

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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In the Matter of the Application of

THE COLLEGE OF NEW ROCHELLE SENATE, THE  
COUNCIL OF THE FACULTY OF THE COLLEGE OF  
NEW ROCHELLE, ROBERT TATE, MARIO CHARLES,  
CYNTHIA KRAMAN, MARIE OCTOBRE, DIANE  
RAMOS-KELLY, SUSAN CANNING, SAMUEL LILLY,  
LUKE FEDER, JESSICA KINDRED, WILLIAM  
MAXWELL, JENNIFER L. RANSOM, DANIEL  
GARCIA, ELLEN JACOBS and ELVIRA LONGORDO

Index No.:

**VERIFIED PETITION**

Petitioners,

For a Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules

--against--

THE COLLEGE OF NEW ROCHELLE, THE BOARD OF  
TRUSTEES OF THE COLLEGE OF NEW ROCHELLE,  
DOROTHY ESCRIBANO, in her capacity as President of  
THE COLLEGE OF NEW ROCHELLE,

Respondents.

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Petitioners The College of New Rochelle Senate, the Council of the Faculty of The College of New Rochelle, Robert Tate, Mario Charles, Cynthia Kraman, Marie Octobre, Diane Ramos-Kelly, Susan Canning, Samuel Lilly, Luke Feder, Jessica Kindred, William Maxwell, Jennifer L. Ransom, Daniel Garcia, Ellen Jacobs, and Elvira Longordo (collectively "Petitioners"), by their attorneys Eisner & Dictor, P.C., petition and complain of Respondents The College of New Rochelle, The Board of Trustees of the College of New Rochelle, and Dorothy Escribano, in her capacity as President of The College of New Rochelle (collectively, "Respondents"), and allege as follows:

**INTRODUCTION**

1. This is a hybrid action involving a C.P.L.R. Article 78 proceeding and breach of contract claims seeking a writ of mandamus ordering Respondents to vacate the June 12, 2017 decisions terminating the employment of the individual Petitioners, professors with tenure and continuous appointments, and the

entry of an Order finding that the decisions to terminate the individual Petitioners were made in violation of the Respondents' own policies and procedures, were arbitrary and capricious, and breached the individual Petitioners' contracts of employment.

2. Specifically, The College of New Rochelle (hereinafter "the College") has established a set of policies and procedures applicable to tenured faculty in its Faculty Handbook, duly adopted by the Board of Trustees in May of 2014 (attached hereto as Exhibit A). The College has also established a set of policies and procedures that apply to instructional staff and Assistant Professors in the School of New Resources who have been awarded continuous appointment.<sup>1</sup> Those policies are set forth in the Instructional Staff Handbook (attached hereto as Exhibit B).

3. Both the Faculty Handbook and the Instructional Staff Handbook form part of the essential employment understandings between the individual Petitioners and Respondents.

4. Both the Faculty Handbook and the Instructional Staff Handbook require that the College proceed through the detailed process of declaring financial exigency prior to engaging in economic layoffs of tenured faculty or instructional staff and Assistant Professors in the School of New Resources who have been awarded continuous appointment.

5. As discussed more thoroughly herein, Respondents terminated the individual petitioners without a declaration of financial exigency and without following the detailed co-governance procedures set forth in the College's Handbooks. By failing to follow the layoff and financial exigency procedures, the Respondents' decision to layoff the individual Petitioners was arbitrary and capricious, and must therefore be deemed a nullity.

#### **THE PARTIES**

6. Petitioner The College of New Rochelle Senate (hereinafter "the Senate") is an elected body established pursuant to the College's Governance Handbook (attached hereto as Exhibit C). The

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<sup>1</sup> On or about August 22, 2016, instructional staff members with continuous appointments in the School of New Resources were awarded the rank of Assistant Professor and were still subject to the rules and procedures set forth in the Instructional Staff Handbook.

Senate is the “the principal vehicle of college-wide governance under the President and Board of Trustees” of The College of New Rochelle.

7. Petitioner Council of the Faculty is a body established by the College’s Governance Handbook and charged with being an “advocate for the faculty, providing a forum for faculty matters and a formal channel for communication between faculty and administration.” (Exhibit C, p. 6).

8. Petitioner Susan Canning was hired as an Associate Professor in the School of Arts and Sciences on or about August 1, 1989. On or about May 1, 1992, Professor Canning was awarded tenure. On or about August 1, 2002, Professor Canning was promoted to the rank of Full Professor. On or about June 12, 2017, Professor Canning received a notice that her employment with the College would be terminated effective August 31, 2017. Professor Canning is a resident of New York County, State of New York.

9. Petitioner Robert Tate was hired as an instructional staff member in the School of New Resources on or about August 1, 1996. On or about August 1, 1999, Professor Tate was awarded a continuous appointment. On or about August 22, 2016, Professor Tate was awarded the rank of Assistant Professor. On or about June 12, 2017, Professor Tate received a notice that his employment with the College would be terminated effective June 30, 2017. Professor Tate is a resident of New York County, State of New York.

10. Petitioner Mario Charles was hired as an Assistant Professor in the Gill Library at The College of New Rochelle on or about August 1, 1994. On or about August 1, 2008, Professor Charles was awarded tenure at the rank of Associate Professor. On or about June 12, 2017, Professor Charles received a notice that his employment with the College would be terminated effective August 31, 2017. Professor Charles is a resident of West Orange, State of New Jersey.

11. Petitioner Cynthia Kraman was hired by the College on or about August 1, 1986. On or about August 1, 1998, Professor Kraman was appointed to the rank of Assistant Professor in the School of Arts and Sciences. On or about August 1, 2003, Professor Kraman was awarded tenure. On or about June

12, 2017, Professor Kraman received a notice that her employment with the College would be terminated effective August 31, 2017. Professor Kraman is a resident of Ulster County, State of New York.

12. Petitioner Marie Octobre was hired as an Assistant Professor in the Gill Library at The College of New Rochelle on or about August 1, 1996. On or about August 1, 1999, Professor Octobre was awarded tenure. On June 12, 2017, Professor Octobre received a notice that her employment with the College would be terminated effective August 31, 2017. Professor Octobre is a resident of Queens County, State of New York.

13. Petitioner Diane Ramos-Kelly was hired as an Assistant Professor in the School of Arts and Sciences on or about August 1, 2010. On or about August 1, 2013 Professor Ramos-Kelly was awarded tenure. On or about June 12, 2017, Professor Ramos-Kelly received a notice that her employment with the College would be terminated effective August 31, 2017. Professor Ramos-Kelly is a resident of the County of Westchester, State of New York.

14. Petitioner Samuel Lilly was hired as an instructional staff member in the School of New Resources on or about August 1, 1997. On or about August 1, 2000, Professor Lilly was awarded a continuous appointment. On or about August 22, 2016, Professor Lilly was awarded the rank of Assistant Professor. On or about June 12, 2017, Professor Lilly received a notice that his employment with the College would be terminated effective June 30, 2017. Professor Lilly is a resident of Kings County, State of New York.

15. Petitioner Luke Feder was hired as an instructional staff member in the School of New Resources on or about August 22, 2011. On or about August 22, 2014, Professor Feder was awarded a continuous appointment. On or about July 1, 2016, Professor Feder was awarded the rank of Assistant Professor. On or about June 12, 2017, Professor Feder received a notice that his employment with the College would be terminated effective June 30, 2017. Professor Feder is a resident of Nassau County, State of New York.

16. Petitioner Jessica Kindred was hired as an instructional staff member in the School of New

Resources on or about November 1, 2009. On or about November 1, 2012, Professor Kindred was awarded continuous appointment. On or about August 22, 2016, Professor Kindred was awarded the rank of Assistant Professor. On or about June 12, 2017, Professor Kindred received a notice that her employment with the College would be terminated effective June 30, 2017. Professor Kindred is a resident of New York County, State of New York.

17. Petitioner William Maxwell was hired as an Assistant Professor in the School of Arts and Sciences on or about August 1, 1975. On or about August 1, 1982, Professor Maxwell was awarded tenure and promoted to the rank of Full Professor. On or about June 12, 2017, Professor Maxwell received a notice that his employment with the College would be terminated effective August 31, 2017. Professor Maxwell is a resident of Westchester County, State of New York.

18. Petitioner Jennifer Ransom was hired as an Assistant Professor in the Gill Library on or about August 1, 2001. On or about August 1, 2005, Professor Ransom was awarded tenure at the rank of Associate Professor. On or about June 12, 2017, Professor Ransom received a notice that her employment with the College would be terminated effective August 31, 2017. Professor Ransom is a resident of Queens County, State of New York.

19. Petitioner Daniel Garcia was hired as an Assistant Professor of U.S. and Latin American History in the School of Arts and Sciences on or about August 1, 2005. On or about August 1, 2011, Professor Garcia was awarded tenure and was promoted to the rank of Associate Professor. On or about June 12, 2017, Professor Garcia received a notice that his employment with the College would be terminated effective August 31, 2017. Professor Garcia is a resident of Bronx County, State of New York.

20. Petitioner Ellen Jacobs was hired as an instructional staff member in the School of New Resources on or about August 1, 1994 and was awarded continuous appointment at that time. On or about August 22, 2016, Professor Jacobs was awarded the rank of Assistant Professor. On or about June 12, 2017, Professor Jacobs received a notice that her employment with the College would be terminated effective June 30, 2017. Professor Jacobs is a resident of Queens County, State of New York.

21. Petitioner Elvira Longordo was hired as an Assistant Professor in the School of Arts and Sciences on or about August 1, 2006. On or about May 1, 2010, Professor Longordo was awarded tenure. On or about August 1, 2012, Professor Longordo was promoted to the rank of Associate Professor, with tenure. On or about June 12, 2017, Professor Longordo received a notice that her employment with the College would be terminated effective August 31, 2017. Professor Longordo is a resident of Westchester County, State of New York.

22. Petitioners Tate, Charles, Kraman, Octobre, Ramos-Kelly, Canning, Lilly, Feder, Kindred, Maxwell, Ransom, Garcia, Jacobs and Longordo are hereinafter referred to collectively as the "Individual Petitioners."

23. Respondent College of New Rochelle ("CNR" or "the College") is a non-profit corporation and private college. It was incorporated as Ursuline Seminary on March 22, 1898, in the State of New York. The College's charter was amended in 1910 to change its name to The College of New Rochelle. The College is authorized to grant all degrees and chartered by the New York State Education Department Board of Regents. Presently, upon information and belief, the College is comprised of an undergraduate School of Arts and Sciences, a Graduate School, a School of Nursing and Health Professions, the School of New Resources, and the Gill Library. The College has campuses located at 29 Castle Place, New Rochelle, NY 10805 ("New Rochelle Campus"); 1368 Fulton Street, Brooklyn, NY 11216 ("Brooklyn Campus"); 755 Co-op City Boulevard, Bronx, NY 10475 ("Co-op City Campus"); 332 East 149th Street, Bronx, NY 10451 ("South Bronx Campus" or "John Cardinal O'Conner Campus"); 144 West 125th Street, New York, NY 10027 ("Harlem Campus" or "Rosa Parks Campus").

24. Respondent Board of Trustees is the governing body of the College.

25. Respondent Dorothy Escribano is the Acting President of The College of New Rochelle. Pursuant to the By-Laws of the Board of Trustees of The College of New Rochelle (attached hereto as Exhibit D), the President is the Chief Executive Officer of the College and charged with, *inter alia*, the authority to "dismiss members of the administrative and academic staffs subject to such regulations as the

Board may adopt.”

### VENUE AND JURISDICTION

26. This Court has subject matter jurisdiction to decide this Petition, pursuant to C.P.L.R. § 7803, because the decisions challenged here were final determinations made by Respondents in violation of their own policies and procedures, were arbitrary and capricious, and were a breach of Petitioners’ contracts of employment with Respondents.

27. Venue is proper pursuant to C.P.L.R. § 503(a) because Respondents maintain at least one of their campuses in New York County and Petitioners Canning, Tate, and Kindred resided in New York County at the time of the commencement of this instant action.

### FACTS

28. At all times relevant to the instant action, the Individual Petitioners have worked for Respondents pursuant to binding employment contracts that consist of their respective appointment letters, promotion letters, awards of tenure or continuous appointment, and the various handbooks promulgated and duly-adopted by Respondents.

29. Section VII of the Faculty Handbook (“Termination of Faculty Appointments”) limits the grounds upon which the College may terminate the employment of tenured faculty to (i) refusal of the faculty member to fulfill their contractual obligations; (ii) inability of the tenured faculty member to perform their duties; (iii) misconduct; and (iv) discontinuation of the faculty member’s area of instruction following the declaration of financial exigency by the Board of Trustees.

30. The College may only discontinue a tenured faculty member’s area of instruction after following the specific procedures contained in Section IX of the Faculty Handbook (“Procedure for Declaration of Financial Exigency”).

31. Section VIII(D) of the Faculty Handbook provides that:

The College has the right to terminate the services of a member should the area of instruction be discontinued for whatever reason and a reasonable attempt to place the member in another department is unsuccessful. (See Section IX.)

32. Section V of the Instructional Staff Handbook similarly limits the grounds for terminating instructional staff with continuous appointments to instances of (i) voluntary separation, (ii) retirement, (iii) just cause (disciplinary) and (iv) financial exigency. (Exhibit B, p. C-7).

33. Both the Faculty Handbook and the Instructional Staff Handbook are regulations that have been adopted by the Board of Trustees.

34. While faculty at the School of New Resources were awarded the rank of "Assistant Professors" on or about August 22, 2016, the Instructional Staff Handbook provisions cited herein were still applicable to them at all times relevant.

35. Both the Faculty Handbook and the Instructional Staff Handbook identically incorporate the terms of the *Procedure for Declaration of Financial Exigency* (Section IX of the Faculty Handbook and Section VI of the Instructional Staff Handbook). Hereinafter, citations will be made to the Faculty Handbook.

36. Section IX of the Faculty Handbook contains the College-wide policies, procedures and criteria required for the Board of Trustees to declare financial exigency, prior to terminating faculty with tenure or continuous appointment:

IX. PROCEDURE FOR DECLARATION OF FINANCIAL EXIGENCY  
(COLLEGE WIDE)

According to the AAUP definition, financial exigency is "an imminent financial crisis which threatens the survival of the institution as a whole and which cannot be alleviated by less drastic means" ([www.aaup.org](http://www.aaup.org)). The Board of Trustees has identified the following criteria for determining financial exigency at the College:

1. No later than October 31st, the Vice President for Financial Affairs notifies the chair of the Council of the Faculty and the chair of the Senate Finance Committee that an imminent financial crisis exists. Documentation must be provided to the chairs that the crisis exists as a result of:

a. A decrease in unrestricted net assets from operations that was reflected in the prior year's audited financial statements, is reflected in the current year's monthly financial report, and is projected in the next year's budget.

b. Unrestricted net assets from operations must be less than 10% of total expenses from operations in the prior year's audited financial statements.



2. The Senate Finance Committee and the Council of the Faculty, augmented by two members of the Instructional Staff, elected by the full Instructional Staff, will form an ad hoc committee to study the documentation. They will call upon other members of the College community whenever necessary and have access to the College's accounting records and auditors. They will be empowered to engage a consultant to assist their work. Officers of the ad hoc committee will be elected by and from the committee.

3. While the ad hoc committee is in the process of studying the documentation, a special Financial Exigency Committee will be formed (See Section X). Additionally, the ad hoc committee will present a summary of the situation to a college-wide general faculty/instructional staff meeting no later than thirty days after the initial notification is received from the Vice President for Financial Affairs. Part of this meeting will be devoted to questions, responses, and suggestions from those present. Other members of the College community who can be of assistance may be invited to work closely with the ad hoc committee.

4. No later than sixty days after the initial notification, the ad hoc committee will make a recommendation to the President concerning a declaration of financial exigency. The Council of the Faculty representative who sits on this committee will present this recommendation and its rationale to the Finance Committee of the Board at their next meeting.

5. The Board of Trustees will review the report from the Financial Committee at their next meeting. The Board will determine whether to issue a formal declaration of financial exigency.

37. Prior to laying-off faculty with tenure or continuous appointment, the College must declare financial exigency and comply with the procedures that begin with notice from the College administration to the Senate and Council of the Faculty.

38. Specifically, Section IX requires the College administration to notify the Senate and Council of the Faculty that an "imminent financial crisis exists" and provide documentation demonstrating same. The Senate and Council of the Faculty are then charged with co-governance rights and obligations to participate in a detailed process of financial review that must precede any declaration of financial exigency by the Board of Trustees.

39. Following notification, Section IX of the Faculty Handbook directs the Senate and Council of the Faculty to review, investigate and make recommendations to the Board of Trustees concerning the existence of financial exigency and advise as to what steps might be taken to avoid cuts in academic

programs.

40. Section X of the Faculty Handbook and Section VII of the Instructional Staff Handbook contain the *Procedure for Determination of Cuts in Academic Areas in Declared State of Financial Exigency*. Hereinafter, citations will be made to the Faculty Handbook. The procedure requires that, following the preliminary notice of imminent financial crisis, the Council of the Faculty is to notify the full-time faculty/instructional staff of the establishment of a Financial Exigency Committee ("FEC") which is charged with the co-governance authority "to make recommendations to the President as to where savings can be realized and cuts made in the academic programs of the College without destroying its viability as an educational institution." The detailed procedure, set forth below, requires the completion of seven separate steps, including a requirement that the College administration, in conjunction with the FEC, "attempt to place these faculty members [selected for layoff] in other suitable positions in the College."

41. Section X requires the following steps and timeline be followed in determining cuts in academic areas in the event of financial exigency:

Step 1

When the ad hoc Budget/Council of the Faculty Committee is beginning its deliberations, the four schools and the Library will elect a special Financial Exigency Committee (FEC) composed of the five Deans and fifteen faculty/instructional staff (three from each of the four schools and the Library). At least two of the three faculty members from the SAS, GRS, SON and the Library shall be tenured if available. The faculty/instructional staff will be elected as follows:

a. At this time, the Council of the Faculty will notify the faculty/instructional staff of the four schools and the Library that a FEC is being formed. All full-time faculty/instructional staff will have three days from this point to notify the Council of the Faculty if they are not willing to serve on the FEC.

b. The list of faculty/instructional staff willing to serve will be sent by the Council of the Faculty to all full-time faculty/instructional staff on a nominating ballot with a five-day limit for return. All balloting will be conducted within each school and the Library (i.e., each school and the Library will elect its own representatives).

c. The six highest nominees in each School and the Library (at least two of whom must be tenured in SAS, GRS, SON, and the Library if available) will be listed on an election ballot with a five-day limit for return, and the three highest in each School will be elected to serve on the FEC.

## Step 2

The duly elected FEC will elect its officers by and from its members. They will thoroughly familiarize themselves with the total financial situation at the College even before the official declaration of financial exigency is made; they will thus be ready to begin work immediately in the event of such a declaration. (If the declaration is not made, the committee can disband in December.)

## Step 3

The task of the FEC will be to make recommendations to the President as to where savings can be realized and cuts made in the academic programs of the College without destroying its viability as an educational institution. It is assumed that other areas of the College will also be determining where to cut during this period. At least ninety days will be allotted to the FEC for this task so that the recommendations can be made in April and acted upon by the Board by the end of the fiscal year. In the course of their deliberations, the FEC will work closely with the Chief Academic Officer, the Vice President for Financial Affairs and his/her staff, department chairpersons and program directors, etc. When they begin to consider specific cuts, they will be required to hear appropriate representatives of the affected areas. The FEC will be empowered to call in outside consultants if necessary.

## Step 4

The FEC representatives from each school and the Library will keep the faculty informed of the progress of their deliberations and make supporting documents and data available in the offices of the Deans. When the FEC has formulated a tentative plan of action, school representatives will formally consult their faculties in the following fashion:

a. School and Library representatives from the FEC will present their tentative plan and supporting evidence to a faculty meeting in each school and the Library; those adversely affected by the plan will have an opportunity to present counterarguments. Part of the meeting will be devoted to discussion, debate, alternate suggestions, etc.

b. Within five days after these meetings, all full-time faculty/instructional staff will be polled by mail (within each school and the Library) on those parts of the plan which are college wide or which directly affect their own school or the Library. These votes will be reported to the FEC as recommendations from each School and the Library.

## Step 5

The FEC will finish its deliberations and formulate its final recommendations for cuts; each recommendation will require a two-thirds vote of the committee. These recommendations will be presented to the Board of Trustees in April.

## Step 6

The President and the Board will determine and announce the final cuts by the end of May.

## Step 7

AAUP guidelines, as specified in the Association's Recommended Institutional Regulations on Academic Freedom and Tenure (1976) will be followed with regard to faculty adversely affected by these cuts:

a. The College administration, in consultation with the FEC, will attempt to place these faculty members in other suitable positions in the College.

b. Any faculty member who cannot be so placed may request a hearing before a faculty committee; the Hearing Committee will be constituted according to the Board of Trustees' Statement of Faculty Termination Procedures, Article 4.1 (Faculty Handbook pp. 27-28). As specified in AAUP Regulation 4 (c), "the hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5 dismissal proceedings, but the essentials of an on-the-record adjudicative hearing will be observed. The issues in this hearing may include:

i. The existence and extent of the condition of financial exigency. The burden will rest on the administration to prove the existence and extent of the condition. The findings of a faculty committee in a previous proceeding involving the same issue may be introduced.

ii. The validity of the educational judgments and the criteria for identification for termination; but the recommendations of a faculty body on these matters will be considered presumptively valid.

iii. Whether the criteria are being properly applied in the individual case.

c. In all cases of termination, the faculty member will be given notice or severance salary as specified in AAUP Regulation 8.

42. A copy of the AAUP's Recommended Institutional Regulations on Academic Freedom and Tenure is attached hereto as Exhibit E. Regulation 8 is set forth on page 85 of Exhibit E and entitles Petitioners to one year's notice or equivalent pay in the event their appointment is terminated. In the instant matter, the College failed to provide notice or pay to Petitioners in accordance with Regulation 8.

43. Pursuant to the terms of the Faculty Handbook and the Instructional Staff Handbook, Respondents were required to declare financial exigency prior to terminating the employment of faculty with tenure or continuous appointment.

44. At all times relevant, the Individual Petitioners have dedicated their careers to The College of New Rochelle based on the guarantees of tenure and continuous appointment.

45. At all times relevant, the Individual Petitioners have reasonably relied on the representations made by Respondents through the College's Handbooks that they would not be terminated for economic reasons absent a declaration of financial exigency.

46. At all times relevant, the Individual Petitioners have reasonably relied on the representations made by Respondents through the College's Handbooks that, in the event of financial exigency, they would be entitled to the due process and co-governance protections set forth in the *Procedure for Determination of Cuts in Academic Areas in Declared State of Financial Exigency*.

47. On October 24, 2016, Dr. Betty J. Roberts, then Vice President for Finance and Administration, wrote to the Chair of the Senate Finance Committee and Co-Chair of the Council of the Faculty advising of an "imminent financial crisis . . . warranting the start of the process for determining whether to issue a declaration of financial exigency" while noting that the College may do so without adhering to the "timeline and procedures outlined in the Faculty Handbook for a declaration of financial exigency." A copy of Dr. Roberts' letter is attached hereto as Exhibit F.

48. As Dr. Roberts suggested, Respondents failed to follow the timeline or procedures for the declaration of financial exigency as outlined in Section IX of the Faculty Handbook and Section VI of the Instructional Staff Handbook.

49. On October 27, 2016, Co-Chair of the Council of the Faculty Stephen D. O'Rourke wrote to Dr. Roberts requesting the audited financial information that is required to be provided by the procedures for the declaration of financial exigency. A copy of Professor O'Rourke's e-mail is attached hereto as Exhibit G.

50. On November 1, 2016, Gwen Adolph, Chair of the Board of Trustees, informed representatives of the Senate and the Council of the Faculty that "it would be fruitless for us to meet pursuant to the exigency process." Chairperson Adolph's November 1, 2016 correspondence is attached

hereto as Exhibit H.

51. To date, Respondents have not declared financial exigency and have terminated the Individual Petitioners in violation of the College's own rules and procedures.

52. In letters dated June 12, 2017, the Individual Petitioners were advised by President Escribano that their employment would be terminated due to the "financial circumstances of the College." Petitioners with continuous appointment (Professors Tate, Lilly, Feder, Kindred and Jacobs) were advised that their termination would be effective June 30, 2017. Petitioners with tenure, (Professors Charles, Kraman, Octobre, Ramos-Kelly, Canning, Maxwell, Ransom, Garcia and Longordo) were given an effective termination date of August 31, 2017.

53. Immediately following the receipt of the June 12, 2017 letters of termination, the Individual Petitioners were cut off from access to their college email accounts and their names and pictures were removed from the College's website.

54. By failing to declare financial exigency prior to terminating faculty with tenure and continuous appointment, Respondents violated Section X of the Faculty Handbook and Section VII of the Instructional Staff Handbook.

55. As a result of Respondents' failure to follow the duly-adopted procedure for the declaration of financial exigency as require by Section IX of the Faculty Handbook and Section VI of the Instructional Staff Handbook, the Council of the Faculty was denied the opportunity to proceed with the discharge of the duties of the Financial Exigency Committee.

56. As a result of Respondents' failure to follow the duly-adopted procedure for the declaration of financial exigency as required by Section IX of the Faculty Handbook and Section VI of the Instructional Staff Handbook, Respondents have prevented the completion of the seven-step process for the determination of cuts in academic areas, as set forth in Section X of the Faculty Handbook and Section VII of the Instructional Staff Handbook.

57. At no time prior to the June 12, 2017 decisions to terminate the Individual Petitioners'

employment did Respondents attempt to place them in other suitable positions in the College as required by Section X of the Faculty Handbook and Section VII of the Instructional Staff Handbook.

58. The June 12, 2017 notices of termination received by the Individual Petitioners (attached hereto as Exhibit I)—all written and signed by President Escribano—constitute final and binding decisions terminating the employment of the Individual Petitioners.

59. Upon information and belief, following the termination of the Individual Petitioners, the College has sought out and hired new non-tenured instructors into the positions previously held by some of the Individual Petitioners.

### **FIRST CLAIM FOR RELIEF**

#### **(Respondents' Failure to Follow the Procedure for the Declaration of Financial Exigency was Arbitrary and Capricious)**

60. Petitioners repeat, reallege and incorporate each and every preceding paragraph as if set forth fully herein.

61. Pursuant to the terms of the Faculty Handbook and the Instructional Staff Handbook, the Respondents were not permitted to layoff or otherwise terminate faculty with tenure or continuous appointment without a declaration of financial exigency.

62. Pursuant to the terms of the Faculty Handbook and the Instructional Staff Handbook, the Respondents were required to follow the *Procedures for the Declaration of Financial Exigency* as set forth in Section IX of the Faculty Handbook and Section VI of the Instructional Staff Handbook.

63. Respondents' June 12, 2017 decision to terminate the employment of the Individual Petitioners was made in violation of the lawful procedures contained in the Faculty Handbook and Instructional Staff Handbook.

64. Respondents repeatedly and materially violated the procedures set forth in the Faculty Handbook and Instructional Staff Handbook, thereby rendering the decisions terminating the employment of the Individual Petitioners arbitrary and capricious and a violation of lawful procedure.

65. As a result of Respondents' failure to abide by their own policies and procedures,

Petitioners have suffered and will continue to suffer damages and injury, including the loss of salary, benefits, and damage to their professional reputations.

66. Further, pursuant to the terms of the Faculty Handbook, Individual Petitioners would have been entitled to receive severance pay in accordance with AAUP Regulation 8, which has been explicitly adopted and incorporated by reference into the Faculty Handbook.

### **SECOND CLAIM FOR RELIEF**

#### **(Respondents' Failure to Follow the Procedure for the Determination of Cuts in Academic Areas in Declared State of Financial Exigency was Arbitrary and Capricious)**

67. Petitioners repeat, reallege and incorporate each and every preceding paragraph as if set forth fully herein.

68. Respondents failed to follow the *Procedure for Determination of Cuts in Academic Areas in Declared State of Financial Exigency* as contained in Section X of the Faculty Handbook and Section VII of the Instructional Staff Handbook.

69. Respondents repeatedly and materially violated the procedures set forth in the Faculty Handbook and Instructional Staff Handbook thereby rendering the decisions terminating the employment of the Individual Petitioners arbitrary and capricious and a violation of lawful procedure.

70. As a result of Respondents' failure to abide by their own policies and procedures, the Individual Petitioners have suffered and will continue to suffer damages and injury, including the loss of salary, benefits, and damage to their professional reputations.

### **THIRD CLAIM FOR RELIEF**

#### **(Failure to Follow Procedures Violated the Rights of the Senate and Council of the Faculty)**

71. Petitioners repeat, reallege and incorporate each and every preceding paragraph as if set forth fully herein.

72. By failing to follow the procedures set forth in Sections IX and X of the Faculty Handbook, and Sections VI and VII of the Instructional Staff Handbook, Respondents deprived the Senate and the Council of the Faculty the opportunity to participate in the co-governance of the College as provided



therein, including but not limited to the right to review and investigate the existence of an imminent financial crisis and make recommendations concerning same.

73. Respondents materially and repeatedly violated the duly-adopted procedures set forth in the Handbooks, thereby denying the Senate and the Council of the Faculty their rights to co-governance.

**FOURTH CLAIM FOR RELIEF**

**(Violation of Due Process)**

74. Petitioners repeat, reallege and incorporate each and every preceding paragraph as if set forth fully herein.

75. An academic institution must comply with its own rules and policies and scrupulously implement its due process procedures.

76. Respondents materially and repeatedly violated their own rules, policies and due process procedures by, *inter alia*, failing to provide the Individual Petitioners with an “on-the-record adjudicative hearing” as required by Section X of the Faculty Handbook and Section VII of the Instructional Staff Handbook.

77. The foregoing violations materially prejudiced the Petitioners and impaired the integrity of the College’s decision-making process.

78. Because of these violations, the decisions terminating the employment of the Individual Petitioners were arbitrary, capricious and an abuse of discretion.

79. As a result of Respondents’ failure to abide by their own policies and procedures, Petitioners have suffered and will continue to suffer damages and injury, including the loss of salary, benefits, and damage to their professional reputations.

**FIFTH CAUSE OF ACTION**

**(Breach of Contract)**

80. Petitioners repeat, reallege and incorporate each of the foregoing paragraphs as if fully set forth herein.

81. The individual Petitioners, as faculty with tenure or continuous appointment, have a contractual relationship with The College of New Rochelle.

82. Respondents are contractually obligated to abide by the terms of Petitioners' employment contracts which consist of the Handbooks, appointment letters, promotion letters, tenure award letters, continuous appointment award letters, and numerous other communications between the Individual Petitioners and Respondents.

83. The termination of the Individual Petitioners constitutes a material breach of the Individual Petitioners' contractual rights, including the right to continued employment, the right to severance pay pursuant to AAUP Regulation 8, the right to academic freedom and economic security.

84. As a result of Respondents' breach of the Individual Petitioners' contractual rights, Individual Petitioners will suffer damages and injuries including loss of salary and benefits, and damage to their professional reputations.

#### **SIXTH CAUSE OF ACTION**

##### **(Promissory Estoppel – Pled in the Alternative to Breach of Contract)**

85. Petitioners repeat, reallege and incorporate each of the foregoing paragraphs as if fully set forth herein.

86. The Individual Petitioners reasonably relied to their detriment on the representations made by Respondents that Respondents would abide by the guarantees of tenure and continuous appointment which include full academic freedom and economic security, which prohibit termination for economic reasons in the absence of a declaration of financial exigency.

87. As a result of the representations made by Respondents, the Individual Petitioners structured their professional careers on the understanding that they had a guarantee of continued employment in the absence of financial exigency declared in accordance with the procedures adopted by the Respondents.

88. The Individual Petitioners also reasonably relied to their detriment on the representations

made by Respondents that, in the event financial exigency was declared, Respondents would attempt to place them in other suitable positions.

89. Had the Individual Petitioners believed that their employment could be terminated in the absence of a declaration of financial exigency, the Individual Petitioners would have planned their careers differently.

90. Accordingly, Respondents are liable to the Individual Petitioners for all damages caused to them as a result of Respondents' actions.

### **PRAYER FOR RELIEF**

To the extent permitted by law, Petitioners demand a trial by jury pursuant to C.P.L.R. § 4102 and § 7804(h).

**WHEREFORE** Petitioners respectfully pray that the Court grant the following relief:


1. Issuance of a writ of mandamus ordering Respondents to vacate and nullify the decisions terminating the Individual Petitioners' employment with Respondents and prohibiting Respondents from terminating faculty with tenure or continuous appointment without adherence to the provisions set forth in the Faculty Handbook and Instructional Staff Handbook;
2. Entry of an Order and Judgment that the decisions to terminate the Individual Petitioners was made in violation of Respondents' own policies and procedures, was arbitrary and capricious and is thus invalid and a nullity;
3. Entry of an Order and Judgment that the decisions to terminate the Individual Petitioners was made in violation of the individual Petitioners' right to due process;
4. Entry of an Order and Judgment that the decisions to terminate the Individual Petitioners constitute violations of the Individual Petitioners' employment contracts;
5. Award of damages to the Individual Petitioners, including lost wages, benefits, and harm to their professional reputations that resulted from Respondents' unlawful actions and breach of contract;

6. Award of such further and additional relief as the Court may deem just and proper, including attorney's fees and costs of this proceeding.

Dated: New York, New York  
October 17, 2017

Respectfully submitted,

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