SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

THE NEW YORK STATE NURSES ASSOCIATION, Plaintiff, v. WESTCHESTER COUNTY HEALTH CARE CORPORATION AND THE BOARD OF DIRECTORS OF THE WESTCHESTER COUNTY HEALTH CARE CORPORATION, Defendants.	Index No. VERIFIED COMPLAINT

The New York State Nurses Association ("NYSNA"), on behalf of the 1,600 registered nurses ("RNs") it represents at Westchester Medical Center ("WMC"), brings this lawsuit against Westchester County Health Care Corporation ("WCHCC," together "Defendants") and the WCHCC Board of Directors to redress severe and pervasive workplace hazards that are causing or are likely to cause the WMC RNs imminent death or serious physical harm.

JURISDICTION

1. Jurisdiction is proper pursuant to NY CPLR § 301.

VENUE

2. Venue is proper because the actions and inactions giving rise to this action arose in Westchester County and because Defendants are doing business in Westchester County.

PARTIES

3. Plaintiff NYSNA is a union of 42,000 frontline nurses standing together for strength at work, their practice, safe staffing, and healthcare for all. NYSNA is New York's

largest union and professional association for registered nurses, and is the collective bargaining representative of 1,600 registered nurses employed by Defendants at WMC.

4. Defendant WCHCC is a public benefit corporation that is responsible for operating WMC. WCHCC was created pursuant to Sections 3300, *et seq*. of the Public Authorities Law in 1997, and is a public employer under the Public Employees Fair Employment Act, commonly known as the "Taylor Law," § 200, *et seq*.

5. Defendant WCHCC Board of Directors is the governing body of WCHCC, appointed pursuant to § 3303 of the Public Authorities Law.

FACTS

THE COVID-19 PANDEMIC

6. We are in the middle of a global pandemic with no certain end. On March 7, 2020, Governor Andrew Cuomo declared a state of emergency for New York State. New York City Mayor Bill De Blasio, Westchester County Executive George Latimer and other local officials across the state followed suit soon after. On March 13, 2020, President Donald Trump declared a national state of emergency.

7. Here in New York, all but essential businesses have been shuttered and schools are closed. Residents not engaged in essential work have been urged to remain at home unless they need to pick up food or medicine, and even then to wear masks and maintain at least six feet of social distance.

8. Despite these efforts, New York State has become the epicenter of the epidemic. As of April 15, more than 222,000 have tested positive for COVID-19, and more than 12,000 people have died. *See* N.Y. Dep't of Health, *COVID-19 Tracker* (last visited Apr. 16, 2020). New York State accounts for nearly half of the deaths in the entire country. *See* Centers

for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19): Cases in U.S.* (last visited Apr. 16, 2020).

THE IMPACT OF THE PANDEMIC ON NURSES

9. COVID-19's toll on RNs in New York State has been particularly severe. To date, at least six NYSNA RNs have died due to COVID-19 contracted at work, at least 84 NYSNA RNs have been hospitalized as a result of serious COVID symptoms. Approximately 72% of NYSNA members have been exposed to COVID-19 at work. As a result of this, at least 954 NYSNA RNs have tested positive for COVID-19, including 11 at WMC. Affidavit of Lisa Baum ("Baum Aff."), ¶¶ 7, 8; *see also* Affidavit of Michael Hertz, RN ("Hertz Aff."), ¶ 6. These statistics do not reflect the profound impact that COVID-19 has had on RNs throughout New York State, as they do not include the thousands of additional RNs working at non-NYSNA represented facilities. Baum Aff., ¶ 8.

10. There are three basic methods by which a nurse can contract COVID-19 on the job. First, nurses can contract COVID-19 from simply touching a contaminated surface at work, such as a computer or a counter-top. Second, nurses can contract it through aerosolized droplets, which are secretions from coughing and sneezing. Nurses caring for COVID-19 patients, many of whom have a persistent and aggressive cough, are regularly exposed to these aerosolized droplets. In addition, nurses are exposed to aerosolized droplets during medical procedures such as intubations, where COVID patients are put on ventilators to assist with breathing. Finally, a nurse can contract COVID-19 through airborne particles, which are smaller and drier than aerosolized droplets and therefore travel farther and stay in the air longer. Baum Aff., ¶ 6.

SEVERE HEALTH AND SAFETY HAZARDS AT WMC

11. Even before it became clear to many government leaders that the COVID-19 crisis would place unprecedented and severe burdens on New York's nurses, NYSNA sprang into action. On January 26, 2020, NYSNA's Area Director for WMC, Michael Hertz, RN, noted that signage at the hospital's entrance referenced the seasonal flu, but not COVID-19. When he spoke with the WMC RNs, none had knowledge of any COVID emergency preparedness plan by WMC. On January 27, correctly anticipating that COVID-19 would become a major issue for its members, NYSNA requested that the only topic on the agenda for its next regularly scheduled labor-management meeting be WMC's strategy for dealing with COVID-19. At the meeting, which took place on January 28, WMC's Chief of Infectious Disease, Donald Chen, MD and its Chief Nursing Officer, Paula Fessler, RN assured NYSNA that they were making all necessary plans to prepare for the virus. Recent events prove that this was not the case. Hertz Aff., ¶ 7.

12. WMC is currently like a war zone, and the RNs there are being sent into battle on a daily basis by hospital management without the essential tools they need to do their job and keep themselves safe. Instead of implementing polices that will protect the nurses (and, by extension, their patients and the public at large), WMC management through its actions and inactions has created and allowed to flourish a number of severe and pervasive workplace hazards that are causing or are likely to cause the WMC RNs death or serious physical harm. These include:

(1) rationing N-95 respirators;

(2) failing to "fit test" N-95 respirators;

(3) failing to provide impermeable gowns that fully cover RNs' bodies;

(4) rationing gowns;

(5) failing to properly train and supervise RNs on the use of personal protective equipment ("PPE");

(6) failing to properly train RNs who have been redeployed;

(7) failing to provide safe donning and doffing areas for PPE;

(8) failing to properly ventilate COVID patient areas;

(9) failing to adopt practices to ensure for the safety of RNs who are pregnant or have underlying medical conditions that make them especially susceptible to COVID; and

(10) intimidating RNs who have spoken out publicly about deficiencies in WMC's COVID-19 response.

13. NYSNA has repeatedly sought to have WMC management resolve these issues, to no avail. Hertz Aff., ¶¶ 11, 13 and Exs. A & C; *see also* Affidavit of Jayne Cammisa, RN ("Cammisa Aff."), ¶ 15. Most recently, WMC management has demonstrated that it is prepared to defy an order by Governor Cuomo concerning one of the most consequential health and safety hazards it has created -- rationing of N-95 respirators. Hertz Aff., ¶¶ 12, 14, 15-18 and Exs. B, D & E; *see also* Cammisa Aff., ¶ 15; Klein Aff., ¶ 11.

A. Rationing N-95 Respirators

14. PPE is a nurse's first line of defense against infection by COVID-19. By creating a physical protective barrier around an RN, PPE prevents the virus particles present on an infected patient's skin, or in the air due to the patient's coughing or sneezing, from entering a nurse's eyes, nose, and mouth and thus infecting the nurse.

15. The most well-known piece of PPE in the context of the COVID-19 outbreak is the N-95 respirator mask. These respirators cover a nurse's nose and mouth and create a physical barrier preventing virus particles from entering the nurse's body. Unlike a

typical paper or cloth surgical mask, N-95 respirators are semi-rigid and filter fine particles, and are thus more effective against COVID-19. Hertz Aff., ¶ 8.

16. Until the week of March 22, 2020, weeks after Governor Cuomo had declared a state of emergency on March 7, WMC management was not providing all of its RNs with N-95 respirators. For example, RN Debra Cava, who is responsible for providing supervision to a variety of patient care units, was issued only one surgical mask (not a respirator), which management told her she would have to use for the entire week. Affidavit of Debra Cava, RN ("Cava Aff."), ¶¶ 1, 5.

17. During the week of March 22, 2020, WMC management finally gave Cava an N-95, but told her that she needed to use it for an entire week. Cava Aff., ¶ 6.

18. The normal standard of care in the United States is that N-95 respirators must be discarded after treating a single patient with infectious disease. N-95s gradually lose their effectiveness as they are worn and may become contaminated with the virus. Baum Aff., ¶16.

19. Indeed, prior to the COVID-19 outbreak, the practice at WMC was to use the N-95 only once per patient room visit. Cammisa Aff., ¶ 8; Cava Aff., ¶ 7; Affidavit of Zina Klein, RN ("Klein Aff."), ¶ 10; Affidavit of David Long, RN ("Long Aff."), ¶ 6; Affidavit of Liesl Van Ledjte, RN ("Van Ledjte Aff."), ¶ 7. If an RN did not dispose of their N-95 after a patient room visit, they were subject to discipline. Cava Aff., ¶ 7.

20. Since the COVID-19 outbreak, WMC management's consistent practice has been to provide its RNs with a single N-95 to use for the week. Affidavit of Margaret Brown, RN ("Brown Aff."), ¶ 5; Cammisa Aff., ¶ 8; Cava Aff., ¶ 6; Hertz Aff., ¶ 8; Klein Aff., ¶ 4; Long Aff., ¶ 4. Donning and doffing the same N-95 throughout the week increases the

opportunity for contact transmission and makes it more likely that the respirator will stretch and not fit properly. Klein Aff., ¶ 5.

21. WMC management instructs RNs that they are entitled to receive a new N-95 replacement only if their respirator becomes soiled or no longer holds its form. Cammisa Aff., ¶ 8; Hertz Aff., ¶ 8; Klein Aff., ¶ 8; Long Aff., ¶ 5.

22. WMC Chief Nursing Officer Fessler has told RNs who have asked if they can receive more than one N-95 a week that they can only do so if their respirator becomes soiled or loses its shape. Cava Aff., ¶ 9.

23. WMC has not provided any parameters or criteria for what constitutes sufficient soiling or deformation to merit a new N-95. Cava Aff., ¶ 9; Hertz Aff., ¶ 8; Klein Aff., ¶ 6; Long Aff., ¶ 5. At least one RN who asked management for a new N-95 after the strap broke was refused. Affidavit of Mary-Lynn Boyts, RN ("Boyts Aff."), ¶ 10. When some RNs asked for another N-95, they were not given one. Klein Aff., ¶ 8.

24. N-95s are easily soiled through innocuous actions such as breathing and sweating. Long Aff., ¶ 5. In addition, N-95s cause frequent perspiration, which can cause the respirator to lose its shape. Cava Aff., ¶ 8. If an N-95 loses its shape, it cannot properly protect the wearer from inhaling harmful airborne particles. Cava Aff., ¶ 8. Nurses also suffer skin irritation because they are wearing the same N-95 for too long. Klein Aff., ¶ 4.

25. On April 1, 2020 during a labor-management meeting, RN Zina Klein told WMC Chief Nursing Officer Fessler that per CDC recommendations, N-95s should be used no more than five times. WMC management dismissed Klein's concerns. Klein Aff., ¶ 15.

26. Since the COVID-19 outbreak, WMC management has instructed RNs that they should write their name and the date they obtained their N-95 on the N-95 itself, and

store it in a brown paper bag between shifts. Brown Aff., ¶ 5; Cammisa Aff., ¶ 8; Cava Aff., ¶ 6; Klein Aff., ¶ 6; Long Aff., ¶ 4.

27. Storing the N-95 in a paper bag increases the chances for contact transmission of COVID-19, since RNs may inadvertently touch the outside of the respirator while reaching into the bag. Brown Aff., ¶ 6; Klein Aff., ¶ 6. In addition, wearing the same N-95 throughout the week makes it more likely that it will stretch and not seal properly. Klein Aff., ¶ 4.

28. WMC has provided no protocols or procedures for sanitizing N-95s between shifts. Brown Aff., ¶ 5; Cammisa Aff., ¶ 8; Long Aff., ¶ 4. As a result of WMC management's rationing of N-95s, at least one nurse has resorted to trying to sanitize their N-95s with Clorox wipes that she purchased herself. Cava Aff., ¶ 6.

29. Absent guidance from the manufacturer, the CDC recommends extended use of the same N-95 for no longer than eight hours. Additionally, if the same N-95 is used for multiple patient encounters, the CDC recommends no more than five uses to ensure adequate safety. Klein Aff., ¶ 10.

30. The N-95s used by WMC come in packaging labeled "for single use only." Brown Aff., ¶ 6.

31. On April 12, 2020, Governor Cuomo's COVID-19 task force issued an Order providing that any frontline healthcare worker who asked their employer for an N-95 respirator would get a new one at least once a day.

32. On April 13, 2020, NYSNA telephoned WMC's Director of Labor Relations, Alan Liebowitz, and Labor Relations Manager Mitchell Mirtil, and asked them when

management intended comply with the Governor's Order to issue RNs new N-95 every day. Liebowitz and Mirtil did not respond. Hertz Aff., ¶ 16.

33. On April 14, 2020, NYSNA followed up with an email to Liebowitz and Mirtil. Liebowitz responded by email on April 15, 2020. In his email, he falsely asserted that WMC's practice has always been to provide N-95s on request and that WMC was already in compliance with Governor Cuomo's Order. Hertz Aff., ¶ 17 and Ex. F.

34. To date, WMC continues to defy Governor Cuomo's Order. Cammisa Aff., ¶ 9; Klein Aff., ¶ 11; Hertz Aff., ¶ 17.

B. Failing to "Fit-Test" N-95 Respirators

35. The Occupational Safety and Health Administration and the Public Employees Safety and Health Bureau both require health care facilities to "fit-test" the model and size of the N-95 respirators that they distribute to RNs. Fit-testing is a process where a technician measures whether there is a tight seal between the respirator and an RN's face. If there is no tight seal, contaminated air can seep in through the side of the respirator and endanger the RN. There are different models and sizes of N-95 respirators and, if an RN fails a fit-test on one size or model, it is imperative, in order to protect the RN's health and life, that the employer continue fit-testing with different sizes and models until there is a proper fit. Baum Aff., ¶ 19.

36. WMC management has not fit-tested all of its nurses on the N-95 respirator models that it has provided. Cammisa Aff., ¶ 10; Klein Aff., ¶ 7; Long Aff., ¶ 4; Van Ledjte Aff., ¶ 6. As a result, some nurses have been forced to wear N-95s that are too big and make them vulnerable to infectious airborne particles. Van Ledjte Aff., ¶ 6. Some nurses have also had difficulty obtaining small and extra-small respirators. Klein Aff., ¶ 7.

37. Other RNs have been given a different model of respirator than the one for which they were fit-tested. For example, RN Mary-Lynn Boyts was fit-tested to wear a duck-bill

style respirator, but management issued her a round respirator. Boyts was only able to secure a duck-bill respirator by calling the hospital's equipment and supplies department. Boyts Aff., ¶ 7.

C. Failing to Provide Sufficiently Protective Gowns

38. To protect against COVID-19, hospitals must provide nurses with fluid-resistant or impermeable gowns and/or body coverings to change after caring for each infectious patient. Issuing RNs with gowns that are neither fluid resistant nor impermeable presents a serious infection control concern that could result in new COVID-19 infections of patients, RNs, their families and their communities. Baum Aff., ¶ 22.

39. The gowns that WMC is issuing to nurses to use when caring for COVID and suspected COVID patient are yellow linen gowns that are neither fluid resistant nor impermeable. Cava Aff., ¶ 10; Long Aff., ¶ 8. Moreover, the gowns do not fit properly, which prevents nurses from covering their entire body and exposes them to infection. Cammisa Aff., ¶ 11; Klein Aff., ¶ 12. Many of the gowns have holes in them. Boyts Aff., ¶ 12.

40. If a patient infected with COVID spits, vomits or secretes any bodily fluid that makes contact with the yellow linen gowns, the fluids easily seep through and onto the scrubs and skin of the nurse. Cava Aff., ¶ 10.

41. Nurses who work in WMC's psychiatric unit are particularly vulnerable, since many psychiatric patients do not understand the concept of social distancing and often touch and even spit on staff. Van Ledjte Aff., ¶ 8. Indeed, as of April 6, 2020, WMC's adult psychiatric unit, B2, was closed to new patients after patients in the unit tested positive for COVID-19. In addition, over the course of the past month, two other psychiatric units, A2 and B1, were also temporarily closed to new patients after patients in those units tested positive for COVID-19. This led to WMC creating a COVID psychiatric unit, to which all of the psychiatric patients who have tested positive for COVID-19 have been transferred. Van Ledjte Aff., ¶¶ 3-5.

42. WMC management has resisted efforts by RNs to secure other types of protective coverings. For example, or about April 1, 2020, RN David Long observed a WMC physician using a powered air purifying respirator ("PAPR") suit while caring for a patient. PAPR suits are completely enclosed and are therefore particularly helpful in ensuring the safety of the wearer. Long asked that nursing staff receive PAPRs, but CNO Fessler denied his request without providing an explanation for the denial. Long Aff., ¶ 7.

D. Rationing Gowns

43. To protect against COVID-19, hospitals must provide nurses with a gown or body covering that is changed after caring for each infectious patient. Rationing of gowns presents a serious infection control concern which could result in new COVID-19 infections of nurses and patients. Baum Aff., ¶ 22.

44. Prior to the COVID-19 outbreak, WMC management considered gowns to be a single use form of PPE, meaning that RNs were required to change them when going from one infectious disease patient to another. Long Aff., ¶ 8.

45. Since the COVID-19 outbreak, WMC management has required nurses to use the same gown for multiple patients. WMC management has told RNs that changing gowns is not necessary when moving from one COVID patient to another one. Long Aff., ¶ 8.

E. Failing to Train and Supervise on Proper Use of PPE

46. WMC management is failing to train and supervise RNs on the proper use of PPE, further undermining the efficacy of the limited PPE it has given them.

47. On or about March 16, 2020, the children's operating room at WMC stopped accepting non-emergent procedures in order to allow time to prepare for patients with COVID-19. RN Margaret Brown, an operating room nurse knowledgeable in proper PPE donning and doffing procedures, offered to provide training on PPE to her co-workers, but was

denied. Instead, in a gross display of misplaced priorities, WMC management told her to prepare for a state inspection that is not scheduled until the summer or to take an online training on the hospital's new charting program, which is not scheduled to roll out until June. To Brown's knowledge, to date management has provided no training to RNs in the children's operating room on how to safely don and doff PPE. Brown Aff., ¶¶ 2-4.

48. RN Debra Cava has advocated for the nurses she supervises in WMC's intensive care units and emergency room to receive training from WMC's Infection Control Department so that they can care for COVID patients in a way that reduces their likelihood of contracting the disease. Specifically, a month ago she asked WMC's Director of Infection Control, Rita Sussner, to provide training to the night shift RNs on how to safely don and doff their PPE. To date, WMC has not provided this critically important training. Cava Aff., ¶ 11.

49. In addition, WMC management is supposed to provide observers to supervise the RNs and make sure they don and doff PPE correctly, but is not currently doing so. Boyts Aff., ¶ 11.

F. Failing to Train RNs Who Have Been Redeployed

50. WMC management is redeploying RNs to other units because of COVID-related staffing needs, but is failing to give them the necessary training and preparation for work on those units to keep themselves and their patients safe. As a result, management is depriving them of the knowledge they need to reduce their likelihood of contracting COVID-19 and to properly care for their patients.

51. For example, WMC management is assigning some RNs to bedside care, even though they do not typically work with patients in that capacity. Similarly, pediatric nurses are being assigned adult patients, day-shift nurses are being forced to function as night-shift nurses, and vice-versa. Cammisa Aff., ¶ 14.

52. In mid-March 2020, WMC management transferred RN Mary-Lynn Boyts from the operating room to the transplant vascular unit. Since she had not worked on the transplant vascular unit for 16 months, Boyts needed training. However, management cut short her training from two days to one. As a result, she was not given adequate time to review the donning and doffing process and other essential procedures, such as cardiac rhythms. Boyts Aff., ¶¶ 3-4.

53. During Boyts' first and second weeks in the transplant vascular unit, she was assigned to treat a patient who had been in the unit for an extended period and who required significant attention. While treating the patient, who had not been identified as having COVID-19, Boyts wore just a surgical mask (not a respirator) and a permeable gown and gloves. Boyts later learned from co-workers that the patient had tested positive for COVID-19. No one in management ever notified her of the potential exposure. Boyts Aff., ¶ 5.

G. Failing to Provide Safe Donning and Doffing Areas

54. For RNs to be able to safely remove contaminated or potentially contaminated PPE after use, hospitals must create spaces that allows PPE to be doffed without contaminating "clean" areas. Hospitals can accomplish this by creating negative pressure rooms with antechambers. They can also accomplish this by using prefabricated portable units or creating spatial divisions using fire-rated plastic with zippers, which is a technique hospitals often use when construction work is being done. If donning and doffing space is inadequate, non-COVID areas can become contaminated, which puts both RNs and non-COVID patients at risk. Baum Aff., ¶ 23.

55. RNs at WMC lack a safe space to don and doff their PPE. Some units, for example, use a plastic curtain to separate the nurse's station from the contaminated area. After

the nurses doff their PPE, they have to enter the nurse's station, a clean area, by climbing through the dirty side of the curtain. Cammisa Aff., ¶ 12.

56. RN David Long is forced to doff his gown, gloves and certain headgear while inside COVID patient care rooms. This is not a safe practice due to the small size of most patient rooms and the airborne nature of COVID-19. Long Aff., ¶ 9.

57. In WMC's Neuro Step-Down Unit, a plastic curtain separates the nurse's station from the contaminated area. After nurses doff their PPE, they must enter the nurse's station, a clean area, by climbing through the dirty side of the curtain, which creates an opportunity for contact transmission. Nurses must re-enter the contaminated area to leave the unit. Klein Aff., ¶ 13.

58. WMC's Cardio Thoracic Intensive Care Unit is similarly unsafe. Nurses cannot leave a patient's room without climbing through the dirty side of a plastic curtain, again creating an opportunity for contract transmission. In fact, conditions there have become so bad that nurses are wearing PPE at all times. Klein Aff., ¶ 14.

59. Nurses' efforts to get WMC management to address these problems have fallen on deaf ears. During the second week of April 2020, RN Zina Klein had a phone conversation with Garrett Doering, WMC's System Director for Emergency Management. Klein explained that in the Neuro Step-Down Unit, RNs had to reenter the "hot zone" to leave the unit, and recommended installing a second curtain to create a "warm zone" that would allow RNs to doff their PPE more safely. Doering acknowledged that conditions did not "sound good." He said that he would try to do something, but that he was in Kingston indefinitely and did not know when he would return. The next day, Doering texted Klein and told her that WMC's Infection Control Department knew about the situation and that everyone was doing their best. To date,

the donning and doffing conditions in the Neuro Step-Down Unit have not improved since Klein voiced her concerns. Nurses in the Neuro Step-Down Unit have since deemed the whole unit "dirty" and are now wearing PPE in all areas inside the unit. Klein Aff., ¶ 16.

H. Failing to Adequately Ventilate COVID Patient Areas

60. Without proper ventilation, the air itself in a COVID-19 unit can become contaminated and deadly. It is a long-standing practice in healthcare to use negative air pressure rooms to care for infectious patients with airborne and droplet transmissible illnesses. When done properly, this engineering control reduces the risk of a virus traveling into other areas and, by rapidly exhausting and exchanging air in an area, it reduces airborne levels of COVID-19, thus reducing the risk of staff exposure. Baum Aff., ¶ 24.

61. WMC management is failing to adequately ventilate COVID patient areas.

62. A number of units at WMC do not have any negative pressure rooms, and while WMC has placed some high-efficiency particulate air ("HEPA") filters in the units, there are not enough. Cammisa Aff., ¶ 12.

63. On the COVID unit where RN Mary-Lynn Boyts works, there is only one negative pressure room. The only ventilation for the rest of the rooms is provided by large fans with filters. However, the hoses and ducts that are supposed to the ensure that the air is properly circulated are not properly connected to the fans, so the fans just blow air around the confined space. Boyts Aff., ¶¶ 15-16.

I. Refusal to Protect Pregnant and Medically Vulnerable Nurses

64. WMC management has failed to adopt practices to ensure for the safety of its most vulnerable employees -- nurses who are pregnant or have underlying medical conditions that make them especially susceptible to COVID-19.

65. For example, since the COVID-19 outbreak, WMC has refused to provide continuous leave under the Family Medical Leave Act to pregnant nurses and those with serious health conditions who are directly involved in patient care. Cammisa Aff., ¶ 13; Hertz Aff., ¶ 10. As a result, nurses who have serious underlying medical conditions, including lupus and multiple sclerosis, have been denied leave. Although WMC has permitted nurses to take "intermittent leave," this allows nurses only the right to call out sick for a single day at a time if their condition is "active" and they experience a flare-up. Nurses are otherwise expected to come to work. Cammisa Aff., ¶ 13.

66. WMC has also refused to reassign pregnant nurses to units that do not treat COVID-19 patients, unless the pregnancy has entered the third trimester. Cammisa Aff., ¶ 13; Hertz Aff., ¶ 10. WMC's position regarding pregnant nurses is contrary to that of other hospitals in the area. Cammisa Aff., ¶ 13.

67. WMC's treatment of pregnant nurses and those with serious underlying medical conditions is particularly dangerous because WMC is creating barriers to RNs who have tested positive for COVID-19 staying home from work. Therefore, it is increasing the risk that pregnant nurses and nurses with serious underlying medical condition will encounter sick colleagues on the job. WMC had initially provided two weeks paid leave to RNs who resided in counties that had issued quarantine orders for those who had tested positive for COVID-19. Recently, however, WMC changed this policy. Cammisa Aff., ¶ 5.

68. Now, when an RN tests positive for COVID-19 and needs to stay home from work, WMC deducts hours from the RN's sick leave bank. In order to access the emergency sick leave guaranteed under New York law, the RN must obtain an individual order

from their county's department of health and fax the form to WMC. Only then will WMC return the RN's sick leave to their bank. Cammisa Aff., ¶ 6.

J. Intimidating RNs Who Speak Out About Dangerous Working Conditions

69. In late March 2020, RN Mary-Lynn Boyts spoke to the media regarding her concerns that the shortage in PPE and inadequate preparation at WMC were endangering hospital personnel and patients. Boyts Aff., ¶ 13.

70. After Boyts spoke to the media, WMC's Labor Relations Manager contacted her and told her that the hospital's policy was that all contact with the media had to go through WMC's media relations department. Boyts Aff., ¶ 14.

71. Boyts felt intimidated during this conversation, and remains fearful that WMC management may discipline her for speaking to the media. Boyts Aff., ¶ 14.

72. WMC's admonishment to Boyts that she cannot speak publicly about her working conditions, which violates her rights under the Taylor Law and the First Amendment, will dissuade other WMC employees from voicing their well-founded health and safety concerns. It will hinder the ability of nurses to learn about and protect themselves from dangers in their workplace, and will consequently jeopardize patients and the public at large.

STATUTORY PREREQUISITES

73. On April 14, 2020, NYSNA filed on behalf of its nurses at WMC a complaint with the New York State Department of Labor ("DOL") pursuant to NY Labor Law §27-a. In its administrative complaint, NYSNA brought the above health and safety issues to the attention of the DOL and requested its intervention. Hertz Aff., ¶ 18 and Ex. F.

74. The DOL did not act within forty-eight hours of the filing of the complaint to relieve the serious health and safety issues complained of above. Hertz Aff., ¶ 18, Ex. F. As a

result, N.Y. Labor Law §27-a grants this Court jurisdiction over NYSNA's health and safety claim.

FIRST CAUSE OF ACTION - VIOLATION OF NEW YORK LABOR LAW

1. NYSNA reiterates the foregoing paragraphs and incorporates them by reference herein.

2. NY Labor Law §27-a requires, and Defendants by the above actions and inactions, are failing to provide to the WMC RNs a place of employment that is free from recognized hazards that are causing or are likely to cause them death or serious physical harm.

3. No previous applications have been made to any Court or Judge for the relief sought herein.

WHEREFORE, NYSNA respectfully request that this Court issue:

(1) a declaration that Defendants have and are continuing to violate NY Labor Law §27-a;

(2) an order that Defendants comply with NY Labor Law §27-a, including by

  (a) providing every WMC RN a new, fit-tested N-95 respirator upon request; rescind its policy providing that RNs can only receive a new N-95 if the N-95 is soiled or loses its shape; and publicize to the RNs that policy's rescission;

  (b) providing every WMC RN a clean, well-fitting, impermeable gown in sufficient quantity that RNs may change gowns between every patient encounter;

  (c) providing adequate training and supervision on the proper use of personal protective equipment;

(d) providing adequate training to RNs who have been redeployed to other units because of COVID-related staffing needs;

(e) providing safe areas for donning and doffing personal protective equipment;

(f) providing proper ventilation in all COVID patient rooms;

(g) ceasing and desisting from refusing to grant statutory medical leave or accommodations to WMC RNs who are legally entitled to it;

(h) ceasing and desisting from instructing RNs they cannot speak publicly about the COVID-19 situation in their workplace; and

(i) develop a plan to this Court's satisfaction which otherwise mitigates the WMC RNs' risk of exposure to COVID-19;

(4) attorneys' fees and costs; and

(5) such other relief as this Court deems just and proper.

Dated: New York, New York
April 20, 2020

Respectfully submitted,

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