

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT

CIVIL ACTION NO: 23-235

INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS

Plaintiff,

v.

NATIONAL FIRE PROTECTION,
ASSOCIATION, INC.

Defendant.

COMPLAINT

(Jury Trial Demanded)

RECEIVED & FILED
2023 MAR 16 AM 10:53
CLERK OF THE COURTS
NORFOLK COUNTY

COMPLAINT

Plaintiff, the International Association of Fire Fighters, (“IAFF” or “Plaintiff”), by and through the undersigned counsel, brings this Complaint against Defendant National Fire Protection Association, Inc. (“NFPA”), a Massachusetts business entity, and hereby states as follows:

1. Plaintiff IAFF currently represents more than 334,000 professional fire fighters, paramedics, and other emergency responders and dispatchers across the United States and Canada. IAFF’s members protect the lives and property of over 85 percent of the continent’s population in nearly 6,000 communities in every state of the United States and 10 provinces and 2 territories in Canada.
2. Plaintiff brings this action for appropriate equitable and injunctive relief and monetary damages for harm resulting from a standard regarding the design, specification, and manufacture of bunker gear¹ promulgated, and upheld, by Defendant NFPA, acting in

¹ As used herein, the terms “bunker gear” and “turnout gear” are intended to be synonymous.

collaboration and combination with non-parties, known as NFPA Standard 1971, Section No. 8.62, entitled “Light Degradation Resistance Test” (“Section No. 8.62”).

3. NFPA 1971, entitled “Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting,” establishes minimum levels of protection from thermal, physical, environmental, and blood-borne pathogen hazards encountered by fire fighters during structural and proximity fire fighting activities, including, but not limited, to provisions regarding materials permitted for use in the specialized protective clothing designed for fire fighters (“bunker gear”).

4. Section No. 8.62, first implemented in the 2007 edition of NFPA 1971, imposes criteria which effectively require the use of per- and polyfluoroalkyl substances (“PFAS”), including but not limited to polytetrafluoroethylene, or “PTFE,” in fire fighters’ bunker gear.

5. Specifically, Section No. 8.62 currently necessitates the use of PFAS in the middle moisture barrier layer of fire fighters’ bunker gear ostensibly in order to satisfy the ultraviolet (UV) light degradation test. However, the time of exposure to xenon-sourced UV light in Section No. 8.62 was deliberately chosen: a shorter exposure time would allow numerous other materials to pass, but a longer exposure time would allow *no* materials to pass. The set 40 hours is the threshold where *only* PFAS passes. UV light degradation is not a testing requirement for the outer shell of the ensemble, which is the only layer exposed to UV light during the course of the product’s normal use.

6. PFAS are human-made chemicals consisting of a chain of carbon and fluorine atoms used in manufactured products to, *inter alia*, resist and repel oil, stains, and water. PFAS include “long-chain” PFAS molecules made up of seven or more carbon atoms (“long-chain

PFAS”) as well as “short-chain” PFAS molecules made up of six or fewer carbon atoms (“short-chain PFAS”).

7. PFAS are known as “forever chemicals,” and per the Stockholm Convention on Persistent Organic Pollutants (to which the US is a signatory) are defined as: Persistent – because they do not break down through organic processes or in the environment; Transboundary – as they migrate through surface and ground water, as well as in the atmosphere and through wildlife; and Bio-accumulative – as they concentrate within our bodies and are passed to the fetus within the womb and through breast milk. Exposure to PFAS in humans can occur through inhalation, ingestion and dermal contact.

8. PFAS have been associated with multiple and serious adverse health effects in humans including cancer, tumors, liver damage, immune system and endocrine disorders, high cholesterol, thyroid disease, ulcerative colitis, birth defects, decreased fertility, and pregnancy-induced hypertension. PFAS have also been found to concentrate in human blood, bones and organs and, more recently, to reduce the effectiveness of vaccines, a significant concern in light of COVID-19 and the occupational risk thereof for the members of the IAFF.

9. Fire fighter occupational cancer is the leading cause of line-of-duty deaths in the fire service.

10. At the 2022 IAFF Fallen Fire Fighter Memorial, almost 75% of the names added to the wall (348 out of 469) were members who had died from occupational cancer.

11. On March 6, 2023, President Joseph R. Biden, speaking in Washington, pledged, “We’re going after toxic exposure to PFAS, so-called ‘forever chemicals’ that for years have been in your gear, your equipment . . . that you depend on to be able to do your job.”

12. Plaintiff seeks damages and injunctive relief for the injuries it sustained as a direct and proximate result of a coercive civil conspiracy arising from the combination of Defendant NFPA, a Massachusetts corporation, and certain non-parties, including Lion Group, Inc. (“Lion”) and W.L. Gore & Associates, Inc. (“Gore”), to promulgate, implement, and/or prevent the repeal of NFPA Standard 1971, Section No. 8.62, which has directly resulted in harm to the IAFF by, *inter alia*, exposing its members to carcinogenic chemicals in bunker gear.

13. Specifically, Section 8.62’s criteria necessitates the use of PTFE, a fluoropolymer and type of PFAS, known to degrade into toxic, carcinogenic compounds in the moisture barriers for fire fighters’ bunker gear, and by specifically hindering and impeding the development and use by fire fighters of PFAS-free bunker gear.

14. Plaintiff brings suit because it has been harmed by Defendant NFPA’s conduct with regard to promulgating Section No. 8.62 and actively resisting its repeal, including member actions and Technical Committee participation in contravention of the NFPA Guide for Conduct 3.1(b),(d),(e), 3.3(b),(c),(d),(f),(h) in violation of M.G.L.A. 93A §§ 2, 11, and seeks both damages and injunctive relief against Defendant NFPA.

15. Specifically, Defendant NFPA is an entity engaged in trade and commerce within the Commonwealth, and it has employed unfair methods of competition, acts, and practices within this Commonwealth in implementing and preventing the repeal of Section No. 8.62, in violation of M.G.L.A. 93A §§ 2, 11, which has caused Plaintiff to directly sustain losses and damages.

PARTIES, JURISDICTION, AND VENUE

16. Plaintiff IAFF is an unincorporated labor organization with its principal place of business located in Washington, D.C.

17. At all times relevant, Plaintiff IAFF has been engaged in trade and commerce within the Commonwealth of Massachusetts.

18. Defendant NFPA is a Massachusetts corporation which does business in the Commonwealth of Massachusetts and throughout the United States. NFPA has its principal place of business at One Batterymarch Park, Quincy, Massachusetts, 02169.

19. At all times relevant, Defendant NFPA has been engaged in trade and commerce within the Commonwealth of Massachusetts, including, but not limited to, its conduct regarding the adoption and maintenance of NFPA 1971,² which has harmed Plaintiff.

20. Defendant NFPA has engaged in deceptive and unfair conduct in this Commonwealth which has directly and proximately resulted in losses of money and/or property to Plaintiff.

21. Defendant NFPA has, in coordination with non-parties, including Lion and Gore, unlawfully conspired to promulgate and maintain Section No. 8.62, thus ensuring that the usage of hazardous PFAS-chemicals in the moisture barrier layer of fire fighters' bunker gear continues and development of PFAS-free alternative gear is stifled.

22. This Court has general and specific jurisdiction over this action under M.G.L.A. 223A §2 because Defendant NFPA is domiciled in, organized under the laws of, and maintains its principal place of business within the Commonwealth, and the injuries and damages alleged herein are likely to exceed the \$50,000.00 threshold set forth in Supreme Judicial Court Standing Order dated July 17, 2019 (eff. January 1, 2020). Additionally, this Court has jurisdiction over this action under M.G.L.A. 214 §1 as Plaintiff also seeks injunctive and equitable relief.

² Of note, Defendant NFPA markets and sells its standards as part of its trade and commerce activities, including NFPA 1971. See <https://catalog.nfpa.org/NFPA-1971-Standard-on-Protective-Ensembles-for-Structural-Fire-Fighting-and-Proximity-Fire-Fighting-P1479.aspx> (last visited 3/7/2023) (indicating a PDF version of the standard costs \$97.50 and a print version of the standard costs \$91.00)

23. Additionally, this Court has jurisdiction over Plaintiff's claim arising under M.G.L.A. 93A §11 because the actions and transactions giving rise to Plaintiff's claim occurred primarily and substantially within the Commonwealth of Massachusetts.

24. Venue is proper in Norfolk County Superior Court under M.G.L.A. 223 § 8 because Defendant NFPA has its principal place of business in Quincy, Massachusetts.

25. As an unincorporated association, the IAFF is deemed a citizen of every state where it has members. *See Carden v. Arkoma Assocs.*, 494 U.S. 185, 195-96 (1990). Because it has numerous members in Massachusetts, IAFF is a citizen of that state. Consequently, there is no complete diversity of citizenship between the parties. Furthermore, even if Plaintiff IAFF and Defendant NFPA are deemed to be citizens of different states, this case is expressly not removable to federal court under 28 U.S.C. § 1441(b)(2) because Defendant NFPA is a citizen of Massachusetts.

FACTUAL ALLEGATIONS

A. PFAS Chemicals

26. PFAS chemicals are used in fire fighter bunker gear to meet performance requirements for liquid resistance, repellence, and penetration testing, as mandated by the NFPA 1971 Standard, as well to pass other physical testing requirements within the Standard.

27. PFAS are a family of synthetic chemicals containing fluorine bonded to carbon atoms(s).

28. PFAS were first invented in the 1930s.

29. PFAS have strong surfactant properties, meaning they reduce the surface tension between a liquid and another liquid or solid, and are thus effective for products which require oil, stain, grease, and water repellency.

30. The two most widely known and studied PFAS are PFOA and PFOS.

31. PFOA, a perfluoralkyl carboxylate, is an environmentally persistent anthropogenic chemical that is produced synthetically.

32. PFOS, a perfluoralkyl sulfonate, is an environmentally persistent anthropogenic chemical that is also produced synthetically.

33. PTFE, when heated to temperatures commonly found in fire fighting, can produce PFOA and other PFAS compounds hazardous to human health.

34. The chemical structure of PFOA and PFOS, and other PFAS, makes them mobile and extremely resistant to breakdown in the environment and in human tissue.

35. PFAS are known as “forever chemicals” because they are immune to degradation, bio-accumulate in individual organisms and humans, and increase in concentration up the food chain. Indeed, scientists are unable to estimate an environmental half-life (*i.e.* the time it takes for 50% of the chemical to decrease from its original concentration) for many PFAS within humans. Additionally, some PFAS chemicals (known as “precursors”) degrade into different long-chain and short-chain PFAS chemicals.

36. PFAS are nearly indestructible and are highly transportable.

37. Human exposure to PFAS can occur through inhalation, ingestion, or dermal contact.

38. To date, there is no safe, acceptable or “normal” level of PFAS in the human body.

39. PFAS exposure affects nearly every system in the human body. It has been associated with multiple and serious adverse health effects in humans including, but not limited to, cancer, tumors, liver damage, immune system and endocrine disorders, thyroid disease, ulcerative colitis, birth defects, decreased fertility, pregnancy-induced hypertension, accelerated changes in gene expression, and increases in oxidative stress which can contribute to DNA

changes, tumor promotion, and other health conditions. It has also been found to concentrate in human blood, bones, and organs, and to reduce the effectiveness of certain vaccines, a significant concern in light of COVID-19.

B. Fire Fighter Bunker Gear

40. Members of Plaintiff IAFF, as first responders to fire, hazardous materials incidents, and other emergency and medical calls, risk their lives on a daily basis. They not only save lives and protect property, but they also provide emergency services and medical care, perform rescues, and offer support to people in traumatic circumstances. To prepare them for and protect them during this enormously challenging work, Plaintiff's members wear bunker gear and receive extensive and ongoing training in fire suppression.

41. During their training, and when responding to fires, fire fighters wear bunker gear intended to provide limited thermal, chemical, and biological protection.

42. Bunker gear components include individual components such as a helmet, hood, jacket, pants and suspenders, boots, and gloves. Each component of the jacket and pants is made of an outer layer, as well as several inner layers that include a moisture barrier and thermal liner which are meant to protect the fire fighter from ambient heat.

43. Upon information and belief, bunker gear contains PFAS, including types of PFAS compounds which degrade into PFOA.

44. A June 2020 study of bunker gear by researchers at the University of Notre Dame analyzed 30 new and used bunker jackets and pants originally marketed, distributed, and sold in 2008, 2014, and 2017, by six bunker gear makers, and found high levels of PFAS in bunker gear worn, used, or handled by fire fighters.

45. In this study, which looked at used and unused bunker gear to assess the probability of PFAS migrating from the moisture barrier layer to other parts of the gear, the researchers found that concentrations of PFAS in the thermal liner were different in used versus unused bunker gear, suggesting that PFAS migrated from the moisture barrier to the thermal liner, which contacts the fire fighters' skin. Migration of impregnated chemicals from textiles to the wearer's skin is well understood. The risk related to vapor uptake through the skin for lipid-soluble volatile organic compounds like some PFAS may exceed inhalation exposure.

46. In a more recent study done at the Oregon State University by Derek Muensterman, extractable volatile PFAS were found at exceedingly high concentrations in fire fighter bunker gear as compared to earlier investigations of non-volatile PFAS like PFOA and PFOS. The highest level of these volatile PFAS were determined to originate from the PTFE moisture barrier. Bioavailability of volatile PFAS is considered high, as the inhalation route is of concern, especially given the application of the products which are worn by the Plaintiff's members on their bodies for extended durations.

47. When exposed to heat, PFAS chemicals in the bunker gear off-gas, break down, and degrade into highly mobile and toxic particles and dust, exposing fire fighters to PFAS chemicals, particles and dust, including through skin contact/absorption, ingestion and/or inhalation. Fire fighter exposure to these highly mobile and toxic materials also occurs through normal workplace activities, because particles or dust from their bunker gear spread to fire apparatus, tools, equipment and fire stations, as well as fire fighters' personal vehicles and homes.

48. Such workplace exposure to PFAS or PFAS-containing materials has been found to be toxic to humans. For example, in an internal memo dated July 31, 1980, DuPont officials described measures that were needed to prevent workplace exposure to PFOA, which they knew

could permeate all protective materials, and noted that PFOA's toxicity varied depending on the exposure pathway, acknowledging that ingestion was "slightly toxic," dermal contact was "slightly to moderately toxic" and inhalation was "highly toxic." The memo concluded "continued exposure is not tolerable."

C. NFPA 1971, Section No. 8.62

49. NFPA 1971 Section No. 8.62 is a UV light degradation test methodology for moisture barriers, the middle of three layers in fire fighters' bunker gear, which is sandwiched between the middle liner and outer shell.

50. Section No. 8.62 is an arbitrary and unreasonable standard that requires bunker gear's middle moisture barrier layer, which is not exposed to light, to undergo UV light degradation testing, while *not* requiring such testing for the outer shells.

51. Section No. 8.62 was adopted by NFPA on the basis of an unscientific, industry-funded thesis, *Evaluation of Moisture Barriers for Fire Fighting Turnout Gear Assessment of Product Failure and Test Method Development Predicting Failure Modes*, written by Chastity Danielle Newsome, a student at the University of Kentucky in 2000, for her Master of Science in that institution's Interior Design, Merchandising and Textiles program.

52. According to Ms. Newsome, her thesis sought to "to investigate the failures seen in the moisture barrier of . . . turnout gear, as noted by the protective clothing industry."

53. Upon information and belief, the moisture barrier failures of the kind which provided an impetus for Ms. Newsome's thesis have been shown to result from degradation due to heat, abrasion, and wear and tear, and not UV light.

54. Ms. Newsome's unpublished thesis was the only document identified at the time of Section 8.62's adoption to support NFPA's implementation of the UV light standard.

55. Indeed, Ms. Newsome's thesis thanks Lion "for their interest in th[e] research" and extends a special thanks to Lion employees Don Aldridge and Frank Taylor as "without their support [the] study would not have been feasible."

56. Ms. Newsome's thesis advisor at the University of Kentucky, Elizabeth Easter, has received significant funding from the PFAS-industry, including but not limited to Lion, DuPont, and 3M.

57. Ms. Newsome conceded in her thesis that her research design methodology was "quasi-experimental" and that "moisture barrier samples were chosen and tested without randomization of the samples."

58. Moreover, in Ms. Newsome's thesis, nine moisture barriers were evaluated, three of which contained PTFE, a PFAS polymer. Ms. Newsome's thesis specifically denotes that PTFE moisture barriers failed after the abrasion and UV light tests, similar to non-PTFE moisture barriers, demonstrating that the use of PTFE-based moisture barriers does not prevent degradation from occurring and that the UV light degradation test does not address the mechanism of previously observed moisture barrier failure.

59. Ms. Newsome's conclusions included comments such as: "Further investigation of the degradation of the moisture barrier should be conducted," "No failures were seen in the complete 3-piece ensembles from Natural Light exposure," "Sample limitations prevent conclusions as to whether flexing affected degradation of the moisture barrier," and "There was no replication of the 3-piece ensembles in the instrumental exposures. Therefore, the findings of this study are only representative of that sample."

60. These facts show that Section No. 8.62's UV light test was initially implemented in NFPA 1971 without adequate scientific justification, and that the ongoing use of that test is unwarranted.

61. Don Aldridge, an official of Lion, thanked by Ms. Newsome in her thesis, presented Ms. Newsome's thesis findings to the NFPA when Section No. 8.62 was initially considered.

62. NFPA 1971 (2007) was issued with an effective date of August 17, 2006.

63. Updated versions of NFPA 1971 were issued in 2013 and in 2018; both of these iterations included Section No. 8.62.

D. Challenges to Section No. 8.62

64. In 2021, the members of Plaintiff IAFF instituted significant changes to the organization.

65. First, in January 2021, the IAFF's membership voted on two resolutions, Resolution 28 and Resolution 31. The former resolution, calling for IAFF to no longer accept sponsorships from the chemical industry, textile manufacturers, or personal protective equipment manufacturers that utilize PFAS chemicals, passed by a margin of 1,536 to 10. The latter resolution, calling for the IAFF to actively oppose the use of PFAS chemicals in bunker gear, passed by a margin of 1,472 to 4.

66. Furthermore, in early 2021, the members of IAFF elected Edward Kelly as the organization's new General President. Under President Kelly's leadership, IAFF has been actively working to rid the fire service of the toxic PFAS found in bunker gear.

67. In furtherance of that goal, on June 21, 2021, IAFF submitted Temporary Interim Amendment ("TIA") 1594 to the NFPA, which called for eliminating Section No. 8.62's UV light degradation test, which would in turn end the requirement for PTFE-containing moisture barriers

and the attendant hazards posed by those chemicals, and allow PFAS-free alternatives to enter the market.

68. By August 5, 2021, 182 comments had been submitted to NFPA's Technical Committee on Structural and Proximity Fire Fighting Protective Clothing and Equipment ("Technical Committee") regarding TIA 1594, 179 of which were in support of the measure.

69. On August 12, 2021, NFPA's Technical Committee and its Correlating Committee on Fire and Emergency Services Protective Clothing and Equipment ("Correlating Committee") both rejected TIA 1594.

70. Significantly, the most vocal opponent of TIA 1594 on the Technical Committee was Karen Lehtonen, Lion's VP of Innovation and Management. As to the question of whether the amendment had technical merit, Ms. Lehtonen abstained from voting but offered the following comments:

- "The question of the Light Degradation Resistance Test preventing the commercialization of PFAS-free moisture barrier materials that are safe for fire fighters requires more study;"
- "Cassie Newsome's 2000 University of Kentucky master's thesis ... presented evidence that UV exposure was replicating the discoloration and degradation found in sections of Breathe-Tex moisture barriers in the field after two to three years of use;"
- "...[A] unique safety feature of fluorinated polymer textile finishes is their ability to resist both water and chemicals. PFAS-free finishes have limited oil and chemical repellency. According to information from one textile manufacturer, the introduction of PFAS-free outer shell finishes reduced the chemical resistance of the outer shell fabrics in at least one ASTM test. In the field, this may mean that fireground chemicals may be able to pass more easily through the outer shell and more regularly make direct contact with the moisture barrier. With the transition to PFAS-free outer shell finishes, the durability and performance of the moisture barrier layer may become even more critical to protect firefighters from exposure to fuels, battery acid, chlorine bleach, and other toxic chemicals;" and
- "...[T]here presently is insufficient information to assess the technical merit of the proposal."

71. As to the question of whether the amendment before the Technical Committee was one of emergency nature, Ms. Lehtonen voted against the amendment and offered the following comments:

- “Existing data does not support the need for emergency measures that could create uncertainty and potentially compromise safety without appropriate study. Currently available studies on PFAS in firefighters provide no evidence that trace amounts of PFAS from turnout gear are entering into firefighters’ blood, or at levels that cause adverse health effects;”
- “...[T]he risks of dermal absorption from PFAS are very low;” and that
- “NFPA 1970 (for which NFPA 1971 will be contained within) is currently open for public input and a task group within the Technical Committee has been established. The changes proposed by the TIA should be addressed in the upcoming revision cycle for this standard.”

72. NFPA’s Correlating Committee rejected TIA 1594 both on (1) the issue of correlation (*i.e.* conflict) with other NFPA standards, and (2) on the emergency nature of the amendment. Eight members of the NFPA’s Correlating Committee are also Technical Committee members, including Karen Lehtonen.

73. Just as she was with the Technical Committee, Ms. Lehtonen was the most vocal opponent of TIA 1594 on NFPA’s Correlating Committee.

74. Ms. Lehtonen voted that the amendment was not in conflict with other NFPA standards. She commented that “[t]here is not a correlation concern over this test not applying to other elements containing moisture barriers. There are several examples in this project of specific tests applying to one element and not another. Additionally, at the time of inclusion, the NFPA 1971 durability task group did not recommend application of this test to gloves and footwear due to differing useful life expectancy of those elements as well as the construction of the barriers in those elements.”

75. Ms. Lehtonen voted against the emergency nature of the amendment and offered the same comments noted above.

76. While Gore asserted that it was taking no position on TIA 1594, as with Lion, it submitted a comment which included the following statements:

- “The TIA substantiations, as written, cast unnecessary and inappropriate doubt upon the safety of PTFE, a PFAS material used in Gore’s moisture barriers;”
- “Gore uses ePTFE (an expanded form of PTFE) for the thin waterproof and breathable membranes at the heart of all of our GORE® moisture barrier products for the firefighting industry. PTFE is a member of the fluoropolymer class of per-and polyfluorinated alkyl substances (PFAS) and it is broadly recognized as safe for products of high societal value, including implantable medical devices;”
- “As written, the TIA is misleading and more clarity should be provided about the PFAS chemistries in the firefighting gear rather than broad descriptions that are not relevant for the application and, in some cases, factually inaccurate. As written, the TIA appears to suggest that PTFE causes cancer in firefighters. This is not the case;” and
- “Gore concludes its firefighting products are not the cause of cancers impacting firefighters.”

77. On August 5, 2021, Brian J. Sullivan, a representative for Gore, sent an email to the NFPA 1971 Hazardous Substances Task Group (consisting of many Technical Committee voting members). The letter referenced a presentation by Dr. Jamie DeWitt and Dr. Miriam Calkins, experts in the field of occupational exposure and the toxicology of PFAS. Sullivan stated, “Inaccurate claims we heard were: 1) PTFE is made up of PFOA and fluorotelomer alcohol monomers (i.e., polymer building blocks), and can degrade to such non-polymeric materials; 2) The fluoropolymer PTFE leads to small PFAS monomers (PFOA and fluorotelomers) which are bioavailable (i.e., can be absorbed by human cells); and 3) PTFE thermally degrades in normal firefighter conditions experienced by moisture barriers.” “Decisions based upon inaccurate or unsupported statements may have the unintended consequence of limiting firefighters ability to

choose the highest performing materials helping to protect them against many hazards faced on the job.”

78. IAFF appealed the Technical Committee’s denial of TIA 1594, and a hearing was held with the Standards Council on August 25, 2021. NFPA’s Standards Council voted on August 26, 2021, to deny that appeal.

E. Ongoing Misrepresentations and Denials of the Hazards Posed by PFAS Bunker Gear

79. These submissions by Lion and Gore to Defendant NFPA are consistent with their ongoing misrepresentations and efforts to minimize the dangers posed by PFAS in bunker gear.

80. For example, Gore has known for decades that PFAS compounds can be absorbed through the skin and that inhalation, ingestion, and dermal are all potential routes of exposure for PFOS, PFOA, and APFO.

81. Likewise, in 2017, Lion’s President, Stephen Schwartz, wrote a letter to the editor of the Columbus Dispatch, expressing outrage at the assertion in a government filing that fire fighters may have been exposed to PFAS through bunker gear. Schwartz called this assertion false, stating that Lion’s bunker gear is not treated or made with PFOS or PFOA, and further stating, *inter alia*, that: “PFOAs and PFOSs have never been components of Lion’s turn-out gear, either as a coating or as a textile.”

82. He acknowledged that turn-out gear is treated with PTFE to provide a durable water repellant, and that the textile industry in the past had used PFOA as a processing aid to manufacture PTFE moisture barrier films and repellants. “It is possible that trace amounts may have been present as a residue when the films and finishes were incorporated into [the company’s] turn-out gear. *However, based on all available scientific data, such nominal trace amounts, if they existed*

at all, would not have posed any health risk to firefighters. There is absolutely no connection at all between PFOS and firefighter turnout gear.” (Emphasis added).

83. In 2018, Defendant NFPA issued a publication listing 11 ways to minimize risk of occupational cancer. The suggestions centered on wearing bunker gear for protection resulting from combustion or spills, and cleaning bunker gear after exposure to chemicals. There was not a single mention of the risks associated with exposure to PFAS or PFAS-containing materials within bunker gear.

84. In 2019, Lion issued a Customer Safety Alert for PFOA and Turnout Gear stating: “Your Lion turnout gear continues to be safe and ready for action especially when properly maintained. It is extremely important that firefighters continue to wear and properly care for their gear to stay safe on the job.”

85. In 2020, Lion-hired consultant Paul Chrostowski, PhD, placed a full-page advertisement in Firefighter Nation to argue that turnout gear is completely safe and any evidence to the contrary, including the Notre Dame study, is unreliable and fear-mongering. “[E]ven if PFAS were found in their turnout gear, at this time there is no credible evidence that it ends up in firefighters [sic] bodies in amounts that would be higher than the general population.... the connection between PFAS and cancer is extremely weak. The few peer-reviewed epidemiological studies that have found an association were not statistically significant and inconsistent with other studies.... The materials used in turnout gear are the safest materials available, and without them, firefighters would be at extreme risk for burns and exposure to known cancer-causing toxic chemicals present on the fireground, as well as metabolic heat stress.... Alternative materials tried by the U.S. fire service thus far have proven to be unsafe.”

86. Similarly, in 2020, Lion, again through its hired consultant Chrostowski, also stated in Firefighter Nation that all bunker gear are compliant with the standards set by the NFPA and Swiss organization OEKO-TEX's Standard 100 for PPE and Materials for PPE. "The OEKO-TEX certification process tests for the presence of unsafe levels of trace materials, including PFOA."

87. In 2021, Gore maintained in the New York Times that its bunker gear products were safe, and reiterated its contention that its products were tested and not hazardous. Moreover, in 2021 Lion stated that the representations articulated by its consultant Paul Chrostowski in 2020 (see above), reflect its position: "Dr. Chrostowski's report says it all for Lion."

FIRST CAUSE OF ACTION
CIVIL CONSPIRACY: PECULIAR POWER OF COERCION

88. Plaintiff incorporates by reference all prior paragraphs of this complaint, as though fully set forth at length herein.

89. By way of background, non-party Lion began to manufacture, market and sell bunker gear in 1970. Since its founding, and continuing to the present, Lion makes, markets, and sells bunker gear using PFAS-containing fabrics, including moisture barrier fabrics supplied by non-party Gore.

90. Non-party Lion is the fifth largest manufacturer of bunker gear in the United States, and, upon information and belief, was, via its combination with Defendant NFPA and others, instrumental in ensuring the NFPA's adoption and preservation of the UV Light Test standard described above.

91. Upon information and belief, non-party Gore also was, via its combination with Defendant NFPA and others, instrumental in ensuring the NFPA's adoption and preservation of the UV Light Test standard described above.

92. Upon information and belief, prior to the initial adoption of Section No. 8.62 in the 2007 edition of NPFA 1971, Defendant NFPA and non-parties, including Lion and Gore, entered into a combination to accomplish an unlawful purpose and/or to accomplish a lawful purpose though unlawful means, *i.e.*, to ensure that the NFPA's minimum standards would unnecessarily and illogically contain a UV light degradation standard applicable to moisture barriers in the middle of three layers of firefighting bunker gear, irrespective of the fact that the moisture barrier *is not* exposed to light during ordinary, foreseeable use.

93. Upon information and belief, subsequent to the initial adoption of Section No. 8.62 in the 2007 edition of NPFA 1971, Defendant NFPA and non-parties, including Lion and Gore, entered into a combination to accomplish an unlawful purpose and/or to accomplish a lawful purpose though unlawful means. Specifically, NFPA and others conspired to ensure that the unnecessary, illogical, unreasonable and arbitrary UV light degradation standard set forth in Section No. 8.62 would remain part of the 2018 edition of NFPA 1971 so that Lion, Gore, and industry members would continue to be able to profit from the manufacture, use, and distribution of moisture barriers in bunker gear comprised of PTFE, a fluoropolymer and type of PFAS known to degrade into toxic, carcinogenic compounds.

94. Upon information and belief, Defendant NFPA and non-parties, including Lion and Gore, have, by their combination, exercised a peculiar power of coercion over Plaintiff and its members, by *inter alia*, implementing and opposing the repeal of Section No. 8.62, and thereby effectively requiring the use of PFAS chemicals in bunker gear used by Plaintiff's members, a power of coercion over Plaintiff which neither Defendant NFPA nor its non-party co-conspirators, would have had, had they acted independently.

95. Upon information and belief, Defendant NFPA and non-parties, including Lion and Gore, by their combination, have exercised a peculiar power of coercion over Plaintiff and its members, and have directly and proximately performed acts which injured Plaintiff and its members, by *inter alia*, specifically hindering the development and use by fire fighters of PFAS-free bunker gear, a power of coercion over the Plaintiff which neither Defendant NFPA, nor its non-party co-conspirators, would have had, had they acted independently.

96. Upon information and belief, Defendant NFPA and non-parties, including Lion and Gore, by their combination, have exercised a peculiar power of coercion over Plaintiff and its members, and directly and proximately performed acts which injured Plaintiff and its members, by *inter alia*, egregiously and unnecessarily exposing thousands of Plaintiff's members to hazardous PFAS compounds contained in moisture barriers compliant with Section No. 8.62's UV light degradation test. This conduct has also forced Plaintiff to expend significant resources in order to make its members aware of the risks associated with PFAS-containing bunker gear, to develop recommended policies and procedures regarding the use of PFAS-containing bunker gear until such time as PFAS-free gear can be developed and implemented, and to advocate for the repeal of the nonsensical Section No. 8.62 UV light degradation test and for the development and adoption of PFAS-free bunker gear in the fire service.

97. Upon information and belief, Defendant NFPA, and its non-party co-conspirators, have, through the exercise of the power derived from their combination, directly and proximately caused injuries and damages to Plaintiff IAFF, including, but not limited, to costs and expenses incurred in preparing resources on and providing outreach information to its membership about the hazards posed by PFAS-containing bunker gear, the costs of bringing and challenging the

continued use of Section No. 8.62 by NFPA, and such other losses of money and/or property as the evidence may show.

98. WHEREFORE, the IAFF demands judgment in its favor against Defendant NFPA for compensatory damages in an amount to be determined by a jury, injunctive relief requiring NFPA to immediately rescind Section No. 8.62 of NFPA 1971, together with prejudgment interest, post-judgment interest, costs and expenses, attorneys' fees and costs , and such other relief as this Court deems just and equitable.

SECOND CAUSE OF ACTION
VIOLATION OF M.G.L.A. 93A §§ 2 AND 11

99. Plaintiff incorporates by reference all prior paragraphs of this complaint, as though fully set forth at length herein.

100. Plaintiff IAFF brings this Second Cause of Action, arising under M.G.L.A. 93A §§ 2 and 11, for its losses arising from Defendant NFPA's engaging in unfair methods of competition and/or unfair and deceptive acts and practices.

101. At all times relevant, Defendant NFPA has been engaged in trade and commerce substantially occurring within the Commonwealth of Massachusetts.

102. At all times relevant, Plaintiff IAFF has been engaged in trade and commerce substantially occurring within the Commonwealth of Massachusetts.

103. The conduct of NFPA in maintaining the irrelevant, hazardous provisions of Section No. 8.62 was reckless, willful, misleading, deceptive, and unfair.

104. The conduct of Defendant NFPA complained of herein occurred primarily and substantially within the Commonwealth of Massachusetts and has caused and will continue to cause injury to Plaintiff.

105. The conduct of Defendant NFPA as alleged herein constitutes unfair and deceptive acts and practices in the conduct of trade or commerce, in violation of M.G.L.A. Chapter 93A.

106. Upon information and belief, Defendant NFPA's violations of Chapter 93A were willful or knowing.

107. Plaintiff IAFF has sustained and continues to sustain cognizable injuries and damages as a result of Defendant NFPA's violations of Chapter 93A, including direct, indirect, consequential, and incidental damages.

108. Defendant NFPA is liable to the Plaintiff for up to three times the damages it incurred because of Defendant's violations of M.G.L.A. Chapter 93A, plus its attorneys' fees and costs.

109. WHEREFORE, the IAFF demands judgment in its favor against Defendant NFPA for compensatory damages in an amount to be determined by a jury, injunctive relief requiring NFPA to immediately rescind Section No. 8.62 of NFPA 1971, together with prejudgment interest, post-judgment interest, costs and expenses, attorneys' fees and costs, and such other relief as this Court deems just and equitable.

THIRD CAUSE OF ACTION
NEGLIGENCE

110. Plaintiff incorporates by reference all prior paragraphs of this complaint, as though fully set forth at length herein.

111. Defendant NFPA describes itself as being "devoted to eliminating death, injury, property and economic loss due to fire, electrical and related hazards." Its self-described "vision" is "We are the leading global advocate for the elimination of death, injury, property, and economic loss due to fire, electrical and related hazards," and says its "mission" is "To help save lives and reduce loss with information, knowledge, and passion."

112. At all times relevant, the hazards posed by the presence of PFAS in bunker gear moisture barriers were foreseeable to, and/or actually or constructively known to Defendant NFPA.

113. At all times relevant, Defendant NFPA, by virtue of its role in the fire safety industry and due to its special relationship with IAFF, owed a duty of due care to promulgate and maintain standards which promote the health, safety, and welfare of fire fighters.

114. At all times relevant, Defendant NFPA, by virtue of its role in the fire safety industry and due to its special relationship with IAFF, owed a duty of due care to minimize or eliminate known and/or foreseeable hazards inimical to the health, safety, and welfare of fire fighters.

115. At all times relevant, Defendant NFPA, by virtue of its role in the fire safety industry and due to its special relationship with IAFF, owed a duty of due care to promulgate standards which it knew or should have known would cause or contribute to the creation of hazards to IAFF and its members.

116. At all times relevant, Defendant NFPA, by virtue of its role in the fire safety industry and due to its special relationship with IAFF, owed a duty of due care to rescind existing standards which it knew or should have known were causing or contributing to hazardous, unreasonable dangers to IAFF and its members.

117. At all times relevant, Defendant NFPA, by virtue of its role in the fire safety industry and due to its special relationship with IAFF, owed a duty of due care to not materially misstate or mislead Plaintiff about the hazards posed by the presence of PFAS chemicals in fire fighter bunker gear.

118. At all times relevant, Defendant NFPA breached the foregoing duties owed to Plaintiff IAFF by, *inter alia*:

- a. Adopting Section 8.62, needlessly requiring the use of PFAS-containing materials in bunker gear moisture barriers;
- b. Ignoring the wealth of scientific evidence on the safety and health hazards posed by the presence of PFAS-containing materials in bunker gear moisture barriers, but instead refusing to rescind Section 8.62;
- c. Downplaying and misstating the scope and severity of the foreseeable and/or known hazards posed by the presence of PFAS-containing materials in bunker gear moisture barriers; and
- d. In such other particulars as the evidence may show.

119. As a direct and proximate result of NFPA's tortious conduct, IAFF has been forced to redirect its limited time and resources away from its existing trade and commerce activities, including but not limited to fire fighter education, safety, and research, to publicize NFPA's ongoing refusal to revoke Section 8.62, and attempt to minimize the harm that would be prevented, or at least significantly reduced, but for the NFPA's ongoing retention of Section 8.62.

120. Among other things, NFPA's refusal to rescind Section 8.62 forces IAFF to redirect resources away from its core trade, commerce, education, and advocacy work toward requesting information about the hazards posed by the presence of PFAS-containing materials in bunker gear moisture barriers; fighting to obtain that information; reviewing, analyzing, and digesting that information; and publicizing it to educate its members and the public in order to attempt to countermand the numerous health and safety risks posed by the NFPA's conduct.

121. Likewise, NFPA's refusal to rescind Section 8.62 has necessitated that IAFF utilize

its limited time and resources to, *inter alia*, partner with the American Cancer Society, hire its first ever Chief Medical Officer as well as create and staff its own Science & Research Department to expand cancer research.

122. As a direct and proximate result of NFPA’s breaches of the above-noted duties, Plaintiff IAFF has suffered property damages, economic losses, and such other injuries as the evidence may show at trial.

123. WHEREFORE, the IAFF demands judgment in its favor against Defendant NFPA for compensatory damages in an amount to be determined by a jury, injunctive relief requiring NFPA to immediately rescind Section No. 8.62 of NFPA 1971, together with prejudgment interest, post-judgment interest, costs and expenses, attorneys’ fees and costs, and such other relief as this Court deems just and equitable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests a trial by jury on all counts so triable, and Judgment:

- (1) Awarding the IAFF past and future compensatory damages, treble and/or additional damages, and other appropriate damages in amounts to be determined by the evidence at trial and allowed by law;
- (2) Enjoining NFPA from maintaining or enforcing NFPA 1971 (2018), Section No. 8.62;
- (3) Awarding all costs and disbursements resulting from this litigation, including but not limited to, reasonable attorneys’ fees and costs and expert witness fees, as permitted by law;
- (4) Pre-judgment and post-judgment interest; and
- (5) Granting such further relief as the Court deems just, equitable, and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all counts so triable.

Respectfully submitted,

By: /s/ Jayne Conroy
SIMMONS HANLY CONROY LLC
Jayne Conroy
Massachusetts Bar No. 546090
Simmons Hanly Conroy LLC
112 Madison Ave., 7th Floor
New York, NY 10016
(212) 784-6402
jconroy@simmonsfirm.com

Daniel P. Blouin (*pro hac vice* to be filed)
Simmons Hanly Conroy LLC
112 Madison Ave., 7th Floor
New York, NY 10016
(212) 257-8482
dblouin@simmonsfirm.com

Justin Presnal (*pro hac vice* to be filed)
Simmons Hanly Conroy LLC
5216 Cascades Drive
College Station, TX 77845
(979) 224-2036
jpresnal@simmonsfirm.com

/s/ Donald A. Migliori
MOTLEY RICE LLC
Donald A. Migliori
Massachusetts Bar No. 567562
Anne McGuinness Kearse (*pro hac vice* to be filed)
T. David Hoyle (*pro hac vice* to be filed)
28 Bridgeside Boulevard
Mount Pleasant, SC 29464
(843) 216-9000
dmigliori@motleyrice.com
akearse@motleyrice.com
dhoyle@motleyrice.com

Esther Berezofsky (*pro hac vice* to be filed)
Motley Rice LLC
210 Lake Dr. East, Suite 101
Cherry Hill, NJ 08002
(856) 667-0500
eberezofsky@motleyrice.com

**SULLIVAN PAPAIN BLOCK MCGRATH
COFFINAS AND CANNAVO P.C.**
Thomas J. McManus (*pro hac vice* to be filed)
Nicholas Papain (*pro hac vice* to be filed)
Craig Silverman (*pro hac vice* to be filed)
120 Broadway, 27th Floor
New York, NY 10271
(212) 266-4125
Tmcmanus@triallaw1.com
npapain@triallaw1.com
CSilverman@triallaw1.com

Attorneys for Plaintiff

Dated: March 16, 2023