

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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Teachers4Action, Inc. :
 On behalf of its Members : CIVIL ACTION
 And By Florian Lewenstein, : 08-cv-548 (VM)(AJP)
 Its President and Spokesperson, :
Twana Adams; :
Olga Batyreva; :
Ming Bell; :
David Berkowitz; :
Jonathan Berlyne; :
Jill Budnick; :
Roslyn Burks; :
Anthony Caminiti; :
Jaime Castro; :
Gloria Chavez :
Judith Cohen; :
Josefina Cruz; :
James J. Cullen; :
Diane Daniels; :
Michael Ebewo; :
Boubakar Fofana :
Louisa Ganis; :
Roslyn Gisors; :
Diana Gonzalez; :
Joanne Hart; :
Lisa Hayes; :
Wendy Hazen; :
Arnulfo Hiestroza; :
Michael Hollander; :
Eleanor Johnson; :
Rina Johnson; :
Rafal Robert Kowal; :
Jane Levine; :
Hazel Martinez; :
Michael McLoughlin :
Raymond Nunge; :
Julianne Polito; :
Alena Radtke-Gabriel; :
Thomasina Robinson; :
Denise Russo; :
Paul Santucci; :
Jennifer Saunders; :
Jacqueline Sawyer; :
Brandi Scheiner; :

Alan Schlesinger :
 Alex Schreiber; :
 Barbara Segall; :
 Linda L. Seiffert; :
 Daniel Smith; :
 Helena Tarasow; :
 Gilda Teel; :
 Eustoquio Torres-Nogueras; :
 Jacqueline Wade; :
 Nahid Wakili :
 Nicholas Watson; :
 Michael Westbay :
 Mauricio Zapata, and :

Plaintiffs, :

- vs - :

SECOND
 AMENDED COMPLAINT
 (WITH JURY DEMAND)

Michael G. Bloomberg, :
 Mayor of New York City; :
 City of New York; :
 Joel Klein, :
 Individually and in his capacity as :
 Chancellor of New York City :
 Department of Education; :
 New York City Department of Education; :
 Randi Weingarten; :
 Individually and as President of :
 United Federation of Teachers; :
 United Federation of Teachers; :
 Betsy Combier, :
 Individually and as agent / representative :
 Of United Federation of Teachers, :
 Defendants. :

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INTRODUCTION

This action is predicated upon a wrongful course of action that was designed to attack the institution of tenure and to unlawfully reduce the budget for New York City Public Schools by reducing the number of tenured teachers, including Plaintiffs. To accomplish that goal, Defendants individually and/or jointly (i) violated Plaintiffs’ Free Speech, Association, Due Process, Equal Protections – 1st, 5th & 14th Amendments and Other Constitutionally Protected

Rights & Freedoms; (ii) harassed Plaintiffs and created a hostile work environment; (iii) retaliated against Plaintiffs when they stood up for their rights; (iv) constructively discharged certain Plaintiffs; (v) breached contracts with Plaintiffs; (vi) breached their fiduciary duties to Plaintiffs, including the Duty of Fair Representation; (vii) aided & abetted others in the breach of contract or breach of fiduciary duties or negligent acts against Plaintiffs; (viii) failed to properly supervise its/their employees, agents, consultants and others who caused damages to Plaintiffs; (ix) conspired to defraud, interfere with claims and rights and/or cause other damages to Plaintiffs; and (x) caused Plaintiffs to be falsely confined. These wrongful acts violated Plaintiffs' constitutional, statutory and contractual rights.

COMPLAINT

JURISDICTION

- 1) The Court has original jurisdiction over Plaintiffs' claims based upon alleged violations of the 1st, 5th and 14th Amendments, 29 U.S.C. §§ 623(a)(1) and (2), 42 U.S.C. § 1981 ("Civil Rights Act of 1991"), 42 U.S.C. § 1983 and the Anti-Retaliation Provisions of Title VII and other laws, 29 U.S.C. §§ 411 Sec. 101.a (2), (4) and (5), §§ 529 Sec. 609, §§ 415 Sec. 105, and §§ 439 Sec. 209. b ("Labor-Management Reporting and Disclosure Act of 1959," hereinafter "LMRDA"); as well as violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.
- 2) The Court has ancillary and/or supplemental jurisdiction of all Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.
- 3) The claims of each named Plaintiff exceed the statutory limit of this Court, exclusive of attorneys' fees, costs and interest.

VENUE

- 4) Venue is proper in this Court because one or more of the Plaintiffs live in this judicial district and one or more of the Defendants live and/or do business in this district, and/or the Defendants' unlawful acts occurred within this judicial district.

PARTIES

Plaintiffs

- 5) Plaintiff Teachers4Action, Inc.¹ is a not-for-profit corporation incorporated in the State of New York.
- 6) Plaintiff Florian Lewenstein (hereinafter "Lewenstein") is the President and Spokesperson of Plaintiff Teachers4Action, Inc. and is authorized and has standing to commence and prosecute this action, individually and on behalf of Plaintiff Teachers4Action, Inc.
- 7) Teachers4Action, Inc. Plaintiffs are teachers and guidance counselors, both tenured and untenured, who fall into certain categories, including but not limited to (i) teachers who are presently re-assigned to Temporary Reassignment Centers (hereinafter "Rubber Rooms"); (ii) teachers who are being targeted for re-assignment to Rubber Rooms; (iii) teachers in the midst of the administrative disciplinary process and against whom charges have been brought; (iv) teachers who were previously re-assigned to Rubber Rooms and who were terminated, fined and/or suspended without pay, or forced, harassed, intimidated and/or coerced to accept onerous or unfair deals; (v) teachers who suffer loss of property, loss of pay and other monetary losses; (vi) teachers who suffer physical or emotional injuries from being forced into Rubber Rooms; (vii) teachers who cannot get

¹ Teachers4Action, Inc.^{TM®} is in the process of obtaining tax exempt status under the IRS Code Section 501(c)(3).

other jobs; and (viii) teachers who are otherwise being targeted and victimized as part of the wrongful course of action.

Defendants

- 8) Defendant Michael G. Bloomberg (hereinafter “Bloomberg”) is the Mayor of New York City and in that capacity has direct control over the New York City Public Schools.
- 9) Defendant City of New York (hereinafter “City”) is a municipal corporation that is responsible for the conditions in the New York City Public Schools.
- 10) Defendant Joel Klein (hereinafter “Klein”) is the Chancellor of the New York City Department of Education and together with Bloomberg has control over the New York City Public Schools.
- 11) Defendant New York City Department of Education (hereinafter “DOE”) is Plaintiffs’ employer.
- 12) Defendant Randi Weingarten (hereinafter “Weingarten”) is the President of the United Federation of Teachers.
- 13) Defendant United Federation of Teachers (hereinafter “UFT”) is the collective bargaining agent for, and maintains a fiduciary relationship with, Plaintiffs.
- 14) Defendant Betsy Combier (hereinafter “Combier”) is a representative of Defendant UFT.

GENERAL FACTS

- 15) Starting in or about 2002, Defendants Bloomberg, City, Klein and DOE determined and agreed that it would be in the best interests of the City public schools, including all students and educators involved, for the office of the Mayor of New York City to assume direct control over the New York City Public Schools and Defendant DOE. In June 2002, the NYS legislature authorized the NYC Mayor to assume direct control of the

NYC public schools.

16) In or about 2003, in furtherance of this agreement, Defendants Klein and DOE agreed to the complete reorganization of the DOE so that it came under the control of Defendant Bloomberg.

17) Defendants Bloomberg and Klein were not motivated to enact this reorganization out of the best interests of the City public schools, including all students and educators; instead the motive was primarily financial.

18) Defendants Bloomberg and Klein sought to use the reorganization as a way to achieve drastic budget reductions and to attack the institution of tenure.

19) Defendant Bloomberg has repeatedly and publicly committed himself to undermining and/or ending the institution of tenure, and he has on a number of occasions unsuccessfully attempted to persuade the NYS Legislature to support his efforts.

20) Defendants Bloomberg and Klein and others in Defendant DOE conceived a plan (hereinafter “The Plan”) through which teachers, such as Plaintiffs:

- a) would be targeted and written up for a variety of allegations that rise to the level of an offense for which they could be terminated or suspended;
- b) would be harassed and subjected to hostile work environments;
- c) would be reassigned to Temporary Reassignment Centers (hereinafter “Rubber Rooms”) where they would be further subjected to harassment and hostile work environments;
- d) would be subjected to disciplinary proceedings under NYS Education Law § 3020-a (hereinafter “3020-a hearings”);
- e) would be deprived of their constitutional and due process rights;

- f) would be deprived of the rights and the protections afforded them pursuant to NYS Education Law §§ 3020 and 3020-a;
 - g) would be deprived of the rights and protections afforded them under the Collective Bargaining Agreement Article 21G (hereinafter “Article 21G”);
 - h) would be forced through adverse determinations or coerced stipulations to resign or retire, or be subjected to suspension without pay, ruinous fines and other financial consequences; and
 - i) would be subjected to 3020-a hearings conducted by Arbitrators from a permanent “Rotational Panel,” whose dependence on the lucrative fees that are enriching them causes them to do Defendants’ bidding in furtherance of The Plan;
- 21) Defendants Bloomberg and Klein used the Rubber Rooms in furtherance of wrongful acts against Plaintiffs.
- 22) Defendants Bloomberg, City, Klein and DOE determined that if The Plan was to succeed, they needed to adopt a position that the Rubber Rooms were being used as a place to “keep” teachers accused of *“serious misconduct and crimes . . . who (Defendant DOE would) not keep . . . with kids in schools simply because their contract says they must continue to be paid.”*
- 23) At the time Defendants Bloomberg, City, Klein and DOE adopted this policy, they knew that their statements about the Rubber Rooms and the teachers “reassigned” to the Rubber Rooms were false and misleading. The great majority of teachers reassigned to Rubber Rooms are accused of incompetence, or misconduct that in no way suggests they are a danger to children, even if the allegations against them are true. (*See Exhibit 1*)
- 24) Defendants Bloomberg, City, Klein and DOE depended on a provision of NYS Education

Law § 3020(4), which provides in pertinent part as follows:

a. Notwithstanding any inconsistent provision of law, the procedures set forth in section three thousand twenty-a of this article and subdivision seven of section twenty-five hundred ninety-j of this chapter may be modified by agreements negotiated between the city school district of the city of New York and any employee organization representing employees or titles that are or were covered by any memorandum of agreement executed by such city school district and the united federation of teachers on or after June tenth, two thousand two... (iii) the provisions of subdivisions one and two of this section shall not apply to agreements negotiated pursuant to this subdivision

(emphasis added)

25) NYS Education Law § 3020(4) contains a special provision for Defendants

Bloomberg, City, DOE and Klein to enter into a Collective Bargaining Agreement with Defendant UFT to modify the disciplinary proceedings for tenured teachers as set out in NYS Education Law § 3020-a.

26) Moreover, teachers employed by Defendant DOE are not afforded the written election provided by NYS Education Law § 3020(1) to teachers in other school districts in New York State that allow them to choose between the disciplinary procedures set out in their Collective Bargaining Agreement and the disciplinary procedures set out in NYS Education Law § 3020-a. *(See Exhibit 2)*

27) Defendants Bloomberg, City, Klein, DOE, UFT and Weingarten knew that Plaintiffs were nonetheless entitled to the fundamental due process protections provided by NYS Education Law § 3020-a, as set out in NYS Education Law § 3020(4).

a. ...Where such procedures are so modified: (i) compliance with such modified procedures shall satisfy any provision of this chapter that requires compliance with section three thousand twenty-a of this article; ...that no person enjoying the benefits of tenure shall be disciplined or removed during a term of employment except for just cause

(emphasis added)

28) Defendants Bloomberg, City, Klein, DOE, UFT and Weingarten knew that NYS Education Laws §§ 3020 and 3020-a provided safeguards for the investigation,

prosecution and discipline of tenured teachers such as Plaintiffs that Defendants deliberately negotiated away, in contravention of Plaintiffs' constitutional and statutory rights.

Note: Plaintiffs' claims herein should not be construed as to suggest that Defendant DOE does not and should not have the authority to properly and legally investigate, prosecute and discipline tenured Teachers. The issues presented in this lawsuit do not address the merits of any claims and/or charges that have been filed against the named Plaintiffs. Those issues are not before the Court. Plaintiffs' claims are that Defendants violated, failed to comply with, or chose to attempt to implement in an unlawful manner, the provisions of NYS Education Law §§ 3020 and 3020-a that were designed and/or enacted to provide Plaintiffs and others with due process and other constitutional safeguards.

- 29) Defendants Bloomberg, City, Klein and DOE knew that if they afforded Plaintiffs and other teachers the protections of NYS Education Law §§ 3020 and 3020-a, they would not be able to accomplish The Plan through termination, resignation or retirement of Plaintiffs and other teachers.
- 30) To carry out The Plan, Defendants Bloomberg, City, Klein and DOE communicated their goals and intentions to, and sought the assistance and/or cooperation of, Defendants Weingarten and UFT, who at times actively cooperated in furtherance of The Plan, and at other times did nothing to protect teachers being targeted and victimized by The Plan.
- 31) Defendant Weingarten is an educated, licensed and experienced attorney who should have immediately realized that what Defendants Bloomberg, City, Klein and DOE sought to do was a violation of the constitutional, statutory and contractual rights of Plaintiffs and other tenured teachers.

- 32) Nevertheless, in furtherance of The Plan, Defendants Bloomberg, City, Klein, DOE, UFT and Weingarten entered into a Collective Bargaining Agreement that abrogated Plaintiffs' constitutional and statutory due process rights.
- 33) Prior to Defendant Weingarten's tenure as Defendant UFT's president, Article 21 of the Collective Bargaining Agreement that deals with the disciplinary procedures for tenured teachers was protective of the due process rights to which tenured teachers are entitled.
- 34) Starting with the first contract negotiated by Defendant Weingarten in 2002, Article 21 of the Collective Bargaining Agreement was rewritten in its entirety in such a way as to strip tenured teachers of virtually all their due process rights protections.
- 35) Prior to the Collective Bargaining Agreement that went into effect in 2002 the DOE disciplinary proceedings followed NYS Education Law § 3020-a: (*See Exhibits 3 and 4*)
- a) teachers could choose an expedited hearing or binding arbitration to resolve their disciplinary charges;
 - b) hearing officers were selected by mutual agreement between the Board of Education (hereinafter "BOE") and the teacher, from a list of Arbitrators provided by the American Arbitration Association (hereinafter "AAA"), along with their biographical information;
 - c) when the charges concerned pedagogical incompetence or issues involving pedagogical judgment, the teacher was afforded the choice of either a single hearing officer or a three-member panel;
 - d) expedited hearings were conducted by three-member panels;
 - e) to assure impartiality, a hearing officer was not eligible to serve if s/he was under the jurisdiction of the BOE, an employee, representative or agent of the

BOE or of any labor organization representing employees of the BOE, had served as such representative or agent within two years of the date of the scheduled hearing, or if s/he was then serving as a mediator or fact finder in the City.

- f) tenured teachers could only be suspended without pay if:
 - i. their charges were upheld following 3020-a disciplinary hearings; or
 - ii. they were convicted of a serious felony such as possession of drugs or drug paraphernalia, or the sexual abuse of a minor.

36) Starting with the Collective Bargaining Agreement that went into effect in 2002, and through the present, the disciplinary proceedings deviated severely from NYS Education Law § 3020-a: (*See Exhibit 5*)

- a) teachers are no longer afforded the election of a three- member panel in place of a single arbitrator;
- b) Defendant DOE can now elect to discipline tenured teachers regarding absences and/or lateness through an expedited hearing process if termination is not sought, in proceedings that will be informal, and where the normal rules of trial procedures and evidence will not apply;
- c) a permanent “Rotational Panel” of Arbitrators has been established to conduct 3020-a hearings;
- d) the Arbitrators on the panel are selected by Defendants DOE and UFT;
- e) Arbitrators serve for a period of at least one year, conducting hearings continuously;
- f) some Arbitrators serve for years, at the pleasure of Defendants DOE and UFT;

- g) Arbitrators on the panel are dependent on the income from their continuous service;
- h) the Arbitrators have an improper relationship with Defendants;
- i) an Arbitrator for a 3020-a hearing is selected from the Rotational Panel, and the teacher has no say, nor can s/he object to the Arbitrator's assignment;
- j) the Arbitrators routinely violate the rules of arbitration and the requirements of Article 21G and NYS Education Law §§ 3020 and 3020-a.
- k) in other words, the protections of NYS Education Law § 3020-a that were meant to insure the impartiality of the Arbitrators have been eliminated in their entirety;
- l) a tenured teacher can now be suspended without pay after a hearing where testimony of witnesses is not required and cross examination is not allowed, and where a probable cause arbitrator determines that "probable cause" exists that the teachers has committed "serious misconduct," such as possession of drugs or drug paraphernalia, or sexual abuse of a minor.

37) In furtherance of The Plan, Defendants Bloomberg, DOE, Klein, UFT and Weingarten conspired to deprive tenured teachers of their due process rights as set out in NYS Education Law §§ 3020 and 3020-a.

38) Defendants Weingarten and UFT failed to properly advise Defendant UFT's membership of the import of the changes to Article 21G prior to the contract's ratification.

39) Under the provisions of Article 21G Defendants Bloomberg, City, DOE, Klein, UFT and Weingarten proceeded to empower a permanent "Rotational Panel" of Arbitrators earning up to \$1,900.00 per day to conduct 3020-a hearings that are the equivalent of "Kangaroo Courts," where the Arbitrators do Defendants' bidding to violate Plaintiffs' due process

rights by, amongst other things, ignoring the timing requirements of NYS Education Law §§ 3020 and 3020-a and Article 21G, colluding with Defendant DOE to coerce Plaintiffs into onerous stipulations involving resignation, retirement, suspension without pay, and/or ruinous fines, or rendering negative determinations in almost every case brought before them, including termination and loss of licensure, suspension without pay, and/or ruinous fines.

40) Defendants Bloomberg, City, DOE, Klein, UFT and Weingarten further conspired to violate Plaintiffs' and other teachers' due process rights by re-assigning them to Rubber Rooms and allowing them to wait for months and years without having formal charges lodged against them, in violation of Article 21G, while being excluded from applying for per session jobs and summer school jobs to which they would otherwise be entitled.

41) As part of its obligations to Plaintiffs and other teachers, Defendant UFT, through the New York State United Teachers (hereinafter "NYSUT"), provides lawyers paid for by UFT membership dues for Plaintiffs and other teachers against whom accusations are made which subject them to 3020-a hearings.

42) Defendants Bloomberg, City, Klein and DOE further sought assistance from Defendants Weingarten and UFT, that they in essence do nothing and sit idle as Defendants Bloomberg, City, Klein and DOE subject Plaintiffs to harassment, discrimination and violation of their constitutional, statutory and contractual rights.

43) Defendants Bloomberg, City, Klein and DOE also needed assistance from the UFT, that the NYSUT lawyers who were appointed to represent Plaintiffs and other teachers in response to whatever charges and/or allegations were made against them would not zealously assert their due process and/or constitutional rights, or adherence to the

procedures and requirements of NYS Education Law §§ 3020 and 3020-a and the Collective Bargaining Agreement, to which Plaintiffs and other teachers are entitled.

44) As a result of the agreement reached between Defendants Bloomberg, City, Klein and

DOE on the one hand, and Defendants Weingarten and UFT on the other hand,

Defendant DOE did not properly follow, amongst other requirements, (i) the conduct of fair 3020-a hearings with impartial arbitrators; (ii) assuring adequate representation for teachers; and (iii) the timing requirements as set out in NYS Education Law § 3020-a and the Collective Bargaining Agreement.

45) The NYSUT lawyers who Defendant UFT paid to represent Plaintiffs during the 3020-a

process were given instructions, either orally or in writing, that they were not to advise

Plaintiffs of their rights and were not to challenge Defendant DOE on the issues of NYS Education Law §§ 3020 and 3020-a requirements that were wrongfully abrogated in the Collective Bargaining Agreement negotiated by Defendants Bloomberg, City, Klein, DOE, UFT and Weingarten.

46) The NYSUT lawyers paid by Defendant UFT to represent Plaintiffs during the 3020-a

process were given additional instructions, either orally or in writing, that they were to

persuade or coerce Plaintiffs that instead of fighting their charges, they should make deals to accept as little punishment as was possible to get the procedures over as quickly as possible, so they could be returned to their jobs.

47) In fact it was never the plan of Defendants Bloomberg, City, Klein and DOE, or

Defendants Weingarten and UFT, to have Plaintiffs returned to their jobs.

48) The Plan involved (i) keeping Plaintiffs in the Rubber Rooms; (ii) violating and/or

allowing the violation of NYS Education Laws §§ 3020 and 3020-a; (iii) depriving

Plaintiffs of their rights; (iv) creating a hostile work environment that would compel Plaintiffs to quit, be terminated and/or be subjected to ruinous fines; (v) misleading Plaintiffs and the public about the true motives behind Defendants Bloomberg's, City's, Klein's and DOE's failure to comply with NYS Education Law §§ 3020 and 3020-a and use of the Rubber Rooms, and (vi) retaliating against any Plaintiff who objected and sought to speak out against and/or enforce his/her rights.

49) Defendants Bloomberg, City, Klein and DOE also sought to harass Plaintiffs and to make the conditions within their "workplace" and the terms of Plaintiffs' employment untenable, so as to:

- a) retaliate against Plaintiffs for seeking to enforce their constitutional and contractual rights;
- b) retaliate against Plaintiffs for speaking out against the deplorable conditions in the workplace and/or in the Rubber Rooms;
- c) retaliate against Plaintiffs for attempting to expose Defendants' wrongful acts and/or conditions within the NYC public school system;
- d) intimidate others from coming forward to support and/or join in Plaintiffs' allegations of Defendants' wrongful acts and/or conditions within the NYC public school system; and
- e) intimidate others from coming forward in defense of the charges against Plaintiffs.

50) To accomplish this goal, Plaintiffs were:

- a) forced to endure verbal and physical harassment and intimidation in their schools and in the Rubber Rooms;

- b) subjected to dangerous physical conditions in their schools and in the Rubber Rooms;
- c) removed from classrooms and subjected to solitary confinement in closets, empty windowless offices or other small spaces;
- d) subjected to ridicule, insults and abusive attacks by principals and other administrators;
- e) intimidated and made to be fearful of speaking out against the abuses, conditions and wrongful acts;
- f) intimidated, harassed and prevented from speaking out against the abuses, unlawful conduct and/or other improper acts that Defendants should have prevented, and which Defendants did not want to become public, or for which Defendants did not want to be held accountable; and
- g) otherwise retaliated against.

51) The hostile work environment and other acts by Defendants Bloomberg, City, Klein and DOE against Plaintiffs were designed to, and did in fact:

- a) discourage other teachers from coming forward to assert their constitutionally protected rights, including but not limited to, freedom of speech and freedom of association; and
- b) discourage other teachers, similarly situated to Plaintiffs, from coming forward to speak out and/or “blow the whistle” and attempt to prevent or stop the abuses of and/or wrongful acts of which Plaintiffs were aware and sought to report;

52) The hostile work environment and other acts by Defendants Bloomberg, City, Klein and DOE against Plaintiffs resulted in termination, demotion, decrease in salary or wage, less

distinguished titles, material loss in benefits, prevention of and/or interference with Plaintiffs ability to compete for and secure positions and assignments to which they were entitled, significantly diminished responsibilities, or other acts designed to humiliate Plaintiffs and subject them to particular situations that were embarrassing and not consistent with their status, positions and/or experience.

53) The hostile work environment and other wrongful acts by Defendants Bloomberg, City, Klein and DOE against Plaintiffs were not mere inconvenience to Plaintiffs and were not alteration of Plaintiffs' job responsibilities. They were instead a complete change in the terms and conditions of Plaintiffs' employment and tenure that were designed to force Plaintiffs to quit, or to be subjected to 3020-a hearings through which Plaintiffs could be terminated, albeit unlawfully and improperly.

54) In addition, the wrongful acts by Defendants Bloomberg, City, Klein and DOE against Plaintiffs were intended to interfere with Plaintiffs' current or future employment as tenured teachers.

55) In addition to the hostile work environment and other wrongful acts by Defendants Bloomberg, City, Klein and DOE against Plaintiffs, some Plaintiffs were also subjected to involuntary transfers to locations and/or facilities at which Plaintiffs (i) were not permitted to engage in their normal work activities, (ii) were not permitted to perform and/or engage in the duties and assignments for which they were hired, (iii) were not allowed to participate in, compete for and/or benefit from additional work and/or assignments to which they would have otherwise been permitted but for the transfer or "reassignment", (iv) were limited in their freedoms to move about, communicate and/or associate with others, (v) were forced to sit in assigned seats, in uncomfortable work

locations and deprived of the normal equipment, access to resources and/or other support to which they would normally be entitled, (vi) were guarded by professional security personnel, and (vii) otherwise forced to remain in locations not of their choosing and not within the scope of the duties for which they were hired.

56) Defendants Bloomberg, City, Klein and DOE intended, and Defendants Weingarten and UFT allowed, Plaintiffs to be transferred to and remain in Rubber Room locations (i) where they were subjected to harassment, threats and/or intimidation, and (ii) that Defendants Bloomberg, City, Klein and DOE knew were unsafe and/or inappropriate for Plaintiffs' "reassignment".

57) Defendants Bloomberg, City, Klein and DOE intended, and Defendants Weingarten and UFT allowed, some Plaintiffs to be "reassigned" out of their schools and to remain in Rubber Rooms on the basis of charges for which such "reassignment" was not warranted, including but not limited to their (i) alleged insubordination, (ii) work allegedly being substandard, or (iii) other allegedly improper conduct which did not rise to the level of "serious misconduct" that endangered the welfare of the students or other persons in their schools.

58) Defendants Bloomberg, City, Klein and DOE intended, and Defendants Weingarten and UFT allowed, Plaintiffs to be transferred to and kept in Rubber Rooms because they (i) had achieved a high pay and benefits level, (ii) dared to challenge and/or question DOE practices and / or the "Rubber Room" procedures, (iii) are "whistle blowers," and/or (iv) dared to demand their rights, including seniority transfers and/or due process rights.

59) Defendants Bloomberg, City, Klein and DOE intended, and Defendants Weingarten and UFT allowed, Plaintiffs to be transferred to and kept in Rubber Rooms so that (i) they

would not interfere with The Plan; (ii) they would not expose the constitutional and contractual and due process violations, (iii) they would not expose the hostile work environment and (iv) they would not expose the other wrongful acts going on in the NYC Public Schools.

60) In furtherance of The Plan, Defendants Bloomberg, City, Klein and DOE intended, and Defendants Weingarten and UFT allowed, Plaintiffs to become targets, unacceptable pawns, or sacrifices.

61) Defendants Bloomberg, City, Klein and DOE intended, and Defendants Weingarten and UFT allowed, Plaintiffs to be:

- a) confined in Rubber Rooms for weeks, months and/or years in direct violation of NYS Education Law §§ 3020 and 3020-a and Article 21G;
- b) deprived of their constitutional and contractual rights to expeditiously clear their names so that they could be returned to their responsibilities in their schools and to their privileges, status and/or assignments.

62) As a result of Defendants Bloomberg's, City's, Klein's and DOE's actions against Plaintiffs and other tenured teachers, and Defendants Weingarten's and UFT's actions and/or failure to act to protect the rights of Plaintiffs and other tenured teachers, the instances have increased and worsened of (i) failure to comply with provisions of NYS Education Law §§ 3020 and 3020-a, (ii) unlawful use of and confinement to Rubber Rooms, (iii) violation of due process, (iv) harassment and hostile work environment, and (v) retaliation. (*See Exhibit 1*)

63) With full knowledge that they were violating the constitutional, statutory and contractual rights of Plaintiffs and other teachers, Defendants Bloomberg, City, Klein and DOE, with

the tacit complicity of Defendants Weingarten and UFT, increased their wrongful acts against Plaintiffs and other teachers, so that the situation has become urgent.

64) In 2004, the crisis became even more urgent, with (i) violation of tenured teachers' contractual and due process rights, (ii) dangerous and hostile work environment, (iii) retaliation against teachers who sought to speak out against the violations, and in support of their rights, and to expose the problems in the NYC public school system, and (iv) Rubber Room violations that were known to Defendants Weingarten and UFT but for which they took no legal action to protect Plaintiffs or to fix the abuses.

65) Defendants Weingarten and UFT refused to help Plaintiffs and other teachers trapped in Rubber Rooms, by refusing to recognize the Rubber Room locations as UFT chapters and appointing UFT representatives to protect them.

66) In September 2007 Defendant Comber solicited Defendants Weingarten and UFT to hire her and appoint her as their representative.

67) Toward the end of 2007, in response to the worsening situation with Plaintiffs and other tenured teachers, and the failure of Defendants Weingarten and UFT to take any responsible action to help teachers, Defendants Weingarten and UFT determined to try to mollify Plaintiffs and/or mislead the public into thinking that they were taking action to protect Plaintiffs or other tenured teachers. In fact, Defendants Weingarten and UFT did nothing and in essence abandoned Plaintiffs and other tenured teachers.

68) In October 2007, as part of the efforts to mislead Plaintiffs, other tenured teachers and the public, Defendants Weingarten and UFT appointed a "Rubber Room Task Force," with Defendant Comber as one of Defendant UFT's official representatives.

- 69) In reality, Defendants Weingarten and UFT had no intention to allow its “Rubber Room Task Force” to take any meaningful action, and they gave the “Rubber Room Task Force” no support and no authority to take any meaningful action on behalf of Plaintiffs or other tenured teachers.
- 70) The October 2007 appointment of the UFT “Rubber Room Task Force” by Defendants Weingarten and UFT was nothing more than a public relations “gimmick” that was supported by Defendants Bloomberg, City, Klein and DOE.
- 71) As of November 2007 Defendants Weingarten, UFT and/or Combier “claimed” that they had evidence related to (i) violations of Plaintiffs’ and other teachers’ constitutional, due process and contractual rights, (ii) harassment and hostile work environment, (iii) contract violations, (iv) abuses in the NYC public school system, and (v) dangerous conditions and improper use of Rubber Rooms. However, Defendants Weingarten, UFT and/or Combier again took no action.
- 72) By the end of December 2007, it became apparent that Defendants Weingarten, UFT and/or Combier (i) were not acting in the best interests of Plaintiffs, (ii) had no intention of taking action based on the alleged evidence they had amassed, and (iii) were engaging in public relations posturing and “gimmicks” to try to make it appear as if they were actually taking action to protect Plaintiffs and other teachers, when in fact they took no legal action and failed to act.
- 73) By the end of December 2007, Plaintiffs and other teachers remained in Rubber Rooms and continued to be forced into 3020-a hearings or post hearing processes that violated their due process, constitutional and contractual rights.

- 74) Defendants Weingarten, UFT and Combier put, and continue to put, their personal interests ahead of the interests of Plaintiffs and other teachers to whom they owe duties, and on whose behalf they claimed, and were obligated, to take action to protect Plaintiffs' and other teachers' rights.
- 75) One or more Plaintiffs, individually and/or collectively, urged Defendants Weingarten, UFT and Combier to take action related to the instant claims, the due process, constitutional and contractual violations, but nothing was done.
- 76) When it became apparent that Defendants Weingarten, UFT, Combier and/or the so called "Rubber Room Task Force" failed to take any action to protect Plaintiffs and other teachers, Plaintiff Teachers4Action, Inc. was formed and sought to take the actions to protect Plaintiffs and other teachers.
- 77) On January 15, 2008, Plaintiff Teachers4Action, Inc. notified Defendants Bloomberg, City, Klein, DOE, Weingarten and UFT of their demands that Defendant DOE comply with Plaintiffs' constitutional and contractual rights. The notification was widely circulated to the media and area politicians, who had previously been asked for assistance.
- 78) In response to Plaintiff Teacher4Action's January 15, 2008 notification on behalf of Plaintiffs and other teachers, Defendants Bloomberg, City, Klein, DOE, Weingarten and UFT retaliated against Plaintiff Teachers4Action, Inc. and its members, by doing the following:
- a) Defendant DOE immediately reassigned Plaintiff Lewenstein to the Rubber Room with new allegations of "verbal abuse."

b) Defendant Weingarten wrote a letter to the media and area politicians refuting Teachers4Action, Inc.'s allegations and claiming that Defendant UFT was in negotiations with Defendant DOE to resolve the Rubber Room problem.

79) On January 21, 2008, Plaintiff Teachers4Action, Inc. filed the instant lawsuit.

80) Immediately after the filing, Defendants Bloomberg, City, Klein, DOE, Weingarten, UFT and Combier, jointly and/or individually again started to retaliate against Plaintiffs and now also looked for ways to interfere with Plaintiffs' ability to prosecute this action.

81) In response to Plaintiffs (i) filing of this complaint, (ii) challenging and contesting Defendants UFT's and Weingarten's policy and management objectives, (iii) starting to expose the problems with Article 21G of the Collective Bargaining Agreement, (iv) engaging in public protests against Defendant DOE's actions related to the 3020-a hearings, and (v) starting to assert the violation of their due process, constitutional and contractual rights, Defendants retaliated by among other things:

- a) interfering with Plaintiffs' rights and Plaintiffs' rights to prosecute this action; and
- b) directing that administrators and security personnel in the Rubber Rooms restrict Plaintiffs' ability to speak and otherwise communicate with one another, and to meet and associate with one another, to respond to the increased inquiries by other teachers who sought to join Plaintiff Teachers4Action, Inc. and to prepare their claims in this case.

82) As part of the retaliation, Defendants Weingarten and UFT remained silent and did nothing to support Plaintiffs' rights or to stop the violation of their rights and the unlawful use of the Rubber Rooms.

83) From February 2008 to present, Defendant UFT, Weingarten and Combier retaliated against Plaintiffs named or identified with this action by means of (i) intimidation, (ii) harassment, (iii) threats, (v) dissemination / publication of false and/or defamatory statements and (vi) interception, publication and use of confidential materials.

84) As the Plaintiffs continued to prosecute this complaint, Defendants Weingarten, Combier and UFT increased their retaliation and pressure on Plaintiffs, by conspiring with Defendant DOE to:

- a) accelerate the 3020a hearings against Plaintiffs;
- b) cause Plaintiffs to be stripped of their counsel, who were paid for by Defendant UFT with monies they received from Plaintiffs' union dues; and
- c) subject Plaintiffs to further financial and emotional intimidation and circumstances, as a result of Plaintiffs being left helpless in the 3020-a hearings that are controlled by Defendant DOE.

85) From February 2008 to present, Defendant DOE also assisted and collaborated with Defendants UFT's, Weingarten's and Combier's retaliation by providing Defendant UFT Representative Combier with access and opportunity to trap and confront Plaintiffs who are confined in Rubber Rooms, so that they can be subjected to Defendants' further harassment, intimidation, threats, coercion, false accusations and offers of bribes, to coerce, cajole and persuade them to withdraw from the instant lawsuit.

86) As further retaliation for Plaintiffs' continued efforts to (i) challenge and contest Defendants UFT's and Weingarten's policy and management objectives, (ii) start to expose the problems with Article 21G of the Collective Bargaining Agreement, (iii) engage in public protests against Defendant DOE's actions related to the 3020-a hearings,

and (iv) attempt to expose the violations of their due process, constitutional and contractual rights, Defendants DOE and UFT and its representatives started to engage in ex-parte communications, and to assist the Arbitrators conducting the 3020-a process in their efforts to cause Plaintiffs further financial, personal and emotional stresses.

87) From April 2008 to the present, Defendant DOE and the Arbitrators have stepped up the level of harassment, intimidation and interference with Plaintiffs, both in the Rubber Rooms and the 3020-a hearings.

88) From April 2008 to the present, Defendants have retaliated against Plaintiffs by arbitrarily and capriciously abridging their rights to assemble, to discuss, and otherwise communicate in the Rubber Rooms, for the purpose of defending their rights and prosecuting their lawsuits.

89) From April 2008 to the present, Defendants have retaliated against Plaintiffs by subjecting them to different restrictions and conditions from other teachers in the Rubber Rooms and within the workplace, and treating them as if they were criminals or already convicted of serious allegations.

90) From April 2008 to the present, Defendant DOE has sought to use its position of authority to trick, coerce or intimidate Plaintiffs into 3020-a hearings, when they are/were stripped of counsel by Defendant UFT, and in which Plaintiffs are/were tricked into making statements against their interests, or where the record is/was manipulated so exculpatory and/or explanatory statements and/or evidence is/was omitted from the record, thereby causing Plaintiffs further damages and prejudice.

91) Starting in April/May 2008, Defendant DOE started to retaliate against certain Plaintiffs by increasing the financial and emotional pressures on such Plaintiffs who suffer from

certain emotional and/or physical disabilities or financial stresses. In this regard, Defendant DOE and/or its representatives started to communicate with physicians and credit and/or public assistance agencies in an effort to provide or get information improperly and unlawfully to use against Plaintiffs.

92) In May 2008 Defendant DOE continued to retaliate by (i) preventing Plaintiffs from access to and/or use of their printers and fax equipment, (ii) restricting Plaintiffs access to and communication with one another, (iii) interference with Plaintiffs' ability to freely move about the Rubber Rooms, (iv) forcing certain Plaintiffs into meetings with adversaries during which Plaintiffs were subjected to threats intimidation and harassment, (v) engaging in verbal abuse and harassment of Plaintiffs and (vi) discriminating against Plaintiffs by treating them differently in all respects from other teachers in the Rubber Rooms who are not part of the instant lawsuit.

**First Cause of Action -
Violation / Interference with Constitutionally Protected Rights –
1st, 5th & 14th Amendment
Freedom of Speech & Association and Due Process & Equal Protection Rights
(against Defendants Bloomberg, City, Klein, DOE, Weingarten & UFT)**

93) Plaintiffs repeat and re-allege each of the allegations as set forth above in ¶¶ 15 to 92 as if the same were repeated fully and at length herein.

94) Plaintiffs have the following constitutional and contractual rights:

- a) After being charged, Plaintiffs are entitled to impartial Arbitrators;
- b) After being charged, Plaintiffs are entitled to adequate representation.

95) Defendants Bloomberg, City, Klein, DOE, Weingarten and UFT sought to mislead Plaintiffs and to interfere with their enforcing their rights pursuant to NYS Education

Law §§ 3020 and 3020-a related to the right to (i) impartial Arbitrators, and (ii) adequate legal representation.

96) Defendants Bloomberg, City, Klein, DOE, Weingarten and UFT:

- a) deprived Plaintiffs of the choice of impartial Arbitrators; and
- b) deprived Plaintiffs of their rights to adequate representation.

97) Defendants Bloomberg, City, Klein, DOE, Weingarten and UFT deprived Plaintiffs and other teachers of their due process rights to 3020-a hearings with impartial Arbitrators, and a hearing process that is fair and impartial, by negotiating Article 21G in contravention of NYS Education Law §§ 3020 and 3020-a.

98) Under the provisions of Article 21G Defendants Bloomberg, City, DOE, Klein, UFT and Weingarten proceeded to empower a permanent “Rotational Panel” of Arbitrators earning up to \$1,900.00 per day to conduct 3020-a hearings that are the equivalent of “Kangaroo Courts,” where Arbitrators do Defendants’ bidding to violate Plaintiffs’ due process rights by, amongst other things, ignoring the timing requirements of NYS Education Law §§ 3020 and 3020-a and Article 21G, colluding with Defendant DOE to coerce Plaintiffs into onerous stipulations involving resignation, retirement, suspension without pay, and/or ruinous fines, or rendering negative determinations in almost every case brought before them, involving termination and loss of licensure, suspension without pay, and/or ruinous fines.

99) Article 21G is unconstitutional, because it strips Plaintiffs and other teachers of their constitutional due process protections, and the protections guaranteed by NYS Education Law §§ 3020 and 3020-a.

- 100) Defendants Bloomberg, City, Klein and DOE harassed Plaintiffs and made the conditions within their “workplace” and the terms of Plaintiffs’ employment intolerable by:
- a) retaliating against Plaintiffs to try to prevent them from seeking to enforce their constitutional and contractual rights;
 - b) retaliating against Plaintiffs for speaking out against the deplorable conditions in the workplace and/or in the Rubber Rooms;
 - c) retaliating against Plaintiffs for attempting to expose the Defendants wrongful acts and/or conditions within the NYC public school system;
 - d) limiting Plaintiffs’ ability to associate, assemble, discuss and/or communicate for the purpose of defending themselves, to inform other teachers about their constitutional, statutory and contractual rights, and to allow other teachers to assist them in their defense;
 - e) intimidating others from coming forward to support and/or join in Plaintiffs’ allegations of Defendants wrongful acts and/or conditions within the NYC public school systems; and
 - f) intimidating others from coming forward to and/or in defense of the charges against Plaintiffs.
- 101) Defendants Bloomberg, City, Klein and DOE:
- a) subjected Plaintiffs to endure verbal and physical harassment and intimidation in their schools and in the Rubber Rooms;
 - b) subjected Plaintiffs to dangerous physical conditions in their schools and in the Rubber Rooms;

- c) removed Plaintiffs from classrooms and subjected them to solitary confinement in closets, empty windowless offices or other small spaces;
- d) subjected Plaintiffs to ridicule, insults and abusive attacks by principals and other administrators;
- e) intimidated Plaintiffs and made them to be fearful of speaking out against the abuses, conditions and wrongful acts; and
- f) intimidated, harassed and prevented Plaintiffs from speaking out against the abuses, unlawful conduct and/or other improper acts that Defendants should have prevented and which Defendants did not want to become public or for which Defendants did not want to be held accountable.

102) When Plaintiffs sought to enforce and attempted to speak out in support of and to demand their due process, constitutional and/or statutory rights, Defendants Bloomberg, City, Klein and DOE sought to stop Plaintiffs from speaking and/or associating with others with similar interests and/or rights.

103) Defendants Bloomberg's, Klein's and DOE's wrongful conduct was designed to interfere with Plaintiffs and other tenured teachers, to interfere with Plaintiffs' "certifications and licenses," to interfere with Plaintiffs' salaries and due process rights, and to interfere with Plaintiffs rights as guaranteed by NYS Education Law §§ 3020 and 3020-a, to have the charges expeditiously investigated and adjudicated through fair and impartial hearings.

104) Defendants Bloomberg, City, Klein and DOE caused Plaintiffs to be subjected to, and Defendant Weingarten and UFT allowed Plaintiffs to be subjected to, charges that caused them to be improperly "re-assigned" and confined to the Rubber Rooms, where

they waited for months and years without a chance to clear their names and protect their salaries, licenses and property rights.

- 105) While in the Rubber Rooms, Plaintiffs were deprived of their due process rights and/or the chance to clear their names and be restored to their classrooms.
- 106) While in the Rubber Rooms, Plaintiffs were coerced, harassed, intimidated and terrorized so that they would be fearful for their personal and professional well-being, so that they would be “forced” to retire, resign or accept deals involving ruinous fines or termination.
- 107) Defendants Bloomberg, City, Klein and DOE negotiated and implemented Article 21G, which was intended to interfere with Plaintiffs’ and other teachers’, “certifications and licenses”, salaries and due process rights.
- 108) Defendants Bloomberg, City, Klein and DOE negotiated and implemented Article 21G, which was designed to frustrate Plaintiffs’ and other teachers’ ability to expeditiously defend themselves against the charges that caused them to be placed in the Rubber Rooms, where they waited for months and years without a chance to clear their names and protect their salaries, certifications, licenses and property rights.
- 109) Defendants Bloomberg’s, Klein’s and DOE’s aforesaid acts, violate the 5th and 14th Amendments to the Constitution by depriving Plaintiffs of their due process rights and were otherwise unlawful.
- 110) Defendants Bloomberg’s, Klein’s and DOE’s actions also violate 42 U.S.C. §1983 which states:

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, and citizen of the United States or

other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress”.

- 111) Defendants Bloomberg’s, Klein’s and DOE’s acts were designed to interfere with and/or deprive Plaintiffs of their property rights.
- 112) Defendants Bloomberg’s, Klein’s and DOE’s acts were designed to interfere with and/or deprive Plaintiffs of their due process, statutory, constitutional and/or contractual rights.
- 113) Defendants Bloomberg’s, Klein’s and DOE’s use of Rubber Rooms, harassment, hostile work environment, retaliation and failure to provide Plaintiffs with the protections afforded by the provisions of NYS Education Law §§ 3020 and 3020-a violates 42 U.S.C. § 1983 and Plaintiffs’ constitutional due process protections.
- 114) Defendants Bloomberg’s, Klein’s and DOE’s attempts to prevent Plaintiffs from speaking out against violations of their rights, speaking out about the conditions and abuses in the NYC public school system, and attempting to speak out against the use of Rubber Rooms, attempt to prevent Plaintiffs from getting others to support and provide evidence to them, to defend themselves, violates 42 U.S.C. § 1983 and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. and Plaintiffs’ constitutional due process protections.
- 115) Defendants Bloomberg’s, Klein’s and DOE’s attempts to prevent Plaintiffs from associating with others to discuss the violations of their rights, speaking out about the conditions and abuses in the NYC public school system, and attempting to speak out against the use of Rubber Rooms, attempt to prevent plaintiffs from getting others to support and provide evidence to them, to defend themselves, violates 42 U.S.C. § 1983

and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. and Plaintiffs' constitutional due process protections.

116) Defendants Bloomberg's, Klein's and DOE's attempts to prevent Plaintiffs from speaking to and associating with others violated Plaintiffs' First Amendment rights.

117) As a direct and proximate result of Defendants Bloomberg's, Klein's and DOE's aforesaid acts, Plaintiffs suffered monetary and other damages.

WHEREFORE, Plaintiffs demand judgment against Defendants jointly, severally and/or in the alternative for damages as follows (i) compensatory damages per Plaintiff, based on their individual circumstances, and in an amount in excess of the jurisdictional limit of the Court, (ii) exemplary, special and/or punitive damages in an amount to be determined by the ultimate trier of fact; and (iii) attorneys' fees, interest and costs of suit.

**Second Cause of Action –
Harassment & Hostile Work Environment
(against Defendants Bloomberg, City, Klein & DOE)**

118) Plaintiffs repeat and re-allege each of the allegations as set forth above in ¶¶ 15 to 92 as if the same were repeated fully and at length herein.

119) Defendants Bloomberg, City, Klein and DOE subjected Plaintiffs to be confined in and/or allowed Plaintiffs to remain in locations where they were subjected to emotional and psychological dangers and/or intimidation, and in some instances solitary confinement in closets, empty windowless offices or other small spaces.

120) Defendants Bloomberg, City, Klein and DOE subjected Plaintiffs to (i) ridicule, insults and abusive verbal attacks and/or assaults and (ii) intimidation and fear of speaking out against the abuses, conditions and wrongful acts.

- 121) Defendants Bloomberg, City, Klein and DOE transferred Plaintiffs from locations and conditions where, as a result of the experience, credentials, skills and status that they had achieved and earned, Plaintiffs were recognized as elite or privileged, to locations where they were less prestigious and where they were subjected to further verbal and physical harassment and intimidation.
- 122) Defendants Bloomberg, City, Klein and DOE subjected Plaintiffs to radical changes in the nature and quality of the work given to them, and in most instances Plaintiffs were completely deprived of any work responsibilities whatsoever.
- 123) Defendants Bloomberg, City, Klein and DOE caused Plaintiffs to be transferred to locations where they were not allowed to perform the discretionary and/or managerial functions of the positions for which they were hired, to positions where the work, if any, was that which could be performed by clerical and lower-level personnel.
- 124) Defendants Bloomberg, City, Klein and DOE used the Rubber Rooms to:
- a) subject Plaintiffs to verbal and physical harassment and intimidation;
 - b) subject Plaintiffs to dangerous physical conditions; and
 - c) subject Plaintiffs to emotional and psychological dangers and/or intimidation by keeping Plaintiffs like prisoners.
- 125) Defendants Bloomberg, City, Klein and DOE caused Plaintiffs to be subjected to solitary confinement in closets, empty windowless offices or other small spaces.
- 126) The Rubber Rooms were used by Defendant Bloomberg, City, Klein and DOE to subject Plaintiffs to (i) ridicule, insults and abusive verbal attacks and/or assaults and (ii) intimidation, and fear of speaking out against the abuses, conditions and wrongful acts.

127) Defendants Bloomberg's, City's, Klein's and DOE's use of Rubber Rooms was part of their efforts to (i) retaliate against Plaintiffs and other teachers; (ii) dissuade and/or discourage Plaintiffs and other teachers from coming forward to assert their constitutionally protected rights, including, but not limited to, freedom of speech and freedom of association; and (iii) dissuade and/or discourage Plaintiffs and other teachers from coming forward to speak out and/or "blow the whistle," and attempt to prevent or stop them from reporting abuses and/or other wrongful acts within the NYC public school system.

128) Defendants Bloomberg's, City's, Klein's and DOE's use of Rubber Rooms and abuse of the NYS Education Law §§ 3020 and 3020-a disciplinary process is adverse to, and a material change in, the terms and conditions of Plaintiffs' employment through termination, demotion, decrease in salary or wage, less distinguished titles, material loss in benefits, prevention of and/or interference with Plaintiffs' ability to compete for and secure positions and assignments to which they are entitled, significantly diminished responsibilities, or other acts designed to humiliate Plaintiffs and subject them to particular situations that are embarrassing and not consistent with their status, positions and/or experience.

129) Defendants Bloomberg's, City's, Klein's and DOE's use of Rubber Rooms is not mere inconvenience or alteration of job responsibilities but is rather a complete change in the terms and conditions of Plaintiffs' employment and tenure, designed to force Plaintiffs to quit, or to create conditions through which Plaintiffs could be terminated, albeit unlawfully and improperly.

- 130) Defendants Bloomberg's, City's, Klein's and DOE's use of Rubber Rooms was part of their efforts to interfere with Plaintiff's current or future employment as tenured teachers.
- 131) Defendants Bloomberg, City, Klein and DOE use the Rubber Rooms as a means to involuntarily transfer Plaintiffs to locations and/or facilities at which Plaintiffs (i) are not permitted to engage in their normal work activities, (ii) are not permitted to perform and/or engage in the duties and assignments for which they were hired, (iii) are not allowed to participate in, compete for and/or benefit from additional work and/or assignments to which they would have otherwise been permitted but for the transfer or "reassignment", (iv) are limited in their freedoms to move about, communicate and/or associate with others, (v) are forced to sit in assigned seats, in uncomfortable work locations and deprived of the normal equipment, access to resources and/or other support to which they would normally be entitled, (vi) are guarded by professional security personnel, and (vii) are otherwise forced to remain in locations not of their choosing and not within the scope of the duties for which they were hired.
- 132) Defendants Bloomberg's, City's, Klein's and DOE's use of Rubber Rooms was intended to subject Plaintiffs to conditions, assignment, relocation, denigration of responsibility, status and duties that caused a setback to their careers as tenured teachers.
- 133) Defendants Bloomberg's, City's, Klein's and DOE's use of Rubber Rooms was part of their efforts to transfer Plaintiffs from locations where, as a result of the experience, credentials, skills and status that they had achieved and earned, and where Plaintiffs were recognized as elite or privileged, to locations that were less prestigious, and where Plaintiffs were subjected to radical changes in the nature and quality of the

work given to them, and in most instances Plaintiffs were completely deprived of any work responsibilities whatsoever.

134) Defendants Bloomberg's, City's, Klein's and DOE's use of Rubber Rooms was part of an effort to transfer Plaintiffs to locations where they were not allowed to perform the discretionary and/or managerial functions of the positions for which they were hired, to positions where the work, if any, was that which could be performed by clerical and lower-level personnel.

135) The conditions that Defendants Bloomberg, City, Klein and DOE created in the schools before Plaintiffs were transferred to the Rubber Rooms, and the conditions that Defendants Bloomberg, City, Klein and DOE created in the Rubber Rooms themselves, were part of Defendants' harassment and the creation of a hostile work environment.

136) As a direct and proximate result of Defendants Bloomberg's, City's, Klein's and DOE's subjecting Plaintiffs to harassment and a hostile work environment, Plaintiffs suffered monetary and other damages.

WHEREFORE, Plaintiffs demand judgment against Defendants jointly, severally and/or in the alternative for damages as follows (i) compensatory damages per Plaintiff, based on their individual circumstances, and in an amount in excess of the jurisdictional limit of the Court, (ii) exemplary, special and/or punitive damages in an amount to be determined by the ultimate trier of fact; and (iii) attorneys' fees, interest and costs of suit.

**Third Cause of Action –
Retaliation
(against Defendants Bloomberg, City, Klein, DOE, Weingarten and UFT)**

137) Plaintiffs repeat and re-allege each of the allegations as set forth above in ¶¶ 15 to 92 as if the same were repeated fully and at length herein.

- 138) Defendants Bloomberg, City, Klein and DOE retaliated against Plaintiffs (i) by interfering with Plaintiffs' freedom of speech and freedom of association; (ii) by targeting Plaintiffs and others who acted as "whistle blowers" and spoke out about the due process violations and the wrongs within the Rubber Rooms and the NYC public school system, and (iii) by intimidating Plaintiffs and others from acting as "whistle blowers" and speaking out about the due process violations and the wrongs within the Rubber Rooms and the NYC public school system.
- 139) Defendants Bloomberg, City, Klein and DOE threatened Plaintiffs that if they did not agree to some form of punishment and/or fine, they would be subjected to potentially ruinous fines, suspension without pay, and/or termination and loss of certifications and/or licenses.
- 140) Defendants Bloomberg, City, Klein and DOE threatened Plaintiffs that if they attempted to object to the manner in which Defendants Bloomberg, City, Klein and DOE were conducting the administrative hearings pursuant to NYS Education Law §§ 3020 and 3020-a, Plaintiffs would be subjected to additional punishment, including potentially ruinous fines, suspension without pay and/or termination and loss of certifications and/or licenses.
- 141) Defendants Bloomberg, City, Klein DOE, Weingarten and UFT threatened Plaintiffs, or allowed Plaintiffs to be threatened, that if they did not agree to some form of punishment and/or fine, they would be subjected to potentially ruinous fines, suspension without pay and/or termination and loss of certifications and/or licenses.
- 142) After the January 15, 2008 letter by Plaintiffs Teachers4Action, Inc. to Defendants Bloomberg, City, Klein, DOE, Weingarten and UFT protesting (i)

Defendants' violation of Plaintiffs' due process rights, (ii) Defendants' violations of Plaintiffs' constitutional and contractual rights, and (iii) the other wrongful conduct and/or abuses that occur within the NYC public school system, Defendants Bloomberg, City, Klein, DOE, Weingarten and UFT retaliated against and/or caused the retaliation against Plaintiff Teacher4Action, Inc.'s president by filing new allegations against him and sending him back to the Rubber Room.

143) After the January 25, 2008 letter to Defendants Klein, DOE, Weingarten and UFT protesting (i) Defendants' violation of Plaintiffs' due process rights, (ii) Defendants' violations of Plaintiffs' constitutional and contractual rights, and (iii) the other wrongful conduct and/or abuses that occur within the Rubber Rooms, Defendants Bloomberg, City, Klein, and DOE retaliated against and/or caused the retaliation against Plaintiff Teachers4Action, Inc.'s president by filing new allegations against him.

144) Defendants Weingarten and UFT, through their representative Defendant Combier, caused slanderous and threatening material to be posted / published on web sites controlled by Defendant Combier.

145) Defendants Weingarten and UFT, through their representative Defendant Combier, conducted meetings, discussions and telephone calls to Plaintiffs for the purpose of threatening and intimidating them, and to present deliberate and knowing misinformation about the instant lawsuit.

146) Defendants Weingarten, UFT and Combier threatened Plaintiffs that if they did not withdraw from the instant lawsuit, or if they insisted on pursuing their claims, they would be deprived of the lawyers who were representing Plaintiffs in the 3020-a hearings, and who were retained and paid for by Defendant UFT.

- 147) After the filing of the Amended Complaint on February 25, 2008, the NYSUT lawyers who are paid by Defendant UFT did in fact withdraw representation from Plaintiffs undergoing 3020-a hearings.
- 148) Defendants Bloomberg, City, Klein and DOE have insisted, and have directed the Arbitrators, that Plaintiffs continue with their 3020-a hearings with or without legal representation, and the Arbitrators have complied with Defendants' demands.
- 149) Defendants Bloomberg, City, Klein and DOE have directed, or caused to be directed, that several Plaintiffs be subjected to evaluation by Defendant DOE's Medical Division, as a result of which they can be summarily terminated.
- 150) A DOE attorney called a Plaintiff's doctor to intimidate the doctor into revealing confidential medical information protected by the federal HIPPA statute, and further to intimidate the Plaintiff.
- 151) Defendants Bloomberg's, City's, Klein's, DOE's, Weingarten's and UFT's retaliation against, and/or causing the retaliation of, Plaintiffs was designed to dissuade others from asserting their First Amendment and other constitutional rights.
- 152) Defendants Bloomberg's, City's, Klein's, DOE's, Weingarten's and UFT's retaliation against, and/or causing the retaliation of, Plaintiffs was designed to dissuade others from "blowing the whistle" about wrong doing in the NYC public school system and the Rubber Rooms in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.
- 153) Defendants Bloomberg's, City's, Klein's, DOE's, Weingarten's and UFT's retaliation against, and/or causing the retaliation of, Plaintiffs demonstrates their disdain for "whistle blowers" who report wrong doing in the NYC public school system and the

Rubber Rooms, and their absolute commitment to thwart their constitutional free speech efforts to reveal the wrong doing.

154) Defendants Weingarten's and UFT's retaliation against, and/or causing the retaliation of, Plaintiffs is a violation of 29 U.S.C. 411 Sec. 101. a (2), (4) and (5), and 29 U.S.C. 529 Sec. 609.

155) As a direct and proximate result of Defendants Bloomberg, City, Klein, DOE, Weingarten and UFT retaliating against and/or causing the retaliation of Plaintiffs, Plaintiffs suffered monetary and other damages.

WHEREFORE, Plaintiffs demand judgment against Defendants jointly, severally and/or in the alternative for damages as follows (i) compensatory damages per Plaintiff, based on their individual circumstances, and in an amount in excess of the jurisdictional limit of the Court, (ii) exemplary, special and/or punitive damages in an amount to be determined by the ultimate trier of fact; and (iii) attorneys' fees, interest and costs of suit.

**Fourth Cause of Action –
Constructive Discharge
(against Defendants Bloomberg, City, Klein and DOE)**

156) Plaintiffs repeat and re-allege each of the allegations as set forth above in ¶¶ 15 to 92 as if the same were repeated fully and at length herein.

157) Defendants Bloomberg, City, Klein and DOE knew that they could not get Plaintiffs to quit.

158) Since Defendants Bloomberg, City, Klein and DOE knew that they could not get Plaintiffs to quit, Defendants Bloomberg, City, Klein and DOE determined to harass Plaintiffs and to create a hostile work environment through which Plaintiffs would quit or would agree to early retirement and/or deals that led to their resignation or dismissal.

159) Defendants Bloomberg, City, Klein and DOE made Plaintiffs' working conditions intolerable with the intention of causing, or forcing, Plaintiffs to involuntarily resign or give up some of their benefits.

160) Defendants Bloomberg's, City's, Klein's and DOE's use of Rubber Rooms and failure to provide Plaintiffs with the protections afforded by the provisions of NYS Education Law §§ 3020 and 3020-a was part of Defendants' deliberate and/or intentional creation of an intolerable workplace environment.

161) Defendants Bloomberg's, City's, Klein's and DOE's creation of a hostile work environment constitutes constructive termination of Plaintiffs or deprivation of other benefits.

162) As a direct and proximate result of Defendants Bloomberg's, City's, Klein's and DOE's constructive discharge, Plaintiffs suffered monetary and other damages

WHEREFORE, Plaintiffs demand judgment against Defendants jointly, severally and/or in the alternative for damages as follows (i) compensatory damages per Plaintiff, based on their individual circumstances, and in an amount in excess of the jurisdictional limit of the Court, (ii) exemplary, special and/or punitive damages in an amount to be determined by the ultimate trier of fact; and (iii) attorneys' fees, interest and costs of suit.

**Fifth Cause of Action –
Breach of Contract
(against Defendants Bloomberg, City, Klein and DOE)**

163) Plaintiffs repeat and re-allege each of the allegations as set forth above in ¶¶ 15 to 92 as if the same were repeated fully and at length herein.

164) Defendant DOE and Plaintiffs have a valid and binding contract.

- 165) The terms of the contract guaranteed Plaintiffs rights to a safe and non-hostile work environment, a salary, rights to per session work and summer school work, benefits, other rights related to their work status as tenured teachers, as well as limited due process rights related to the NYS Education Law §§ 3020 and 3020a hearing procedures.
- 166) Defendants Bloomberg, City, DOE and Klein did not want to honor the terms of the contract with Plaintiffs.
- 167) Defendants Bloomberg, City, DOE and Klein sought to break the terms of the contract with Plaintiffs so that they could reduce the budget of the NYC school system and undermine the institution of tenure.
- 168) The terms of the contract between Plaintiffs and Defendant DOE, prohibited Defendants Bloomberg, City, DOE and Klein from targeting Plaintiffs and other tenured teachers (i) who had achieved a high pay and benefits level; (ii) who dared to challenge and/or question the “Rubber Room” procedures; (iii) who acted as “whistle blowers” regarding DOE misconduct (iv) who dared to demand or insist upon their due process rights, (v) by forcing Plaintiffs to wait in the Rubber Rooms without due process and the chance to clear their names and be restored to their classrooms and (vi) by coercing, intimidating and terrorizing Plaintiffs so that they would be fearful for their personal and professional well-being, so that they would retire, resign or be “forced” to accept deals involving ruinous fines or termination.
- 169) Defendants Bloomberg, City, Klein and DOE breached the terms of the contract with Plaintiffs by Defendants Bloomberg’s, City’s, Klein’s and DOE’s targeting of Plaintiffs and other tenured teachers (i) who had achieved a high pay and benefits level; (ii) who dared to challenge and/or question the “Rubber Room” procedures; (iii) who

acted as “whistle blowers” regarding DOE misconduct (iv) who dared to demand or insist upon their due process rights, (v) by forcing Plaintiffs to wait in the Rubber Rooms without due process and the chance to clear their names and be restored to their classrooms and (vi) by coercing, intimidating and terrorizing Plaintiffs so that they would be fearful for their personal and professional well-being, so that they would retire, resign or be “forced” to accept deals involving ruinous fines or termination.

170) Defendants Bloomberg’s, City’s, DOE’s and Klein’s breach of contract was intentional, malicious, reckless, careless, negligent, unlawful and/or improper, and was also designed to interfere with Plaintiffs’ due process, licenses and property rights.

171) As a direct and proximate result of Defendants Bloomberg’s, City’s, DOE’s and Klein’s breach of contract, Plaintiffs suffered monetary and other damages.

WHEREFORE, Plaintiffs demand judgment against Defendants jointly, severally and/or in the alternative for damages as follows (i) compensatory damages per Plaintiff, based on their individual circumstances, and in an amount in excess of the jurisdictional limit of the Court, (ii) exemplary, special and/or punitive damages in an amount to be determined by the ultimate trier of fact; and (iii) attorneys’ fees, interest and costs of suit.

**Sixth Cause of Action –
Breach of Fiduciary Duty and Duty of Fair Representation
Violations of Labor-Management Reporting & Disclosure Act
(against Defendants Weingarten and UFT)**

172) Plaintiffs repeat and re-allege each of the allegations as set forth above in ¶¶ 15 to 92 as if the same were repeated fully and at length herein.

173) Defendants UFT and Weingarten are agents for Plaintiffs with regard to certain matters, including certain matters related to Plaintiffs’ contract with Defendant DOE.

174) Defendants UFT and Weingarten also assumed certain responsibilities and claim to protect the constitutional and contractual rights of Plaintiffs and other teachers.

175) Defendants UFT and Weingarten hold themselves out as *“fighting to make sure teachers are treated with respect and dignity, have a voice in the education of their students and are given the resources they need to succeed in the classroom”*.

176) Defendants UFT and Weingarten hold themselves out as advocates for union members, including Plaintiffs.

177) Defendants UFT and Weingarten are aware that Defendants Bloomberg, City, Klein and DOE were engaged in efforts to interfere with and/or deprive Plaintiffs of their due process, statutory, constitutional and/or contractual rights.

178) Defendants UFT and Weingarten have been on notice and aware that Defendants Bloomberg, City, Klein and DOE were (i) violating Plaintiffs 1st, 5th and 14th Amendment Rights, (ii) harassing Plaintiffs and subjecting Plaintiffs to hostile work environments, (iii) retaliating against Plaintiffs and otherwise violating Plaintiffs’ due process, constitutional and/or contractual rights.

179) Defendants UFT and Weingarten were on notice and aware that Defendants Bloomberg’s, City’s, Klein’s and DOE’s actions were intended and/or designed to get Plaintiffs to quit, be terminated and/or otherwise be subjected to suspension without pay or ruinous fines.

180) Defendants UFT and Weingarten were on notice and aware:

- a) Of the hostile work environment and dangerous conditions in the Rubber Rooms and have done nothing about them;

- b) That Defendants Bloomberg's, City's, Klein's and DOE's use of Rubber Rooms and failure to provide Plaintiffs with the protections afforded by the provisions of NYS Education Law §§ 3020 and 3020-a violates Plaintiffs' due process, statutory, constitutional and/or contractual rights and have done nothing about it;
 - c) That Defendants Bloomberg, City, Klein and DOE have discriminated against Plaintiffs in an effort to get them to quit, be terminated and/or otherwise be subject to ruinous fines and have done nothing about it; and
 - d) That Defendants Bloomberg, City, Klein and DOE have created a hostile work environment and have done nothing about it.
- 181) Defendants UFT and Weingarten owe and owed Plaintiffs a duty of fair representation in dealings with Defendants Bloomberg, City, Klein and DOE.
- 182) Despite their knowledge of Defendant Bloomberg's, City's, Klein's and DOE's wrongful acts, Defendants UFT and Weingarten did nothing.
- 183) Defendants UFT's and Weingarten's failure to act to protect Plaintiffs' rights violate their duty of fair representation to Plaintiffs.
- 184) Defendants UFT's and Weingarten's discrimination and retaliation against and/or harassment of Plaintiffs violate their duty of fair representation to Plaintiffs.
- 185) Defendants UFT's and Weingarten's discrimination and retaliation against and/or harassment of Plaintiffs violate 29 U.S.C. 411 Sec. 101. a (2) ("LMRDA – Freedom of Speech and Assembly").
- 186) Defendants UFT's and Weingarten's discrimination and retaliation against and/or harassment of Plaintiffs violate 29 U.S.C. 411 Sec. 101. a (4) ("LMRDA – Protection of Right to Sue").

- 187) Defendants UFT's and Weingarten's discrimination and retaliation against and/or harassment of Plaintiffs violate 29 U.S.C. 411 Sec. 101. a (5) and 29 U.S.C. 529 Sec. 609 ("LMRDA – Safeguards Against Improper Disciplinary Action").
- 188) Defendants UFT's and Weingarten's failure to inform UFT members about the provisions of the LMRDA violate 29 U.S.C. 415 Sec. 105 ("LMRDA – Information as to Act").
- 189) Defendants Weingarten's and Combier's repeated and knowing false statements regarding the true nature and intent of Article 21G, and regarding their purported efforts to help teachers in the Rubber Rooms, violate 29 U.S.C. 439 Sec. 209. b ("LMRDA – Criminal Provisions").
- 190) Defendants UFT's and Weingarten's aforesaid breach of their duty of fair representation constitutes bad faith and is in reckless disregard for Plaintiffs' rights.
- 191) As a direct and proximate result of Defendants Weingarten's and UFT's breach of fair representation, Plaintiffs suffered monetary damages and emotional injuries, trauma and other related damages.

WHEREFORE, Plaintiffs demand judgment against Defendants jointly, severally and/or in the alternative for damages as follows (i) compensatory damages per Plaintiff, based on their individual circumstances, and in an amount in excess of the jurisdictional limit of the Court, (ii) exemplary, special and/or punitive damages in an amount to be determined by the ultimate trier of fact; and (iii) attorneys' fees, interest and costs of suit.

**Seventh Cause of Action –
Aiding & Abetting Breach of Fiduciary Duty
(against Defendants Weingarten and UFT)**

- 192) Plaintiffs repeat and re-allege each of the allegations as set forth above in ¶¶ 15 to 92 as if the same were repeated fully and at length herein.
- 193) Defendants Weingarten and UFT were aware of their contractual and fiduciary duties to Plaintiffs.
- 194) Defendants Weingarten and UFT were aware that Defendants Bloomberg, City, Klein and DOE were engaged in the above mentioned wrongful acts, including but not limited to (i) violating Plaintiffs 1st, 5th and 14th Amendment Rights, (ii) harassing Plaintiffs and subjecting Plaintiffs to a hostile work environment,, (iii) retaliating against Plaintiffs and (iv) otherwise violating Plaintiffs’ due process, constitutional and/or contractual rights.
- 195) Defendants Weingarten and UFT were aware that Defendants Bloomberg, City, Klein and DOE required the assistance of Defendants Weingarten and UFT to (i) violate Plaintiffs 1st, 5th and 14th Amendment Rights, (ii) harass Plaintiffs and subject Plaintiffs to a hostile work environment, (iii) retaliate against Plaintiffs and (iv) otherwise violate Plaintiffs’ due process, constitutional and/or contractual rights.
- 196) Defendants Weingarten and UFT provided assistance to Defendants Bloomberg, City, Klein and DOE through Defendants Weingarten’s and UFT’s failure and/or refusal to act to protect Plaintiffs from (i) violation of their 1st, 5th and 14th Amendment Rights, (ii) harassment and a hostile work environment, (iii) retaliation, and (iv) other violations of Plaintiffs’ due process, constitutional and/or contractual rights.

197) The assistance that Defendants Weingarten and UFT provided to Defendants Bloomberg, City, Klein and DOE was through Defendants Weingarten's and UFT's failure and/or refusal to act, and Defendants Weingarten's and UFT's directions to the lawyers representing Plaintiffs who were paid for by UFT, and Defendant's Weingarten's and UFT's directions to NYSUT to withdraw legal representation from Plaintiffs and/or their failure or refusal to act on behalf of the Plaintiffs who were left without legal representation.

198) The assistance that Defendants Weingarten and UFT provided to Defendants Bloomberg, City, Klein and DOE was (i) to make announcements that they would take action but then take no action, (ii) to intentionally appoint unqualified and/or inexperienced persons such as Defendant Combier to serve on its "Rubber Room Task Force" and (iii) cause Plaintiffs to be threatened that if they continued to participate in the instant lawsuit, they would be terminated or they would lose the lawyers that the UFT was paying for to represent Plaintiffs in the 3020-a administrative hearings, and (iv) to direct NYSUT to withdraw legal representation from Plaintiffs, or to fail and/or refuse to act on behalf of the Plaintiffs who were left without legal representation.

199) As a direct and proximate result of Defendants Weingarten's and UFT's aiding and abetting breach of fiduciary duty and breach of fair representation, Plaintiffs suffered monetary damages and emotional injuries, trauma and other related damages.

WHEREFORE, Plaintiffs demand judgment against Defendants jointly severally and/or in the alternative for damages as follows (i) compensatory damages per Plaintiff, based on their individual circumstances, and in an amount in excess of the jurisdictional limit of the Court, (ii) exemplary, special and/or punitive damages in an amount to be determined by the ultimate trier

of fact; and (iii) attorneys' fees, interest and costs of suit.

**Eighth Cause of Action –
Negligence Hiring, Retention & Supervision
(against Defendants Bloomberg, City, Klein and DOE)**

- 200) Plaintiffs repeat and re-allege each of the allegations as set forth above in ¶¶ 15 to 92 as if the same were repeated fully and at length herein.
- 201) Defendants Bloomberg, City, Klein and DOE, hired and retained principals and other administrators who they knew, or should have known, would carry out the Defendants' plan to target Plaintiffs and other tenured teachers.
- 202) Defendants Bloomberg, City, Klein and DOE, hired and retained principals and other administrators who they knew, or should have known, had a hatred and/or dislike of tenured teachers, were envious of tenured teachers' positions, status and privileges, and who had a propensity for the type of harassment, retaliation and conduct that were designed to cause Plaintiffs to be charged and sent to Rubber Rooms.
- 203) Defendants Bloomberg, City, Klein and DOE knew or should have known that the Plaintiffs' supervisors had a propensity for anger, belligerence, violence, jealousy, discrimination, hostility and retaliation.
- 204) In fact, Defendants Bloomberg, City, Klein and DOE, knowing the nature of their school administrators, published a manual in 2004 to assist those administrators in successfully targeting teachers to be disciplined, sent to Rubber Rooms, and terminated.
- 205) Defendants Bloomberg, City, Klein and DOE, hired and retained attorneys to prosecute Plaintiffs and other teachers charged with incompetence and/or misconduct for which they would be subject to 3020-a hearings, who they knew, or should have known, would cooperate in The Plan that targets Plaintiffs and other tenured teachers for

termination, involuntary resignation or retirement, or onerous deals involving suspension without pay and/or ruinous fines.

206) Defendants Bloomberg, City, Klein and DOE, hired and retained attorneys who they knew, or should have known, had a hatred and/or dislike of Plaintiffs and other teachers, and who had a propensity for the type of harassment, retaliation and conduct that were designed to cause Plaintiffs to involuntarily resign or retire, or accept onerous deals involving suspension without pay and/or ruinous fines.

207) Defendants Bloomberg, City, Klein and DOE knew or should have known that the attorneys had a propensity for anger, belligerence, violence, jealousy, discrimination, hostility and retaliation that would be directed against Plaintiffs and other teachers.

208) Defendants Bloomberg, City, Klein and DOE knew or should have known that the attorneys would, in furtherance of The Plan, engage in unethical conduct, such as improper ex parte communications with Arbitrators and others, directing Arbitrators to do their bidding, and coercing Plaintiffs and other teachers to accept onerous deals involving suspension without pay and/or ruinous fines.

209) As a direct result of Defendants Bloomberg's, City's, Klein's and DOE's negligent hiring, retention, direction and supervision of Plaintiffs' supervisors, with their propensity for anger, belligerence, violence, jealousy, discrimination, hostility and retaliation, Plaintiffs suffered monetary damages and emotional injuries, trauma and other related damages.

WHEREFORE, Plaintiffs demand judgment against Defendants jointly, severally and/or in the alternative for damages as follows (i) compensatory damages per Plaintiff, based on their individual circumstances, and in an amount in excess of the jurisdictional limit of the Court, (ii)

exemplary, special and/or punitive damages in an amount to be determined by the ultimate trier of fact; and (iii) attorneys' fees, interest and costs of suit.

**Ninth Cause of Action –
Negligence Hiring, Retention & Supervision
(against Defendants Weingarten and UFT)**

210) Plaintiffs repeat and re-allege each of the allegations as set forth above in ¶¶ 15 to 92 as if the same were repeated fully and at length herein.

211) Defendants Weingarten and UFT hired and retained NYSUT lawyers to represent Plaintiffs who, Defendants Weingarten knew, or should have known, would not advise Plaintiffs of their rights, and were not to challenge Defendant DOE on the issues of NYS Education Law §§ 3020 and 3020-a requirements such as (i) right to impartial Arbitrators and (ii) right to adequate representation.

212) Defendants Weingarten and UFT knew that the lawyers they paid for had a propensity and personality that they would intimidate or frighten Plaintiffs into believing that instead of fighting the charges, they should make deals to accept as little punishment as was possible to get the procedures over as quickly as possible and so they could be returned to their jobs.

213) Defendants Weingarten and UFT hired and retained Defendant Betsy Combier to be its representative on the “Rubber Room Task Force”.

214) At the time Defendants Weingarten and UFT hired and retained Betsy Combier, they knew or should have known of (i) her lack of experience, (ii) her animosity toward others, (iii) her propensity to allow her ego and emotions to guide whatever actions she took or would take as their representative, (iv) her inexperience with regard to legal claims that she had made and lost against Defendants City, Klein, DOE and others, (v)

her propensity for use of her websites to further her personal goals rather than for legitimate and lawful purposes in furtherance of the interests of Plaintiffs, other tenured teachers and other teachers to whom Defendants Weingarten, Combier and UFT owed fiduciary duties and/or duty of fair representation.

215) As a direct result of Defendants Weingarten's and UFT's negligent hiring, retention and supervision of the NYSUT attorneys and Defendant Combier, Plaintiffs were threatened and harassed, and the instant claims were damaged, thereby causing Plaintiffs to suffer monetary damages and emotional injuries, trauma and other related damages.

WHEREFORE, Plaintiffs demand judgment against Defendants jointly severally and/or in the alternative for damages as follows (i) compensatory damages per Plaintiff, based on their individual circumstances, and in an amount in excess of the jurisdictional limit of the Court, (ii) exemplary, special and/or punitive damages in an amount to be determined by the ultimate trier of fact; and (iii) attorneys' fees, interest and costs of suit.

**Tenth Cause of Action –
Misrepresentation, Fraud & Conspiracy to Violate Plaintiffs Rights⁴**

216) Plaintiffs repeat and re-allege each of the allegations as set forth above in ¶¶ 15 to 92 as if the same were repeated fully and at length herein.

217) Defendants NYC, Bloomberg, DOE, Klein, UFT and Weingarten associated with one another in The Plan, pursuant to which they intended to violate Plaintiffs rights.

218) The Plan by Defendants NYC, Bloomberg, DOE, Klein, UFT and Weingarten

⁴ Plaintiffs' original complaint included a Cause of Action based upon alleged RICO violations. The RICO Cause of Action was not included in Plaintiffs' Amended Complaint dated February 22, 2008. Based on the documents, deposition testimony and objective facts that will be produced by Defendants in discovery, Plaintiffs believe that there may be a reasonable basis to seek the Court's permission pursuant to FRCP 15 to amend the complaint one more time to include the RICO Cause of Action.

was designed to and did in fact:

- a. violate Plaintiffs' constitutionally protected rights to free speech, association, property and due process as they are granted and guaranteed by the 1st, 5th and 14th Amendments;
 - b. violate Plaintiffs' Civil Rights to freedom of speech and associations and due process as they are granted and guaranteed by 28 USC § 1963;
 - c. violate Plaintiffs' rights and protections against retaliation, discrimination, harassment and other unlawful acts as they are granted and guaranteed by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.;
 - d. violate Plaintiffs' rights and protections to speak out and challenge Union management and Union policies as those rights are granted and guaranteed by the 29 U.S.C. §§ 411 Sec. 101.a (2), (4) and (5), §§ 529 Sec. 609, §§ 415 Sec. 105, and §§ 439 Sec. 209.b – the Labor Relations Management and Reporting Act; and
 - e. violate Plaintiffs' rights and protections as granted and guaranteed under the Federal Whistleblower Protection Act;
- 219) The Plan also included the “targeting” of Plaintiffs and others who:
- a) achieved a high pay and benefits level;
 - b) reported instances of unlawful activities by other persons within the NYC public school system;
 - c) sought to expose and/or report instances and/or conditions within the NYC public school system that endangered the safety and well-being of students,

Plaintiffs and other teachers;

- d) challenged, questioned, reported, cooperated in investigations and/or spoke publicly about conditions and policies in the NYC public school system;
 - e) challenged, questioned, reported, cooperated in investigations and/or spoke publicly about conditions in the “Rubber Rooms” to which Plaintiffs and other teachers were confined;
 - f) challenged, questioned, reported, cooperated in investigations and/or spoke publicly about what they believed to be improper policies or management decisions in the Defendant UFT;
 - g) demanded that Defendants DOE and UFT comply with and respect their obligations to Plaintiffs to protect their due process, constitutional and contractual rights; and
 - h) sought to blow the whistle and avail themselves of the protections of the Federal and NYS Whistleblower acts as they exercise their constitutional rights to act as “whistle blowers” regarding DOE and UFT misconduct.
- 220) The Plan also involved Defendants conspiring with one another to, among other things:
- a) force the targeted teachers to wait in the Rubber Rooms without due process and

the chance to clear their names and be restored to their classrooms

- b) coerce, harass, intimidate and terrorize the “targeted” teachers so that they would be fearful for their personal and professional well-being, so that they would be “forced” to retire, resign or accept deals involving ruinous fines or termination.
- 221) The Plan involved Defendants’ use of the US mail and used electronic means, including but not limited to telephone, faxes and emails, by which to communicate their objectives, agree upon implementation, and agree upon which Defendant and/or its representatives would carry out which part of The Plan.
- 222) In furtherance of The Plan, during the period from 2002 to the present, Defendants Bloomberg, NYC, Klein and DOE and/or their agents, servants and/or employees conspired with one another to create and distribute manuals, instructions, directions and confidential materials through which the targeting of Plaintiffs and others was to be implemented and which materials originated with and/or were exchanged between them and DOE agents, servants and/or employees.
- 223) In furtherance of The Plan, during the period from 2002 to the present, Defendants UFT and Weingarten and/or their agents, servants and/or employees conspired with one another to create and distribute manuals, instructions, directions and confidential materials through which Defendants UFT and Weingarten supported the targeting of Plaintiffs and other teachers, or failed or refused to act to protect Plaintiffs and other teachers who were being targeted.
- 224) Defendants Bloomberg, NYC, Klein, DOE, Weingarten and/or UFT had the duty to (i) protect the Plaintiffs' due process, statutory, constitutional and/or contractual rights, (ii) comply with NYS Education Law §§ 3020 and 3020-a, (iii) provide impartial

Arbitrators to consider allegations of incompetence and/or misconduct upon which or for which Defendant DOE sought to discipline Plaintiffs, and (iv) provide prompt hearings related to allegations of incompetence and/or misconduct upon which or for which Defendants sought to discipline Plaintiffs.

225) During the period from 2002 to present, Defendants Bloomberg, NYC, Klein, DOE, UFT Weingarten and/or Combiere made material misrepresentations of fact about, among other things, Article 21G, NYS Education Law §§ 3020 and 3020-a, the arbitration panel and Plaintiffs' rights.

226) At the time Defendants Bloomberg, NYC, Klein, DOE, UFT Weingarten and/or Combiere made the aforesaid material misrepresentations of fact about, among other things, Article 21G, NYS Education Law §§ 3020 and 3020-a, the Arbitrators or the arbitration panel and Plaintiffs' rights, they knew them to be false.

227) The purpose for making the aforesaid false statements was, among other things, to:

- a) deceive Plaintiffs and other tenured teachers into participating in the 3020a hearings;
- b) deceive Plaintiffs and other tenured teachers about their rights under Article 21G and NYS Education Law §§3020 and 3020a;
- c) force plaintiffs and other teachers into Rubber Rooms;
- d) subject Plaintiffs to undue financial, physical and emotional stresses; and
- e) coerced Plaintiffs and other teachers to stipulate to resignation, retirement, suspension without pay, and/or arbitrary and capricious and ruinous fines.

- 228) Defendants made these misrepresentations for the purpose of inducing Plaintiffs to rely upon the statements and to refrain from insisting upon their constitutional, due process and contractual rights.
- 229) To their detriment, Plaintiffs and other teachers relied upon these statements in the belief that they were true.
- 230) As a result of the superior economic, political, labor and emotional pressures that Defendants exerted on Plaintiffs, Plaintiffs were unable to discover that Defendants aforesaid statements were false and designed to cause harm to Plaintiffs.
- 231) As a result of the concealment of evidence by Defendants, Plaintiffs were unable to discover that Defendants' aforesaid statements were false and/or designed to cause harm to Plaintiffs.
- 232) The aforesaid misrepresentations, fraud and conspiracy was also intended to coerce Plaintiffs into 3020-a hearings in which they did not have impartial Arbitrators, had inadequate or no legal representation, and were forced to await hearings for months and years, during which time they suffered severe financial, physical and emotional damages.
- 233) Defendants Bloomberg, NYC, Klein, DOE, Weingarten, UFT and/or Combier also sought to conspire to deprive Plaintiffs, or allow Plaintiffs to be deprived, of their constitutional, due process, statutory and/or contractual rights.
- 234) The aforesaid misrepresentations, fraud and conspiracy, were also designed to interfere with and/or deprive Plaintiffs of:

- a) the right to a three person panel to consider any allegations of incompetence or poor pedagogical judgment upon which or for which Defendant DOE sought to discipline Plaintiffs; and
 - b) the right to 3020-a hearings rather than probable cause hearings related to allegations of “serious” misconduct upon which or for which Defendant DOE sought to discipline Plaintiffs by suspending them without pay.
- 235) As part of the aforesaid misrepresentations, fraud and conspiracy, Defendants empowered and/or implemented a “Rotational Panel” of expensive Arbitrators who were hand-selected and vetted and who were placed in their positions so that they would give the appearance of due process, when in fact they were not impartial, and were placed in their positions to do the bidding of Defendants Bloomberg, City, Klein, DOE, Weingarten and UFT to, among other things:
- a) improperly, arbitrarily and capriciously impose discipline, including termination, suspension without pay, and ruinous fines, that is accomplished through the denial of Plaintiffs’ due process rights as they face allegations of incompetence or misconduct;
 - b) selectively targeting and pushing Plaintiffs into hearings related to allegations of incompetence or misconduct upon which or for which Defendant DOE sought to discipline Plaintiffs; and
 - c) interfering with, and/or depriving Plaintiffs of, their right to fair and impartial consideration of applications, subpoenaed testimony, requests for extensions of time, adequate representation by or substitution of counsel, and fair hearings related to allegations of incompetence or misconduct upon which or for which Defendant DOE sought to discipline Plaintiffs.

- 236) Defendants also conspired with one another to violate Plaintiffs’ and other tenured teachers’ due process and contractual rights, to facilitate the “reassignment” of Plaintiffs and other tenured teachers to the Rubber Rooms, and/or to facilitate disciplinary letters to be placed in Plaintiffs’ files without fair and impartial review and/or investigation of the allegations, in contravention of NYS Education Law §§ 3020 and 3020-a and NYS Supreme Court decisions such as Sticco vs. Board of Education.
- 237) At the time Defendants Bloomberg, City, Klein, DOE, Weingarten and UFT conspired with one another to place and/or make charges against Plaintiffs, they knew they were violating Plaintiffs’ due process and contractual rights to facilitate the “reassignment” of Plaintiffs and other teachers to the Rubbers Rooms and/or to facilitate disciplinary letters to be placed in Plaintiffs’ files without fair and impartial review and/or investigation of the allegations.
- 238) The fraud and conspiracy to defraud Plaintiffs was done with actual and/or constructive knowledge that Defendants Bloomberg, City, Klein, DOE, Weingarten and UFT were depriving Plaintiffs of their constitutional, due process, statutory and/or contractual rights.
- 239) At the time Defendants Bloomberg, City, Klein, DOE, Weingarten and UFT conspired with one another, they did so knowing that they were not entitled to deprive Plaintiffs of the aforesaid constitutional, due process, statutory and/or contractual rights.
- 240) As a direct and proximate result of Defendants’ aforesaid misrepresentations, fraud and conspiracy to violate Plaintiffs rights, Plaintiffs suffered monetary and other damages.

WHEREFORE, Plaintiffs demand judgment against Defendants jointly, severally and/or in the alternative for damages as follows (i) compensatory damages per Plaintiff, based on their individual circumstances, and in an amount in excess of the jurisdictional limit of the Court, (ii) exemplary, special and/or punitive damages in an amount to be determined by the ultimate trier of fact; and (iii) attorneys' fees, interest and costs of suit.

**Eleventh Cause of Action –
False Confinement and Resulting Physical & Emotional Injuries
(against Defendants Bloomberg, City, Klein and DOE)**

- 241) Plaintiffs repeat and re-allege each of the allegations as set forth above in ¶¶ 15 to 92 as if the same were repeated fully and at length herein.
- 242) The Rubber Rooms, closets, empty windowless offices or other small spaces are not workplaces.
- 243) The Rubber Rooms, closets, empty windowless offices or other small spaces are locations where Plaintiffs and other teachers are confined, guarded and their movements restricted.
- 244) Plaintiffs and other teachers are not permitted to come and go from the Rubber Rooms, closets, empty windowless offices or other small spaces as they please.
- 245) Plaintiffs and other teachers are not permitted to meet and/or freely move about the Rubber Rooms, closets, empty windowless offices or other small spaces.
- 246) The Rubber Rooms do not meet the relevant and applicable safety, fire and health standards and are in fact unsafe and dangerous facilities.
- 247) Defendants Bloomberg, City, Klein and DOE are aware of the safety, fire and health violations in the Rubber Rooms and knowingly subject Plaintiffs and other teachers to unsafe and dangerous conditions.

248) Defendants Bloomberg's, City's, Klein's and DOE's use of the Rubber Rooms, closets, empty windowless offices or other small spaces to confine Plaintiffs is/was improper.

249) Plaintiffs' and other teachers' relocation and reassignment to the Rubber Rooms, closets, empty windowless offices or other small spaces constitutes unlawful confinement and/or false imprisonment.

250) As a direct and proximate result of confinement in the Rubber Rooms, closets, empty windowless offices or other small spaces, Plaintiffs suffered monetary, physical, emotional and other damages.

WHEREFORE, Plaintiffs demand judgment against Defendants jointly, severally and/or in the alternative for damages as follows (i) compensatory damages per Plaintiff, based on their individual circumstances, and in an amount in excess of the jurisdictional limit of the Court, (ii) exemplary, special and/or punitive damages in an amount to be determined by the ultimate trier of fact; and (iii) attorneys' fees, interest and costs of suit.

**Twelfth Cause of Action -
Declaratory Judgment Pursuant 28 USC § 2201 et seq.**

251) Plaintiffs repeat and re-allege each of the allegations as set forth above in ¶¶ 15 to 92 as if the same were repeated fully and at length herein.

252) Pursuant to 28 USC 2201 et seq. (hereinafter "The Declaratory Judgment Act"):

... In a case of actual controversy within its jurisdiction ... upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.

253) The issues presented as they relate to Article 21G and certain of the due process violations, certain of the acts of retaliation and harassments, certain acts as related to the conduct of the 3020-a hearings against Plaintiffs and the withdrawal of Plaintiffs' counsel based upon a purported "conflict of interest" declared by Defendant UFT, the unlawful confinement in the Rubber Rooms and

- a) 3020-a hearings convened in violation of NYS Education Law §§ 3020 and 3020-a;
- b) imposition of decisions, fines, suspension without pay, termination and/or other penalties resulting from hearings that were convened in violation of NYS Education Law §§ 3020 and 3020-a;
- c) coercion to enter into stipulations involving resignation, retirement, suspension without pay, and/or arbitrary, capricious and ruinous fine;
- d) retaliation for attempting to exercise their 1st Amendment rights and freedoms related to informing others, assisting others and getting assistance from others, in relation to the violation of their constitutional and contractual rights, hostile work environment, false confinement, and other abuses within the City public school system, which are having a chilling affect on Plaintiffs freedom of speech and association; and
- e) threats that if they do not withdraw from this lawsuit they will be subjected to further damages, including termination,

all are ripe for Declaratory Judgment.

WHEREFORE, Plaintiffs request Declaratory Judgment that (i) Article 21G is void, (ii) the 3020-a hearings as conducted by the DOE violate Plaintiffs' due process rights, (iii) the

forcing of Plaintiffs into hearings without counsel violates their due process rights, (iv) the retaliation and harassment of Plaintiffs by Defendants violate their due process, constitutional and contractual rights, (v) violate the 1st, 5th & 14th Amendments, violate anti-retaliation provisions of Title VII, (vi) violate the Federal Whistleblower Protection Act, (vii) violate the Labor Management Disclosure and Reporting Act, and (viii) the Rubber Rooms are dangerous and hazardous and should be immediately closed.

Dated: June 2, 2008
New York, NY

/s/ Edward D. Fagan (electronically signed)
Edward D. Fagan Esq. (EF-4125)
5 Penn Plaza, 23rd Floor
New York, NY 10001
Tel. (646) 378-2225
Fax (888) 845-8593
Email: faganlawintl@aim.com