

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Petition

-between-

NEW YORK CITY DEPUTY SHERIFFS' ASSOCIATION,

Petitioner,

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY  
DEPARTMENT OF FINANCE, and THE SHERIFF OF  
THE CITY OF NEW YORK,

Respondents.

BCB-\_\_\_\_\_-23

Trial Examiner:

**VERIFIED IMPROPER  
PRACTICE PETITION**

**TO THE BOARD OF COLLECTIVE BARGAINING:**

1. Petitioner, the New York City Deputy Sheriffs' Association (hereinafter "DSA" or "Union"), as and for its Verified Improper Practice Petition, by its attorneys, Pitta LLP, respectfully allege the following pursuant to § 1-07 (d) of Title 61 of the Rules of the City of New York Office of Collective Bargaining (hereinafter "OCB Rules"):

2. Petitioner, the DSA, is the certified bargaining representative for all employees in the civil service rank of Administrative Sheriff, Senior Deputy Sheriff, Supervising Deputy Sheriff, and Deputy Sheriff employed by the New York City Department of Finance (hereinafter "DOF") working for the Sheriff of the City of New York (hereinafter "Sheriff"), pursuant to the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (hereinafter "NYCCBL") § 12-302.

3. The Union's principal place of business is 31-00 47<sup>th</sup> Avenue, 3<sup>rd</sup> Floor, Suite 3100, Long Island City, New York 11101; and the Union's telephone number is (718) 425-4329.

4. Ingrid Simonovic is the duly-elected President of the DSA, and as such, she is charged with the contractual and legal protection of the members of the Union.

5. The first above-captioned Respondent herein is the City of New York, which is a duly constituted political subdivision of the State of New York, is a municipal corporation organized and existing under the laws of the State of New York, and is defined as a “public employer” pursuant to NYCCBL § 12-303(g) (hereinafter “City”).

6. The second above-captioned Respondent herein is the DOF, which is a political subdivision of the City and which maintains its principal place of business at 66 John Street, New York, New York 10038.

7. The third above-captioned Respondent herein is the Sheriff’s Office, which is a subdivision of the DOF and which maintains its headquarters at 30-10 Starr Avenue, Long Island City, New York 11101.

8. The New York City Office of Labor Relations is the City’s office that represents the Mayor and City in the conduct of all labor relations between the City and municipal employee organizations, such as the DSA, which maintains its principal place of business at 22 Cortlandt Street, 15<sup>th</sup> Floor, New York, New York 10007 and whose telephone and facsimile numbers are (212) 306-7200 and (212) 306-7202, respectively (hereinafter “OLR”); further OLR is a “mutual agency” and a “mayoral agency,” as those terms are defined in § 12-303(d) and (f) of the NYCCBL.

9. The City, on behalf of DOF and Sheriff (collectively, “Respondents”), and DSA are parties to a collective bargaining agreement covering the period from \*\*\* to \*\*\* (hereinafter “CBA” or “Agreement”), which is currently in *status quo*. Annexed hereto as Exhibit A is a copy of the Agreement.

10. The DSA files the instant Verified Improper Practice Petition because the Union alleges that the City violated NYCCBL § 12-306(a)(1) and (3) by discriminating and retaliating against members of the Union’s Executive Board for engaging in statutorily protected activity, as defined by NYCCBL § 12-305 and the decisional law promulgated by the New York City Board of Collective Bargaining (“Board” or “BCB”).

11. As will be sufficiently alleged below, the DSA seeks an order from the Board, *inter alia*, determining that Respondents violated the NYCCBL, issuing a make-whole remedy related to the acts complained of herein, and mandating the posting of appropriate notices.<sup>1</sup>

### **BACKGROUND**

12. The Sheriff’s Office is generally responsible for enforcing court mandates, orders, decrees, and other duties as prescribed by New York State law.

13. Such functions include, *inter alia*, executing service, seizing property, conducting arrests, and performing searches of locations selling tobacco products.

14. The job specification for DSA members states that they are responsible for carrying out duties, including but not limited to: executing mandates and orders resulting from civil litigation; effecting service of civil process, such as complaints and subpoenas; executing process involving the seizure of property and giving actual possession of real property; apprehending persons pursuant to order of civil arrest; escorting prisoners to civil jail and assuming responsibility for their care, custody, and control.

15. However, the job specification for DSA members does not contain any reference to the search of stores and/or vendors selling marijuana products, the seizure of such products, and the arresting of individuals suspected to have engaged in the sale of such products.

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<sup>1</sup> For a comprehensive list of the remedial measures requested by the Union in the instant matter, the Board is directed to the instant pleading’s *ad damnum* clause at the conclusion herein.

16. Similarly, there was no protocols established by either the DOF or Sheriffs' Office with respect to the storage of the marijuana products seized during the raids of these stores.

17. On September 12, 2022, the Executive Board for the DSA (hereinafter "Executive Board")<sup>2</sup> submitted a request to schedule a labor-management meeting with the DOF, Sheriffs' Office, and OLR with respect to a wide ranging set of topics.

18. Specifically, the Union sought to discuss, *inter alia*: i) the recent changes to the DOF's leave policies with respect to use of annual leave, scheduling vacations, and cancellation of leave requests;<sup>3</sup> ii) the scheduling of DSA members returning from Line-of-Duty Injuries (hereinafter "LODI") to work 8-hour tours without their service weapons alongside DSA members working 10-hour tours with their service weapons;<sup>4</sup> iii) DSA members performing out of title work due to inappropriate staffing levels and increase in work-related responsibilities; iv) the 12 to 18 month delay in implementing promotions that had already been approved; and v) the recent changes to the Notice of Examination for certain civil service ranks represented by the Union.

19. On November 10, 2022, the Executive Board met with representatives from DOF, Sheriffs' Office, OLR to discuss the topics raised in the Executive Board's September 12, 2022 correspondence.

20. Although many of these topics were discussed by all sides present during this labor-management meeting, none of them were resolved.

21. On November 29, 2022, the Union was apprised that the Sheriffs' Office was "deputizing" enforcement workers from the New York City Department of Consumer and Workers

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2 At all times relevant to the instant matter, the Executive Board consists of the DSA President (Ingrid Simonovic), the DSA 1<sup>st</sup> Vice-President (), the DSA 2<sup>nd</sup> Vice-President (Furney Canteen), the DSA 3<sup>rd</sup> Vice-President (Derek Skuzenski), the DSA Treasurer (Timothy Lo), and the DSA Secretary (Randy Alvarado) \*\*\*

3 This dispute is currently being litigated before the Board in the matter docketed as BCB-4496-23.

4 This dispute is currently being litigated before the Board in the matter docketed as BCB-4497-23.

Protection (hereinafter “DCWP”) and the New York State Office of Cannabis Management, and inquired with OLR about the veracity of this action and the legal authority for engaging in such action.

22. On December 1, 2022, the DSA President emailed with OLR regarding the hazardous manner and unsafe location in which the marijuana and various liquid nicotine products seized by DSA members was being stored.

23. On December 5, 2022, the DSA President forwarded a series of photographs taken from DOF’s offices demonstrating where and how the marijuana seized by DSA members was being stored. Annexed hereto as Exhibit B are copies of said photographs.

24. The next day, on December 6, 2022, the Union emailed with Respondents regarding the ventilation issues at the headquarters of the Sheriffs’ Office located at 30-10 Starr Avenue, Long Island City (hereinafter “Headquarters”).

25. On December 30, 2022, there was a surprise, unannounced visit by the New York State Public Employee Safety and Health Bureau (hereinafter “PESH”) to investigate the Union’s claims concerning the storage of the marijuana products seized by DSA members and the lack of appropriate ventilation related thereto.

26. On January 5, 2023, the DSA President emailed the DOF, Sheriffs’ Office, and OLR with respect to the changes made to the Notice of Examination for the most-recent civil service examination for the civil service rank of Deputy Sheriff.

27. Specifically, the DSA President submitted a demand to bargain with Respondents in connection with the reason behind the new institution of a physical fitness requirement, as well as the possibility of periodic physical fitness qualifications.

28. On January 6, 2023, PESH conducted an announced visit to the Headquarters to gather additional information related to the Union's claims concerning the storage of the marijuana products seized by DSA members and the lack of appropriate ventilation related thereto.<sup>5</sup>

29. On January 23, 2023, PESH inspectors conducted interviews of DSA members, including the DSA President and DSA 2<sup>nd</sup> Vice-President, regarding the Union's claims concerning the storage of the marijuana products seized by DSA members and the lack of appropriate ventilation related thereto.

30. On February 2, 2023, a second labor-management meeting was held involving the Union, DOF, and Sheriffs' Office.

31. Although many of these topics were discussed by all sides present during this labor-management meeting, none of them were resolved.

32. That same day, on February 2, 2023, the Executive Board sent a letter to the Commissioner for DOF, the Sheriff, and the New York City Law Department (hereinafter "Corporation Counsel") seeking specific reference related to the legal authority allegedly bestowed upon the DOF and Sheriffs' Office to conduct operations related to the seizure of marijuana products and the arresting of individuals suspected in the sale of such products. Annexed hereto as Exhibit C is a copy of said letter.

33. On February 7, 2023, the Union met with the Sheriffs' Office to again discuss the recent changes made by the DOF to its vacation selection process.

34. In March 2023, the DSA President was transferred from her work location of many years located in Queens County to a location in New York County.<sup>6</sup>

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<sup>5</sup> In addition, in or about January 2023, the DSA began filing improper practice petitions against Respondents. These matters have been docketed as BCB-4496-23, BCB-4497-23, and BCB-4498-23, respectively. All three of these matters are in various stages of litigation pending before the Board.

35. On March 15, 2023, the Union, through its then-counsel, sent an email to the DOF regarding the unresolved topics discussed during the November 11, 2022 and February 2, 2023 labor-management meetings.

36. On March 19, 2023, the DSA President sent a letter to the Sheriff with respect to the assignment of DSA members to assist in the patrolling of and crowd control for First Amendment Activities (hereinafter “FAAs”), where civil unrest could be on display and which is currently the subject of ongoing, federal litigation in *In re NYC Policing During Summer 2020 Protests*, 20-CV-8924 (CM) (GRG). Annexed hereto as Exhibit D is a copy of said letter.

37. On May 2, 2023, Respondents suspended members of the Executive Board based upon outdated allegations that some of them had engaged in misconduct years ago.<sup>7</sup>

38. That same day, on May 2, 2023, members of the Executive Board were served with disciplinary charges and specifications related to this outdated and closed investigation.

39. As part and parcel of Respondents’ inappropriate conduct set forth herein, many of these individual Union members were served with such charges in-person while they were off-duty, were subjected to a custodial pat-down, and were then ordered into DOF vehicles to be taken to Headquarters where they were required to surrender their respective equipment, including but not limited to personal and professional firearms.

40. Since that time, these members of the Executive Board have been returned to duty but in a modified capacity, have been transferred out of their work locations, have been prohibited

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6 This dispute is currently being litigated before the Board in the matter docketed as BCB-4498-23.

7 Approximately three years ago, the Sheriffs’ Office opened an investigation into DSA members for improperly stealing/selling liquor confiscated by the DOF as part of its attempt to shutter illegal gatherings in violation of Citywide quarantine orders related to COVID-19 that were stored in a shipping container maintained by the Sheriffs’ Office. According to the Union, this investigation was initially referred out to the New York City Department of Investigations (hereinafter “DOI”) and then to the Office of the District Attorney for Queens County (hereinafter “Queens DA”). After these respective investigations ran their course, in or about 2021, they were closed out with no disciplinary and/or criminal charges being proffered against any members of the Executive Board.

from entering any facilities operated by the Sheriffs' Office, have been denied access to their respective DOF email accounts, have had their requests for usage of leave denied, and have not had any of their firearms, both personal and professional, returned to them.

41. Furthermore, they are currently embroiled in disciplinary litigation before the DOF Advocates Office, where they face a disproportionate level of discipline, in light of the alleged underpinnings of these disciplinary charges and disciplinary penalties other members of the DSA, who are not on the Executive Board, have faced in the recent past.<sup>8</sup>

42. For the reasons set forth below, the Board must grant the instant petition and award the remedies requested herein.

**FIRST CAUSE OF ACTION  
INTERFERENCE WITH STATUTORY RIGHTS  
AGAINST RESPONDENTS**

43. The DSA repeats and realleges each and every allegation contained in paragraphs 1 through \*\*\* as though fully set forth at length herein.

44. NYCCBL § 12-305 provides, in pertinent part: “Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all such activities.”

45. Further, NYCCBL § 12-306(a)(1) states that: “It shall be an improper practice for a public employer or its agents: to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter.”

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<sup>8</sup> To this point, Petitioners are prepared to offer testimony to demonstrate that, within the last 12 months, two DSA members not on the Executive Board have been arrested and another DSA member not on the Executive Board was involved in an alleged on-the-job domestic incident, and none of them have been suspended or, at this time, had disciplinary charges and specifications proffered against them.



46. Commonly referred to as an “interference” or an “independent (a)(1)” cause of action, the Board has stated that “[t]o determine if an independent violation of § 12-306(a)(1) has been established, this Board adopted the test stated in *NLRB v. Great Dane Trailers, Inc.*, 388 U.S. 26 (1967).” *Feder*, 1 OCB2d 27, at 12 (BCB 2008).

47. The Board adopted this standard in *Assistant Deputy Wardens Association*, 55 OCB 19, 26-28 (BCB 1995), and quoted *Great Dane*, 388 U.S. at 34: “if it can reasonably be concluded that the employer’s discriminatory conduct, was ‘inherently destructive’ of important employee rights, no proof of antiunion motivation is needed and the Board can find an unfair labor practice even if the employer introduces evidence that the conduct was motivated by business considerations.”

48. In interpreting this language, the Board has held that certain conduct by a public employer that contains “an innate element of coercion, irrespective of motive, can constitute conduct which, because of its potentially chilling effect, is inherently destructive of important rights guaranteed under the NYCCBL.” *Soc. Serv. Employees Union, Local 371*, 3 OCB2d 22, at 15 (BCB 2010) (*citing Asst. Deputy Wardens Assn.*, 55 OCB 19, at 40).

49. Attempts by a public employer to discourage employees from utilizing their respective union and threats of retaliation constitute valid interference claims. *See Detectives’ Endowment Assn.*, 4 OCB2d 35, at 9 (BCB 2011).

50. Further, the Board has held that statements made by supervisors to rank-and-file employees to not employ the assistance of a particular union representative has been held by the Board to constitute impermissible interference with an employee’s § 12-305 rights, *see Dist. Council 37, Local 376*, 73 OCB 6, at 11 (BCB 2004).

51. Finally, managerial actions “intended to discourage union activity” also constitute violations of NYCCBL § 12-306(a)(1). *Dist. Council 37*, 4 OCB2d 47, at 22 (BCB 2011).

52. Here, based upon the allegations set forth above, Petitioner has established that the suspension of members of the Executive Board, the proffering of disciplinary charges against members of the Executive Board, and the alteration of their working conditions constitutes behavior that is inherently destructive to the statutory rights of Union members and actively seeks to discourage them from exercising the same.

53. For approximately the last year, Respondents have engaged in actions with questionable legal basis, have unilaterally instituted changes to the DOF and Sheriffs’ Office, and have endangered the safety of DSA members.

54. For approximately the last year, the Union has challenged, in its role as the certified bargaining representative for employees in the civil service rank of Administrative Sheriff, Senior Deputy Sheriff, Supervising Deputy Sheriff, and Deputy Sheriff, these actions through its various avenues of redress.

55. The Union’s efforts in this endeavor have been spearheaded by the Executive Board.

56. But due to the resistance demonstrated by the Executive Board concerning these actions, Respondents have intentionally targeted these individuals.

57. Respondents have proffered specious disciplinary charges and specifications against them, have suspended them, have transferred them out of their respective work locations, and have altered their work schedules.

58. All these actions undertaken by Respondents against the members of the Executive Board acts as an inherent deterrent to other DSA members exercising their rights under § 12-305 of the NYCCBL and unquestionably chills future, potential exercising of said rights.

59. The message being clearly communicated from Respondents to Petitioner is, if they are challenged in any manner, they will exhume dubious circumstances to serve as the basis for disciplinary charges that lack merit and utilize the same to unilaterally impose their will upon their subjects.

60. Respondents' actions set forth above innately coerce DSA members due to their chilling effect on protected, union activity and is therefore inherently destructive of the rights guaranteed by the NYCCBL.

61. Accordingly, the Board should find that Respondents interfered with, restrained, and coerced the Union's members' exercise of their rights granted in NYCCBL § 12-305 and should grant all the relief requested herein.

**SECOND CAUSE OF ACTION  
DISCRIMINATION AND RETALIATION  
AGAINST RESPONDENTS**

62. Petitioner repeats and re-alleges each and every allegation contained in paragraphs 1 through \*\*\* as if more fully set forth at length herein.

63. NYCCBL § 12-306(a)(3) proscribes public employers from discriminating “against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization.”

64. Causes of action under this subdivision of the NYCCBL are often referred to as “discrimination” and/or “retaliation” claims. *Correction Officers Benevolent Assn.*, 2 OCB2d 7, at 40 (BCB 2009). \* In *Bowman*, 39 OCB 51, 16-17 (BCB 1987), the Board adopted the standard

utilized by the New York State Public Employment Relations Board in *City of Salamanca*, 18 PERB ¶ 3012 (1985) when analyzing these types of cases.

65. The *Bowman-Salamanca* standard provides that in order to establish a *prima facie* case, a petitioner must demonstrate that

1. The employer's agent responsible for the alleged discriminatory action had knowledge of the employee's union activity; and

2. The employee's union activity was a motivating factor in the employer's decision  
*Bowman*, 39 OCB 51, at 18-19; *see also Edwards*, 1 OCB2d 22, at 16 (BCB 2008).

66. The Board has further held that if a Petitioner alleges sufficient facts to make out a *prima facie* case, the public employer may attempt "to refute petitioner's showing on one or both elements, or may attempt to refute this showing by demonstrating that legitimate business reasons would have caused the employer to take the action complained of even in the absence of protected conduct." *Soc. Serv. Employees Union*, 77 OCB 35, at 18 (BCB 2006).

67. In satisfaction of the *Bowman-Salamanca* standard, the Board has held that protected, union activity may consist of: i) seeking the union's assistance to resolve concerns regarding the employment relationship, (*see Civ. Serv. Bar Assn., Local 237*, 71 OCB 5, at 10 (BCB 2003)), ii) filing grievances, administrative, and/or improper practice petitions, (*see Soc. Serv. Empl'ys. Union, Local 371*, 77 OCB 35, at 16 (BCB 2005)), iii) holding a recognized, union position, (*see Comm. Workers of America, Local 1182*, 8 OCB2d 18, at 11-12 (BCB 2015)).

68. Regarding the second prong of this standard, "typically, this element is proven through the use of circumstantial evidence, absent an outright admission." *Burton*, 77 OCB 15, at 26 (BCB 2006).

69. Additionally, to establish motive, a petitioner must offer allegations based on statements of probative facts and not mere “speculative or conclusory allegations.” *Sergeants Benevolent Assn.*, 75 OCB 22, at 22 (BCB 2005).

70. Further, while temporal proximity alone is not sufficient to establish causation, the “repeated, suspicious, temporal proximity” between the protected, union activity and the allegedly retaliatory action, in conjunction with other facts supporting a finding of improper motivation, is sufficient to satisfy the second element of the *Bowman-Salamanca* test. *Colella*, 79 OCB 27, at 55 (BCB 2008).

71. Here, the Union has unquestionably established that the actions complained of herein satisfy each element of the *Bowman-Salamanca* standard.

72. As set forth above, the Union’s examples of engaging in protected, union activity are legion.

73. The DSA requested and participated in several labor-management meetings with Respondents; the DSA expressly and overly challenged a number of actions instituted by Respondents; the DSA filed grievances, administrative charges, and improper practice petitions in order to protect and secure the statutory and contractual rights of its members; and the DSA directly refused to be complicit with the overbearing and overreaching actions of Respondents.

74. These efforts were notably and conspicuously led by the Executive Board.

75. Furthermore, all of these actions undertaken against the Executive Board by Respondents occurred in a fairly short window of time.

76. Therefore, not only is there temporal proximity between the protected, union activity and the adverse employment action taken against the Executive Board, there is also circumstantial evidence that belies any attempt by Respondents to legitimize the actions directed

against the Executive Board; namely the resurrection of a closed investigation that both DOI and Queens DA determined to lack substance and merit.

77. And as a result of this intentional targeting of the Executive Board, these members Board have been returned to duty only in a modified capacity (no guns), have been transferred out of their work locations (where they have no IDs or pass-cards to access said new locations), and have had their requests to use leave cancelled and/or denied.

78. Accordingly, the Board should find that Respondents discriminated and retaliated against members of the Executive Board by zealously advocating for the rights, privileges, and benefits of DSA members and should grant all the relief requested herein.

**THIRD CAUSE OF ACTION  
DERIVATIVE INTERFERENCE  
AGAINST RESPONDENTS**

79. Petitioner repeats and re-alleges each and every allegation contained in paragraphs 1 through \*\*\* as if more fully set forth at length herein.

80. NYCCBL § 12-306(a)(1) provides, in pertinent part, that: “It shall be an improper practice for a public employer or its agents: to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter.

81. The Board has consistently found that, when a public employer violates §§ 12-306(a)(2)-(5) of the NYCCBL, that public employer “also derivatively violates NYCCBL § 12-306(a)(1).” *United Fedn. of Teachers, Local 2*, 4 OCB2d 2, at 10 (finding a derivative violation of NYCCBL § 12-306(a)(1) when the Board determined that the public employer failed to bargain in good faith); *see also Marine Empl. Beneficial Assn., Dist. No. 1*, 3 OCB2d 4, at 24 (BCB 2010).

82. In the instant matter, the DSA has established a violation of § 12-306(a)(3) of the NYCCBL.

83. In order to avoid needless repetition, Petitioner directs the Board to ¶¶ \*\*\*-\*\*\* above.

84. Accordingly, as the case law cited herein states that when there is a violation of §§ 12-306(a)(2)-(5) there is a derivative violation of NYCCBL § 12-306(a)(1), the Union has met its burden of establishing a claim for the interference of the statutory rights, set forth in § 12-305 of the NYCCBL, for each and every DSA member.

85. Based upon the foregoing, the Board must determine that Respondents, by engaging in the above-stated actions that violated related provisions of the NYCCBL, also derivatively interfered with the statutory rights of the DSA and its members encapsulated in NYCCBL § 12-305.

**WHEREFORE**, based upon the foregoing factual allegations, Petitioner respectfully requests the Board to issue a Decision and Order:

- Directing the cessation of all actions complained of herein by Respondents that interfere with the statutory rights of DSA members;
- Directing the cessation of all actions complained of herein by Respondents that discriminated and/or retaliated against DSA members, including but not limited to the Executive Board;
- Directing Respondents to make all adversely affected DSA members, including but not limited to the Executive Board, whole monetarily;
- Directing the restoration of all DSA members, including but not limited to the Executive Board, to posts that they previously occupied, prior to the improper actions complained of herein committed by Respondents;
- Directing the cessation of any and all punitive and improper transfers by Respondents;

- Directing the posting of conspicuous notices throughout the City, DOF, and Sheriff's Office; and
- For such other and further relief as the Board deems just and proper.

Dated: New York, New York  
August \_\_, 2023

**PITTA LLP**

By: \_\_\_\_\_

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**VERIFICATION**

I, STEPHEN Mc QUADE, pursuant to New York Civil Practice Law and Rules § 3020, affirm, verify, and state that I am an attorney admitted to practice in the Courts of this State; that I am a Partner of the law firm of Pitta LLP, the attorneys for Petitioner in the within action; that I have read the foregoing petition and know the contents thereof; that the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters I believe it to be true. The grounds of my belief as to all matters not stated upon my knowledge are a review of the file and all documents filed during participation as counsel at all previous stages of the underlying proceeding.

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Stephen Mc Quade

