or presentation at negotiations. During the course of proceedings, the Chairman shall have the authority as necessary to maintain decorum and order and may direct (absent mutual agreement) the order of procedure; the rules of evidence or procedure in any court shall not apply or be binding. The actual proceedings shall not be open to the public, and the parties understand and agree that the provisions of 5 ILCS 120/1 et seq. are not applicable. If, in the opinion of the impartial member of the Board, it would be appropriate to meet with either the Employer or Unit 156-Sergeants for mediation or conciliation functions, the Board may do so, provided only that notice of such meetings shall be communicated to the other party.

7. The compensation, if any, of the representatives appointed by Unit 156-Sergeants shall be paid by Unit 156-Sergeants. The compensation of the representative appointed by the Employer shall be paid by the Employer.

8. The terms decided upon by the Board shall be included in an agreement to be submitted to the City Council for adoption. The terms of this Agreement shall continue to bind both parties hereto during all negotiations and impasse resolution procedures.

9. If the City Council should reject the arbitrated agreement, the parties shall meet again within ten (10) days of the City Council's vote to discuss the reasons for the City Council's rejection and to determine whether any modifications can be made to deal with the problems, but either party may thereafter terminate this Agreement upon ten (10) days' written notice to the other.

10. There shall be no implementation of any provisions of a successor agreement without City Council ratification and adoption in ordinance form of the agreement, except, however, that the terms of this Agreement shall remain in full force and effect until a successor agreement is adopted in ordinance form or this Agreement is terminated pursuant to subsection (B)(9).

11. As permitted by 5 ILCS 315/14(p), the impasse resolution procedure set forth herein shall govern in lieu of the statutory impasse resolution procedure provided under 5 ILCS 315/14, except that the following portions of said 315/14 shall nevertheless apply: subsections (h), (i), (k) and (m).

Exhibit F, p. 47-49 (emphasis added). See Also Exhibit G, p 48, 49; Exhibit H, p.50-52.

43. The City of Chicago and the three PBPA Unions, 156A, 156B, and 156C, have a current contract that was ratified in July, 2020 and which expires on June 30, 2022. The current contracts for the three unions do not contain provisions regarding mandatory vaccinations nor provide a requirement that the members disclose current vaccination status.

44. The City initiated a COVID-19 policy on August 25, 2021, and submitted it for discussion with a coalition of police unions that consists of Plaintiffs Chicago Fraternal Order of Police Lodge No. 7 and PBPA Units 156 A, B, and C. Exhibit D. These labor organizations

represent the Police Officers, Sergeants, Lieutenants and Captains of the Chicago Police Department.

45. Negotiations over the COVID-19 policy were conducted between these unions and the City of Chicago on August 24, September 27 and 30, and October 7, 2021, and as part of that process, the unions submitted an extensive information request to facilitate the discussions. Exhibit C. At the meeting held on September 30, 2021, the City presented the police unions with a draft proposal for a vaccination policy for the sworn members of the Chicago Police Department, which included, among other things, a requirement for vaccination, discipline for non-compliance with the vaccination requirements, proof of vaccination, testing of employees, and the reporting of tests and exemptions based on accommodations for medical and religious reasons.

46. At the meeting held on October 7, 2021, the coalition of police unions responded to the City's September 30th proposal and identified the matters that could form the basis of a memorandum of understanding on the COVID-19 protocols. In response, the City's representatives stated that they intended to review the unions' responses and thereafter contact the unions within a short period of time.

47. The police unions made a series of multi-layered proposals to protect Police Officers and members of the public from COVID-19 pathogens. These proposals included frequent testing of employees, the provision of facial coverings to Officers on a daily basis, limitations concerning the number of Officers in a class room and buses used to transport Officers to scenes of potential civil disturbances, provisions for ventilation in all areas where Officers work, including interrogation rooms, requirements for cleaning and sanitizing Chicago Police Department facilities, requirements for securing the confidentiality of individual vaccine

information, protocols for dealing with Officers who have been exposed to COVID-19, and procedures for Officers to seek medical and religious exemptions from the COVID-19 policy proposed by Defendants.

48. On October 8, 2021, the day after the parties' meeting, and before the City's representatives had even responded to the unions' offers and comments, the City, at 2:31 P.M., unilaterally issued a statement to all employees addressed as "Dear Colleagues, The Mayor announced on August 25th that all employees must be fully vaccinated against COVID-19 by October 15 unless they have received a medical or religious accommodation. Since that time, we have been working with our labor partners to create a vaccination policy that is effective, fair, and workable. We appreciate your patience as we finalized the policy. The City of Chicago Vaccination Policy, which is effective today, requires that all City employee must be fully vaccinated by Friday, October 15, 2021." Exhibit I.

49. The unilateral changes made by the Defendants have eroded the morale of the Officers. More importantly, they have diminished support for PBPA as the exclusive collective bargaining agent for the Sergeants, Lieutenants, and Captains. Further, they constitute a recurring and ongoing breach of Section 28.3 of the PBPA's collective bargaining agreements.

50. The PBPA requested the City to engage in an interest arbitration proceeding to resolve the collective bargaining dispute on the issue of a COVID-19 policy and applicability to apply to Police Officers represented by the PBPA. This request was made on October 12, 2021, and the PBPA requested an answer in order to expedite the process. The City subsequently responded with a "last, best and final" offer. The PBPA rejected said offer and thereafter demanded Arbitration. Exhibit J.

51.. On October 14, 2021, the PBPA filed grievances protesting the City's unilateral implementation of the COVID-19 vaccination and testing policy as a violation of Sections 28 and 28.3 of the parties' collective bargaining agreement on the ground that the City has failed and refused to proceed to interest arbitration as required by the agreement. Group Exhibit K.

52. By unilaterally implementing several new conditions of employment during the course of negotiations, the City foreclosed further bargaining with the police unions, including, but not limited to, the PBPA and, in so doing, squarely violated the impasse resolution terms of their collective bargaining agreements.

53. The City has an obligation to engage in interest arbitration over the COVID related policy since the parties reached impasse on the issue. Each of the three PBPA union contracts contain the same Article 28 which is headed "Duration, Enforcement and Dispute Resolution". Specifically, section 28.3B reads "If a complete agreement is not reached between the parties as to the items for negotiation at the any negotiating period, the following procedures shall apply:...". The section then lists a series for terms the parties will adhere to for dispute resolution. The parties agreed to apply the standards for statutory impasse resolution found in the Illinois Labor Relations Act, 5 ICLS 315/14, *et seq.*, under subsection (p) in lieu of the statutory impasse provided under 5 ICLS 315/14, except the following portions of 315/14 shall nevertheless apply: subsections (h), (i), (k), and (m).

54. The Illinois Labor Relations Act and the collective bargaining agreements allow for arbitration of contractual disputes that have reached the point of impasse. Contractual disputes do not only occur at the beginning or end of a contract. The key is this dispute, which announced a new condition of employment, was unilaterally implemented midterm to add provisions in already negotiated contracts. Although the City and the coalition of unions met and

negotiated over several weeks, the negotiations abruptly stopped when the City gave a “last, best and final offer” to which the coalition of unions declined. At this point the parties were at impasse and the coalition of unions requested the matter be arbitrated and the City failed to respond. Having received no response the PBPA units filed grievances. Arbitration is necessary and appropriate according to the collective bargaining agreements and the plain language of section 23.8 espouses this understanding. If the parties were not able to arbitrate this matter, the City could introduce new policies, briefly negotiate, make a best and final offer, have that offer denied, impasse declared, and implement the policies. The purpose of the negotiated provision under section 23.8, which the City recognized and agreed to, is to allow for the arbitration process to make a determination whether the implementation of a unilaterally decided policy is unconscionable.

55. The Illinois Appellate Court has upheld that unions who are not entitled to strike are entitled to arbitration to address disputes, even if the disputes are midterm in their respective contracts. *In The State of Illinois Department of Central Management Services (Department of Corrections), Petitioner-Appellant v. The State of Illinois Labor Relations Board, State Panel, et al.*, 869 N.E.2d, 274, 311 Ill.Dec.60, 181 L.R.R.M. (BNA) 3204, “In reaching impasse in a typical negotiation, an employer has the right to unilaterally implement its final offer and an employee has the right to strike in support of its bargaining demands. *Local Union No. 47 v. National Labor Relations Board*, 927 F.2d 635, 640 (D.C. Cir. 1991); *Hydrologies, Inc.*, 293 N.L.R.B. 1060, 1062 n.13, 131 L.R.R.M. 1350, 1353 n.10, citing *Speedrack, Inc.*, 293 N.L.R.B. 1054, 1055-56, 131 L.R.R.M. 1347, 1349 (1989). Providing each party with an economic weapon puts the parties on more equal footing. *Local Union No.47*, 927 F.2d at 643, citing *National Labor Relations Board v. Lion Oil Co.*, 352 U.S. 282, 290-91, 1 L. Ed. 2d 331, 338-39,

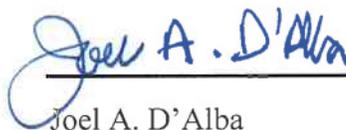
77 S.Ct. 330, 335 (1957). The language in the Illinois Labor Relations Act recognizes that employees who were not allowed to strike needed equitable dispute resolution. That resolution was the right to arbitrate disputes, even midterm disputes, such as the one between the City and the coalition of unions.

56. Refusal by the Defendants to participate in the interest arbitration process constitutes a breach of the Defendants' contractually-based collective bargaining obligations.

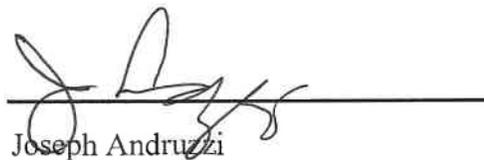
WHEREFORE, the PBPA requests that this Court enter an order:

- (a) Declaring that the PBPA has a right to maintain the status quo and prevent unilateral changes in the terms and conditions of its collective bargaining agreement pending interest arbitration of its grievances filed;
- (b) Restraining the Defendants from, in any manner, failing and refusing to perform their obligations under the parties' collective bargaining agreement;
- (c) Restraining the Defendants from implementing their COVID-19 policy until the interest arbitration process has been completed;
- (d) Compelling the Defendants to proceed to arbitration;
- (e) Order such other appropriate relief which the court deems to be just and proper.

Respectfully Submitted,


Joel A. D'Alba


Ryan Hagerty


Joseph Andruzzi


Donna Dowd


Jason W. Lee

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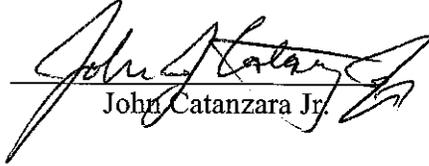
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Firm Id: 64520

VERIFICATION

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing instrument are true and correct, except as to matters therein stated to be on information and belief and, as to such matters, the undersigned certifies as aforesaid that I verily believe the same to be true.

Date: October 14, 2021

By:

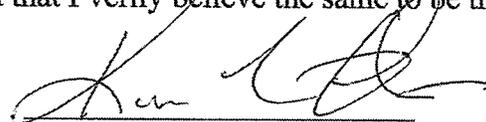

John Catanzara Jr.

VERIFICATION

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Date: October 14, 2021

By:



Kevin Chambers

VERIFICATION

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing instrument are true and correct, except as to matters therein stated to be on information and belief and, as to such matters, the undersigned certifies as aforesaid that I verily believe the same to be true.

Date: October 14, 2021

By:


Michael Stiscak

FILED DATE: 10/14/2021 5:36 PM 2021CH05276

VERIFICATION

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing instrument are true and correct, except as to matters therein stated to be on information and belief and, as to such matters, the undersigned certifies as aforesaid that I verily believe the same to be true.

Date: October 14, 2021

By:


James Calvino

FILED DATE: 10/14/2021 5:36 PM 2021CH05276