SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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In the Matter of the Petition of

ANDRENE PAUL AS PROPOSED ADMINISTRATOR OF THE ESTATES OF KAREN STEWART-FRANCIS DECEASED AND K. F. DECEASED AND INDIVIDUALLY; ELAINE STEWART AS PROPOSED ADMINISTRATOR OF THE ESTATE OF SHAWNTAY YOUNG DECEASED AND INDIVIDUALLY; KERRY ANN BARTLEY AS PROPOSED ADMINISTRATOR OF THE ESTATE OF HOLT FRANCIS DECEASED; HOWARD STEWART; ETHEL STEWART; CARMALETA SEWELL; ERNESTO SEWELL; CARMALETA SEWELL AS MOTHER AND NATURAL GUARDIAN OF J. S.; KADIAN BLAKE; GAWAYNE BLAKE; AND KADIAN BLAKE AS MOTHER AND NATURAL GUARDIAN OF J. B.

Petitioner(s),

- against -

THE CITY OF NEW YORK, THE FIRE DEPARTMENT OF THE CITY OF NEW YORK, THE NEW YORK CITY HOUSING DEVELOPMENT AND PRESERVATION, NEW YORK CITY DEPARTMENT OF BUILDINGS, THE NEW YORK CITY DEPARTMENT OF SANITATION, CONSOLIDATED EDISON, INC., GENERAL ELECTRIC COMPANY and THE NEW YORK CITY ADMINISTRATION OF CHILDREN'S SERVICES,

Respondents(s).

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VERIFIED PETITION

Index No:

Robert Vilensky, an attorney duly admitted to practice law in the courts of the State of New York, hereby affirms that the following is true under penalty of perjury, pursuant to CPLR § 2016.

PRELIMINARY STATEMENT

This proceeding is brought under Section 3102(c) of the New York Civil Practice Law and Rules (CPLR) and seeks, inter alia, pre-action discovery from the Respondents, THE CITY OF NEW YORK, THE FIRE DEPARTMENT OF THE CITY OF NEW YORK, THE NEW YORK CITY HOUSING DEVELOPMENT AND PRESERVATION, NEW YORK CITY DEPARTMENT OF BUILDINGS, THE NEW YORK CITY DEPARTMENT OF SANITATION, CONSOLIDATED EDISON, INC., GENERAL ELECTRIC COMPANY and THE NEW YORK CITY ADMINISTRATION OF CHILDREN'S SERVICES. Petitioners are seeking pre-action discovery as well as to preserve information necessary to the bringing of an action against THE CITY OF NEW YORK, THE FIRE DEPARTMENT OF THE CITY OF NEW YORK, THE NEW YORK CITY HOUSING DEVELOPMENT AND PRESERVATION, NEW YORK CITY DEPARTMENT OF BUILDINGS, THE NEW YORK CITY DEPARTMENT OF SANITATION, CONSOLIDATED EDISON, INC., GENERAL ELECTRIC COMPANY and THE NEW YORK CITY ADMINISTRATION OF CHILDREN'S SERVICES and others whose identities are presently unknown.

There are various short statutes of limitations for certain claims against municipal defendants and for certain acts by individuals that were involved in the underlying matter. Municipalities are notorious for delays in discovery, often failing to produce discovery for years. This historically prejudices a plaintiff's ability to obtain necessary discovery to prosecute their case. In this matter, it will have the added prejudice of limiting the ability of the Petitioners to timely identify the correct parties to a lawsuit, making the within Petition all the more necessary. When litigating against municipal defendants, especially against police departments, who may

claim on-going investigations, etc., it can take years to identify the correct individuals and different departments that are responsible for the various acts and/or failures to act which caused or contributed to the underlying incident in question.

In this matter, the within Petitioners are innocent, aggrieved family members and the Petition herein is not only necessary but appropriate under the law considering that petitioners have only a short time to bring their claims. Further, petitioners will suffer severe prejudice if evidence is not preserved and they are not able to conduct timely inspections of the evidence sought herein before conditions are destroyed, lost, or altered.

STATEMENTS OF FACTS

The facts herein are based upon interviews with witnesses, news reports and limited information provided by the New York City Fire Department are as follows: On December 29, 2017, at approximately 6:15 pm a building fire occurred at the premises located at 2363 Prospect Avenue, Bronx, New York. The fire started in a first floor apartment and eventually spread throughout the building, killing 13 people and injuring and displacing many others. Upon information and belief, the respondents had issued violations against the owners of the building for the owner's failure to properly ensure and require that smoke detectors were in the apartments in the building. Respondents had further failed to make sure that such smoke detectors had in fact been replaced and were operating. Further, upon information and belief, the respondents failed to properly inspect and/or enforce statutes, codes, and/or regulations relative to emergency lighting, hallway smoke detection, self-closing devices on doors, exit signs, exit diagrams, and/or resident instructions for exiting and/or fire escape use in the event of a fire. Also upon information and belief, upon arrival to the building, the firefighters were unable to quickly obtain an adequate water supply due to frozen and/or inoperable fire hydrants. Such

inoperable and/or frozen fire hydrants caused the firefighters to lose valuable time trying to get such hydrants to fully discharge water and caused loss of precious time by having to look for and find fire hydrants which were not frozen and were further away, causing and allowing the fire to continue to spread.

Upon information and belief said fire was started by an unnamed 3 year old child who resided in one of the apartments on the first floor. More specifically, it is believed that just prior to the fire, the 3 year old was playing with burners on the apartment's stove. Fire Department of New York Commissioner Daniel Nigro was reported as knowing that the child had a history of playing with the stove burners. Upon information and belief, the mother of said child was a person known to the authorities and to the Administration for Child Services Department for not watching and taking care of her child. The claimants contend that had said Administration for Child Services Department and/or other City agencies followed up on complaints and taken the child away from the mother, as they should have, said fire would not have occurred.

In Petitioner's investigation of the matter herein, your affirmant learned that several dumpsters or containers of trash and fire debris were removed from the premises in the days following the fire. Your affirmant further learned that a gas meter from the apartment where the fire started was removed from the premises. Additionally, your affirmant learned that the apartment where the fire allegedly started had been sealed for investigation but then unsealed and the scene potentially tainted by further removal of evidence related to the manner in which the fire started and spread. Finally, your affirmant has learned that a representative from General Electric Company went to the premises to examine the stove in the first floor apartment where the fire allegedly started. Your affirmant also learned that the stove was removed from the premises by a person believed to be a representative from General Electric Company.

Petitioners have filed a Notice of Claim with the City of New York, The New York City Fire Department, The Department of Housing Preservation and Development and the Administration of Children's Services. (Exhibit A) Petitioners also recently served preservation letters upon the Respondents and every department or agency of the City of New York which are likely to have relevant records pertaining to the within incident. (Exhibit B) Petitioners have also sent FOIL requests asking for the materials related to the building, fire, and debris removal from the premises after the fire. (Exhibit C) Petitioners are requesting the Court Order the preservation of evidence in this case and not force Petitioners to rely upon Respondents complying with foresaid letters or FOIL requests.

In light of the fact that the Petitioners have a limited amount of time to bring an action and that evidence in this action must be preserved and/or inspected before evidence is lost, removed or altered, the instant Petition, pursuant to CPLR 3102(c) is necessary to aid petitioners in bringing the lawsuit, framing the complaint, determining the proper parties to the lawsuit and preserving relevant evident. It should be noted that while the Respondents were only recently served with letters to preserve evidence, Petitioners do not believe that a timely response will be provided without a Court Order.

ARGUMENT

CPLR 3102(c) provides a mechanism for obtaining pre-action discovery in three scenarios: (1) to aid in bringing an action; (2) to preserve testimony or evidence which may otherwise be lost; and (3) to obtain disclosure in anticipation of arbitration. CPLR 3102(c) provides as follows:

> (c) Before an action is commenced, disclosure to aid in bringing an action, to preserve information or to aid in arbitration, may be obtained, but only by court order. The court may appoint a referee to take testimony.

Here, Petitioners are requesting pre-action discovery to both aid in bringing an action and to preserve testimony or evidence which may otherwise be lost or destroyed. In this matter, the petitioner is asking that the City of New York, the Fire Department of the City of New York, the New York City Department of Buildings, New York City Department of Sanitation, New York City Housing Development and Preservation, Consolidated Edison, and the City of New York Administration of Children's Services preserve evidence which could potentially subject them to liability and a Court Order is imperative to protect the Petitioners' rights. Additionally, Petitioners' experts should be permitted to examine the evidence in the Respondents' possession. Should this evidence inexplicably go missing, the Petitioners will be irreparably harmed. At this time, other than potential claims of privacy for files maintained by the Administration of Children's Services, there is no reason to withhold or delay providing the evidence sought herein. It has been four weeks since the fire and Petitioners herein fear that Respondents will claim that repairs or remediation must be undertaken to prevent further injuries or that evidence was lost or otherwise no longer available, all frustrating the Petitioners' ability to timely obtain the evidence regarding the premises, the fire, the investigation or persons involved in setting or otherwise allowing the fire to be set and spread.

In the Matter of the Estate of Sidney W. Pelley, Deceased, *43 Misc.2d 1082, 252 N.Y.S.2d 944* (Sup. Crt. 1964) the court opined: "This court interprets the phrase, 'to aid in bringing an action,' (CPLR 3102, subd. [c]) to mean for the purpose of (1) determining the identity of defendants against whom a cause of action lies, (2) discovering the precise facts upon which the cause of action is based, in order to frame pleadings, (3) the determination as to what

form the cause of action should take and (4) the perpetuation of testimony."

CPLR §3102(c) permits a potential plaintiff to determine who should be named as a defendant in the prospective action. In doing so, the provision avoids the waste of judicial and parties' resources that result when a plaintiff discovers after commencement of the action that he or she should move to add or delete defendants. In aiding the proper naming of defendants, the provision also serves to avoid the burdens of imposing litigation on improperly named defendants. Here it is clear that the identity of the proper defendants to be included in the lawsuit is certainly material and necessary to the instant petitioners' viable claim.

Pre-action disclosure is available should the movant demonstrate that facts constituting a viable claim are present, and that additional information is necessary to identify the correct parties or the form the action must take. See Houlihan-Parnes Realtors v. Cantor Fitzgerald & Co., Inc., 58 A.D.2d 629, 395 N.Y.S.2d 684 (2nd Dept. 1977) (an application for pre-lawsuit disclosure requires the existence of a valid claim to prevent the initiation of troublesome and expensive procedures based upon a mere suspicion which may annoy or intrude upon an innocent party); In Re Pelley, 43 Misc.2d 1082, 252 N.Y.S.2d 944 (Supreme Court Nassau County, 1964), the Court held that CPLR 3102(c) contemplates those situations in which the movant has a cause of action against the defendant, but needs the court's assistance to determine the form of the action or the parties to be sued.

In this action, the within pre-action motion to preserve evidence is necessary to prevent the loss and destruction of evidence related to the December 28, 2017 fire at 2363 Prospect Avenue, Bronx, New York. A motion to preserve evidence is a proper method upon which evidence can be identified and preserved. Uddin v. New York City Transit Authority, 27 A.D.3d 265, 810 N.Y.S.2d 198 (1st Dept. 2006). The court herein should thus exercise its

discretion and grant petitioner's motion for pre-action discovery to preserve evidence in order to assist the petitioners in framing their pleadings and for the imminent action that the petitioners seek to commence. Barillaro v. City of New York, 53 Misc. 3d 307, 38 N.Y.S.3d 697 (Bx. Cty. 2016) *citing* Thomas v. New York City Transit Police Department, 91 A.D.2d 898, 457 N.Y.S.2d 518 (1st Dept. 1983) and Wien & Malkin, LLP v. Wichman, 255 A.D.2d 244, 680 N.Y.S.2d 250 (1st Dept. 1998).

A movant for pre-action discovery must present facts showing or allege facts that likely state a prima facie cause of action in order for the movant to be granted the authority to have pre-action disclosure in order to aid it in bringing its action. Wien & Malkin L.L.P., 255 A.D.2d 244, 680 N.Y.S.2d 250 (1st Dept. 1998). The language used by the New York courts in describing this requirement differs from Department to Department. For example, the Third Department stated that the petitioner must "show the existence of a prima facie cause of action," Ero v. Graystone Materials, Inc., 252 A.D.2d 812, 814, 676 N.Y.S.2d 707 (3rd Dept. 1998), while the Second Department stated that the petitioner must have "alleged sufficient facts to establish a prima facie case." Stewart v. New York City Transit Authority, 112 A.D.2d 939, 940, 492 N.Y.S.2d 459 (2nd Dept. 1985).

In determining whether the movant has shown or stated a prima facie cause of action, the facts alleged must "be considered in the aspect most favorable to [the movant] and ... [the movant] is entitled to the benefit of every favorable inference which reasonably can be drawn from [the facts alleged]." Ero, *supra*. Once the movant has stated a prima facie cause of action, thus meeting the threshold and most important requirement, intrusion upon the party from whom discovery is sought is no longer a primary concern. Stewart v. New York City Transit Authority, 112 A.D.2d 939, 492 N.Y.S.2d 459 (2nd Dept. 1985). Rather, pre-action discovery should be

granted to allow a party to preserve evidence and frame a complaint, including by seeking to determine the "identities of the parties and what form or forms the action should take." Id.; see also Houlihan-Parnes, Realtors v. Cantor, Fitzgerald & Co., Inc., 58 A.D.2d 629, 630, 395 N.Y.S.2d 684 (2nd Dept. 1977); Bergan v. Sullivan Brothers Wood Products of Keeseville, Inc., 77 A.D.2d 723, 724,430 N.Y.S.2d 422 (3rd Dept., 1980).

It is error for a court to deny an application for pre-action discovery where the Petitioner has stated a prima facie cause of action, and seeks pre-action discovery in order to assist in framing its complaint, by determining what form or forms the action should take or by determining the precise facts upon which a cause of action lies, or to assist it in identifying who should be named as a defendant. Hughes v. Witco Corp.- Chempreme Division, 175 A.D.2d 486, 488, 572 N.Y.S.2d 531 (3rd Dept, 1991); Rosenberg v. Brooklyn Union Gas Co., 80 A.D.2d 834, 436 N.Y.S.2d 339 (2nd Dept, 1981); Teall v. Roeser, 206 A.D. 371, 373 201 N.Y.S 280 (4th Dept 1923) (post-summons but pre-complaint discovery granted to plaintiff.)

Here, it is clear that Petitioners have alleged facts sufficient to form a prima facie case. This is not a case where Petitioner is uncertain if a meritorious cause of action exists. Petitioners, have multiple valid claims against the Respondents stemming from the December 28, 2017 fire at 2363 Prospect Avenue, Bronx, New York. In light of the facts alleged herein and that the Respondents will more likely than not delay in providing a response and otherwise potentially lose relevant evidence, the relief Petitioned for herein should be granted.

DEPOSITION

Included in the pre-action discovery to uncover the identity of the proper defendants available to Petitioner is an examination of some prospective party(s) to discover the necessary

parties to the action. *See* Stewart v. Socony Vacuum Oil Co., 3 A.D.2d 582, 163 N.Y.S.2d 22 (3rd Dept. 1957) (to entitle a party to an examination of some other party in order to frame a complaint something actionable must be demonstrated); Houlihan-Parnes Realtors v. Cantor Fitzgerald & Co., Inc., 58 A.D.2d 629, 395 N.Y.S.2d 684 (2nd Dept. 1977). Here, Petitioners have satisfied the requirements necessary to obtain said disclosure.

The need to identify a potential defendant in an action is a common reason to invoke CPLR 3102[c], and such applications are routinely granted: "In all judicial departments in New York for many years, examinations have been permitted before the commencement of an action to determine the identity of prospective parties before suit." Eastman Kodak Co. v. Fotomat Corp., 62 Misc 2d 1025, 1027 [NY Sup. Ct. 1970]. See also, In re Houlihan-Parnes Realtors, 58 AD2d 629 [2d Dept. 1977]; Weinstein-Korn-Miller, New York Civil Practice ¶ 3102.12 [2d ed. *7 2005]; and Connors, Practice Commentaries, McKinney's Consolidated Laws of N.Y., Book 7B CPLR C3102:4, at 4 94.

There can be no dispute that CPLR § 3102 [c] serves several salutary purposes. It permits a would-be plaintiff to determine who should be named as defendants in the prospective action and thus avoiding the waste of judicial and parties' resources that result when a plaintiff discovers after commencement of the action that he or she should move to add or delete defendants. The statute also avoids the imposition of litigation on improperly named defendants.

WHAT FORM THE ACTION SHOULD TAKE

Once Petitioner has satisfied the threshold of alleging facts that state a cause of action, pre-action discovery should be granted to allow the Petitioner to determine what form or forms the action should take, e.g., which causes of action should be asserted and which forms of relief

demanded. In Houlihan-Parnes, *supra*, the Petitioner alleged that the Respondents wrongfully denied him a commission to which he was entitled. The Appellate Division held that he was entitled to pre-action discovery to determine if causes of action for fraud, deceit, and intentional interference with contractual rights were appropriate in addition to a cause of action for the reasonable value of his services. *See also,* Varney v. Edward S. Gordon Co., 126 AD2d 953, 954 (4th Dept. 1987) (holding that petitioner was entitled to pre-action discovery to determine what form the action should take).

Here, it is important for Petitioners to be granted pre-action disclosure as it is unclear what caused the fire, if a fire hydrant was frozen, the condition of the building, the condition of the gas lines, and whether or not the building was maintained in accordance with building codes and ordinances. As stated herein, there are numerous claims that exist against the City of New York and the other respondents resulting from the December 28, 2017 fire at 2363 Prospect Avenue, Bronx, New York. However, outside of the facts herein based largely upon news reports, nothing else is clear or certain. Therefore, Petitioners cannot be sure as to exactly what causes of action are available to them, nor are they aware of all the proper parties to any potential lawsuit. Further, "a potential plaintiff is entitled to pre-action disclosure ... to determine the precise facts upon which a cause of action lies in order to frame pleadings ..." Manufacturers and Traders Trust Co. v. Bonner, 84 A.D.2d 678, 679, 446 N.Y.S.2d 631 (4th Dept. 1981) [italics added]; see also Public Relations Society of America, Inc. v. Road Runner High Speed Online, 8 Misc.3d 820, 822, 799 N.Y.S.2d 847 (Sup. Ct. N.Y. Co. 2005) (holding pre-action discovery is appropriate to obtain facts outside the potential plaintiffs' knowledge in order to frame the complaint).

Here, pre-action discovery is necessary to assist Petitioners in framing a complaint by aiding in determining what form the action should take, specifically in determining, which causes of action Petitioners should allege against which parties.

IDENTITY OF POTENTIAL DEFENDANTS

The courts of this State have consistently held that in addition to framing the complaint and the causes of action therein, pre-action discovery is available to determine who the defendants should be. Hughes v. Witco-Chempreme Division, 175 A.D.2d at 488; Stewart, 112 A.D.2d at 940; Bergan, 77 A.D.2d at 724; *see also* Alexander .v Spanierman Gallery, LLC, A.D.3d 411, 822 N.Y.S.2d 506 (1st Dept. 2006) (pre-action disclosure of identity of purchaser of sculpture stolen from home of petitioner was proper as "such person or entity [is] a potential defendant in a prospective action by petitioner to, inter alia, replevy the artwork").

Pre-action discovery is appropriate in order for a potential plaintiff to "determine the relationship between [the potential defendants], so as to ascertain the proper party to sue." Bergan, 77 A.D.2d at 724. Here, there are multiple unidentified parties that are alleged herein to be responsible for multiple acts of negligence and violations of the rights of the Petitioners. Numerous unidentified building and fire investigators were at the scene, different unidentified employees in different capacities have been alleged herein to have committed various tortious acts as well as violating the Petitioners' rights prior to the fire.

Additionally, pre-action discovery will assist the Petitioners in identifying the individuals who would be proper party defendants, since both defendants may claim that their employees acted outside their scope of authority. Just as in Bergan, *supra*, pre-action discovery here will enable Petitioners to determine the relationship between the currently known potential

defendants and currently unidentified potential defendants who were involved in the inspection, gas supply, and condition of the premises, both before and after the December 28, 2017 fire at 2363 Prospect Avenue, Bronx, New York;

PRESERVE INFORMATION

Most importantly, in addition to seeking pre-action discovery, Petitioners are seeking an Order from the Court Ordering the Respondents to preserve discovery in this case. As stated above, CPLR 3102(c) provides a mechanism to preserve testimony or evidence before an action is commenced.

The need to preserve information is not limited to testimony, but also for documents, audio, video and other physical evidence. Preservation is not only of testimony, but may be directed at enjoining a potential defendant or other person from disposing of physical evidence. Spraggins v. Current Cab Corp., 127 Misc. 2d 774, 487 N.Y.S.2d 292 (Sup. Ct. 1985) (preliminary injunction enjoining cab corporation from disposing of or altering taxicab in which passenger was riding at time passenger was allegedly injured). "[I]t is particularly appropriate in a civil rights case . . . for the Court to exercise its discretion to grant pre-action disclosure to preserve information that is necessary for the protection of the petitioner's rights. O'Grady v. City of New York, 164 Misc.2d 171, 624 N.Y.S.2d 337 (1995); See also Thomas v. New York City Transit Police Department, 91 A.D.2d 898, 457 N.Y.S.2d 518 (1st Dept. 1983); Application of Sarlo, 52 Misc.2d 547, 276 N.Y.S.2d 41 (1966).

In this action, Petitioners have learned that fire debris, pieces of the building and gas lines and/or meters have been removed from the building. Petitioner has also learned that previously sealed portions of the building where the fire allegedly started were unsealed and may have been

tampered with. Thus, to prevent further possible loss or alteration of evidence, pre-action disclosure is necessary to preserve evidence.

EXPERT'S INSPECTION

As stated supra, if there is a valid concern that when the item will be destroyed or discarded, the plaintiff may invoke CPLR 3102(c) to order preservation of the item. Spraggins v. Current Cab Corp., *supra; see also* Matter of Gonzalez v. UPS, N.Y.L.J. May 11, 2006, Col 3, Sup. Ct. Nassau County. (Court permits inspection of conveyor belt at UPS facility and orders that machine's operating manuals and safety manuals be sent to Court for in camera inspection.) Here there is a valid concern that evidence necessary to Petitioners' future actions are in the possession of the future defendants. Approximately 4 weeks have passed since the fire and a cause of the fire has not been confirmed. It is incumbent on the Petitioners to request that their experts examine the physical evidence maintained by the defendants herein before it is "accidently" disposed of. Should that happen, the Petitioners will be unable to prove some or all of their claims. Therefore, as the Petitioners are the aggrieved parties and the Respondents have already started an investigation which had altered and moved evidence, the only logical conclusion is that an ongoing investigation by the respondents will only frustrate the Petitioners' ability to examine the evidence which resulted in many deaths and injuries complained of herein. As the evidence is in the exclusive possession of the Respondents and they will be defendants in the future action it would be fair and equitable for the Court to Order the Respondents to permit inspection of the evidence in this matter by the Petitioners' representatives and their experts.

Petitioners have not made a prior similar application.

WHEREFORE, Petitioners respectfully request this Court issue a Judgment:

1. Pursuant to CPLR 3102(c) directing the Respondents to produce witnesses for deposition with personal knowledge to aid Petitioners in bringing an action, to help frame the complaint and to identify the proper parties to any potential future lawsuit regarding the December 28, 2017 fire at 2363 Prospect Avenue, Bronx, New York,

2. Ordering the Respondents to preserve all evidence, including but not limited to, documents, audio and video recordings and physical evidence regarding the December 28, 2017 fire at 2363 Prospect Avenue, Bronx, New York;

3. Ordering the Respondents to permit Petitioners and their experts to inspect and examine the aforesaid evidence regarding the December 28, 2017 fire at 2363 Prospect Avenue, Bronx, New York;

4. Ordering the Respondents to permit Petitioners and their experts to inspect and examine all items, debris, and trash removed from the premises at 2363 Prospect Avenue, Bronx, New York following the December 28, 2017 fire;

5. Ordering the Respondents to identify and permit Petitioners and their experts to inspect and examine the fire hydrant that was frozen and unusable at the time of the December 28, 2017 fire at 2363 Prospect Avenue, Bronx, New York;

6. Ordering the Respondents to identify and permit Petitioners and their experts to inspect and examine any gas meters and other gas delivery system items that were removed from the premises following the December 28, 2017 fire at 2363 Prospect Avenue, Bronx, New York;

7. Ordering the Respondents to preserve the gas stove removed from the first floor apartment following the December 28, 2017 fire at 2363 Prospect Avenue, Bronx, New York;

8. Ordering the Respondents to permit Petitioners and their experts to inspect and examine the gas stove removed from the first floor apartment following the December 28, 2017 fire at 2363 Prospect Avenue, Bronx, New York;

9. For such other and different relief as to this Court may seem just and proper under the circumstances.

Dated: New York, New York
January 24, 2018

Robert Vilensky

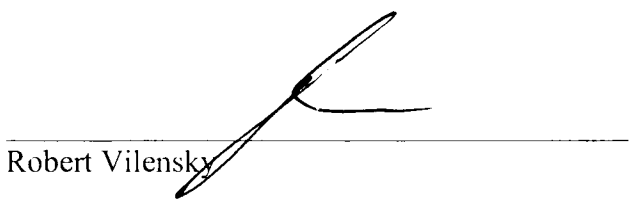
Robert Vilensky, a New York attorney, affirms under penalty of perjury:

That he/she is the attorney for the PLAINTIFF(S) in the within entitled action; that he/she has read the foregoing **VERIFIED PETITION** and knows the contents thereof; that the same is true to the knowledge of the affirmant, except as to the matters therein stated to be upon information and belief and as to those matters he/she believes them to be true.

Affirmant further states that the reason why this verification is not made by the plaintiff(s) is that said plaintiff(s), upon information and belief, are not residents of the County of New York, where affirmant has his/her office.

That the grounds for affirmant's belief as to all matters not therein stated to be alleged upon as knowledge, are investigations and information received by affirmant in the course of his/her duties as the attorney for said plaintiff(s).

Dated: New York, New York
January 24, 2018



Robert Vilensky