

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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NEW YORK CITY COUNCIL MEMBER YDANIS RODRIGUEZ, NEW YORK CITY COUNCIL MEMBER JUMAANE WILLIAMS, JOHN KNEFEL, NEW YORK CITY COUNCIL MEMBER LETITIA JAMES, JUSTIN SULLIVAN, JEFFERY MCCLAIN, NEW YORK CITY COUNCIL MEMBER MELISSA MARK-VIVERITO, STEPHANIE KEITH, DEMOCRATIC DISTRICT LEADER PAUL NEWELL, JUSTIN WEDES, PETER DUTRO, TIMOTHY FITZGERALD, PAUL SULLIVAN, MICHAEL RIVAS and YONATAN MILLER.

Index No.

**COMPLAINT AND  
JURY DEMAND**

Plaintiffs,

-against-

DEPUTY INSPECTOR EDWARD WINSKI, THE CITY OF NEW YORK, THE METROPOLITAN TRANSIT AUTHORITY, J.P. MORGAN CHASE & CO., BROOKFIELD OFFICE PROPERTIES, MITSUI FUDUSAN AMERICA, INC., MAYOR OF THE CITY OF NEW YORK MICHAEL BLOOMBERG, NEW YORK POLICE DEPARTMENT COMMISSIONER RAYMOND KELLY, METROPOLITAN TRANSIT AUTHORITY POLICE COMMISSIONER MICHAEL COAN, MTA POLICE OFFICER LAKERAM, , POLICE OFFICER ROBERT MATRISCIANI, SERGEANT STEVEN CARO, POLICE OFFICER MARGARET MONROE, POLICE OFFICER FERNANDO TRINIDAD, JOHN AND JANE DOE NYPD OFFICERS ##1-100, JOHN AND JANE DOE MTA POLICE OFFICERS ##1-8, JOHN DOE EMPLOYEES OF J.P. MORGAN CHASE & CO. ##1-10, JOHN DOE EMPLOYEES OF BROOKFIELD OFFICE PROPERTIES ##1-10, JOHN DOE EMPLOYEES OF MITSUI FUDUSAN AMERICA, INC. ##1-10,

Defendants.

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## PRELIMINARY STATEMENT

1. This is a civil rights action in which Plaintiffs seek relief for the violation of their rights secured by 42 USC §1983 and the First, Fourth, and Fourteenth Amendments to the United States Constitution, and the laws and Constitution of the State of New York and rules and regulations of the City of New York.
2. The claims arise from a series of incidents in connection with Occupy Wall Street protests beginning in and around September 17, 2011 and continuing to the present day in which the City of New York in concert with various private and public entities have employed Officers of the New York City Police Department ("NYPD") and others acting under color of state law, to intentionally and willfully subject Plaintiffs and the public to, among other things, violations of rights to free speech, assembly, freedom of the press, false arrest, excessive force, false imprisonment, and malicious prosecution and, furthermore, purposefully obstructing Plaintiffs carrying out their duties as elected officials and members of the press, including oversight of the New York City Police Department.
3. This unlawful conduct has been undertaken with the intention of obstructing, chilling, deterring and retaliating against Plaintiffs for engaging in Constitutionally-protected protest activities.
4. Plaintiffs seek injunctive relief as well as special, compensatory and punitive monetary damages against Defendants, as well as an award of costs and attorneys' fees, and such other and further relief as the Court deems just and proper.

## JURISDICTION

5. This action is brought pursuant to 28 USC §1331, 42 USC §1983, and the First,

Fourth and Fourteenth Amendments to the United States Constitution. Pendent party jurisdiction and supplementary jurisdiction over Plaintiffs' state law claims are asserted.

6. Venue is laid within the United States District Court for the Southern District of New York in that Defendant City of New York is located within and a substantial part of the events giving rise to the claims occurred within the boundaries of the Southern District of New York.

### INTRODUCTION

7. The First Amendment to the United States Constitution states: "Congress shall make no law [I.] respecting an establishment of religion, or prohibiting the free exercise thereof; [II.] or abridging the freedom of speech, [III.] or of the press; [IV.] or the right of the people peaceably to assemble, [V.] and to petition the Government for a redress of grievances.

8. During the early life of the Occupy Wall Street ("OWS") movement, Defendants including but not limited to Defendant City of New York and its police force, the New York City Police Department ("NYPD"), have acted to systematically curtail four of the five freedoms guaranteed by the First Amendment with respect to Occupy Wall Street participants: Freedom of Speech, Freedom of the Press, Freedom to Peaceably Assemble, and Freedom to Petition the Government for Redress of Grievances.

9. Furthermore, in the course of their undertakings intended to suppress Plaintiffs' First Amendment rights, Defendants have systematically employed means that violate Plaintiffs' Fourth Amendment right to be free from unreasonable searches and seizures.

10. Private corporations named as Defendants and others have conspired and acted in concert with the government actors named as Defendants and others to suppress the First

Amendment rights of citizens speaking out against the perceived interests of such corporations. This lawsuit seeks redress for these violations, including but not limited to ensuring that Defendant City of New York (“City”) and its agents follow the law as it relates to political protest and First Amendment protected expression.

11. Plaintiffs bring this action primarily to address following unlawful actions taken by the defendants:

- a. The arbitrary prevention of citizens from entering public spaces for the purpose of lawfully and peaceably assembling, and the forcible removal of citizens from public spaces who are present for the purpose of lawfully and peaceably assembling;
- b. Violating the rights of members of the press and elected officials who seek to lawfully observe and document actions taken by police officers in and around demonstrations and other Constitutionally protected activities;
- c. Violating the privacy of protesters who have been arrested but whose charges were dismissed by retaining the photographs of said protesters;
- d. Violating the rights to Free Speech and public assembly by improper police conduct during the arrest and processing of peaceful protesters that seek to chill the continued and future expressive conduct of said peaceful protesters;
- e. Detaining persons in arrest and non-arrest postures for extended periods of time for participating in peaceful protests, without charges;
- f. Photographing said non-prosecuted detainees in direct violation of applicable statutes and administrative enactments setting forth offenses which justify police taking and retaining photographs of arrestees;

- g. Charging persons arrested for participating in peaceful protests with crimes and violations not actually committed;
  - h. Overcharging persons arrested for participating in peaceful protests with crimes and violations not supported by probable cause in order to remove officers' discretion to release said persons from custody with summonses or Desk Appearance Tickets;
  - i. Charging persons arrested for participating in peaceful protests with crimes and violations in the absence of probable cause; and
  - j. Using excessive force against persons participating in peaceful protests with the intention and purpose of denying, dissuading and/or discouraging said protesters from exercising their First Amendment rights to free expression, peaceable assembly, and to petition their government for a redress of grievances.
  - k. Creating and disseminating disinformation, such as false alerts of threats to officer safety<sup>1</sup>, in order to unnecessarily escalate police responses to peaceful protest activities, and in efforts to instigate escalated responses from said peaceful protesters to justify police uses of force.
12. Plaintiffs now bring this action to assure that present and future First Amendment protected activities undertaken by Plaintiffs and others will not be violently suppressed by Defendants in the absence of probable cause and in violation of

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<sup>1</sup> See, e.g., Youtube, "M22 NYPD tries to incite riot at ows union square" uploaded March 22, 2012, and available online at [http://www.youtube.com/watch?feature=player\\_embedded&v=Z1kMs93nM\\_M](http://www.youtube.com/watch?feature=player_embedded&v=Z1kMs93nM_M) [video of junior officer participating in enforcement against OWS protesters at Union Square repeatedly shouting "They're throwing glass bottles! They want to hurt us, guys!" when no such activity was taking place.]

Constitutional guarantees.

**PARTIES**

13. Plaintiff Ydanis Rodriguez is a member of the New York City Council, representing the people of the 10<sup>th</sup> Council District in Manhattan, New York. As such, he represents many constituents who have participated in the OWS and other protest actions in the City of New York. Council member Rodriguez is also an active participant in OWS and has participated in other protest actions in the City of New York. He intends to participate in Constitutionally protected protest activities in New York City in the future.

14. Plaintiff Jumaane Williams is a member of the New York City Council, representing the people of the 45<sup>th</sup> Council District in Brooklyn, New York. As such, he represents many constituents who have participated in the OWS and other protest actions in the City of New York. Council member Williams is also an active participant in OWS and has participated in other protest actions in the City of New York. He intends to participate in Constitutionally protected protest activities in New York City in the future.

15. Plaintiff John Knefel is a participant in OWS and a citizen journalist. NYPD has not issued him a “press pass.” He intends to participate in Constitutionally protected protest activities in New York City in the future.

16. Plaintiff Letitia James is a member of the New York City Council, representing the people of the 35<sup>th</sup> Council District in Brooklyn, New York. As such, she represents many constituents who have participated in OWS and other protest actions in the City of New York. Council member James is also an active participant in OWS and has participated in other protest actions in the City of New York. She intends to participate in Constitutionally protected protest activities in New York City in the future.

17. Plaintiff Justin Sullivan is a participant in OWS and a citizen journalist. NYPD has not issued him a “press pass.” He intends to participate in Constitutionally protected protest activities in New York City in the future.
18. Plaintiff Timothy Fitzgerald is a participant in OWS and a citizen journalist. NYPD has not issued him a “press pass.” He intends to participate in Constitutionally protected protest activities in New York City in the future.
19. Plaintiff Paul Sullivan is a participant in OWS and a citizen journalist. NYPD has not issued him a “press pass.” He intends to participate in Constitutionally protected protest activities in New York City in the future.
20. Plaintiff Michael Rivas is a participant in OWS. He intends to participate in Constitutionally protected protest activities in New York City in the future.
21. Plaintiff Jeffery McClain is a participant in OWS and a member of the organization Iraq War Veterans for Peace. He intends to participate in Constitutionally protected protest activities in New York City in the future.
22. Plaintiff Melissa Mark-Viverito is a member of the New York City Council, representing the people of the 8<sup>th</sup> Council District in Manhattan and the Bronx, New York. As such, she represents many constituents who have participated in the Occupy Wall Street and other protest actions in the City of New York. Council member Mark-Viverito is also an active participant in OWS and has participated in other protest actions in the City of New York. She intends to participate in Constitutionally protected protest activities in New York City in the future.
23. Plaintiff Stephanie Keith is a photographic journalist. Her photographs have been printed in various media outlets including the New York Times and Wall Street Journal.

On October 1, 2011, she was covering the OWS Brooklyn Bridge protest. At least two prior times, and one time subsequent to her October 1, 2011 arrest, the NYPD has issued her a “press pass.” Her images of the October 1, 2011 march on or near the Brooklyn Bridge were utilized by the Associated Press and appeared on national news outlets including ABC News. She intends to continue to earn a living by photographing protest activities, including those associated with the Occupy Wall Street movement.

24. Plaintiff Paul Newell is the Democratic District Leader for the 64<sup>th</sup> Assembly District, Part C, Manhattan, a district encompassing areas where many Occupy Wall Street activities have been conducted, notably including Zuccotti Park, F/K/A Liberty Plaza Park<sup>2</sup> (“FKA Liberty Park<sup>3</sup>”). He is also a participant in OWS and has participated in other large scale community actions, demonstrations and protests prior to Occupy Wall Street. He intends to participate in Constitutionally protected protest activities in New York City in the future.

25. Plaintiff Jason Wedes is a participant in OWS and a citizen journalist. NYPD has not issued him a “press pass.” He intends to participate in constitutionally protected protest activities in New York City in the future. He is one of several persons who posts updates about OWS to the twitter account “OccupyWallStNYC,” and also posts as an administrator to the Occupy Wall Street Facebook page. He intends to participate in Constitutionally protected protest activities in New York City in the future.

26. Plaintiff Peter Dutro is an active participant in OWS. He is a member of various

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<sup>2</sup> Following Brookfield Properties’ purchase of One Liberty Plaza, Liberty Plaza Park was renamed Zuccotti Park, in honor of Brookfield Properties Chairman John Zuccotti.

<sup>3</sup> By the appellation “FKA Liberty Park” used herein, Plaintiffs note the ironic fact that the OWS movement, criticizing corporate capture of our nation’s political discourse at the expense of individual rights and liberties, grew to prominence in a privately-owned public space that was formerly named to invoke the American ideal of liberty, and now for a corporate chairman.

working groups, including one that interacts with Amalgamated Bank, the bank that holds much of the donated funds received on behalf of the Occupy Wall Street movement. He intends to participate in Constitutionally protected protest activities in New York City in the future.

27. Plaintiff Yonatan Miller is an active participant in OWS. He is a member of various working groups. He intends to participate in Constitutionally protected protest activities in New York City in the future.

28. Defendant The City of New York is a municipal corporation organized under the laws of the State of New York. NYPD is an agency of the City of New York and its Commissioner and officers are employees and agents of the City of New York.

29. Defendant Metropolitan Transit Authority (“MTA”) is a public transportation corporation organized under the laws of the State of New York. Its Police Department, Commissioner and officers are employees and agents of the MTA.

30. Defendant J.P. Morgan Chase & Co. (“J.P. Morgan”) is a business entity registered to do business and in fact doing business in the State of New York. J.P. Morgan is the property owner of One Chase Manhattan Plaza, and is the successor in interest to the original entity that bargained with the City of New York to provide a publicly accessible open area in return for bonus floor to area ratio in its building on the One Chase Manhattan Plaza site.

31. Defendant Brookfield Office Properties (“Brookfield”) is a business entity registered to do business and in fact doing business in the State of New York. Brookfield is the property owner of FKA Liberty Park, the Winter Garden in the World Financial Center, and other properties in the City of New York. FKA Liberty Park, and the Winter

Garden and other properties owned by Brookfield are publicly accessible open areas, which it or a predecessor in ownership were required to build in return for bonus floor to area ratio in its buildings near the sites.

32. Defendant Mitsui Fudusan America, Inc. (“Mitsui”) is a business entity registered to do business and in fact doing business in the State of New York. Mitsui is the property owner of 100 William Street which includes a publicly accessible open area, which it or a predecessor in ownership was required to build in return for bonus floor to area ratio in its building on the site.

33. Defendant Mayor Michael Bloomberg (“Mayor Bloomberg”) was at all times here relevant the Mayor of the City of New York. As such, Mayor Bloomberg was a policy maker with respect to the strategic deployment of police officers against OWS and their orders about how to handle OWS participants and members of the press covering OWS. Mayor Bloomberg is sued in his individual and official capacities.

34. Defendant New York Police Commissioner Raymond Kelly (“the Commissioner”) was at all times here relevant the Commissioner of the New York City Police Department, and, as such, was a policy maker with respect to training, supervision, discipline and the strategic deployment of and orders to NYPD officers engaged in the suppression of OWS participants and its press coverage. The Commissioner is sued in his individual and official capacities.

35. Defendant MTA Police Commissioner Michael Coan (“the MTA Commissioner”) was at all times here relevant the Commissioner of the MTA Police Department, and, as such, was a policy maker with respect to training, supervision, discipline and the strategic deployment of and orders to MTA police officers engaged in the suppression of OWS

participants and its press coverage. The MTA Commissioner is sued in his individual and official capacities.

36. All other individual state actor defendants ( collectively, “officers” or “the officers”) are employees of the NYPD or the MTA, and are sued in their individual and official capacities.

**I. ABRIDGING FREEDOM OF THE PRESS: ELECTED OFFICIALS AND MEMBERS OF THE PRESS HAVE BEEN DENIED A RIGHT OF ACCESS TO OBSERVE AND RECORD POLICE ACTIONS AGAINST OCCUPY WALL STREET**

**a. ELECTED OFFICIALS PREVENTED FROM OBSERVING POLICE ACTIONS BY IMPROPER ARRESTS AND USES OF FORCE.**

37. The right of access to governmental administration and processes is enshrined in the First Amendment’s guarantees of free speech and a free press. It protects the public against the arbitrary interference of access to important governmental information. New York Civil Liberties Union v. NY City Transit Auth., 2012 WL 10972 (2d Cir. 2012) *citing* Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 580.

38. “[A] major purpose of [the First] Amendment [is] to protect the free discussion of governmental affairs’.... By offering such protection, the First Amendment serves to ensure that the individual citizen can effectively participate in and contribute to our republican system of self-government.” New York Civil Liberties Union v. NY City Transit Auth., at 431; *quoting* Globe Newspaper v. Superior Court, 457 U.S. 596 at 604 (1982).

39. Implicit in the First Amendment is the notion that, in order to have free discussion of governmental affairs, the press and public must have access to government affairs. Id.

40. The First Amendment protects the rights to gather information about what public officials do and to record matters of public interest. Smith v. City of Cumming, 212 F.3d 1332, 1333 (11th Cir. 2000); Fordyce v. City of Seattle, 55 F.3d 436, 439 (9th Cir.1995).

41. Citizens have a “First Amendment right, subject to reasonable time, manner and place restrictions, to photograph or videotape police conduct.” Smith v. City of Cumming, at 1333 (11th Cir. 2000). “There can be no doubt that the free speech clause of the Constitution protects ... videotap[ing]” police officers. Robinson v. Fetterman, 378 F. Supp. 2d 534, 541 (E.D. Pa. 2005).

42. Reasonable time, place and manner restrictions, however, cannot be used to justify Constitutionally overly broad police restrictions. In City of Houston, Tx. v. Hill, 482 U.S. 451 (1987), the court struck down a city ordinance that prevented speech that would “interfere” with a police officer. Id. at 462.

43. The court further explained: “[W]e are mindful that the preservation of liberty depends in part upon the maintenance of social order. But the First Amendment recognizes, wisely we think, that a certain amount of expressive disorder not only is inevitable in a society committed to individual freedom, but must itself be protected if that freedom would survive.” Hill at 471-472.

44. Yet, on November 15, 2011, when FKA Liberty Park was cleared, NYPD barred the public, the press, and elected officials from observing their activities. In fact, they were kept at least two blocks away from the police activities.

45. Indeed, in a show of force and intimidation, NYPD arrested and assaulted reporters and elected officials, including some of the Plaintiffs herein, to prevent them from covering or even observing the police action. Still others were merely prevented

from observing in furtherance of their institutional roles in a democracy.

46. The New York City Council has a duty to monitor and review the conduct and performance of agencies on a regular and continuous basis on behalf of the people of the City of New York. New York City Charter §29(2).

47. The New York City Council cannot perform its Charter-mandated role unless individual members of the Council are permitted to observe city agencies perform their duties.

48. Individual Council members were prevented from observing the activities of NYPD in their actions to clear FKA Liberty Park.

49. On November 15, 2011, at approximately 2:00 a.m., plaintiff Ydanis Rodriguez, a Member of the New York City Council and Chair of the Higher Education Committee went to observe the events at the eviction of FKA Liberty Park. He understood that residents of his district, as well as City University students, were in FKA Liberty Park at the time.

50. As Plaintiff Ydanis Rodriguez approached a line of police officers and barricades, he informed the officers that he was a City Council member. The police told him he could not go any further and he complied. Plaintiff Ydanis Rodriguez nevertheless was attacked and arrested by police officers in the absence of probable cause.

51. In the prosecution against Council member Rodriguez, Defendant City claimed that he refused an order to not approach the barricades. By this construction, Defendant City in effect asserted that in addition to the arbitrary physical barriers that were erected by agents of Defendant City to keep observers out, said agents of Defendant City also established an arbitrary invisible line before the physical barricades through which no one

could pass, on pain of arrest.

52. Council member Rodriguez was therefore unable to report on the police actions taken at FKA Liberty Park to the City Council or to his constituents, preventing him and the Council from performing their charter mandated roles as monitors of City agencies.

53. The incident was covered on Time Magazine's web site.

54. The story was initially accompanied with a photograph of Rodriguez on the ground being forcefully held down by police officers, and is attached hereto with said original photograph as **Exhibit A**. The original photograph is no longer on the site but the caption from the saved snapshot of the page is "Riot gear police tackle New York City Council Member Ydanis Rodriguez near Zuccotti Park."

55. Some hours later, the photograph was removed and replaced with an unrelated photograph of Council member Rodriguez, attached hereto with replacement photograph as **Exhibit B**. The associated text with the photograph is "New York City Council Member Ydanis Rodriguez, left, speaks with Assistant Chief William Morris, center, and Captain Andrew Lombardo, right, on Nov. 7, 2011, in New York."

56. Upon information and belief, the photograph was removed due to the request and intervention of City officials.

57. Plaintiff Democratic District Leader Paul Newell also went to FKA Liberty Park when the eviction started.

58. As an elected representative, Plaintiff Newell also went to monitor the situation and the police actions being taken against OWS participants. Plaintiff Newell's district includes FKA Liberty Park.

59. It was and remains a personal and institutional responsibility for Plaintiff Newell

to observe momentous governmental actions in his district, such as the eviction of OWS protesters from FKA Liberty Park.

60. The Democratic Party of the State of New York is recognized and certified as an official political party under the laws of the State of New York. It is also the largest political party in the State of New York.

61. The rules of the Democratic Party mandate that as District Leader, Plaintiff Newell must inform and communicate with his constituents and the members of the greater district community about conditions in his district and affairs of government generally.

62. Plaintiff Newell was also prevented from observing police actions on November 15, 2011 at FKA Liberty Park and thereby fulfilling his personal and institutional obligations. He was arbitrarily arrested without probable cause. All charges were dismissed against Plaintiff Newell.

63. On November 15, 2011, Plaintiff Council member Williams also attempted to get to the site of the eviction to monitor the police action against protesters. He too was prevented from engaging in his personal and institutional role as a monitor and overseer of the NYPD by agents of Defendant City including members of the NYPD.

64. Council member Williams was therefore unable to report on the police actions taken at FKA Liberty Park to the City Council, preventing him and the Council from performing their Charter mandated roles as monitors of City agencies including the NYPD.

65. Plaintiff Council members Mark-Viverito, James, Rodriguez and Williams, among other Council members, have been denied the right to receive information about

the police actions against OWS, depriving them of their First Amendment Free Speech rights and further preventing them from performing their Charter mandated roles as monitors of City agencies including the NYPD.

66. Furthermore, plaintiff Council members and other Council members were prevented from gathering information in furtherance of their duty to enact laws for the “good rule and government of the city; for the order, protection and government of persons and property for the preservation of the public health, comfort, peace and prosperity of the city and its inhabitants[.]” Charter § 28.

#### **b. SUPPRESSION OF “MAINSTREAM” MEDIA JOURNALISTS**

67. Some 26 journalists who tried to reach FKA Liberty Park on the night of the eviction, November 15, 2011 (“the night of the eviction”) to report on the police action against OWS were similarly prevented from reaching FKA Liberty Park during the eviction. *See* spreadsheet of Joshua Stearns, tracking journalist arrests at nationwide Occupy events, accessed on April 25, 2012 from <http://storify.com/jcstearns/tracking-journalist-arrests-during-the-occupy-prot> attached hereto as **Exhibit C**.

68. Many journalists from well-known mainstream media outlets complained of their treatment by NYPD on the night of the eviction, claiming that they were being prevented from performing their duties as journalists. *See* November 21, 2011 Letter of New York Times Vice President and Assistant General Counsel George Freeman and twelve (12) others to NYPD Deputy Commissioner Paul J. Browne, attached hereto as **Exhibit D**.

69. Reporters could not get “anywhere near” FKA Liberty Park on the night of the

eviction, said journalist Andrew Katz. *See* Brian Stelter and Al Baker, “Reporters Say Police Denied Access to Protest Site,” New York Times Media Decoder Blog, November 15, 2011, incorporated by reference herein and available online at <http://mediadecoder.blogs.nytimes.com/2011/11/15/reporters-say-police-denied-access-to-protest-site/>, last accessed 4/25/12.

70. NY1 reporter Lindsey Christ said that the aggressiveness with which the police handled reporters on the night of the eviction made it “the scariest 20 minutes” of her life. *Id.*

71. NY1 reporter Lindsey Christ reported that a New York Post reporter was put in a choke hold by police officers on the night of the eviction. *Id.*

72. Despite the widely reported-upon and observed rough behavior employed by agents of Defendant City on the night of the eviction, NYPD Spokesperson Paul J. Browne carefully stated that “he saw ‘nobody’ who was manhandled.” *Id.*

73. In response to police treatment of press on November 15, 2011, United States Congressman Jerrold Nadler, Ranking Member of the House Judiciary Subcommittee on the Constitution, and the representative of Lower Manhattan, wrote a letter, dated December 6, 2011, to United States Attorney General Eric Holder, requesting that the Attorney General initiate an investigation into law enforcement activities surrounding the Occupy movement generally, and OWS particularly. *See* December 6, 2011 letter of Congressman Jerrold Nadler, attached hereto as **Exhibit E**.

74. In that December 6, 2011 letter, Congressman Nadler described Defendant Mayor Bloomberg’s claim that reporters were prevented from approaching FKA Liberty Park for their own protection as “hav[ing] little merit.” Congressman Nadler went on to point out

that “[j]ournalists enter war zones to inform the American people about the status of those conflicts. I think they can be trusted to assume the risks associated with covering a non-violent protest. The actions of the NYPD to prevent the press from covering the protests and the [November 15, 2011] eviction [of OWS participants from FKA Liberty Park] affect core First Amendment values, not just of the right of the press to report, but also the public’s right to be informed on matters of great civic importance.” Id. at 3.

75. Gabe Pressman, president of the The New York Press Club, which represents many of the most established media outlets and reporters in the City of New York, wrote a letter to Defendant New York City Police Commissioner Kelly, stating in part: “the brash manner in which officers ordered reporters off the streets [on the night of the eviction] and then made them back off until the actions of the police were almost invisible is outrageous.” See Gabe Pressman, “Open Letter to Mayor Bloomberg and Commissioner Kelly,” November 15, 2011, incorporated by reference herein and available online at <http://www.newyorkpressclub.org/coalition.php>, sub-tab “11/15/2011 – Open Letter to Mayor Bloomberg and Commissioner Kelly,” last accessed 4/26/12.

76. Mayor Michael Bloomberg paradoxically claimed that the actions taken against journalists on the night of the eviction were undertaken “to protect” said journalists. See YouTube, “Bloomberg Defends Blocking Media from Zuccotti Park (via @capitalnewyork)”, incorporated by reference herein and available online at <http://www.youtube.com/watch?v=cOsujgv8Ueo>, last accessed 4/25/12.

77. In response to the Press Club letter, Defendant Commissioner Kelly issued a well-publicized “directive” instructing NYPD officers to not unreasonably interfere with press coverage.

78. Nevertheless, the suppression of reporters and the right to freedom of the press and speech persisted thereafter, and continues to date. *See, e.g.*, February 1, 2012 Letter of New York Times Vice President and Assistant General Counsel George Freeman and ten (10) others to NYPD Deputy Commissioner Paul J. Browne, incorporated herein by reference and attached hereto as **Exhibit F**.

79. Upon information and belief, many reporters working for established media outlets are afraid to enforce their rights in court because of the threat it poses to their careers.

**c. SUPPRESSION OF CITIZEN JOURNALISTS**

80. Citizen reporters, photographers and videographers have been critical in providing unfiltered and contemporaneous information to the public about OWS and police responses to OWS.

81. As citizen reporters, they have no institutions or corporations to answer to for their reporting.

82. On information and belief, citizen reporters who are not credentialed by NYPD have been targeted by police officers for suppression, harassment and arrest, in violation of their First Amendment rights.

83. On information and belief, citizen reporters who are not credentialed by NYPD continue to be targeted by police officers for suppression, harassment and arrest, in violation of their First Amendment rights.

84. On information and belief, the NYPD's acts in suppressing, harassing and arresting citizen reporters are motivated, in whole or in part, by an unconstitutional distinction between "official" reporters, who are credentialed by NYPD, and other

reporters.

85. However, as pled above, the NYPD has also acted to suppress, harass and arrest “official” reporters as well.

86. Reporters have a First Amendment right to gather and record governmental processes, including police actions, regardless of whether they are “official” or “unofficial”. Smith, 212 F.3d at 1333 (11th Cir. 2000) *citing* Iacobucci v. Boulter, 1997 WL 258494 (D.Mass, 1997).

87. On or about November 15, 2011, in FKA Liberty Park, a publicly accessible open space, Plaintiff Timothy Fitzgerald, a citizen reporter who was documenting protest activities and police response to same in that publicly accessible open place, was grabbed, pulled to the ground and arrested.

88. On December 12, 2011, Plaintiff Jonathan Knepfel was covering a police action against OWS participants at Winter Garden.

89. When asked whether he had (NYPD issued) press credentials, he replied he did not.

90. Since he was not a member of the press credentialed by NYPD, he was prevented from continuing to record the activity and arrested without probable cause. **See Exhibit G**, at timestamps 14:42-15:00.

91. On December 12, 2011, at the Winter Garden, a publicly accessible open space, Plaintiff Justin Wedes, a citizen reporter who was documenting protest activities and police response to same in that publicly accessible open place, was grabbed, pulled to the ground and arrested without warning or probable cause as he stood recording police interactions from a reasonable distance. **See Exhibit G**, at timestamps 12:13-12:55.

92. Plaintiff Justin Wedes was held for forty (40) hours before being arraigned with respect to the above-described arrest.
93. Furthermore, Mr. Wedes was targeted for arrest again by Defendant Deputy Inspector Winski. On March 15, 2012, Defendant Winski focused on Mr. Wedes, as the video attached shows, Defendant Winski called out "HEY JUSTIN" to Plaintiff Wedes via megaphone, and then made gestures and mouthed words indicating that Defendant Winski intended to arrest Mr. Wedes, stating in sum and substance, "You're coming with me." This conduct so frightened and chilled Mr. Wedes' right to observe and document police action that he fled the area in order to avoid yet another illegal arrest.
94. On or about December 12, 2011, at the Winter Garden, a publicly accessible open space, Plaintiff Paul Sullivan, a citizen reporter who was documenting protest activities and police response to same in that publicly accessible open place, was grabbed, pulled to the ground and arrested without warning or probable cause.
95. Plaintiff Paul Sullivan sustained nerve damage in his left hand as a result of the above-described arrest.
96. Photographer Plaintiff Stephanie Keith was covering the Brooklyn Bridge march on October 1, 2011 for the Associated Press.
97. Plaintiff Mrs. Keith was carrying sophisticated photography equipment with her on October 1, 2011 for the purpose of taking photographs for licensing and sale to major news outlets.
98. Plaintiff Mrs. Keith's photographs taken prior to her arrest appeared in major press outlets.
99. Plaintiff Mrs. Keith's photographs taken prior to her arrest prove that the police

had not notified many OWS participants that they could not go on the roadway.

100. Plaintiff Mrs. Keith did not have NYPD granted press credentials.

101. Plaintiff Mrs. Keith violated no police order, but was nevertheless arrested while covering the news story.

102. On or about January 10, 2012, Plaintiff Justin Sullivan was filming an OWS activity at Grand Central Station.

103. Because Plaintiff Justin Sullivan was filming the activity, he was falsely arrested by MTA police and subjected to excessive force.

104. Plaintiff Justin Sullivan was photographed and fingerprinted.

105. Defendant MTA Police Officer Lakeram specifically ordered other officers present to get Plaintiff Justin Sullivan's camera.

106. Plaintiff Justin Sullivan was initially released from custody at the precinct with multiple summonses.

107. When Plaintiff Justin Sullivan went back to the MTA Police Precinct located at Grand Central Station to ask for his missing video camera, he was re-arrested and held for approximately 24 more hours.

108. Additional charges were issued as against Plaintiff Justin Sullivan at that time.

109. Plaintiff Justin Sullivan's still camera was returned.

110. Plaintiff Justin Sullivan's video camera was not returned.

111. Plaintiff Justin Sullivan's data chips were not returned.

112. A witness reported that she observed an officer who fits the physical description of Officer Lakeram instructing another officer to break the camera.

**d. THE POLICE FORCES OF DEFENDANT CITY AND DEFENDANT MTA HAVE VESTED INTERESTS IN CHILLING PRESS AND GOVERNMENTAL ACCESS TO THEIR ENFORCEMENT ACTIVITIES**

113. On information and belief, while Defendant MTA is a separate municipal organization from Defendant City of New York, MTA Police communicates about policies and strategies with NYPD.
114. The MTA Police Commissioner is Defendant Chief Michael Coan.
115. Defendant Chief Coan became Chief of MTA Police after a 26 year career in the NYPD, rising to the level of Deputy Chief of the NYPD.
116. Notably, Defendant Chief Coan was the Commanding officer of NYPD's Public Information Division for four years.
117. On September 19, 2011, a peaceful march from FKA Liberty Park through Wall Street resulted in Defendant Deputy Inspector Winski arresting an orange-hatted OWS participant for alleged disorderly conduct and resisting arrest.
118. NYPD spokesperson Paul Browne alleged in an e-mailed statement that this individual was arrested "for jumping a police barrier and resisting arrest." *See* Laura Marcinek, "Wall Street Areas Blocked as Police Arrest Seven in Protest," Bloomberg News, September 19, 2011, incorporated by reference herein and available online at <http://www.bloomberg.com/news/2011-09-18/wall-street-occupied-by-a-few-hundred-people-as-protesters-ranks-dwindle.html>, last accessed 4/25/12.
119. However, a NY Times City Room Blog with photographs showed precisely the opposite – Defendant Deputy Inspector Winski tried to pull a protestor over a barrier, and then Defendant Deputy Inspector Winski jumped over the barrier to grab the OWS participant. *See* Colin Moynihan, "Wall Street Protests Continue, With at Least 6

Arrested”, New York Times City Room Blog, September 19, 2011, incorporated by reference herein and available online at

<http://cityroom.blogs.nytimes.com/2011/09/19/wall-street-protests-continue-with-at-least-5-arrested/>, last accessed 4/25/12.

120. Subsequently, Spokesperson Paul Browne stated that ‘he had gotten his facts scrambled.’ Dwyer, J. “*A Spray Like A Punch in the Face*” N.Y. Times, 9/27/2011, available online at <http://www.nytimes.com/2011/09/28/nyregion/a-burst-of-pepper-spray-like-a-punch-in-the-face.html> and incorporated by reference herein.

121. Similarly, members of the NYPD lied about the conditions of Plaintiff Council member Rodriguez’s arrest, stating, among other false claims, that the Council member was not injured in the course of the arrest.

122. On information and belief, the above-referred incidents of misstatements, lies and cover-ups perpetrated by members of the NYPD and related to officer misconduct stem from the NYPD’s insular culture, which prioritizes fraternal loyalty over objective integrity.

123. The widespread phenomenon and practice of police officers covering up for one another’s bad acts is known colloquially as “the blue wall of silence.”

124. On information and belief, the insular culture of the NYPD, in conjunction with “the blue wall of silence” phenomenon that has been found to exist among police officers generally, have combined to make internal police oversight by NYPD oversight divisions such as the Internal Affairs Bureau (“IAB”) and Performance Monitoring Unit (“PMU”) largely ineffective at curbing all but the most egregious acts of individual officer corruption.

125. On information and belief, the NYPD's continuing practice of combating meaningful efforts towards internal police oversight is demonstrated by the custom and practice of NYPD officers harassing, hazing and otherwise making life difficult for officers who diligently apply themselves to IAB assignments.
126. On information and belief, the NYPD's continuing practice of combating meaningful efforts towards internal police oversight is demonstrated by the custom and practice of NYPD officers harassing, hazing and otherwise making life difficult for officers who come forward and speak out about police misconduct, such as Adrian Schoolcraft.
127. On information and belief, NYPD supervisory complicity or acquiescence to the NYPD's continuing practice of combating meaningful efforts towards internal police oversight is demonstrated by the limited manpower and resources of PMU.
128. As of the last report on PMU released by Defendant City's Commission to Combat Police Corruption ("CCPC") in 2006, incorporated by reference herein, fourteen (14) officers comprised the totality of the PMU, and were nominally tasked with monitoring the performance of any of the approximately forty thousand (40,000) members of the NYPD who may be set down for performance monitoring.
129. On information and belief, the insular culture of the NYPD, in conjunction with "the blue wall of silence" phenomenon that has been found to exist among police officers generally, have led to a continuing practice of NYPD officers and leadership working to systematically undermine external municipal oversight efforts undertaken by Defendant City's CCPC and Defendant City's Civilian Complaint Review Board ("CCRB").
130. On information and belief, the NYPD's continuing custom or practice of covering

up police misconduct rather than meaningfully addressing same is a “top-down” phenomenon, wherein senior NYPD officials including but not limited to Defendant Commissioner Kelly actively foster a work environment and culture in which misconduct is obfuscated and attempts at meaningful monitoring and oversight are systematically opposed.

131. On information and belief, the NYPD’s continuing custom or practice of covering up police misconduct rather than meaningfully addressing same also enables police officers to lie in accusatory instruments and under oath.

132. On information and belief, the NYPD’s continuing custom or practice of covering up police misconduct rather than meaningfully addressing same, in conjunction with the NYPD’s policy of quantitative enforcement “performance goals,” actually encourages police officers to lie in accusatory instruments and under oath.

133. On information and belief, the NYPD’s continuing custom or practice of covering up police misconduct rather than meaningfully addressing same, in conjunction with the NYPD’s policy of quantitative enforcement “performance goals,” actually encourages police officers to lie in accusatory instruments and under oath because officers are forced to operate in a system which penalizes an absence of enforcement activity, even when no cause for enforcement activity exists, while at the same time enabling officers to lie and commit acts of misconduct against civilians without employment consequences.

134. On information and belief, taken together these practices, policies and customs engender perverse incentives for officers to commit acts of misconduct against civilians without consequences.

135. Defendant Commissioner Kelly demonstrated the reach of these pernicious

practices when he claimed that he was not aware of any claim of injury made by Plaintiff Council member Ydanis Rodriguez, even though Plaintiff Council member Rodriguez had open and obvious wounds on his head, sustained during his arrest, observed by bystanders to Council member Rodriguez' arrest. See "NYC Councilman Ydanis Rodriguez Arrested During Zuccotti Park Raid," CBS/AP, November 15, 2011, available online at <http://newyork.cbslocal.com/2011/11/15/nyc-councilman-ydanis-rodriguez-arrested-during-zuccotti-park-raid/> and incorporated by reference herein.

136. Under NYPD Interim Order 53(03), desk officers processing arrests are required to observe the physical and mental condition of incoming prisoners and make note of said conditions in the Command Log.

137. Therefore, Council member Rodriguez's injuries should have been recorded in a Command Log that was or should have been available to Defendant Commissioner Kelly at the time of his statement noted above.

138. Whether this information was not made available to Defendant Commissioner Kelly or Defendant Commissioner Kelly willfully disregarded this information, the NYPD's customs, policies and practices that promote police misconduct and discourage meaningful police oversight were to blame.

139. The willful failure of Defendant City to accurately take note of injuries inflicted by members of the NYPD on a City Council member for Defendant City while said City Council member was being arrested for observing a police action shocks the conscience.

140. The willful failure of Defendant City to acknowledge injuries inflicted by members of the NYPD on a City Council member for Defendant City while said City Council member was being arrested for observing a police action shocks the conscience.

141. The battery and false arrest inflicted by members of the NYPD on a City Council member for Defendant City while said City Council member was observing a police action shocks the conscience.

142. By employing the NYPD in its present condition to police protests while failing to provide meaningful avenues of police accountability, Defendant City chills each plaintiff, and indeed each citizen, from engaging in Constitutionally protected speech.

143. The above-described issues and phenomena are not new developments, and are not unique or unprecedented in the history of policing in New York City.

144. Instead, the treatment of OWS participants by Defendants represents a continuation, if not a culmination, of general trends of official misconduct among the agents of Defendant City of New York that has persisted in varying forms for over a century.

145. These trends of official misconduct and further support of the above-pled unconstitutional NYPD policies, practices and customs are set forth in detail in Appendix I, which is appended hereto.

146. The facts, allegations and sources set forth in Appendix I are incorporated by reference in the body of the Complaint.

**II. ABRIDGING FREEDOM TO PEACEABLY ASSEMBLE: FROM THE INCEPTION OF THE OCCUPY WALL STREET MOVEMENT, DEFENDANTS HAVE ACTED TO UNCONSTITUTIONALLY AND ARBITRARILY PREVENT PERSONS FROM ASSEMBLING IN TRADITIONAL PUBLIC FORA TO DISCUSS MATTERS OF PUBLIC CONCERN, WHILE ALLOWING PERSONS TO ENGAGE IN NON-POLITICAL ACTIVITIES IN THOSE SAME SPACES**

**a. PREVENTION OF ENTRY INTO AND FORCIBLE REMOVAL OF CITIZENS FROM PUBLIC SPACES ENGAGING IN PEACEFUL ASSEMBLY AND PUBLIC ISSUE SPEECH**

**1. Public Space**

147. Through unlawful exercises of police power and misapplication of law, the NYPD has sought to prevent and has prevented Plaintiffs and other citizens from exercising certain Constitutional Rights, including the right to public assembly and expressive speech.

148. Plaintiffs and other residents of this great city are being prevented from assembling and speaking on public issues in public spaces around Manhattan.

149. Specifically, Plaintiffs and other citizens have been prevented from lawfully entering and/or remaining at public spaces located at FKA Liberty Park, 100 Williams Street, the Winter Garden, and One Chase Manhattan Plaza in Lower Manhattan, among others.

150. On information and belief, each of the above-listed areas is designated as “publicly accessible open space” by the City of New York.

151. The City of New York negotiated with the private developers who own(ed) the aforementioned properties to create these public spaces, in exchange for zoning variances allowing the developers to, among other things, exceed floor area ratio restrictions, creating more office space than was generally possible under law.

152. In 1961, New York City passed a comprehensive Zoning Resolution, setting the City's zoning ordinances and formalizing and codifying the trade-off that developers are able to seek between developing the site beyond the property's zoned floor to area ratio in exchange for creating public space on the property.

153. As it applies to the aforementioned properties, the 1961 Zoning Resolution requires that property owners build "plazas" in exchange for bonus floor-to-area ratio building rights.

154. A "plaza" is defined in Art. 1, Ch. 3 §33-11 of the Zoning Resolution as an "open area accessible to the public at all times". See attached **exhibit H**.

155. In 2007, the City Council approved Resolution 1103, making certain amendments to the 1961 Zoning Resolution. Tellingly, it changed the name "plaza" and other similar designations to the more emphatic "publicly accessible open area". Art. 1, Ch. 2 §12-10.

156. Resolution 1103 was enacted by decision of the City of New York's City Planning Commission without amendment. It reiterates that no change in the terms of public access to publicly accessible open areas may be made without application to the City Planning Commission, and further, upon application the minimum hours of access to said publicly accessible open areas must reach at least to 10:00 PM from April 14 to October 31, and to 8:00 pm from November 1 to April 14.

157. Further, it clarifies that no barriers above five feet can ever be deployed around a publicly accessible open area, and that they must be fully removed during opening hours.

See **exhibit I**.

158. Though publicly accessible open areas are privately owned, it only exists as a creation of City law and policy, and represents the fruit of a consummated bargain between a private actor and government, to wit, for the private actor to provide public space in return for “bonus” floor area from the government.

159. Moreover, the owners of publicly accessible open areas formally transfer responsibility for said areas to the City in order for the City to administer them as they see fit. This was done prior to the eviction of OWS participants at FKA Liberty Park on November 15, 2011.

160. This was no mere enforcement of the private property rights of Brookfield Properties, the owner. To support the criminal charge of trespass against Ronnie Nunez and others who remained in FKA Liberty Park on November 15, Manhattan District attorney Cyrus Vance explained, “Brookfield Properties had transferred authority to the New York City Police Department to revoke that license [to remain in FKA Liberty Park], by ordering the dispersal and evacuation of all individuals in the park.” See **exhibit J** page 4.

161. Indeed, Brookfield Properties gave NYPD “permission” to evacuate Zuccotti Park. See **exhibit K**. **In other words, the evacuation order was at the discretion of the City, not Brookfield Properties.**

162. Under federal and state Constitutional law, whether a space is considered public is not determined by a formalistic approach to the law of real property. Rather, the court must look to a variety of factors: “[T]he source of authority for the private action; whether the State is so entwined with the regulation of the private conduct as to constitute

State activity; whether there is meaningful State participation in the activity; and whether there has been a delegation of what has traditionally been a State function to a private person.” Shad Alliance v. Smith Haven Mall, 66 N.Y.2d 496, 505 (1985).

163. Streets, sidewalks, parks and other public spaces adjacent to sidewalks and streets have long been considered traditional public fora for speech and assembly. “Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.” Hague v. CIO, 307 U.S. 496, 515 (1939). Speech finds its greatest protection in public fora. Deegan v. City of Ithaca, 444 F.3d 135, 142 (2d Cir. 2006).

164. Under these well-settled precedents, these publicly accessible open areas are “public fora” for Constitutional law purposes, and activities within them are entitled to the highest Constitutional protections.

## 2. Public Issue Speech and Assembly

165. [S]peech on ‘matters of public concern’ ... is ‘at the heart of the First Amendment’s protection.’ ” Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., 472 U.S. 749, 758-759 (1985) (opinion of Powell, J.); *quoting* First Nat. Bank of Boston v. Bellotti, 435 U.S. 765, 776 (1978). The First Amendment reflects “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964). That is

because “speech concerning public affairs is more than self-expression; it is the essence of self-government.” Garrison v. Louisiana, 379 U.S. 64, 74-75 (1964). Accordingly, “speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.” Connick v. Myers, 461 U.S. 138, 145, (1983). *See also Snyder v. Phelps*, 131 S. Ct. 1207, 1215 (2011).

166. Clearly, the OWS protests are, and were always planned to be speech about matters of public concern. Attached as **exhibit L** are pages from *Adbusters Magazine*, which helped initiate the OWS movement. As the pages indicate, the OWS actions were planned well in advance, and were intended as speech to dramatize the inequities and social injustice in American society. Clearly, speech in connection with Occupy Wall Street is entitled to the highest protection.

167. Numerous Courts across the country have now recognized the First Amendment right to Occupy space, including tents and tarps, as it “*is an expression of hope for a more just, economically egalitarian society and that it functions as a model community demonstrating their vision of such a society.*” Occupy Augusta v. Maine Commissioner of Public Safety (USDC Maine 11CV00452(NT) slip op. at 3, 12/7/2011) [http://www.med.uscourts.gov/Opinions/Torresen/2011/NT\\_12072011\\_1-11cv\\_452\\_James\\_Freeman\\_v\\_John\\_Morris.pdf](http://www.med.uscourts.gov/Opinions/Torresen/2011/NT_12072011_1-11cv_452_James_Freeman_v_John_Morris.pdf). “*The setting up of tents, sleeping, and governance on Dewey Square is expressive conduct and symbolic.*” Occupy Boston v. City of Boston (11-4152-G, Superior Court Civil Action, Commonwealth of Massachusetts, 2011, slip p at 2, 12/7/2011)(available online [http://aclum.org/sites/all/files/legal/occupy\\_boston/Memorandum\\_and\\_Decision.pdf](http://aclum.org/sites/all/files/legal/occupy_boston/Memorandum_and_Decision.pdf). [“*The Plaintiffs will likely prevail on their claim that their tent city is expressive conduct.*”

*With their occupation of Capitol Park across from the Capitol, the Plaintiffs intend to convey a particularized message on behalf of those who have been unfairly excluded from participation in government. The Plaintiffs also intend to model an ideal form of governance.... In this case, the October 2008 stock market crisis, subsequent bank bailouts, high unemployment, deflation of the housing market, rise in foreclosures, and increasing disparity between the incomes of the highest wage-earners and the low and middle- income earners are all well-known and have set the stage for the Occupy movement. Groups associated with Occupy Wall Street have coalesced in cities around the nation and their protests have received wide coverage in the press. Those who view the tent cities erected by the Occupy movement in general and by Occupy Augusta in particular are likely to understand that these tent cities in parks and squares near centers of government and finance symbolize a message about the unequal distribution of wealth and power in this country.”]*

168. At least two other district court judges have held that the Occupy movement’s tent cities and overnight camping are protected speech under the First Amendment. Occupy Minneapolis v. County of Hennepin, \_\_\_ F.Supp.2d \_\_\_, 2011 WL 5878359 at \*4 (D. Minn., Nov. 23, 2011); Occupy Ft. Myers v. City of Ft. Myers, \_\_\_ F.Supp.2d \_\_\_, 2011 WL 5554034 at \*5 (M.D. Fla., Nov. 15, 2011) (collecting cases). Occupy Augusta v. Maine Commissioner of Public Safety (USDC Maine 11CV00452(NT) slip op. at 10-12, 12/7/2011), available online at [http://www.med.uscourts.gov/Opinions/Torresen/2011/NT\\_12072011\\_1-11cv\\_452\\_James\\_Freeman\\_v\\_John\\_Morris.pdf](http://www.med.uscourts.gov/Opinions/Torresen/2011/NT_12072011_1-11cv_452_James_Freeman_v_John_Morris.pdf); see also, Occupy Minneapolis v. County of Hennepin, \_\_\_ F.Supp.2d \_\_\_, 2011 WL 5878359 at \*4 (D. Minn., Nov. 23, 2011);

Occupy Ft. Myers v. City of Ft. Myers, \_\_\_ F.Supp.2d \_\_\_, 2011 WL 5554034 at \*5 (M.D. Fla., Nov. 15, 2011), Occupy Oklahoma (Isbell) v. Oklahoma City, (11CV01423)(12/2/11); Occupy Nashville v. Governor Haslam, (11CV01037 10/31/11), Occupy Denver v. City of Denver, (11CV03048, 12/7/1).

169. To withstand constitutional scrutiny, government restrictions of public issue speech in a public forum must be (1) content neutral, in that they target some quality other than substantive expression; (2) narrowly tailored to serve a significant governmental interest; and (3) permit alternative channels for expression. Deegan v. City of Ithaca, 444 F.3d 135, 142 (2d Cir. 2006).

170. The restrictions on speech at issue here are not content neutral, since the police are allowing some people to assemble and speak in these public spaces, while the Plaintiffs as OWS participants have been barred and/or removed.

171. Content based restrictions on speech by government must be subjected to “the most exacting scrutiny”. The regulation must be necessary to serve a compelling state interest that it is narrowly drawn to achieve that end. Boos v. Barry, 485 U.S. 312, 321 (1988).

172. In public debate, even insulting and outrageous speech (a level not reached by OWS protesters) must be tolerated by citizens in its public fora in order to provide “adequate breathing space” for the freedoms protected by the First Amendment. In Snyder v. Phelps, 131 S.Ct. 1207 (2011), the court denied the claim of a father who sued for intentional infliction of emotional distress when his son’s funeral was picketed by the Westboro Baptist Church. The picketers displayed signs stating, for example, “Thank

God for Dead Soldiers,” “God Hates You”, “Fags Doom Nations,” “America is Doomed,” “Priests Rape Boys,” and “You’re Going to Hell”. *Id.* At 1216-1217. Even this speech and this protest, because it was about public issues, and took place in a public space adjacent to a public street, was held to be protected by the First Amendment. *See also Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 56 (1988) and *Boos* at 381.

173. By allowing individuals to remain and assemble in public spaces unmolested for days and weeks in pursuit of commercial and non-political purposes<sup>4</sup> that Defendant City deems more desirable, while conducting mass arrests and employing excessive force against individuals assembling and remaining in public places for discussion of public issues involving the effects of income inequality on society, Defendant City is engaging in impermissible content-based restrictions in its policing of public fora.

174. However, even assuming *arguendo* that NYPD’s restriction on OWS speech is somehow content neutral, the restriction is in no way a reasonable time, place and manner restriction.

175. Content neutral time, place and manner restrictions on speech must be narrowly tailored to serve a significant governmental interest, and ample alternative channels for

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<sup>4</sup> *See, e.g.*, “Final Installment Of ‘Harry Potter’ Series Holds U.S. Premiere At Lincoln Center[;] Some Fans Camp Out For Week For Chance To Glimpse Hogwarts Crew” CBS New York, July 11, 2011, incorporated by reference herein and available online at <http://newyork.cbslocal.com/2011/07/11/harry-potter-fans-camp-out-at-lincoln-center-for-u-s-premiere/>; *see also* Lucadamo, Kathleen, “Lady Gaga fans camp outside ‘SaturdayNight Live’ for days in hopes to score Tickets,” New York Daily News, May 20, 2011, incorporated herein by reference and available online at [http://articles.nydailynews.com/2011-05-20/entertainment/29583913\\_1\\_lady-gaga-fans-tickets-season-finale](http://articles.nydailynews.com/2011-05-20/entertainment/29583913_1_lady-gaga-fans-tickets-season-finale); *see also* Bilton, Nick, “iPad Resellers Now Camp Overnight at Apple Stores,” New York Times, April 15, 2011, incorporated by reference herein and available online at <http://bits.blogs.nytimes.com/2011/04/15/ipad-resellers-now-camp-overnight-at-apple-stores/>.

speech must be available. Heffron v. International Society for Krishna Consciousness, Inc., 452 U.S. 640, 648 (1981).

176. As will be shown in the factual allegations below, numerous police actions against OWS participants that were intended to prevent OWS participants from entering or remaining in nominally publicly accessible open areas are not content neutral, and in any case, do not and would not amount to reasonable time, place and manner restrictions.

### **3. Factual Allegations Relating to Public Space Issues**

177. The City of New York has engaged in a pattern and practice of barring OWS participants from engaging in public speech and peaceful assembly since on or around September 17, 2011, the day OWS began.

178. Defendant City of New York has continued this pattern and practice of barring OWS participants from engaging in public speech and peaceful assembly to date.

179. Defendant City of New York has continued this pattern and practice of barring OWS participants from engaging in public speech and peaceful assembly and has conspired with other public and private entities to do so unlawfully.

180. On September 17, 2011, peaceful OWS participants gathered at Bowling Green in Manhattan and marched to Wall Street, but were prevented from entering Wall Street on a Saturday by police officers and barricades.

181. On information and belief, most of the businesses and offices surrounding the area of Wall Street that was closed by NYPD officers on Saturday, September 17, 2011 were already closed or in limited operation on Saturday, September 17, 2011.

182. On information and belief, the area of Wall Street that was closed by NYPD officers on Saturday, September 17, 2011 has relatively few residences, as compared to most other blocks in New York City.
183. On information and belief, no reasonable time, place or manner restriction existed to justify the acts of agents of Defendant City in closing the area of Wall Street that was closed by NYPD officers on Saturday, September 17, 2011.
184. On information and belief, these police officers and barricades were present for the sole purpose of preventing a group of individuals from undertaking their intended shared act of peaceful expressive assembly, to wit, occupying Wall Street.
185. From Wall Street, the OWS participants marched to One Chase Manhattan Plaza, a publicly accessible open space, to hold a General Assembly meeting, but were met there as well with police barricades and NYPD officers.
186. On information and belief, the police barricades and NYPD officers present at One Chase Manhattan Plaza on Saturday September 17, 2011, were present for the sole purpose of preventing OWS participants from entering said open, outdoor plaza.
187. On information and belief, the businesses and offices located in the buildings around One Chase Manhattan Plaza are either closed or in limited operation on Saturdays and Sundays.
188. On information and belief, the area encompassing One Chase Manhattan Plaza that was closed by NYPD officers on Saturday, September 17, 2011 has relatively few residences, as compared to most other blocks in New York City.

189. On information and belief, no reasonable time, place or manner restriction existed to justify the acts of agents of Defendant City in closing the area encompassing One Chase Manhattan Plaza that was closed by NYPD officers on Saturday, September 17, 2011.

190. On information and belief, the NYPD's closure of One Chase Manhattan Plaza on Saturday, September 17, 2011, was undertaken for the express purpose of preventing a group of individuals from peaceably assembling to discuss issues of public concern, including but not limited to social issues arising from income inequality.

191. Police Spokesman Paul J. Browne explained that prior to September 17, the plans for the meeting and protest were "well known publicly." *See exhibit M.*

192. One Chase Manhattan Plaza is a product of bargaining undertaken by Defendant City of New York's City Planning Commission, on behalf of the citizens of the City of New York with the private developers who developed One Chase Manhattan Plaza.

193. In return for said developers creating a plaza designated for public use and enjoyment, Defendant City allowed a zoning variance to build the One Chase Manhattan Plaza building beyond the generally-applicable floor to area ratio limit. *See exhibit N,* from New York Times, December 7, 1955.

194. One Chase Manhattan Plaza was the first plaza to be built under the seminal New York City 1961 Zoning resolution. Manhattan Skyscrapers, Nash, Eric P. Princeton Architectural Press, 2005, page 113.

195. In building One Chase Manhattan Plaza, authorization was sought and granted to de-map a portion of Cedar Street to join two parcels of land upon which One Chase Manhattan Plaza was built. *See* New York City Landmarks Preservation Commission, One Chase Manhattan Plaza Landmark Designation Report, February 10, 2009, Designation List 410, LP-2294.
196. In the generations since its construction, One Chase Manhattan Plaza has traditionally been used as a public space for public speech. For example, in 2009, it was the site of a group demonstrating against home disclosures – NACA – that was undisturbed by police or by private security.
197. From September 17, 2011 to at least October 12, 2011, New York City police officers and police department barricades prevented OWS participants from entering One Chase Manhattan Plaza for the purpose of engaging in public issue speech and peaceful assembly.
198. One Chase Manhattan Plaza is a public space that is open 24 hours a day, 7 days a week.
199. On information and belief, members of the NYPD, including but not limited to Defendants, willfully and intentionally prevented the entry of OWS participants to One Chase Manhattan Plaza to deter individuals from engaging in peaceable assembly and speech regarding particular matters of public concern.
200. After September 17, 2011, police barricades and police presence remained around One Chase Manhattan Plaza, preventing the entry of OWS participants.

201. On October 12, 2011, OWS participants walked to One Chase Manhattan Plaza to protest the unfairness of the New York State Tax Code and to present J.P. Morgan CEO Jamie Dimon with a large symbolic check, representing the tax breaks he would receive under said tax code. *See* Michael Herzenberg, "Four Arrested As "Occupy Wall Street" Protesters Rally At JPMorgan Chase HQ," New York 1, October 12, 2011, incorporated by reference herein and available online at [http://www.ny1.com/content/news\\_beats/politics/148841/four-arrested-as--occupy-wall-street--protesters-rally-at-jpmorgan-chase-hq](http://www.ny1.com/content/news_beats/politics/148841/four-arrested-as--occupy-wall-street--protesters-rally-at-jpmorgan-chase-hq).
202. Police barricades and officers prevented OWS participants from entering One Chase Manhattan Plaza.
203. The October 12, 2011 OWS participants were not employing amplified sound on the walk to One Chase Manhattan Plaza or at One Chase Manhattan Plaza.
204. The October 12, 2011 OWS participants were not sufficiently numerous to fill the entirety of the public plaza at One Chase Manhattan Plaza.
205. On information and belief, even if allowed into said public plaza, the October 12, 2011 OWS participants would not have precluded others from use and enjoyment of said public plaza by their presence or expressive activities.
206. On information and belief, even if allowed into said public plaza, the October 12, 2011 OWS participants would not have precluded others from access to buildings adjacent to the public plaza by their presence or expressive activities.

207. It can hardly be said that prevention of a gathering of people in a very large plaza without sound amplification, without blocking doorways or ordinary pedestrian traffic, without any inconvenience to the public whatsoever, save the inconvenience to those who are not receptive to the content of their speech and purpose of their assembly, is a compelling or even significant government interest.

208. Indeed, allowing OWS participants into the public plaza would very likely have caused less public inconvenience than forcing them to stay on the sidewalk.

209. Moreover, particularly as it relates to the October 12, 2011 protest, there was no suitable alternative channel for the protest. It was meant as a message to the CEO Jamie Dimon of J.P. Morgan Chase, whose headquarters is at One Chase Manhattan Plaza.

210. On information and belief, the NYPD has repeatedly undertaken arbitrary closures of various public spaces on a number of occasions to stop OWS public speech and assembly, cutting off forums for speech as OWS participants attempt to use them.

211. Upon information and belief, between September 17, 2011 and October 12, 2011, people who were not OWS participants were not prevented by NYPD from entering and remaining on the One Chase Manhattan Plaza to engage in speech and assembly activities.

212. At some point after October 12, 2011, the police barricades were removed and were replaced by a high fence surrounding the entire publicly accessible open area. The fence has been there 24 hours a day, seven (7) days a week since it was put up.

213. On information and belief, the fence now surrounding One Chase Manhattan Plaza is owned by the private property owners of One Chase Manhattan Plaza.
214. On information and belief, the erection of this fence around the publicly accessible open space at One Chase Manhattan Plaza is nothing more than a continuation of the policies, customs and/or practices of Defendant City and NYPD to prevent OWS participants from entering public spaces to peaceably assemble and engage in expressive activities and speech on matters of public concern.
215. The fence at One Chase Manhattan Plaza could not have been erected without coordination with Defendant City, including but not limited to permitting for said fence and coordination with the NYPD to take down NYPD barriers.
216. On information and belief, the NYPD is intertwined with the continuing practice of content-based restrictions on Constitutionally protected activities, and is a participant in implementing and enforcing said content-based restrictions.
217. On information and belief, the property owner of One Chase Manhattan Plaza has not only participated in the violation of public space rules, they are doing so as a delegate of NYPD, and the NYPD or another like state entity can only be the source of such authority. Security guards allow certain people to enter, while others are barred.
218. OWS participants are prohibited from entering the public space at One Chase Manhattan Plaza.
219. There is no construction occurring at the public space at One Chase Manhattan Plaza.

220. There are no apparent safety concerns that would reasonably preclude the presence of OWS participants from the public space at One Chase Manhattan Plaza.

221. On information and belief, the gate and security around the public space at One Chase Manhattan Plaza is nothing more than another manifestation of the City policy, custom and/or practice of keeping OWS participants out of One Chase Manhattan Plaza and other public spaces closely related to the target audiences of OWS expressive activities, to wit, financial institutions that have played significant roles in the current economic crisis and that have lobbied heavily to reduce government oversight of financial markets.

222. On information and belief, Defendant City of New York's policy, custom or practice of keeping OWS participants out of One Chase Manhattan Plaza and other public spaces closely related to the target audiences of OWS expressive activities is an impermissible content-based restriction on First Amendment protected expressive activities.

#### **FKA Liberty Park**

223. FKA Liberty Park (Zuccotti Park) is a publicly accessible open area under the 2007 Zoning Resolution.

224. The NYPD and Defendant Brookfield Properties, the property owners of FKA Liberty Park, have acknowledged in court proceedings that responsibility for FKA Liberty Park was transferred to the City on November 15, 2011. **Exhibit J.**

225. At about 1:00 a.m. on November 15, 2011, the NYPD forcibly removed OWS participants from the park.
226. Many of those arrested on November 15, 2011 at FKA Liberty Park were not provided with a realistic opportunity to leave FKA Liberty Park.
227. However, on November 15, 2011, at approximately 8:30 a.m., Justice Billings of the Supreme Court of the County and State of New York issued a Temporary Restraining Order, enjoining the City and NYPD from forcibly removing OWS participants from the park and permitting their re-entry into the park, with their equipment and personal effects, during the pendency of the litigation. Attached as **Exhibit O**.
228. City attorneys were present in the courtroom when the ruling was made.
229. Defendant City had immediate notice of this ruling.
230. Nevertheless, the NYPD violated Justice Billings' order, refusing entry of OWS participants in a flagrant and blatant violation of the rule of law. *See* Video of man showing cops the order and the punched woman, attached hereto as **Exhibit G**, at timestamps 8:07-8:59.
231. Clearly, it was the City's decision to continue its policy of restricting the Constitutional rights of OWS participants to blatantly flout a judicial order ordering that OWS participants be allowed to re-enter FKA Liberty Park.
232. Later on November 15, 2011, Justice Stallman of the Supreme Court of the State and County of New York, denied a Temporary Restraining Order application brought by a participant in Occupy Wall Street, and permitted the City and Brookfield Properties to

enforce laws and rules at FKA Liberty Park to prohibit “the erection of structures, the use of gas or other combustible materials, and the accumulation of garbage and human waste...” A copy of the Order is attached as **Exhibit P**.

233. Ironically, the City then immediately erected structures, to wit, barriers and barricades, at FKA Liberty Park to prevent citizens from engaging in peaceful assembly and free speech that have nothing to do with the health or safety concerns of the public.

234. In addition to the two layers of metal barricades placed around FKA Liberty Park, the NYPD had officers stationed around the perimeter of FKA Liberty Park, and arbitrarily barred some persons from entry into the park, while allowing others to enter unmolested.

235. For several months after November 15, 2011, NYPD officers, in concert with private security entities, conduct arbitrary searches of bags and other personal containers of certain people entering FKA Liberty Park, but not others, in violation of the Fourth Amendment. *See MacWade v. Kelly*, 460 F.3d 260, 267 (2d Cir. 2006).

236. On information and belief, for several months after November 15, 2011, the NYPD was barring entry to FKA Liberty Park and conducting searches of persons who, in individual officers’ perceptions and stereotypes, appeared to be OWS participants.

237. On information and belief, police were engaging in content specific regulation of OWS speech.

238. Over this time, the NYPD would not allow a OWS participant to enter FKA Liberty Park if a determination was made that the entry could be denied.

239. On information and belief, NYPD Officers' reasons for barring OWS participants entry to FKA Liberty Park include, but are not limited to (a) carrying too large of a bag; (b) carrying a musical instrument; (c) carrying food for more than one person such as a pizza pie or box of cupcakes; (d) carrying books; or (e) carrying a chair.

240. This practice of conditioning entry to a public space on submission to warrantless searches --without probable cause-- chilled the ability of many individuals to engage in Constitutionally protected speech.

241. This practice of allowing NYPD Officers to arbitrarily deny individuals access to a public space, putatively for carrying food, books, or bags into a public space where those items are allowed, chilled the ability of many individuals to engage in Constitutionally protected speech.

242. At some point after November 15, 2011, the barricades were taken down from the perimeter of the FKA Liberty Park.

243. Even then, the barricades remained in and near FKA Liberty Park.

244. On information and belief, the barricades were and are being kept close to FKA Liberty Park after being removed to facilitate Defendant City of New York and its agents' future use of said barricades at FKA Liberty Park to chill and curtail future expressive activities.

245. On information and belief, the barricades were and are being kept close to FKA Liberty Park as a tacit threat of future use of said barricades at FKA Liberty Park to chill and curtail future OWS-related expressive activities.

246. On March 17, 2012, the six month anniversary of day one of Occupy Wall Street, the NYPD unlawfully 'closed' the park, violently arrested more than seven peaceful OWS participants and erected the barricades once again.

247. Regardless of the ownership of the barricades that remain at the site, clearly the City is very involved and intertwined with the property owner in asserting responsibility for the publicly accessible open space and therefore, the City is and will be held responsible if the barricades are deployed to block entry.

#### **100 William Street**

248. On January 1, 2012, at approximately 7 p.m., OWS participants gathered to hold a General Assembly meeting at 100 William Street.

249. The area where they were going to hold the meeting is a publicly accessible open area.

250. Plaintiff Yonatan Miller was among the OWS participants gathered at 100 Williams Street on January 1, 2012.

251. As Plaintiff Miller and others gathered, police officers and Supervisors arrived.

252. Defendant Deputy Inspector Edward Winski, backed up by numerous officers, demanded that the OWS participants leave the area.

253. Defendant Deputy Inspector Winski was told by various OWS participants present that the plaza at 100 William Street was public space.

254. Defendant Deputy Inspector Winski responded that the owners believed this to be private space.

255. The OWS participants pointed out to Defendant Deputy Inspector Winski that they were entitled to be there under the publicly accessible open area's rules, and pointed to legally required signage in the public plaza that stated in large letters, "REQUIRED TO BE OPEN TO THE PUBLIC FROM 7AM TO MIDNIGHT."

256. Defendant Winski and the other officers allowed other citizens to enter the public area, only barring the OWS participants.

257. Plaintiff Miller and other OWS participants were threatened with arrest if they did not comply with the forcible removal instigated by Defendant Winski.

258. There was no legal or Constitutional basis for Defendant Winski to forcibly remove the OWS participants.

259. Defendant Winski responded to the OWS participants claim that they had the right to be in this public space by threatening to arrest them and process them overnight, telling them they can leave or he will arrest them and they will be incarcerated until the morning when they could explain his illegal actions "to the judge." See **Exhibit G** at timestamp 18:30.

260. **Exhibit G**, at timestamps 17:43-20:53 is a video of this incident.

### Winter Garden

261. On December 12, 2011, OWS participants gathered at the Winter Garden to engage in Constitutionally protected speech and assembly activities.

262. Police came to the scene to remove the OWS participants. Many people involved in the activities, but who were not engaged in any type of disorderly conduct, were charged criminally with trespass.
263. The Winter Garden is a publicly accessible open area, and is owned by Brookfield Properties.
264. In order to be charged with criminal trespass, it must be shown that a lawful order was given to leave the premises.
265. Under the rules of the Winter Garden, the OWS participants were in the open space within the permissible time of use.
266. Plaintiff John Knefel was at the Winter Garden recording the activities of the OWS participants on December 12, 2011.
267. Plaintiff John Knefel was not engaged in any activity that could be construed as unlawful.
268. Plaintiff John Knefel was nevertheless stopped from recording the arrests of OWS participants
269. Plaintiff John Knefel was arrested.
270. Plaintiff Paul Sullivan was at the Winter Garden recording the activities of the OWS participants on or about December 12, 2011.
271. Plaintiff Paul Sullivan was not engaged in any activity that could be construed as unlawful.

272. Plaintiff Paul Sullivan was nevertheless stopped from recording the arrests of OWS participants
273. Plaintiff Paul Sullivan was arrested.
274. A New York Times photographer, Robert Stolarick, was present that day at the Winter Garden.
275. Robert Stolarick did have current NYPD press credentials.
276. While he was photographing the arrests that are referenced in this complaint, he was physically blocked by members of the NYPD from doing his job as a member of the press.
277. Mr. Stolarick continued to try to do his job, and members of the NYPD continued to try to block him from photographing these arrests. *See* video attached as **Exhibit G**, at timestamps 13:00-14:41.
278. The carte blanche given to members of the NYPD to suppress First Amendment expression and press coverage of same over the course of the Winter Garden incident is reflected in the video of Plaintiff Paul Sullivan, who was arrested by a Defendant “John Doe” Police Officer for chuckling at said Defendant when said Defendant comically slipped on the Winter Garden’s marble floor while pursuing an OWS participant.
279. The City had no lawful purpose to prohibit all OWS participants from entering and remaining in the Winter Garden to engage in Constitutionally protected activity.

## Union Square Park

280. OWS participants, who have effectively been prevented from entering and remaining in One Chase Manhattan Plaza, FKA Liberty Park, 100 William Street and the Winter Garden, among others, have been holding general assembly meetings and conducting other expressive activities at Union Square Park.
281. Union Square Park has for centuries been a meeting place for citizens to come together: to celebrate Union victories in the Civil War, to mourn together, as after 9/11, and to rally and protest.
282. Indeed, Union Square Park was the site of the first Labor Day parade in 1882.
283. Union Square Park, as a matter of practice, has long been open to the public 24 hours a day, although as a City park, regulations state that it is open to the public from 6:00 a.m. to 1:00 a.m. The South entrance to Union Square Park is a public sidewalk and has always been open to the public 24 hours a day.
284. Nevertheless, just before midnight on March 21, 2012, police began barricading the South entrance of the park, dispersing OWS participants, and arresting those who they allege were not complying with their order.
285. Plainly, the order to leave the South plaza of the park was arbitrary and illegal.

**III. DEFENDANTS CITY, MAYOR BLOOMBERG, COMMISSIONER KELLY HAVE CONSPIRED WITH PRIVATE CORPORATIONS AND OTHER GOVERNMENTAL ENTITIES TO SUPPRESS THE CONSTITUTIONAL RIGHTS OF PLAINTIFFS AND OTHER OWS PARTICIPANTS TO PETITION THEIR GOVERNMENT FOR REDRESS OF GRIEVANCES**

286. The examples noted above show a policy established by the Defendants City of New York, Mayor Bloomberg, and Commissioner Kelly of specifically targeting Occupy Wall Street participants and preventing them from engaging in Constitutionally protected activities in publicly accessible open spaces. These actions were not the mere activities of private actors on private property, nor the mere enforcement of property laws by public officials. Rather, Plaintiffs' allegations demonstrate that they were the acts of public actors acting in concert with private corporations to bar access to publicly accessible open areas in furtherance of the governmental interests of the Mayor and the private interests of corporations.

287. As demonstrated by its supporting deposition in the Ronnie Nunez criminal trespass case, Brookfield management has worked with police to have OWS participants removed from its public spaces, actually transferring discretion and authority to NYPD to order OWS participants off of publicly accessible open areas and forcibly removing them. *See Exhibit K*, attached.

288. Police barricades were erected at One Chase Manhattan Plaza in advance of the beginning of OWS in order to bar OWS participants from entering. At some point after October 12, 2011 police barricades were removed and, upon information and belief, a private fence owned by Defendant J.P. Morgan was erected to keep OWS protesters out of the Plaza.

289. On information and belief, the close temporal proximity between the removal of the initial barriers and their replacement with the subsequent private fence shows that Defendant J.P. Morgan and state actors conferred and conspired to continue the violation of Constitutional rights of individuals seeking to gather and exercise their rights in said publicly accessible open area.

290. On October 3, 2011, Defendant J.P. Morgan made the largest contribution ever to the New York Police Foundation, to wit, goods, services and cash totaling Four point Six Million Dollars (\$4,600,000.00).

291. The New York Police Foundation is closely associated with the NYPD. A photo and a statement from Commissioner Ray Kelly appears on the home page of the New York Police Foundation's web site. <http://www.nycpolicefoundation.org/netcommunity//>  
*See Exhibit Q.*

292. Defendant Mitsui officials conferred with Defendant NYPD Deputy Inspector Winski to violate the Constitutional rights of OWS participants when Defendant Mitsui, according to the words of Defendant Winski, told him that they were to be removed in violation of their rights.

293. An agreement was formed between the state actors MTA and its police commissioner, and the state actors City of New York and its Mayor and Police Commissioner to violate the Constitutional rights of OWS participants in their jurisdictions.

294. The MTA Commissioner was a high-ranking 26 year veteran of the NYPD when he left to become MTA Commissioner. The MTA Commissioner served for approximately five years with NYPD's Public Information Division as its highest ranking

officer. The Public Information Division has responsibility for handling the press. Given this history, the MTA Commissioner would have had every opportunity to coordinate with NYPD in its response to OWS generally and handling the press specifically in connection with OWS.

295. In each case, the conspiring entities or individuals acted in concert and committed overt acts to cause violations of the Constitutional rights of Plaintiffs and many other OWS participants.

296. Just two years ago, the United States Supreme Court, in upholding the right of corporations to spend unlimited amounts of money on political campaigns, stated "[t]here is no basis for the proposition that, in the political speech context, the Government may impose restrictions on certain disfavored speakers. Both history and logic lead to this conclusion." Citizens United v. Federal Elections Commission, 130 S.Ct. 876 at 883 (2010).

297. Yet, Defendant City of New York, through its police department, in apparent deference to and in conjunction with large corporations, has restricted actual live people from speaking in the political speech context by ferreting out OWS participants and barring them from speaking in public spaces where others are allowed to assemble and speak freely.

298. In light of the Citizens United decision, and the spectacle of corporate money crowding out other speakers from the political process, it is more important than ever that the public square be available to all people, especially those with fewer resources, to freely express opinions.

299. The City, the Mayor and the police force, have conspired with the defendant private corporations and other governmental entities to effectively impose a corporate monopoly on political speech by barring OWS from traditional public squares and by targeting press to suppress reporting on the crackdowns on the movement.

**IV. FREEDOM OF SPEECH: DEFENDANTS HAVE ENGAGED IN SYSTEMATIC VIOLATIONS OF LAW AND CONSTITUTIONAL GUARANTEES INTENDED TO CHILL THE FIRST AMENDMENT RIGHTS OF OCCUPY WALL STREET PARTICIPANTS TO EXPRESS OPINIONS ON MATTERS OF PUBLIC CONCERN**

**A. NYPD OFTEN OVERCHARGES PEACEFUL PROTESTERS WITH RESISTING ARREST IN ORDER TO HOLD THEM OVERNIGHT RATHER THAN RELEASE THEM WITH DAT'S**

300. According to NYPD Patrol Guide section ("PG") 208-27, various arrestable offenses should result in the issuance of a Desk Appearance Ticket.
301. One of the disqualifications of eligibility for receiving a Desk Appearance Ticket is the charge of resisiting arrest. PG 208-27(4)(s).
302. A defendant that is otherwise eligible to receive a Desk Appearance Ticket will lose such eligibility, and will subsequently be held overnight and be processed through the system, if one of the charges filed against such an individual is resisting arrest.
303. Often times, this charge will be added to a docket regardless of whether factual conduct existed that would sustain a prima facie charge of resisting arrest.
304. It is well recognized in New York's First Appellate Department's jurisprudence, which controls in Manhattan, that affirmative conduct intended to prevent an an arrest is

required to support a charge of resisting arrest under PL §205.30. People v. Arbeiter 169 Misc.2d 771, 774 (1996).

305. Often times during peaceful OWS protests, individuals will be charged with resisting arrest as a punitive charge so that they would become ineligible to receive a Desk Appearance Ticket.

306. Often times, when a defendant is wrongfully charged with resisting arrest, the charge itself is dropped by the District Attorney's office.

307. Distinctly, the charge of Obstruction of Governmental Administration, triggers a discretionary decision to be made by a member of the NYPD whether to issue a Desk Appearance Ticket or not. PG 208-27(4)(t\*) "A person arrested for Obstruction of Governmental Administration 2<sup>nd</sup> Degree may be issued a DAT if he/she engaged in uncooperative actions and is otherwise qualified."

308. The charge of resisting arrest does not trigger any discretionary decision. Upon information and belief, the charge of resisting arrest is often added to an array of charges by the NYPD against OWS participants as an unconstitutional chill on an individual's right to peacefully assemble and engage in expressive speech by punishing such conduct with an overnight incarceration rather than the issuance of a Desk Appearance Ticket.

309. Further information regarding the NYPD's continuing pattern and practice of charging individuals with Disorderly Conduct, Resisting Arrest, and Obstruction of Governmental Administration in retaliation for perceived "Contempt of Cop" is contained in Appendix I, incorporated by reference herein.

**B. NYPD PHOTOGRAPHS ARRESTEES AND, UPON DISMISSALS, DOES NOT RETURN THE PHOTOTGRAPHS TO THE INNOCENT ARRESTEE IN VIOLATION OF STATE PRIVACY LAW**

310. Plaintiffs and other OWS participants have been arrested and taken to One Police Plaza and police precincts under police custody.
311. While at One Police Plaza and other precincts, police personnel take photographs of the individual arrestees, in contradiction to customary police practice.
312. The NYPD Patrol Guide at PG 208-07 provides a list of “photographable offenses.” (Attached as **Exhibit R**). It includes all felonies and a list of misdemeanors as photographable offenses.
313. PG 208-07 does not designate disorderly conduct as a photographable offense.
314. PG 208-07 does not designate resisting arrest as a photographable offense.
315. PG 208-07 does not designate obstruction of governmental administration in the second degree as a photographable offense.
316. PG 208-07 does not designate any degree of misdemeanor or violation trespass as a photographable offense.
317. The Plaintiffs, and indeed nearly all OWS arrestees, have not been arrested for photographable offenses.
318. Nevertheless, NYPD officers have photographed substantially all OWS arrestees.
319. On information and belief, one purpose of this practice of improper photographing of arrestees is to facilitate prosecutions in mass arrests by providing deponent officers and testifying officers with a reference as to which particular arrestee they will allege undertook particular conduct.
320. On information and belief, the allegations against these mass arrestees are

generally fabricated to support arrests undertaken in the absence of probable cause to chill Constitutionally protected expression.

321. On information and belief, deponent officers and testifying officers setting forth allegations regarding mass arrestees need photographic references and other materials to consistently set forth their allegations because the allegations against the mass arrestees are generally not based on validly criminal conduct observed by any officer.

322. In the aftermath of the unlawful closure of FKA Liberty Park on or about March 17, 2012, a number of individuals were detained by the NYPD for more than ten hours, photographed and then released without charges.

323. NYPD photographs OWS arrestees and does not return the photographs to the arrestee, nor, upon information and belief, destroy them when they are found not guilty by a competent court.

324. The failure to return or destroy the photographs violates New York State's guarantees of privacy set forth in its Criminal Procedure Law.

325. Crim. Pro. L. § 160.50 provides that fingerprints and photographs of defendants whose charges are terminated favorably must be returned to the person or destroyed "forthwith."

326. Nevertheless, the NYPD often flouts the law by retaining photographs, sometimes using them for photo arrays and other investigation techniques, in direct contravention of the letter and spirit of the law.

327. Upon information and belief, NYPD has not returned or destroyed photographs of innocent arrestees in the OWS movement and Plaintiff.

328. On November 15, 2012, Plaintiff Jeffery McClain was arrested, and on January

- 11, 2012, the charges against him were dismissed.
329. A photograph was taken of him at 1 Police Plaza.
330. On January 27, 2012, he wrote the police department to ask for the photograph or proof that it was destroyed. Attached as **Exhibit S**.
331. On February 15, 2012, the Department wrote back explaining that it would consider his request for 20 business days under the provisions of the Freedom of Information Law (FOIL). Attached as **Exhibit T**.
332. FOIL does not apply to this matter, and it is nothing more than an attempt at obstruction.
333. On March 15, 2012, the Department wrote in further reply to Plaintiff McClain's lawful and proper request for the destruction of his photograph in police possession, stating that "numerous records must be reviewed in order to determine whether disclosure is required." Attached as **Exhibit U**.
334. The March 15, 2012 letter from the NYPD to Plaintiff McClain went on to state that Plaintiff McClain would receive a response by July 15, 2012. *Id.*
335. "[T]he purpose of CPL 160.50 is to protect accused individuals from the unauthorized use of their records." Green v. Montgomery, 95 N.Y.2d 693, 701, 746 N.E.2d 1036, 1041 (2001).
336. Crim. Pro. L. § 160.50 creates a liberty interest which cannot be deprived without due process of law under the Fourteenth Amendment to the United States Constitution. Anderson v. City of New York, 611 F. Supp. 481 at 489 (S.D.N.Y. 1985).

337. The pattern of prior conduct of not returning or destroying photographs and fingerprints with deliberate indifference of the rights of innocent citizens makes the failure to follow the statute a violation of state law and Constitutional law.

V. **THE LACK OF RESPECT THE NYPD HAS FOR THE COMMUNITIES IT POLICES, AND FOR THE CONSTITUTION AND LAWS IT IS SUPPOSED TO UPHOLD, ALSO LEADS TO WIDESPREAD NYPD CORRUPTION AND CRIMINAL CONDUCT**

338. A simple review of police misconduct that was caught and led to arrests, indictments and/or police trials, since the beginning of the OWS movement just six months ago, overwhelmingly indicates that the Mollen Commission's recommendation for Command Control and Oversight is needed now, even more than it was twenty years ago.

339. Individually, these particular acts may indicate a bad apple in an otherwise finely tuned administration of police security in New York City.

340. Collectively, these individual acts indicate a systematic pattern of police conduct that strains the accountability that these officers owe the citizens and residents of New York City.

341. On October 23, 2011, five current and three former members of the NYPD were arrested and charged federally with Conspiracy to Transport Fire Arms Interstate, Conspiracy to Transport Defaced Firearms Interstate, Conspiracy to Sell a Firearm to an

Out Of State Resident, Conspiracy to Transport and Receive Stolen Merchandise. United States of America v. Masso, et al, 11MAG2730.

342. Just five days later, on October 28, 2011, a ticket fixing scandal broke with the arrest of thirteen NYPD officers, two Sergeants and one Internal Affairs Lieutenant, who was charged with leaking information to union officials about the investigation that led to these arrests.

343. The charges also included misconduct, grand larceny, records tampering and obstruction of governmental administration.

344. The investigation began with the uncovering of an officer from the 40<sup>th</sup> precinct who was selling narcotics from a barbershop he owned in the Bronx.

345. On January 17, 2012, NYPD Officer Jason Arbeeny, a 14 year veteran, was convicted of planting drug on two individuals.

346. Testimony at the trial of Officer Arbeeny indicated that the planting of drugs was widespread in the Brooklyn South Narcotics Taskforce. An individual named Melanie Perez testified at the Arbeeny trial that she was provided with narcotics by NYPD officers and then forced to perform sex acts.

347. On January 29, 2012, NYPD Officer Monty Green was put through an NYPD departmental trial for acting as a pimp.

348. On February 3, 2012, a retired NYPD Officer was found guilty of conspiracy to distribute cocaine and using, carrying, and possessing a firearm in connection with that

conspiracy. See Jim Kouri, "Retired NYPD Officer Convicted In Bronx Drug Trafficking Conspiracy," examiner.com, February 4, 2012, incorporated by reference herein and available online at <http://www.examiner.com/public-safety-international/retired-nypd-officer-convicted-bronx-drug-trafficking-conspiracy>.

349. On February 25, 2012, an investigation was disclosed into NYPD Detectives from the 33<sup>rd</sup> Precinct for drinking on the job and either paying a waitress for sex or sexually assaulting her on February 16, 2012. See Al Baker, "4 Detectives Suspected of Drinking on the Job," New York Times, February 24, 2012, incorporated herein by reference and available online at [http://www.nytimes.com/2012/02/25/nyregion/4-detectives-suspected-of-drinking-on-duty.html?\\_r=2](http://www.nytimes.com/2012/02/25/nyregion/4-detectives-suspected-of-drinking-on-duty.html?_r=2).

350. On March 7, 2012, the Village Voice reported on a 95 page NYPD report concerning the unlawful hospitalization of NYPD Officer Adrian Schoolcraft in retaliation for reporting *confidentially* to NYPD investigators that crime statistics were being manipulated by orders of precinct Commanding Officers to arrest citizens for doing little more than standing on the street corner while making it difficult for real victims of crimes to report such crimes. Said NYPD report substantially confirmed Schoolcraft's claims. See Graham Rayman, "The NYPD Tapes Confirmed," Village Voice, March 7, 2012, incorporated by reference herein and available online at <http://www.villagevoice.com/2012-03-07/news/the-nypd-tapes-confirmed/>.

**VI. NYPD MISCONDUCT CAN BE EXAMINED IN MICROCOSM BY VIEWING THE NYPD'S TREATMENT OF THE OCCUPY MOVEMENT**

351. On September 18, 2011, an arrest made by Defendant Deputy Inspector Winski was one of the first made at Occupy Wall Street of an OWS participant.
352. On this date, a peaceful march was taking place from FKA Liberty Park to Wall Street.
353. As an individual in an orange hat passed Defendant Deputy Inspector Winski.
354. This individual in the orange hat was arrested and charged with resisting arrest and disorderly conduct.
355. NYPD Spokesperson Paul Browne stated in an email to the media that this individual was arrested as he tried to jump a barricade and resisted arrest.
356. A NY Times article appeared that contradicted this statement, and seemed to prove that the opposite was true, specifically, that Defendant Deputy Inspector Winski was the individual who jumped a barricade to make this arrest.
357. Photographs were posted on line that show the statement made by the NYPD was inaccurate. See **Exhibit V**, five photographs taken by NY Times photographer Robert Stolarick.
358. In a follow-up interview, NYPD Spokesperson Paul Browne stated to the NY Times that he must have had his notes mixed up.

359. Since that date, the NYPD has engaged in an intentional pattern to badger and bother both citizen and media press.

360. On September 24, 2011, a senior officer of the NYPD, Deputy Inspector Anthony Bologna, was present in the vicinity of Union Square when a peaceful protest was taking place.

361. Deputy Inspector Anthony Bologna approached a group of defenseless young women who were being held against their will by the NYPD in orange netting and sprayed them with NYPD issued pepper spray, without apparent cause or provocation.

362. At or about the same time, Deputy Inspector Anthony Bologna was walking on the sidewalk in and around Union Square when he again released a few various sprays of NYPD issued pepper spray.

363. Both moments of improper conduct were caught on video camera and subsequently posted on the internet.

364. Recordings of these two serial incidents of misconduct by Deputy Inspector Bologna are available online at <http://www.youtube.com/watch?v=bRc7t6gRkhE> and <http://www.youtube.com/watch?v=gcl9mQPC-Xo>, both last accessed 4/29/12.

365. Upon information and belief, the NYPD initially sought to justify the use of pepper spray, and discount the posted videos. However, after multiple videos were posted and received significant viewership, the NYPD conducted a *pro forma* investigation into the improper use of pepper spray by Deputy Inspector Anthony Bologna.

366. On information and belief, Deputy Inspector Bologna was docked vacation days for his misconduct, but suffered no criminal sanction.

367. Further acts of violence committed by the NYPD on September 24, 2011, were caught on video and published on the MSNBC program “The Last Word with Lawrence O’Donnell.”

368. On October 1, 2011, a peaceful march left FKA Liberty Park and eventually made its way to the Brooklyn Bridge.

369. There is conflicting evidence of whether the NYPD led people onto the bridge, then trapped and arrested them.

370. There is a lawsuit that was filed a few days later in the Southern District of New York challenging the conduct of the NYPD. Garcia et al v. NYC et al, 11CV6957 (JSR).

371. As set out above, Plaintiff Stephanie Keith was working that day as a news photographer when she was arrested on the Brooklyn Bridge.

372. The Manhattan District Attorney’s Office dismissed all charges against Mrs. Keith in the interest of justice, due to her status as a working professional news photographer.

373. On November 15, 2011, the NYPD at the behest of private property owners and the defendant Michael Bloomberg, physically evicted peaceful protesters from FKA Liberty Park.

374. Plaintiff Councilmember Ydanis Rodriguez was assaulted as he tried to observe the police interaction at FKA Liberty Park on November 15, 2011, in his capacity as a democratically elected member of the New York City Council.

375. Plaintiff Democratic District Leader Paul Newell was assaulted as he tried to observe the police interaction at FKA Liberty Park on November 15, 2011, in his capacity as a democratically elected District Leader for the 64<sup>th</sup> Assembly District, Part C, Manhattan.

376. On November 15, 2011, Plaintiff Michael Rivas was badly beaten by police officers as he tried to enter FKA Liberty Park. He was arrested without warning or probable cause, and suffers permanent injuries as a result of the encounter.

377. On November 15, 2011, Plaintiff Jeffery McClain went to lower Manhattan while FKA Liberty Park was being evicted. He is a veteran of the Army and member of the Iraq War Veterans for Peace. He was dressed in uniform and with a t-shirt showing his affiliation.

378. When Plaintiff McClain was prevented from going to the park by members of the NYPD, he joined a march with other OWS participants to Foley Square.

379. OWS participants were being harrassed and intimidated by police at Foley Square.

380. Due to this mistreatment, Plaintiff McClain, and many other OWS participants, began to march North. When it appeared that all the marchers would be arrested, he broke off with about 20 others and marched down a side street.

381. Plaintiff McClain and the twenty other OWS participants he was with, were quickly surrounded by police, even though they were breaking no laws. Upon seeing one participant being brutalized by police officers while he was on the ground and not resisting, he tried to assist the person by pulling him away from the out of control police gang assault.

382. Plaintiff McClain was immediately arrested and badly beaten by police officers, who repeatedly called him a traitor to his country and unfit for his uniform. *See exhibit W*, photograph of Jeffery McClain.

383. On November 15, 2011, a citizen of this great city was punched in the face by a member of the NYPD simply because she was presenting to this officer the Court Order authorizing the OWS participants back into Liberty Plaza. *See Video, Exhibit G*.

384. On November 15, 2011 and thereafter, members of the NYPD and other Defendants authorized the mass destruction of the property of the OWS participants and others.

385. Notices of claim have been filed concerning this destruction of property by and on behalf of Occupy Wall Street, members of the Library of Occupy Wall Street and Global Revolution TV.

386. On November 15, 2011, Plaintiff Timothy Fitzgerald, a citizen reporter, documented the destruction of property belonging to OWS participants by the NYPD, and was subsequently grabbed, pulled to the ground and arrested by NYPD officers.

387. On November 17, 2011, during a peaceful protest in response to the eviction of FKA Liberty Park, NYPD entered Amalgamated Bank at 52 Broadway and arrested Plaintiff Peter Dutro.

388. The criminal complaint filed against Plaintiff Peter Dutro set out that he was at the corner of Broadway and Exchange Place with approximately 50 other individuals.

389. This was false, as Plaintiff Peter Dutro was in the confines of the Amalgamated Bank, and falsely arrested solely because Plaintiff Dutro had asked a peaceful protester who was being arrested, "What's your name?"

390. The Manhattan District Attorney's Office dismissed the case against Plaintiff Peter Dutro after reviewing the security video from Amalgamated Bank.

391. On December 17, 2011 at the Winter Garden, Plaintiff Justin Wedes was targeted by Defendant Deputy Inspector Ed Winski because of his status as citizen press.

392. Although the video of Plaintiff Justin Wedes' arrest clearly shows he complied with the arresting officers and did not resist in any manner, he was charged with resisting arrest and held for more than forty (40) hours.

393. On December 17, 2011 at the Winter Garden, Plaintiff John Knefel was arrested as a recognized citizen journalist because he did not have NYPD issued press credentials. *See* video, **Exhibit G**, at timestamps 14:42-15:00.

394. On or about December 17, 2011, at the Winter Garden, Plaintiff Paul Sullivan, a citizen journalist, was grabbed, pulled to the ground and arrested without warning or

probable cause.

395. On December 17, 2011 at the Winter Garden, NY Times photographer Robert Stolarick was harassed and physically blocked from doing his job as a professional press photographer by members of the NYPD. *See* Video, **exhibit G**, at timestamps 13:00-14:41.

396. On or about January 1, 2012, at approximately 2:30 a.m., a group of people were marching on the sidewalk on Second Avenue heading north.

397. As the group approached 13<sup>th</sup> Street, they were stopped by the NYPD and surrounded by officers of the NYPD on foot and on motor scooter.

398. The individuals surrounded, began to chant, “why are we being detained, why are we being detained.”

399. Some individuals sought to leave the area and the officers standing in their path pushed these individuals back. At the same time, the officers on motor scooters, maneuvered their scooters in a way to intimidate individuals with the fear that they would be physically harmed by these officers on motor scooters if they tried to leave the area.

400. More than twenty individuals were detained and arrested at 13<sup>th</sup> Street an Second Avenue at approximately 2:50 a.m. on January 1, 2012 and subsequently issued Desk Appearance Tickets.

401. On the date that they were to appear in Court, the Manhattan District Attorney’s Office declined to prosecute substantially every one of these arrests.

402. At least one lawsuit has been filed complaining of these January 1, 2012 unlawful arrests. *See Treffs v. The City of New York et al.*, SDNY 12-cv-3030 (HB)(KNF).

403. On or about January 10, 2012, Plaintiff Justin Sullivan was arrested and charged with multiple counts of assault while observing the arrest of another OWS participant in a public place, Grand Central Station.

404. The video exhibit clearly shows that Plaintiff Sullivan did not commit either assault, but that inconsistent police actions led to officers knocking themselves down, knocking down Plaintiff Sullivan, and even allowing a dog to bite an OWS participant that was in police custody.

405. On March 17, 2012, a large group of OWS participants gathered in FKA Liberty Park for cultural classes, music and socializing.

406. Defendant Deputy Inspector Edward Winski told OWS participant Dallas Pesola that he would be arrested that day, though Defendant Winski did not indicate why.

407. Within a few hours, OWS participant Dallas Pesola was arrested at the behest of Defendant Deputy Inspector Edward Winski, charged with two counts of disorderly conduct and one count of resisting arrest, held for forty-eight hours before being arraigned and released.

408. Later on March 17, 2012, without cause or legal right, high ranking members of the NYPD announced that this public space was now closed and anybody who remained would be arrested.

409. Thereafter, high ranking members of the NYPD, including Lieutenants and Deputy Inspectors began to violently harm the OWS participants.
410. More than seventy OWS participants were arrested that evening.
411. Upon information and belief, every one of the arrested individuals were processed as overnight arrests and not issued Desk Appearance Tickets.
412. Video of the violence brought to the peaceful protest by the NYPD can be seen here:  
<http://www.youtube.com/watch?v=1AiNMAv2KI&feature=BFa&list=UUhwwoeOZ3EJPobW83dgQfAg&lf=plcp>, last accessed 4/29/12.
413. During the same series of arrests, a female OWS participant went into seizure while being arrested, yet she was not provided any medical attention and was literally left on a cold street of NYC for length fo time before the NYPD finally carried her to a sidewalk. One on the sidewalk, they did not seek to locate a medic or anyone to provide medical attention. Video of this incident can be seen here  
<http://www.youtube.com/watch?v=An8OCm-Gl2U&feature=related>.

### **EQUITABLE RELIEF**

414. Injunctive relief is appropriate in this case because firstly, the Plaintiffs have shown that their Constitutional rights have been violated. Lewis v. Casey, 518 U.S. 343 (1996).

415. Secondly, Plaintiffs have shown that, in light of the continuous and ongoing nature of the Constitutional violations at issue, said violations are highly likely to recur.
416. Where a plaintiff's right to free speech has been infringed in the past, the chilling effect of future speech is a sufficient continuing injury to obtain injunctive relief. Secretary of State of MD. V. Joseph H. Munson Co., Inc., 467 U.S. 947 at 956-957 (1984).
417. Where an individual officers' misconduct is officially authorized it is likely to recur, and therefore injunctive relief is appropriate. City of Los Angeles v. Lyons, 461 U.S. 95 at 106. *See also* Illinois Migrant Council v. Pilliod, 540 F.2d 1062, 1067 (7<sup>th</sup> Cir. 1976).
418. Plaintiffs have standing, and injunctive relief is granted where they "allege a pattern of localized, intentional misconduct aimed at a particular set of identifiable individuals, those individuals satisfied the requirement that they show an imminent threat of injury." Nat'l Council of La Raza v. Gonzales, 468 F. Supp. 2d 429, 442 (E.D.N.Y. 2007).
419. For example, the court upheld standing and the availability of injunctive relief where Plaintiffs who had been falsely arrested in high drug areas feared further future injury because of the pattern of conduct exhibited by police and because the arrests took place in targeted geographical zones, i.e. high drug areas. Roe v. City of New York, 151 F.Supp. 2d 495 (S.D.N.Y. 2001). *See also* Zepeda v. U.S.I.N.S., 753 F.2d 719 (9<sup>th</sup> Cir. 1983); Illinois Migrant Council v. Pilliod, 540 F.2d 1062 (7<sup>th</sup> Cir. 1976);

National Congress of Puerto Rican Rights v. City of New York 191 F.R.D. 52

(S.D.N.Y. 1999).

420. Plaintiffs here have demonstrated that their Constitutional rights have been violated repeatedly. That the violations are ongoing, and have taken place in recent days.

421. Plaintiffs here have demonstrated that they have been targeted as members of a group, namely, OWS. Therefore, each and every participant in OWS named here as a plaintiff is entitled to relief and has standing to participate in this lawsuit. Each plaintiff is chilled from engaging in future public speech and peaceful assembly in connection with OWS. Finally, the conduct by police has been almost certainly authorized by the City.

422. Each of these factors, along with past injury, demonstrate the high likelihood that injury to Plaintiffs and other OWS participants are likely to recur; and further, that Plaintiffs exercise of their First Amendment rights have been chilled by the likelihood that the injury will recur.

423. Therefore, Plaintiffs are entitled to injunctive relief.

**FIRST CAUSE OF ACTION  
VIOLATION OF CONSTITUTIONAL RIGHTS OF PLAINTIFFS  
(UNITED STATES CONSTITUTION AND 42 USC §1983)**

424. The above paragraphs and Appendix I below are here incorporated by reference.

425. The above-referred acts by Defendants were undertaken under color of law.

426. The above-referred acts by Defendants were undertaken in the exercise of

Defendants' official duties.

427. The above-referred acts by Defendants violated the Constitutional rights of Plaintiffs.

428. Plaintiffs were injured as a result of Defendants' acts.

**SECOND CAUSE OF ACTION  
VIOLATION OF FIRST AMENDMENT RIGHT TO FREEDOM OF SPEECH BY  
PREVENTING ELECTED OFFICIALS FROM OBSERVING AND RECORDING  
POLICE ACTIONS AGAINST PROTESTERS  
(FIRST AMENDMENT OF THE CONSTITUTION OF THE  
UNITED STATES OF AMERICA AND 42 USC § 1983)**

429. The above paragraphs and Appendix I below are here incorporated by reference.

430. On November 15, 2011, elected officials, including Plaintiffs Council members Rodriguez and Williams and Democratic District Leader Newell were prevented by NYPD officers from observing, recording and reporting on the clearance of FKA Liberty Park for no lawful purpose.

431. Plaintiffs Rodriguez and Newell were arrested for exercising their personal and institutional roles to report on a major police mobilization.

432. Defendants have deprived the above Plaintiffs of their civil, Constitutional and statutory rights and have conspired to deprive them of such rights and are liable to Plaintiffs under 42 USC §1983.

433. As a result, the aforementioned Plaintiffs have been injured.

**THIRD CAUSE OF ACTION**  
**VIOLATION OF FIRST AMENDMENT RIGHT TO FREEDOM OF SPEECH**  
**BY PREVENTING ELECTED OFFICIALS FROM OBSERVING AND**  
**RECORDING POLICE ACTIONS AGAINST PROTESTERS**  
**(ARTICLE 1 § 8 OF THE CONSTITUTION OF THE STATE OF NEW YORK,**  
**STATE CONSTITUTIONAL TORT)**

434. The above paragraphs and Appendix I below are here incorporated by reference.
435. On November 15, 2011, elected officials, including Plaintiffs Council members Rodriguez and Williams and Democratic District Leader Newell were prevented by NYPD officers from observing, recording and reporting on the clearance of FKA Liberty Park for no lawful purpose.
436. Plaintiff Rodriguez and Newell were arrested for exercising their personal and institutional roles to report on a major police mobilization.
437. Defendants have deprived the above Plaintiffs of their civil, Constitutional and statutory rights and have conspired to deprive them of such rights and are liable to Plaintiffs under the New York State Constitution.
438. As a result, the aforementioned Plaintiffs have been injured.

**FOURTH CAUSE OF ACTION**  
**ABUSE OF EXECUTIVE POWER BY PREVENTING MEMBERS OF THE**  
**LEGISLATIVE BRANCH FROM OBTAINING INFORMATION ABOUT**  
**THE CONDUCT OF A CITY AGENCY IN ORDER TO REVIEW ITS**  
**ACTIONS AND TO MAKE LAW FOR THE GOOD RULE AND**  
**GOVERNMENT OF THE CITY**  
**(THE CHARTER OF THE CITY OF NEW YORK, §§ 28 AND 29)**

439. The above paragraphs and Appendix I below are here incorporated by reference.
440. Members of NYPD, a Mayoral City agency, prevented Plaintiffs Rodriguez and Williams from observing the mass police action against OWS on November 15, 2011.
441. In doing so, the executive branch of City government prevented them from

performing an official function, to wit, to gather information in furtherance of the role of the City Council to review government activities and make law for the good rule of the City.

442. Such action prevented Plaintiff Council members James and Mark-Viverito, as well as Rodriguez and Williams, from effectively conducting Charter mandated investigations and lawmaking responsibility.

**FIFTH CAUSE OF ACTION**  
**VIOLATION OF FIRST AMENDMENT RIGHT TO FREEDOM OF PRESS**  
**PUBLIC SPEECH BY PREVENTING PRESS MEMBERS FROM**  
**OBSERVING AND RECORDING POLICE ACTIONS AGAINST**  
**PROTESTERS**  
(FIRST AMENDMENT OF THE CONSTITUTION OF THE  
UNITED STATES OF AMERICA AND 42 USC § 1983)

443. The above paragraphs and Appendix I below are here incorporated by reference.

444. Members of the press, including Plaintiffs Justin Wedes and John Knefel have been routinely prevented by NYPD officers from observing, recording and reporting on OWS activities and police response to said activities.

445. Reporters, including the above referenced Plaintiffs, were forcibly removed and sometimes arrested by NYPD officers from the scene of police actions against protesters for no lawful purpose.

446. In addition, members of the press are targeted by police officers for arrest and harassment to deter them from recording and observing police activity.

447. Furthermore, the deliberate and unlawful interference with and prevention of reporting about police activities in connection with the OWS movement violates the rights of all citizens, including all Plaintiffs in this suit, from being free of unlawful and unnecessary infringement of their free speech rights.

448. Defendants have deprived the above Plaintiffs of their civil, Constitutional and statutory rights and have conspired to deprive them of such rights and are liable to Plaintiffs under 42 USC §1983.

449. As a result, the aforementioned Plaintiffs have been injured.

**SIXTH CAUSE OF ACTION  
VIOLATION OF FIRST AMENDMENT RIGHT TO FREEDOM OF PRESS  
PUBLIC SPEECH BY PREVENTING PRESS MEMBERS FROM  
OBSERVING AND RECORDING POLICE ACTIONS AGAINST  
PROTESTERS  
(ARTICLE 1 § 8 OF THE CONSTITUTION OF THE STATE OF NEW YORK,  
STATE CONSTITUTIONAL TORT)**

450. The above paragraphs and Appendix I below are here incorporated by reference.

451. Members of the press, including Plaintiffs Justin Wedes and John Knefel have been routinely prevented by NYPD officers from observing, recording and reporting on OWS activities and police response to said activities.

452. Reporters, including the above referenced Plaintiffs, were forcibly removed and sometimes arrested by NYPD officers from the scene of police actions against protesters for no lawful purpose.

453. In addition, members of the press are targeted by police officers for arrest and harassment to deter them from recording and observing police activity.

454. Furthermore, the deliberate and unlawful interference with and prevention of reporting about police activities in connection with the OWS movement violates the rights of all citizens, including all Plaintiffs in this suit, from being free of unlawful and unnecessary infringement of their free speech rights.

455. Defendants have deprived the above Plaintiffs of their civil, Constitutional and statutory rights and have conspired to deprive them of such rights and are liable to

Plaintiffs under the State Constitution.

456. As a result, the aforementioned Plaintiffs have been injured.

**SEVENTH CAUSE OF ACTION**  
**VIOLATION OF RIGHT TO FREE SPEECH AND FREE ASSEMBLY IN**  
**PUBLIC SPACES**  
(FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF  
AMERICA, AND, 42 U.S.C. § 1983)

457. The above paragraphs and Appendix I below are here incorporated by reference.

458. Plaintiffs John Knefel, Paul Sullivan, Timothy Fitzgerald, Michael Rivas and Justin Wedes, attempted to enter and/or remain in publicly accessible open areas in accordance with each area's published rules.

459. They were prevented from entering and/or forced to leave and/or arrested for being in a publicly accessible open area by officers of NYPD and MTA Police.

460. Defendants have deprived the above Plaintiffs of their civil, Constitutional and statutory rights and have conspired to deprive them of such rights and are liable to Plaintiffs under 42 USC §1983, New York State common law, and the New York State Constitution.

461. As a result, Plaintiffs have been injured.

**EIGHTH CAUSE OF ACTION**  
**VIOLATION OF RIGHT TO FREE SPEECH AND**  
**FREE ASSEMBLY IN PUBLIC SPACES**  
(ARTICLE 1 § 8 OF THE CONSTITUTION OF THE  
STATE OF NEW YORK, STATE CONSTITUTIONAL TORT)

462. The above paragraphs and Appendix I below are here incorporated by reference.

463. Plaintiffs John Knefel, Paul Sullivan, Timothy Fitzgerald, Michael Rivas and Justin Wedes, attempted to enter and/or remain in publicly accessible open areas in accordance with each area's published rules.

464. They were prevented from entering and/or forced to leave and/or arrested for being in a publicly accessible open area by officers of NYPD and MTA Police.

465. Defendants have deprived the above Plaintiffs of their civil, Constitutional and statutory rights and have conspired to deprive them of such rights and are liable to Plaintiffs under 42 USC §1983, New York State common law, and the New York State Constitution.

466. As a result, Plaintiffs have been injured.

**NINTH CAUSE OF ACTION  
CONSPIRACY TO VIOLATE PLAINTIFFS FIRST AMENDMENT RIGHTS  
OF FREEDOM OF SPEECH, ASSEMBLY, AND PRESS**

467. The above paragraphs and Appendix I below are here incorporated by reference.

468. An agreement was formed between and among state actor/defendants City of New York, MTA, and its agents, Mayor Bloomberg and Commissioner Kelly and private actors/defendants J.P. Morgan, Brookfield Properties, and Matsui to violate the Constitutional rights of Plaintiffs and other participants in OWS.

469. Specifically, an agreement was formed to bar OWS participants from entering and/or remaining in publicly accessible open area on each of the private actor defendants' properties, as described above.

470. In each case, the conspiring entities or individuals acted in concert and committed overt acts to cause violations of the Constitutional rights of Plaintiffs and many other OWS participants.

471. The conspiracy has caused Plaintiffs to suffer injury.

**TENTH CAUSE OF ACTION  
VIOLATION OF DUE PROCESS UNDER THE FOURTEENTH  
AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF  
AMERICA AND SECTION 160.50 OF THE CRIMINAL PROCEDURE LAW  
OF THE STATE OF NEW YORK**

472. The above paragraphs and Appendix I below are here incorporated by reference.
473. Defendant NYPD took photographs of OWS arrestees, including substantially all Plaintiffs.
474. The criminal charges against substantially all Plaintiffs and numerous other OWS arrestees have been terminated in their favor.
475. With deliberate indifference and gross negligence, defendants did not return or destroy photographs taken of arrestees who received favorable terminations in their criminal court case.
476. Defendants have deprived Plaintiffs of their civil, Constitutional and statutory rights, and have conspired to deprive them of such rights in violation of 42 USC §§1983, 1985 New York State law, and the New York State Constitution.
477. Plaintiffs were damaged as a result of defendants' unlawful conduct.

**ELEVENTH CAUSE OF ACTION  
MUNICIPAL AND SUPERVISORY LIABILITY  
(THE CITY OF NEW YORK, MAYOR BLOOMBERG  
AND COMMISSIONER KELLY UNDER 42 USC § 1983 AND MONELL V.  
CITY OF NEW YORK DEPARTMENT OF SOCIAL SERVICES, 436 U.S.  
658(1978))**

478. The above paragraphs and Appendix I below are here incorporated by reference.
479. The City and the Commissioner are liable for the damages suffered by Plaintiffs as a result of the conduct of their employees, agents, and servants.
480. The City, and the Commissioner knew or should have known of their employees',

agents', or servants' propensity to engage in the illegal and wrongful acts detailed above.

481. The aforesaid events have been carefully planned by the City and the Police Commissioner. For example, The Commissioner and the Mayor of the City of New York, Michael Bloomberg, have both said that each aspect of the Zuccotti Park operation went according to the City's plan.
482. The aforementioned actions are occurring in an open and notorious manner. Furthermore, much of the aforementioned activities have been carried out by police supervisors and presumably at the direction of the City and the Commissioner. If the City and Commissioner are not directing such actions, they clearly are tacitly accepting and encouraging such conduct.
483. Similarly, the forcible removing of protesters from public spaces and the prevention of members of the press to observe and record police activities has been widely reported on and happens in the presence of and at the direction of supervising officers. The New York Press Club was loudly critical of the actions taken against members of the press, and they were acknowledged publicly by Commissioner Kelly. The City and Commissioner clearly has notice of such actions and yet, the City, Commissioner and their supervisors either direct such actions or tacitly accept and encourage them by not preventing officers from engaging in such conduct and disciplining them. The aforesaid events were not isolated incidents.
484. The City and the Commissioner have been aware for some time (from lawsuits, notices of claim and complaints filed with the Civilian Complaint Review Board) that many of their police officers are insufficiently trained on the observations necessary

to support arrests and prosecutions. The City and the Commissioner are further aware, from the same sources, that NYPD officers routinely assault citizens without fear of reprisal. The City and the Commissioner fail to discipline officers for not reporting fellow officers' misconduct that they have observed, and they fail to discipline officers for making false statements to disciplinary agencies. Further, there is no procedure to notify individual officers or their supervisors of unfavorable judicial review of their conduct. Without this notification, improper force is practiced and incredible testimony goes uncorrected. Additionally, the City and the Inspector have isolated their law department from the discipline of police officers, so that civil suits against police officers for actions taken in their capacity as police officers have no impact on the officers' careers, regardless of the outcome of the civil actions. Furthermore, the Public Information Division routinely makes false statements about the circumstances incident to arrests to protect police officers. The City is aware that all of the aforementioned has resulted in violations of citizens' Constitutional rights. Despite such notice, the City and the Commissioner, have failed to take corrective action. This failure and these policies caused the officers in the present case to violate plaintiff's civil rights, without fear of reprisal.

485. The City and the Commissioner knew or should have known that the officers who caused Plaintiffs' injury had a propensity for the type of conduct that took place in this case. Nevertheless, the City and the Commissioner failed to take corrective action.

486. The City and the Commissioner knew or should have known that the officers who caused Plaintiffs' injury had a propensity for the type of conduct that took place in

this case. Nevertheless, the City and Commissioner failed to take corrective action.

487. The City and the Inspector have failed to take the steps to discipline, train, supervise or otherwise correct the improper, illegal conduct of the individual defendants in this and in similar cases involving misconduct.

488. The above described policies and customs demonstrated a deliberate indifference on the part of policymakers of the City, and the Commissioner to the Constitutional rights of persons within New York City, and were the cause of the violations of plaintiff's rights here alleged.

489. Defendants, the City and the Commissioner have damaged Plaintiffs by their failure to properly train, supervise, discipline, review, remove, or correct the illegal and improper acts of their employees, agents or servants in this and in similar cases involving police misconduct.

490. Plaintiff has been damaged as a result of the wrongful, grossly negligent and illegal acts of the City and the Commissioner.

**TWELFTH CAUSE OF ACTION**  
**VIOLATION OF YDANIS RODRIGUEZ'S FOURTH AMENDMENT RIGHT**  
**TO BE FREE FROM UNREASONABLE SEARCH AND SEIZURE -- FALSE**  
**ARREST**  
(FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES  
OF AMERICA, CONSTITUTION OF THE STATE OF NEW YORK ARTICLE 1 §  
12, 42 USC § 1983 AND STATE CONSTITUTIONAL AND TORT LAW  
CLAIMS)

491. The above paragraphs and Appendix I below are here incorporated by reference.

492. Defendant police officer Robert Matrisciani and Sergeant Steven Caro and John Doe officers subjected Plaintiff Council member Ydanis Rodriguez to false arrest and false imprisonment and deprivation of liberty without probable cause.

493. On November 15, 2011, at approximately 2:00 a.m., plaintiff Rodriguez went to observe the police action being taken against the OWS participants.
494. Approximately 2 blocks away from FKA Liberty Park on Broadway, plaintiff encountered police barricades and police officers. He was told that he could not go past the barricades, and he complied.
495. As he backed away from the barricades in compliance with police orders, police officers attacked him and falsely arrested him without any probable cause he was committing any crime or otherwise not obeying police orders, lawful or otherwise.
496. He was held in custody for approximately 18 hours.
497. Defendant police officers have no reasonable expectation of successfully prosecuting Plaintiff.
498. Plaintiff was aware of his confinement, and did not consent to it.
499. These defendants have deprived Plaintiff of his civil, Constitutional and statutory rights, and have conspired to deprive him of such rights in violation of 42 USC §1983, The U.S. Constitution, New York State common law, and the New York State Constitution.
500. Plaintiff was damaged as a result of defendants' unlawful conduct.

**THIRTEENTH CAUSE OF ACTION  
VIOLATION OF YDANIS RODRIGUEZ'S FOURTH AMENDMENT RIGHT  
TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES—  
MALICIOUS PROSECUTION**

(FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES  
OF AMERICAN, CONSTITUTION OF THE STATE OF NEW YORK ARTICLE 1  
§ 12, 42 USC § 1983 AND STATE CONSTITUTIONAL AND TORT LAW  
CLAIMS)

501. The above paragraphs and Appendix I below are here incorporated by reference.

502. Defendants police officer Robert Matrisciani and Sergeant Steven Caro, acting with malice, initiated a false prosecution against Plaintiff Ydanis Rodriguez and caused him to be prosecuted.
503. The criminal proceedings were terminated favorably to Plaintiff.
504. Defendants acted under color of law and conspired to deprive Plaintiff of his civil, Constitutional and statutory rights to be free from unreasonable search and seizure, due process of law, pursuant to the Fourth and Fourteenth Amendments to the United States Constitution and are liable to plaintiff under 42 U.S.C. §§1983 and the New York State Constitution and tort law.
505. Plaintiff was damaged as a result of defendants' unlawful conduct.

**FOURTEENTH CAUSE OF ACTION**  
**VIOLATION OF YDANIS RODRIGUEZ'S FOURTH AMENDMENT RIGHT**  
**TO BE FREE OF UNREASONABLE SEARCHES AND SEIZURE –**  
**EXCESSIVE FORCE**  
(FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES  
OF AMERICA, CONSTITUTION OF THE STATE OF NEW YORK ARTICLE 1 §  
12, 42 USC § 1983 AND STATE CONSTITUTIONAL AND ASSAULT AND  
BATTERY CLAIMS)

506. The above paragraphs and Appendix I below are here incorporated by reference.
507. By aggressively approaching plaintiff as if to attack him, defendants Police Officer Matrisciani and Sergeant Caro made plaintiff fear for his physical well-being and safety and placed him in apprehension of immediate harmful and/or offensive touching.
508. Defendants engaged in and subjected plaintiff to immediate harmful and/or offensive touching and battered him by tackling him to the ground and striking him, causing plaintiff to suffer injuries.

509. Plaintiff obeyed every police order, regardless of its lawfulness, and did not in any way resist arrest.
510. Defendants used excessive and unnecessary force with plaintiff.
511. Defendants have deprived plaintiff of his civil, Constitutional and statutory rights and have conspired to deprive him of such rights and are liable to plaintiff under common law, the Fourth Amendment of the U.S. Constitution, 42 USC §1983 and New York State laws and Constitution.
512. Plaintiff was damaged by defendants' assault, battery and use of excessive force.

**FIFTEENTH CAUSE OF ACTION  
VIOLATION OF JEFFERY MCCLAIN'S FOURTH AMENDMENT RIGHT  
TO BE FREE FROM UNREASONABLE SEARCH AND SEIZURE -- FALSE  
ARREST**

(FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA, CONSTITUTION OF THE STATE OF NEW YORK ARTICLE 1 § 12, 42 USC § 1983 AND STATE CONSTITUTIONAL AND TORT LAW CLAIMS)

513. The preceding paragraphs are here incorporated by reference.
514. Defendant John Doe NYPD officers subjected Plaintiff Jeffery McClain to false arrest and false imprisonment and deprivation of liberty without probable cause.
515. On November 15, 2011, at approximately 2:00 a.m., Plaintiff McClain went to Lower Manhattan in support of the OWS participants who were being removed from FKA Liberty Park.
516. Plaintiff joined a demonstration in the early morning hours protesting the eviction of the park at Foley Square. Police officer took action against the demonstrators forcing them out of the Square.
517. Plaintiff joined a march uptown, but when it seemed that police were going to take action against the march, he broke off the march with approximately 20 other

protesters and turned down a lower Manhattan street going West. He followed all traffic and pedestrian regulations and violated no law.

518. Police surrounded this smaller group of protesters, and some police officers attacked another of the protesters.

519. Upon seeing this protester being badly beaten on the ground without having provoked or resisted police arrest, plaintiff tried to move the protester away from the police by pulling on his back pack. Plaintiff did not touch any police officers while taking this action.

520. Plaintiff was then attacked by police officers, and badly beaten as he lay on the ground. Plaintiff was in no way resisting or fighting back against the officers.

521. In the course of being beaten, plaintiff was verbally abused by the officers, who called him a traitor for being both a war veteran and OWS participant.

522. He was held in custody for approximately 7 hours.

523. Defendant police officers have no reasonable expectation of successfully prosecuting Plaintiff.

524. Plaintiff was aware of his confinement, and did not consent to it.

525. These defendants have deprived Plaintiff of his civil, Constitutional and statutory rights, and have conspired to deprive him of such rights in violation of 42 USC §1983, The U.S. Constitution, New York State common law, and the New York State Constitution.

526. Plaintiffs were damaged as a result of defendants' unlawful conduct.

**SIXTEENTH CAUSE OF ACTION  
VIOLATION OF JEFFERY MCCLAIN'S FOURTH AMENDMENT RIGHT  
TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES—  
MALICIOUS PROSECUTION**

(FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES  
OF AMERICA, CONSTITUTION OF THE STATE OF NEW YORK ARTICLE 1  
§12, 42 USC § 1983 AND STATE CONSTITUTIONAL AND TORT LAW  
CLAIMS)

527. The preceding paragraphs are here incorporated by reference.
528. Defendant John Doe, acting with malice, initiated a false prosecution against Plaintiff Jeffery McClain and caused him to be prosecuted.
529. The criminal proceedings were terminated favorably to Plaintiff.
530. Defendants acted under color of law and conspired to deprive Plaintiff of his civil, Constitutional and statutory rights to be free from unreasonable search and seizure, due process of law, pursuant to the Fourth and Fourteenth Amendments to the United States Constitution and are liable to plaintiff under 42 U.S.C. §§1983 and the New York State Constitution and tort law.
531. Plaintiff was damaged as a result of defendants' unlawful conduct.

**SEVENTEENTH CAUSE OF ACTION  
VIOLATION OF JEFFERY MCCLAIN'S FOURTH AMENDMENT RIGHT  
TO BE FREE OF UNREASONABLE SEARCHES AND SEIZURE –  
EXCESSIVE FORCE**

(FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES  
OF AMERICA, CONSTITUTION OF THE STATE OF NEW YORK ARTICLE 1 §  
12, 42 USC § 1983 AND STATE CONSTITUTIONAL AND ASSAULT AND  
BATTERY CLAIMS)

532. The above paragraphs and Appendix I below are here incorporated by reference.
533. By aggressively approaching plaintiff McClain as if to attack him, defendant John Doe NYPD officers made plaintiff fear for his physical well-being and safety and

placed him in apprehension of immediate harmful and/or offensive touching.

534. Defendants engaged in and subjected plaintiff to immediate harmful and/or offensive touching and battered him by tackling him to the ground and striking him repeatedly, causing plaintiff to suffer blunt chest trauma including fractured ribs, lacerations and bruises to his face, and other injuries.
535. Plaintiff obeyed every police order, regardless of its lawfulness, and did not in any way resist arrest.
536. Defendants used excessive and unnecessary force with Plaintiff in the course of an unlawful arrest.
537. Defendants have deprived plaintiff of his civil, Constitutional and statutory rights and have conspired to deprive him of such rights and are liable to plaintiff under common law, the Fourth Amendment of the U.S. Constitution, 42 USC §1983 and New York State laws and Constitution.
538. Plaintiff was damaged by defendants' assault, battery and use of excessive force.

**EIGHTEENTH CAUSE OF ACTION  
VIOLATION OF JUSTIN WEDE'S FOURTH AMENDMENT RIGHT TO BE  
FREE FROM UNREASONABLE SEARCH AND SEIZURE -- FALSE  
ARREST**

(FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA, CONSTITUTION OF THE STATE OF NEW YORK ARTICLE 1 § 12, 42 USC § 1983 AND STATE CONSTITUTIONAL AND TORT LAW CLAIMS)

539. The above paragraphs and Appendix I below are here incorporated by reference.
540. Defendant Deputy Inspector Edward Winski and other John Doe NYPD officers subjected Plaintiff Justin Wedes to false arrest and false imprisonment and deprivation of liberty without probable cause.

541. On January 17, 2012, Plaintiff Justin Wedes was present at the Winter Garden.
542. Plaintiff was holding a laptop to record and stream video content of the activities and interactions between OWS participants and the NYPD.
543. Plaintiff was holding a cell phone that was being used to live tweet the activities and interactions between OWS participants and the NYPD.
544. Plaintiff was grabbed without cause by Defendant Deputy Inspector Edward Winski and taken to the ground.
545. Plaintiff did not resist in any manner.
546. Plaintiff was arrested and charged with Criminal Trespass in the Third Degree and Resisting Arrest.
547. He was held in custody for approximately 40 hours.
548. Defendant Police Officers had no reasonable expectation of successfully prosecuting Plaintiff.
549. Plaintiff was aware of his confinement, and did not consent to it.
550. These defendants have deprived Plaintiff of his civil, Constitutional and statutory rights, and have conspired to deprive him of such rights in violation of 42 USC §1983, The U.S. Constitution, New York State common law, and the New York State Constitution.
551. Plaintiffs were damaged as a result of defendants' unlawful conduct.

**NINETEENTH CAUSE OF ACTION  
VIOLATION OF JUSTIN WEDE'S FOURTH AMENDMENT RIGHT TO BE  
FREE OF UNREASONABLE SEARCHES AND SEIZURE – EXCESSIVE  
FORCE**

(FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES  
OF AMERICA, CONSTITUTION OF THE STATE OF NEW YORK ARTICLE 1 §  
12, 42 USC § 1983 AND STATE CONSTITUTIONAL AND ASSAULT AND  
BATTERY CLAIMS)

552. The above paragraphs and Appendix I below are here incorporated by reference.
553. By aggressively grabbing Plaintiff Wedes, defendant Deputy Inspector Ed Winski and John Doe NYPD officers made plaintiff fear for his physical well-being and safety and placed him in apprehension of immediate harmful and/or offensive touching.
554. Defendants engaged in and subjected plaintiff to immediate harmful and/or offensive touching and battered him by tackling him to the ground and placing extremely tight flexi cuffs on his wrists for a lengthy period of time.
555. Plaintiff obeyed every police order, regardless of its lawfulness, and did not in any way resist arrest.
556. Defendants used excessive and unnecessary force with plaintiff in the course of an unlawful arrest.
557. Defendants have deprived plaintiff of his civil, Constitutional and statutory rights and have conspired to deprive him of such rights and are liable to plaintiff under common law, the Fourth Amendment of the U.S. Constitution, 42 USC §1983 and New York State laws and Constitution.
558. Plaintiff was damaged by defendants' assault, battery and use of excessive force.

**TWENTIETH CAUSE OF ACTION  
VIOLATION OF PETER DUTRO'S FOURTH AMENDMENT RIGHT TO BE  
FREE FROM UNREASONABLE SEARCH AND SEIZURE -- FALSE  
ARREST**

(FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES  
OF AMERICA, CONSTITUTION OF THE STATE OF NEW YORK ARTICLE 1 §  
12, 42 USC § 1983 AND STATE CONSTITUTIONAL AND TORT LAW  
CLAIMS)

559. The above paragraphs and Appendix I below are here incorporated by reference.
560. Defendant Police Officer Margaret Monroe and other John Doe NYPD officers subjected Plaintiff Peter Dutro to false arrest and false imprisonment and deprivation of liberty without probable cause.
561. On November 17, 2011, Plaintiff Peter Dutro was present at 52 Broadway branch of the Amalgamated Bank when a march associated with Occupy Wall Street passed that location.
562. Accompanied by several employees of Amalgamated Bank, Plaintiff Peter Dutro went to the ATM vestibule of the Amalgamated Bank to observe the march.
563. Shortly thereafter, Plaintiff Peter Dutro observed an individual being taken to the ground and arrested by one or more uniformed NYPD officers.
564. Plaintiff Peter Dutro opened the front door of the Amalgamated Bank and asked the individual being arrested for his name.
565. Immediately, some of the NYPD officers arresting the individual outside of the Amalgamated Bank began running towards Plaintiff Peter Dutro, joined on the way by other officers.
566. In all, approximately six (6) members of the NYPD entered the Amalgamated Bank vestibule and arrested Plaintiff Peter Dutro, against the protests of several Amalgamated Bank employees who identified Plaintiff Peter Dutro as an

Amalgamated Bank customer who had done nothing wrong.

567. Plaintiff Peter Dutro was present at the bank as a customer and representative of the OWS movement, that had a bank account at the Amalgamated Bank.

568. Plaintiff Peter Dutro was taking photos through the front glass window of the Amalgamated Bank at 51 Broadway of various police interactions with citizens on the street, including members of the OWS movement.

569. Nonetheless, the defendant John Doe officers and Defendant NYPD Officer Margaret Monroe unlawfully arrested Plaintiff.

570. Plaintiff was held for approximately ten hours before being released with a Desk Appearance Ticket.

571. On January 25, 2012, the Plaintiff appeared in court and was arraigned on the sole charge of disorderly conduct, PL 240.20(5).

572. The criminal complaint, sworn to by PO Margaret Monroe, states that defendant PO Margaret Monroe observed the plaintiff standing in a group of approximately 50 individuals, standing on the sidewalk and blocking the sidewalk at the above location.

573. These false allegations are contradicted by surveillance video from the Amalgamated Bank vestibule, but Plaintiff Peter Dutro was nevertheless arrested, detained, and subjected to prosecution on the basis of said false allegations.

574. The Amalgamated Bank provided security camera video footage of the Plaintiff's conduct that morning prior to his arrest.

575. The security video shows that Plaintiff never left the bank prior to his arrest, and therefore, was not on the corner of Exchange Place and Broadway at approximately 9:15am.

576. On January 25, 2011, the Plaintiff pled not guilty and stated ready for trial.
577. On February 23, 2012, the Manhattan District Attorney's Office filed a certificate of readiness.
578. On or about March 1, 2012, counsel for the Plaintiff met with the District Attorney and provided a copy of the security video.
579. On March 12, 2012, the criminal charges against the Plaintiff were dismissed upon motion of the District Attorney's Office.
580. Defendant police officers had no reasonable expectation of successfully prosecuting Plaintiff.
581. Plaintiff was aware of his confinement, and did not consent to it.
582. These defendants have deprived Plaintiff of his civil, Constitutional and statutory rights, and have conspired to deprive him of such rights in violation of 42 USC §1983, The U.S. Constitution, New York State common law, and the New York State Constitution.
583. Plaintiffs were damaged as a result of defendants' unlawful conduct.

**TWENTY-FIRST CAUSE OF ACTION  
VIOLATION OF PETER DUTRO'S FOURTH AMENDMENT RIGHT TO BE  
FREE OF UNREASONABLE SEARCHES AND SEIZURE – EXCESSIVE  
FORCE**

(FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA, CONSTITUTION OF THE STATE OF NEW YORK ARTICLE 1 § 12, 42 USC § 1983 AND STATE CONSTITUTIONAL AND ASSAULT AND BATTERY CLAIMS)

584. The above paragraphs and Appendix I below are here incorporated by reference.
585. By aggressively grabbing Plaintiff Dutro, the John Doe NYPD officers made

plaintiff fear for his physical well-being and safety and placed him in apprehension of immediate harmful and/or offensive touching.

586. Defendants engaged in and subjected plaintiff to immediate harmful and/or offensive touching and battered him by tackling him to the ground and placing extremely tight flexi cuffs on his wrists for a lengthy period of time.
587. Plaintiff obeyed every police order, regardless of its lawfulness, and did not in any way resist arrest.
588. Defendants used excessive and unnecessary force with plaintiff in the course of an unlawful arrest.
589. Defendants have deprived plaintiff of his civil, Constitutional and statutory rights and have conspired to deprive him of such rights and are liable to plaintiff under common law, the Fourth Amendment of the U.S. Constitution, 42 USC §1983 and New York State laws and Constitution.
590. Plaintiff was damaged by defendants' assault, battery and use of excessive force.

**TWENTY-SECOND CAUSE OF ACTION  
VIOLATION OF PETER DUTRO'S FOURTH AMENDMENT RIGHT TO BE  
FREE FROM UNREASONABLE SEARCHES AND SEIZURES—MALICIOUS  
PROSECUTION**

(FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES  
OF AMERICAN, CONSTITUTION OF THE STATE OF NEW YORK ARTICLE 1  
§ 12, 42 USC § 1983 AND STATE CONSTITUTIONAL AND TORT LAW  
CLAIMS)

591. The above paragraphs and Appendix I below are here incorporated by reference.
592. Defendant PO Margaret Monroe and other Defendants John Doe Officers, acting with malice, initiated a false prosecution against Plaintiff Peter Dutro and caused him to be prosecuted.

593. The criminal proceedings were terminated favorably to Plaintiff.
594. Defendants acted under color of law and conspired to deprive Plaintiff of his civil, Constitutional and statutory rights to be free from unreasonable search and seizure, due process of law, pursuant to the Fourth and Fourteenth Amendments to the United States Constitution and are liable to plaintiff under 42 U.S.C. §§1983 and the New York State Constitution and tort law.
595. Plaintiff was damaged as a result of defendants' unlawful conduct.

**TWENTY-THIRD CAUSE OF ACTION  
VIOLATION OF STEPHANIE KEITH'S FOURTH AMENDMENT RIGHT  
TO BE FREE FROM UNREASONABLE SEARCH AND SEIZURE -- FALSE  
ARREST**

(FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA, CONSTITUTION OF THE STATE OF NEW YORK ARTICLE 1 § 12, 42 USC § 1983 AND STATE CONSTITUTIONAL AND TORT LAW CLAIMS)

596. The above paragraphs and Appendix I below are here incorporated by reference.
597. Defendant John Doe NYPD officers subjected Plaintiff Stephanie Keith to false arrest and false imprisonment and deprivation of liberty without probable cause.
598. On October 1, 2011, Plaintiff Stephanie Keith was lawfully present and engaged in her professional capacity as a photojournalist covering the Occupy Wall Street march on the Brooklyn Bridge.
599. Plaintiff Stephanie Keith was observing, not participating, in the above-referred march in her professional capacity as a photojournalist.
600. Plaintiff Stephanie Keith only proceeded insofar as police proceeded ahead of her, and complied with all instructions tendered to her by police officers, but was nevertheless arrested.
601. Nonetheless, the defendant John Doe officers unlawfully arrested Plaintiff.

602. Plaintiff was held for approximately ten (10) hours before being released with a Desk Appearance Ticket.
603. On December 15, 2011, the Plaintiff appeared in court.
604. Information was provided to the District Attorney's office proving that plaintiff was a member of the working press who was working in her vocation at the time of her arrest.
605. Upon motion of the District Attorney's office, all charges were dismissed against the Plaintiff.
606. Defendant police officers had no reasonable expectation of successfully prosecuting Plaintiff.
607. Plaintiff was aware of her confinement, and did not consent to it.
608. These defendants have deprived Plaintiff of her civil, Constitutional and statutory rights, and have conspired to deprive him of such rights in violation of 42 USC §1983, The U.S. Constitution, New York State common law, and the New York State Constitution.
609. Plaintiff was damaged as a result of defendants' unlawful conduct.

**TWENTY-FOURTH CAUSE OF ACTION**  
**VIOLATION OF STEPHANIE KEITH'S FOURTH AMENDMENT RIGHT**  
**TO BE FREE OF UNREASONABLE SEARCHES AND SEIZURE –**  
**EXCESSIVE FORCE**  
(FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES  
OF AMERICA, CONSTITUTION OF THE STATE OF NEW YORK ARTICLE 1 §  
12, 42 USC § 1983 AND STATE CONSTITUTIONAL AND ASSAULT AND  
BATTERY CLAIMS)

610. The above paragraphs and Appendix I below are here incorporated by reference.
611. By aggressively arresting Plaintiff Keith while she was performing her chosen

occupation, the John Doe NYPD officers made plaintiff fear for her physical well-being and safety and placed her in apprehension of immediate harmful and/or offensive touching.

612. Defendants engaged in and subjected plaintiff to immediate harmful and/or offensive touching and battered her by tackling her to the ground and placing extremely tight flexi cuffs on her wrists for a lengthy period of time.
613. Plaintiff obeyed every police order, regardless of its lawfulness, and did not in any way resist arrest.
614. Defendants used excessive and unnecessary force with plaintiff in the course of an unlawful arrest.
615. Defendants have deprived plaintiff of her civil, Constitutional and statutory rights and have conspired to deprive her of such rights and are liable to plaintiff under common law, the Fourth Amendment of the U.S. Constitution, 42 USC §1983 and New York State laws and Constitution.
616. Plaintiff was damaged by defendants' assault, battery and use of excessive force.

**TWENTY-FIFTH CAUSE OF ACTION**  
**VIOLATION OF STEPHANIE KEITH'S FOURTH AMENDMENT RIGHT**  
**TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES-**  
**MALICIOUS PROSECUTION**  
(FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES  
OF AMERICAN, CONSTITUTION OF THE STATE OF NEW YORK ARTICLE 1  
§12, 42 USC § 1983 AND STATE CONSTITUTIONAL AND TORT LAW  
CLAIMS)

617. The above paragraphs and Appendix I below are here incorporated by reference.
618. Defendants John Doe Officers, acting with malice, initiated a false prosecution against Plaintiff Mrs. Keith and caused her to be prosecuted.

619. The criminal proceedings were terminated favorably to Plaintiff.
620. Defendants acted under color of law and conspired to deprive Plaintiff of her civil, Constitutional and statutory rights to be free from unreasonable search and seizure, due process of law, pursuant to the Fourth and Fourteenth Amendments to the United States Constitution and are liable to plaintiff under 42 U.S.C. §§1983 and the New York State Constitution and tort law.
621. Plaintiff was damaged as a result of defendants' unlawful conduct.

**TWENTY-SIXTH CAUSE OF ACTION  
VIOLATION OF PAUL SULLIVAN'S FOURTH AMENDMENT RIGHT TO  
BE FREE FROM UNREASONABLE SEARCH AND SEIZURE -- FALSE  
ARREST**

(FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES  
OF AMERICA, CONSTITUTION OF THE STATE OF NEW YORK ARTICLE 1 §  
12, 42 USC § 1983 AND STATE CONSTITUTIONAL AND TORT LAW  
CLAIMS)

622. The above paragraphs and Appendix I below are here incorporated by reference.
623. Defendant Officer Peter Volaric and other John Doe NYPD officers subjected Plaintiff Paul Sullivan to false arrest and false imprisonment and deprivation of liberty without probable cause.
624. On or about December 12, 2011, Plaintiff Paul Sullivan, a citizen journalist, was present at the Winter Garden.
625. Plaintiff was holding a video camera to record the activities and interactions between OWS participants and the NYPD.
626. Plaintiff was grabbed without cause by Defendant Officer Peter Volaric and then was pushed to the ground by Defendant Volaric and several other John Doe NYPD officers.
627. Plaintiff did not resist in any manner.

628. Plaintiff was arrested and charged with resisting arrest and criminal trespass.
629. He was held in custody for approximately thirty-seven hours.
630. These defendants have deprived Plaintiff of his civil, Constitutional and statutory rights, and have conspired to deprive him of such rights in violation of 42 USC §1983, The U.S. Constitution, New York State common law, and the New York State Constitution.
631. Plaintiff was damaged as a result of defendants' unlawful conduct.

**TWENTY-SEVENTH CAUSE OF ACTION  
VIOLATION OF PAUL SULLIVAN'S FOURTH AMENDMENT RIGHT TO  
BE FREE OF UNREASONABLE SEARCHES AND SEIZURE – EXCESSIVE  
FORCE**

(FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA, CONSTITUTION OF THE STATE OF NEW YORK ARTICLE 1 § 12, 42 USC § 1983 AND STATE CONSTITUTIONAL AND ASSAULT AND BATTERY CLAIMS)

632. The above paragraphs and Appendix I below are here incorporated by reference.
633. By aggressively grabbing Plaintiff Sullivan, Defendant Officer Peter Volaric and John Doe NYPD officers made plaintiff fear for his physical well-being and safety and placed him in apprehension of immediate harmful and/or offensive touching.
634. Defendants engaged in and subjected plaintiff to immediate harmful and/or offensive touching and battered him by slamming him against a wall and pushing him to the ground.
635. Defendants used excessive and unnecessary force with plaintiff in the course of an unlawful arrest.
636. Defendants have deprived plaintiff of his civil, constitutional and statutory rights and have conspired to deprive him of such rights and are liable to plaintiff under

common law, the Fourth Amendment of the U.S. Constitution, 42 USC §1983 and New York State laws and Constitution.

637. Plaintiff was damaged by defendants' assault, battery and use of excessive force.

**TWENTY-EIGHTH CAUSE OF ACTION  
VIOLATION OF TIMOTHY FITZGERALD'S FOURTH AMENDMENT  
RIGHT TO BE FREE FROM UNREASONABLE SEARCH AND SEIZURE --  
FALSE ARREST**

(FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES  
OF AMERICA, CONSTITUTION OF THE STATE OF NEW YORK ARTICLE 1 §  
12, 42 USC § 1983 AND STATE CONSTITUTIONAL AND TORT LAW  
CLAIMS)

638. The above paragraphs and Appendix I below are here incorporated by reference.

639. Defendant John Doe NYPD officers subjected Plaintiff Timothy Fitzgerald to false arrest and false imprisonment and deprivation of liberty without probable cause.

640. On November 15, 2011, Plaintiff Timothy Fitzgerald, a citizen journalist, was present at the FKA Liberty Park.

641. Plaintiff was using an iPhone to record and live-stream the activities and interactions between OWS participants and the NYPD.

642. Plaintiff was grabbed without cause by Defendant John Doe NYPD officer and was pushed to the ground.

643. Plaintiff did not resist in any manner.

644. Plaintiff was arrested and charged with crimes.

645. Plaintiff was arrested and charges with violations.

646. The charges against the Plaintiff arising from said incident have been dismissed.

647. These defendants have deprived Plaintiff of his civil, Constitutional and statutory rights, and have conspired to deprive him of such rights in violation of 42 USC §1983, The U.S. Constitution, New York State common law, and the New York State

Constitution.

648. Plaintiff was damaged as a result of defendants' unlawful conduct.

**TWENTY-NINTH CAUSE OF ACTION  
VIOLATION OF TIMOTHY FITZGERALD'S FOURTH AMENDMENT  
RIGHT TO BE FREE OF UNREASONABLE SEARCHES AND SEIZURE –  
EXCESSIVE FORCE**

(FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES  
OF AMERICA, CONSTITUTION OF THE STATE OF NEW YORK ARTICLE 1 §  
12, 42 USC § 1983 AND STATE CONSTITUTIONAL AND ASSAULT AND  
BATTERY CLAIMS)

649. The above paragraphs and Appendix I below are here incorporated by reference.

650. By aggressively grabbing Plaintiff Fitzgerald, Defendant John Doe NYPD officers made plaintiff fear for his physical well-being and safety and placed him in apprehension of immediate harmful and/or offensive touching.

651. Defendants engaged in and subjected plaintiff to immediate harmful and/or offensive touching and battered him by grabbing his arms, pushing him to the ground and placing extremely tight flexi cuffs on his wrists for a lengthy period of time

652. Defendants used excessive and unnecessary force with plaintiff in the course of an unlawful arrest.

653. Defendants have deprived plaintiff of his civil, Constitutional and statutory rights and have conspired to deprive him of such rights and are liable to plaintiff under common law, the Fourth Amendment of the U.S. Constitution, 42 USC §1983 and New York State laws and Constitution.

654. Plaintiff was damaged by defendants' assault, battery and use of excessive force.

**THIRTIETH CAUSE OF ACTION**  
**VIOLATION OF MICHAEL RIVAS' FOURTH AMENDMENT RIGHT TO**  
**BE FREE FROM UNREASONABLE SEARCH AND SEIZURE -- FALSE**  
**ARREST**

(FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES  
OF AMERICA, CONSTITUTION OF THE STATE OF NEW YORK ARTICLE 1 §  
12, 42 USC § 1983 AND STATE CONSTITUTIONAL AND TORT LAW  
CLAIMS)

655. The above paragraphs and Appendix I below are here incorporated by reference.

656. Defendant John Doe NYPD officers subjected Plaintiff Michael Rivas to false arrest and false imprisonment and deprivation of liberty without probable cause.

657. On March 17, 2012, Plaintiff Michael Rivas was present at FKA Liberty Park.

658. As Plaintiff attempted to enter the park, he physically assaulted and pepper sprayed without cause by Defendant John Doe NYPD officers.

659. Plaintiff did not resist in any manner.

660. Plaintiff was arrested and charged with crimes.

661. Plaintiff was arrested and charged with violations.

662. The charges from Plaintiff Michael Rivas' March 17, 2012 arrest have been dismissed.

663. These defendants have deprived Plaintiff of his civil, Constitutional and statutory rights, and have conspired to deprive him of such rights in violation of 42 USC §1983, The U.S. Constitution, New York State common law, and the New York State Constitution.

664. Plaintiff was damaged as a result of defendants' unlawful conduct.

**THIRTY-FIRST CAUSE OF ACTION  
VIOLATION OF MICHAEL RIVAS' FOURTH AMENDMENT RIGHT TO  
BE FREE OF UNREASONABLE SEARCHES AND SEIZURE – EXCESSIVE  
FORCE**

(FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES  
OF AMERICA, CONSTITUTION OF THE STATE OF NEW YORK ARTICLE 1 §  
12, 42 USC § 1983 AND STATE CONSTITUTIONAL AND ASSAULT AND  
BATTERY CLAIMS)

665. The above paragraphs and Appendix I below are here incorporated by reference.
666. By aggressively pushing and punching Plaintiff Rivas, Defendant John Doe  
NYPD officers made plaintiff fear for his physical well-being and safety and placed  
him in apprehension of immediate harmful and/or offensive touching.
667. Defendants engaged in and subjected plaintiff to immediate harmful and/or  
offensive touching and battered him by pushing him repeatedly, punching him in the  
face, slamming a car door on his foot five times, and, after hand-cuffing him,  
spraying him with pepper spray and hitting him with a nightstick.
668. Defendants used excessive and unnecessary force with plaintiff in the course of an  
unlawful arrest.
669. Defendants have deprived plaintiff of his civil, Constitutional and statutory rights  
and have conspired to deprive him of such rights and are liable to plaintiff under  
common law, the Fourth Amendment of the U.S. Constitution, 42 USC §1983 and  
New York State laws and Constitution.
670. Plaintiff was damaged by defendants' assault, battery and use of excessive force.

**THIRTY-SECOND CAUSE OF ACTION  
VIOLATION OF FIRST AMENDMENT RIGHT TO FREEDOM OF PRESS  
PUBLIC SPEECH BY PREVENTING PRESS MEMBERS FROM  
OBSERVING AND RECORDING POLICE ACTIONS AGAINST  
PROTESTERS**

(FIRST AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, ARTICLE 1 § 8 OF THE CONSTITUTION OF THE STATE OF NEW YORK, 42 USC § 1983 AND STATE CONSTITUTIONAL TORT)

671. The above paragraphs and Appendix I below are here incorporated by reference.
672. On March 15, 2012, Plaintiff Justin Wedes was present at an OWS activity involving the Bank of America.
673. Defendant Deputy Inspector Edward Winski was also present, and recognized plaintiff Justin Wedes.
674. While utilizing a voice amplification bullhorn, Defendant Deputy Inspector Edward Winski called out to Justin, by name and threatened to arrest him for being present along with over one-hundred other individuals.
675. Defendant Deputy Inspector Edward Winski focused on Plaintiff Wedes in an effort to chill the Plaintiff's First Amendment rights to publicly assemble.
676. Defendant Deputy Inspector Edward Winski focused on Plaintiff Wedes in an effort to chill the Plaintiff's First Amendment rights to act as a citizen journalist.
677. Defendant Deputy Inspector Edward Winski focused on Plaintiff Wedes in an effort to chill the Plaintiff's First Amendment rights was successful, as video shows soon after the Defendant focused on Plaintiff Wedes and called out to him, threatening to arrest him, Plaintiff exited the area in order to avoid another unlawful arrest.
678. Plaintiff was damaged as a result of defendants' unlawful conduct.

**THIRTY-THIRD CAUSE OF ACTION  
RETALIATION FOR FIRST AMENDMENT PROTECTED  
EXPRESSION/EXPRESSIVE ASSOCIATION AGAINST INDIVIDUALS  
OBSERVING, RECORDING AND COMMENTING UPON POLICE  
ACTIONS**

(FIRST AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, ARTICLE 1 § 12 OF THE CONSTITUTION OF THE STATE OF NEW YORK, 42 USC § 1983 AND STATE CONSTITUTIONAL TORT)

679. The above paragraphs and Appendix I below are here incorporated by reference.
680. In many of the incidents detailed above and throughout the course of Occupy Wall Street, numerous individuals have been subjected to adverse actions including but not limited to arrest, assault, battery and malicious prosecution for observing, recording, and/or commenting upon police conduct with respect to Occupy Wall Street.
681. To wit, Plaintiff Stephanie Keith was lawfully present as a member of the press when she was arrested while photographing police-protester interactions on October 1, 2011 on the Brooklyn Bridge.
682. To wit, Plaintiff Justin Wedes was lawfully present as an observer, social media correspondent and livestream correspondent when he was thrown to the ground and arrested by Deputy Inspector Winski on December 12, 2011 at 225 Liberty Street.
683. To wit, Plaintiff Peter Dutro was lawfully present as a bank customer at Amalgamated Bank when he was seized and arrested on patently false charges after asking the name of a person being arrested on November 17, 2011 in the vestibule of 52 Broadway.
684. The aforesaid actions and other like actions were undertaken by the NYPD for no proper purpose.
685. The aforesaid actions and other like actions undertaken by the NYPD against the

aforesaid Plaintiffs were causally connected to the First Amendment protected activities of the aforesaid Plaintiffs.

686. The aforesaid actions and other like actions were undertaken by the NYPD in flagrant violation of the terms of the consent decree entered in Black et al. v. Codd et al., United States District Court, Southern District of New York, 73 Civ. 5283 (“Consent Decree”).
687. The Consent Decree states at 2 that: “[n]one of the following constitutes probable cause for the arrest or detention of an onlooker [to a police action] unless the safety of officers or other persons is directly endangered or the officer reasonably believes they are endangered or the law is otherwise violated: (a) Speech alone, even though crude and vulgar; (b) Requesting and making notes of shield numbers and names of officers; (c) Taking photographs; (d) Remaining in the vicinity of the stop or arrest.”
688. This understanding memorialized in the Consent Decree is codified in the NYPD Patrol Guide at PG §298-03, subsection “Observers At The Scene of Police Incidents.”
689. Despite due and repeated notice of the First Amendment rights of citizens in the vicinity of police actions, those same rights have been disregarded flagrantly and repeatedly throughout the course of Occupy Wall Street by members and ranking officers of the NYPD alike.
690. Officers of the NYPD took adverse action against the aforesaid Plaintiffs and other persons similarly situated in deliberate efforts to chill the First Amendment protected expression of persons observing, recording, and/or commenting upon police actions undertaken in the course of Occupy Wall Street.

691. Upon information and belief, officers of the NYPD have gone to particular pains to retaliate against credentialed and citizen journalists in order to deter those individuals from recording and disseminating instances of police brutality and abuses of authority.
692. Upon information and belief, officers and ranking officers of the NYPD are aware of the First Amendment rights of participants in Occupy Wall Street.
693. Upon information and belief, officers and ranking officers of the NYPD are aware of the First Amendment rights of credentialed and citizen journalists observing Occupy Wall Street.
694. Upon information and belief, officers and ranking officers of the NYPD have willfully acted to deter individuals from documenting police actions in order to increase their capacities to use improper force, false arrests and malicious prosecutions to deter participation in Occupy Wall Street overall.

**THIRTY-FOURTH CAUSE OF ACTION  
(RESPONDEAT SUPERIOR)**

695. The above paragraphs and Appendix I below are here incorporated by reference.
696. The defendants' intentional tortious acts were undertaken within the scope of their employment by defendant City of New York and the MTA in furtherance of the defendant City of New York's interest.
697. As a result of defendants' tortious conduct in the course of their employment and in furtherance of the business of defendant City of New York and MTA, Plaintiffs were damaged.

WHEREFORE, the Plaintiffs will likely succeed on the merits and;

WHEREFORE, unlawful interference with Constitutional rights is *per se* irreparable harm; and

WHEREFORE, these causes of action are not moot as they are continuing to occur and they are “capable of repetition, yet evading review” Gerstein v. Pugh, 420 U.S. 103, 110 n.11 (1975), Williams v. Ward, 845 F.2d 374, 380 n.6 (2d Cir. 1988)

People ex rel. Maxian on Behalf of Roundtree v. Brown, 164 A.D.2d 56, 58, (2d Dep’t. 1990) aff’d, 77 N.Y.2d 422 (1991);

WHEREFORE, the NYPD history set forth in the attached appendix and incorporated herein indicate that appropriate oversight and monitoring is not in place at the present time;

WHEREFORE, other large municipalities, including Oakland<sup>5</sup> and Detroit<sup>6</sup>, currently have an Independent Police Monitor authorized by a Federal Court that began by (i) initially auditing then present police practices and thereafter, (ii) working with members of the police force and the the Department of Justice (Detroit) or Plaintiffs (Oakland) to create and/or ensure compliance with substantive and procedural requirements entered in a consent decree that would increase best police practices in those police departments; and (iii) on a quarterly basis report back to the Federal Court on compliance by the police department with the 201 substantive and procedural requirements (Detroit) or 51 tasks (Oakland)<sup>7</sup>.

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<sup>5</sup> Oakland Police Department, (<http://policeperformancesolutions.com/oakland.htm> )

<sup>6</sup> Detroit Police Department (<http://policeperformancesolutions.com/detroit.htm>)

<sup>7</sup> Additionally, after an extensive investigation by the Department of Justice, the Puerto Rico police department - the second largest police department in the United States - was found to have a systematic pattern and practice of (i) excessive force in violation of the Fourth Amendment;

Plaintiffs respectfully request that the court:

- (a) Issue a permanent injunction enjoining Defendants from forcibly preventing lawful entry into public spaces, and from forcibly removing citizens lawfully remaining in public spaces;
- (b) Issue a permanent injunction enjoining Defendants from preventing press access to policing activities in connection with public speech and assembly;
- (c) Issue a permanent injunction enjoining Defendants from retaining photographs and fingerprints (and all copies thereof) of arrestees who have received favorable dispositions in their criminal cases, and returning the photographs to the arrestees;
- (d) Issue an Accountability and Transparency Order that the NYPD appoint an agreed upon independent monitor<sup>8</sup> to:
  - i. Review all OWS arrests to determine:
    - a. What percentage of OWS arrestees processed as overnight arrests were eligible for Desk Appearance Tickets/Summons;
    - b. What percentage of OWS arrestees processed as overnight arrests were dismissed or resolved with an Adjournment in Contemplation of Dismissal;

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(ii) unreasonable force and other misconduct designed to suppress the exercise of protected First Amendment rights; and (iv) unlawful searches and seizures in violation of the Fourth Amendment.

[http://www.justice.gov/crt/about/spl/documents/prpd\\_exec\\_summ.pdf](http://www.justice.gov/crt/about/spl/documents/prpd_exec_summ.pdf)

<sup>8</sup> Currently there are at least two major American Cities, that have independent monitors auditing and oversight of their Police Department, appointed and pursuant to federal litigation. Oakland Police Department, (SEE <http://policeperformancesolutions.com/oakland.htm>) Detroit Police Department (<http://policeperformancesolutions.com/detroit.htm>),. See also Cincinnati Police Department (2001) [http://www.cincinnati-oh.gov/police/downloads/police\\_pdf5114.pdf](http://www.cincinnati-oh.gov/police/downloads/police_pdf5114.pdf).

- c. What percentage of OWS arrestees were charged with one or all of the contempt of cop charges - 1 (disorderly conduct), 2 (obstruction of governmental administration) and/or 3 (resisting arrest);
  - ii. Undertake an investigation into how a decision can be made by the NYPD to close public spaces, and how they occurred at:
    - a. 100 William Street on 1/11/12;
    - b. FKA Liberty Park on 3/17/12;
    - c. Union Square on 3/21/12;
    - d. One Chase Manhattan Plaza, from 9/17/11 to present in varying forms;
  - iii. Review all complaints filed with the IAB and audit such response by the IAB;
  - iv. Review all complaints forwarded by the CCRB and audit such responses by the NYPD to report on the findings.
  - v. Review all stop and frisks and audit such documentation of the stop and frisks, and report on the findings;
  - vi. Review all quota documentation and audit such documentation of the arrest quotas existence in the NYPD, and report on the findings;
- (e) Issue an accountability and transparency order that the NYPD report on its hierarchial structure for all at Captain level or higher, and the structure for who the Commissioner reports to.
- (f) Issue a Declaratory judgment declaring that the complained of conduct is

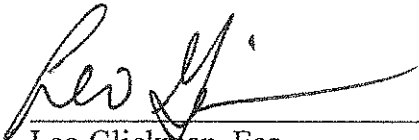
unlawful;

(g) Award money damages to Plaintiffs who have been damaged by the unlawful and/or unconstitutional actions of defendants;

(h) award attorney's fees pursuant to 42 USC §§ 1983 and 1988.

Dated: April 29, 2012

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## APPENDIX I

### I. A CONTINUING PATTERN OF MISCONDUCT AND REFORM: NYPD HISTORY, PAST AND CURRENT, SUPPORTS THE PLAINTIFFS' DEMAND FOR THE APPOINTMENT OF INDEPENDENT AUDITOR

1. Since the days of Tammany Hall, the New York Police Department has been widely-recognized as direly needing major reform approximately every twenty years.
2. Five score and 18 years ago, in 1894, the Lexow Committee was established under State Senator Clarence Lexow to investigate corruption and graft within the NYPD. The resulting reforms, presided over by Theodore Roosevelt himself as President of the NYPD's Board of Commissioners, led to the ouster of corrupt and violent NYPD officers such as:
  - A. Alexander "Clubber" Williams, who was known at the time as "the Czar of the Tenderloin."
  - B. Chief William "Big Bill" Devery, who once famously commented to officers under his command that "[i]f there's any grafting to be done, I'll do it. Leave it to me."
  - C. Thomas Byrnes, whose brutal questioning tactics, which he referred to as "the Third Degree," became the trademark for physical and psychological torture of criminal suspects by police.
3. Eighteen years later, in 1912, allegations of police graft led to the establishment of the Curran Committee to investigate police corruption. While the Curran Committee's investigation centered on police corruption, it also delivered a scathing indictment of police accountability practices, finding that well over ninety percent (90%) of police misconduct complaints were assigned to the accused officer or their immediate superior

for investigation, calling into question the consistent findings of no fault produced by these internal investigations. "Lies! Mayor Cries at Curran Report." New York Times, June 4, 1913, *citing* Curran Committee Report, 4265.

4. Eighteen years later, in 1930, the Seabury Commission explored the grip organized crime had on police officers, judges and politicians through the use of corrupt vice officers. Among its foremost findings was that of a pervasive practice of false arrests of economically and socially disadvantaged persons, setting the stage for shakedowns by corrupt police and magistrates. These economically and socially disadvantaged persons were threatened with convictions and imprisonments on the basis of false testimony from police and paid "witnesses" if they did not pay bribes to police and court officials. Among other findings, the Seabury Commission found 51 women at one correctional institution who had all been convicted and imprisoned on entirely false charges and testimony. *See* New York Supreme Court First Appellate Division Website at [http://www.courts.state.ny.us/courts/ad1/centennial/1930\\_1939.shtml](http://www.courts.state.ny.us/courts/ad1/centennial/1930_1939.shtml), last accessed 2/28/12.

5. In the late 1940's and early 1950's, Brooklyn District Attorney Miles F. McDonald led his Office in a special inquiry that uncovered a scandal involving a Brooklyn bookmaker named Harry Gross, who had enlisted NYPD officers as muscle for his \$20-million-a-year criminal operation. The inquiry led to the resignation of Mayor William O'Dwyer, his police commissioner William P. O'Brien, Chief Inspector August Flath, and three-hundred other police and officials. The inquiry produced twenty-two indictments and ten convictions. McDonald later recalled that when Gross went temporarily broke, "the police went and got him. They staked him to \$50,000 to run his

operation again. They weren't making any money without him. With him, it was a fortune.”

6. In the early 1970's, a series of New York Times articles, including a front-page New York Times article about NYPD Detective Frank Serpico, led to the establishment of the Knapp Commission under Judge Whitman Knapp. The Knapp Commission found systematic corruption throughout the NYPD and recommended the establishment of a central internal affairs division, among other reforms. In 1973, Mayor John Lindsay and Police Commissioner Patrick Murphy embraced the Knapp Commission report and adopted many of their recommendations while replacing over ninety (90%) percent of the top officers in the NYPD. However, the Knapp Commission's most important recommendation, the institution of a permanent civilian police oversight body, would remain unfulfilled for nearly 20 years.

7. The Knapp Commission brought attention to a persistent difficulty in effecting meaningful police reform: the fraternal understanding among police officers known at the time as the “Blue Code of Silence.” As described to the Knapp Commission by Detective Frank Serpico and others, the Blue Code of Silence is a tacit understanding among police officers that it is unacceptable to cooperate in investigations as to fellow officers' misconduct, be it unlawful force, false arrests, or out-and-out bribe taking.

8. Detective Serpico himself was a victim of persecution for his violation of the Blue Code of Silence; after speaking out regarding police corruption in the NYPD, in early 1971 Serpico was shot in the face in the course of a buy-bust operation, and none of his fellow officers assisted him or called in the officer-involved shooting. Instead, Serpico was tended-to by an elderly neighbor of the suspect who shot him, and recovered to

testify despite continuing police harassment over the course of his hospitalization for his injuries.

9. The Blue Code of Silence continues to date, though it is now better known under the new moniker "The Blue Wall of Silence."

10. Thereafter, in 1986, new legislation allowed the formation of the Civilian Complaints Investigative Bureau ("CCIB"), a body administered by mayoral appointees that provided civilian investigations of complaints of police misconduct. However, the CCIB's efficacy was questionable at best; all of its investigations were undertaken under police supervision, and the civilian investigators reported to police investigators and employees.

11. That same 1986 legislation allowed the Civilian Complaint Review Board ("CCRB") to eventually achieve the status of a genuine civilian police oversight agency. The CCRB had been initially formed in the 1950's, but the board itself was comprised of NYPD deputy commissioners and its investigations were undertaken solely by NYPD personnel. Following public calls for civilian oversight of policing in the 1960's, opponents of police accountability successfully introduced a ballot measure forbidding civilian investigations of police conduct that remained law until revoked in 1986.

12. Soon thereafter, the CCRB was commissioned to investigate the 1988 Tompkins Square Park riots, and roundly condemned police misuse of force in that incident. The CCRB's report noted that "there is no evidence that any effort was made to limit the use of force... Force was used for its own sake."

13. Thereafter, in 1992, approximately 20 years after the Knapp Commission, and following the arrests of six NYPD officers in Suffolk County, New York for cocaine

trafficking, Mayor David Dinkins appointed an independent commission under Judge Milton Mollen to investigate Police Corruption and review the anti-corruption procedures established in the NYPD.

14. In 1993, before the end of his term, Mayor David Dinkins and the City Council empowered the modern CCRB with subpoena power and the ability to recommend disciplinary charges for police.

15. The Mollen Commission's 1993 interim report found the NYPD to possess "a deep-rooted institutional reluctance to uncover corruption in the department." The interim report went on to state that the NYPD had "abandoned its responsibility to insure integrity" and had not recognized "that fighting corruption must be one of the department's highest priorities."

16. The Mollen Commission's final report, issued in 1994 under the title "ANATOMY OF FAILURE: A PATH FOR SUCCESS," found that modern police corruption was widespread throughout the NYPD and "characterized by brutality, theft, abuse of authority and active police criminality."

17. "In its report, the Mollen Commission advised the adoption of a 'dual track' approach to the problem of combating police corruption, an approach which would combine the 'two necessary' principles of lasting reform -- independent oversight and command accountability..." While the report stressed that the 'primary responsibility for combating police corruption should and must remain in the Department', creation of an Independent Police Commission was urged, which would 'serve as a management tool for the Mayor and Police Commissioner and a watchdog for the public.'" Mayor of the City of New York v. The Council of the City of New York, 1995 WL 478872 \*1(N.Y.

Sup. 1995.)

18. These findings, and concurrent recommendations for independent civilian police oversight, were scorned by then-Mayor-elect Rudy Giuliani, and then-NYPD Commissioner Raymond Kelly, with Giuliani favoring the installation of a special prosecutor over the proposed civilian oversight, and Kelly stating that the Mollen Commission's report "besmirches the reputation of the department with a rather broad brush that I don't think is appropriate or warranted."

19. Giuliani, in his capacity as mayor, repeatedly vetoed City Council attempts to enact Mollen Commission recommendations, and instead created the Commission to Combat Police Corruption (CCPC) in 1995, a six-member board with no subpoena powers that can only conduct investigations with the permission of the Mayor and the NYPD Commissioner of Investigations.

20. An ensuing State Court litigation between the City Council and Mayor Giuliani over the City Council's creation of the Independent Police Investigation and Audit Board ruled that the City Council's attempt to appoint two of the five members of this board was an impediment of the Mayor's executive power. Mayor of the City of New York v. The Council of the City of New York, 1995 WL 478872 (N.Y. Sup. 1995), *aff'd*, 235 A.D.2d 230, 651 N.Y.S.2d 531 (App Div 1st Dept 1997).

21. In 2005, Mark F. Pomerantz resigned from his position as chairman of CCPC, stating "Doing the job in the right way, in the absence of subpoena power, requires ongoing discussion with the Police Department about the commission's jurisdiction and access to information." Pomerantz went on to note that his attempts to investigate various forms of police misconduct were rendered futile because the police could (and

did) simply refuse to provide information necessary to investigate. As of that time, the CCPC had a budget of only \$500,000.00 per year for its four employees, and the six members of the board served without pay.

22. For the past twenty years, the reforms of police accountability in New York City specifically called for by the Mollen Commission have been neutered and stunted by lack of support from the Executive branch and lack of funding from the municipality.

23. Police misconduct, on the other hand, has flourished over the last twenty years in New York City, and is once again reaching critical mass.

## **II. LACK OF ACCOUNTABILITY PLUS LACK OF TRANSPARENCY EQUAL LACK OF TRUST BETWEEN THE NYPD AND THE NYC COMMUNITIES THEY POLICE**

### **A. UNCONSTITUTIONAL ARREST QUOTAS**

24. Instead of taking steps to curb officers' tendencies to wrongfully arrest persons in the absence of probable cause, Respondent City of New York has, if anything, incentivized this behavior among NYPD officers through the introduction of quantitative enforcement "productivity goals," which may be fairly referred to as arrest and summons quotas.

25. The existence of the aforesaid unconstitutional arrest quota custom and/or policy may be inferred as a finding of fact when, on June 24, 2010, the Honorable Judge Shira A. Scheindlin in Floyd v. City of New York, United States District Court, Southern District of New York, 08 CV 1034, ordered the release of documentation in the possession of the Defendant New York City Police Department's Internal Affairs Bureau, which investigates claims of serious misconduct and corruption of members of the NYPD, with respect to any and all quota allegations investigated by same. The court

held that the Plaintiff in that case had overcome the law enforcement privilege due the strong public interest in uncovering the civil rights violations alleged in the Complaint, and by demonstrating a compelling need to review such documentation. The court noted that the law enforcement privilege is a qualified privilege which may be overcome by establishing: 1) that the suit is non-frivolous and brought in good faith; 2) that the information sought is not available through other discovery or from other sources; and 3) that the party has a compelling need for the privileged information.

26. In addition, in May 2004, the Patrolmen's Benevolent Association filed a labor grievance on behalf of six officers and one sergeant who were transferred out of the 75th precinct for allegedly failing to meet a ten summons per-month quota. In January 2006, a labor arbitrator found that the 75th precinct had imposed summons quotas on its officers in violation of New York State labor laws.

27. The existence of the aforesaid unconstitutional arrest quota custom and/or policy was confirmed as a finding of fact when, on February 18, 2011, the jury in Bryant v. City of New York, Kings County Supreme Court Docket #022011/2007, found that Plaintiff in that case's arrest had resulted from a policy "regarding the number of arrests officers were to make that violated Plaintiff's Constitutional rights and contributed to her arrest" imposed by Defendant City of New York.

28. The existence of the aforesaid unconstitutional arrest quota custom and/or policy may further be inferred from the admission by Deputy Commissioner Paul J. Browne, as reported by the media on November 8, 2010, that commanders are permitted to set

"productivity goals."<sup>9</sup>

29. The existence of the aforesaid unconstitutional arrest quota custom and/or policy may further be inferred from the posting of lists of quantitative targets for various forms of summonses at the 77<sup>th</sup> Precinct in Brooklyn. See fn8.

30. Attached hereto as **Exhibit X** are copies of the quantitative target sheets obtained from the 77<sup>th</sup> Precinct by or on behalf of the New York Daily News, as referenced in the aforesaid November 8, 2010 New York Daily News article.

31. The existence of the aforesaid unconstitutional arrest quota custom and/or policy may further be inferred from the tapes recordings acquired by WABC-TV/DT, including, among other admissions, a 41<sup>st</sup> precinct sergeant explaining that each of his officers is held to a twenty summons per month and one arrest per month enforcement quota, as reported by the media on March 3, 2010.<sup>10</sup>

32. The existence of the aforesaid unconstitutional arrest quota custom and/or policy may further be inferred from the tape recordings acquired by the Village Voice, including, among other admissions, an 81<sup>st</sup> precinct sergeant telling his officers to make "special" arrests as directed by their superiors even if they must void the arrests at the end of their shifts, as reported by the media on May 11, 2010.<sup>11</sup>

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<sup>9</sup> Fanelli, James, "Cops At Brooklyn's Crime-Ridden 77<sup>th</sup> Precinct Told To Meet Quotas For Moving Violations, Memos Say," New York Daily News, November 8, 2010. Article incorporated by reference herein and available online at [http://www.nydailynews.com/ny\\_local/2010/11/08/2010-11-08\\_cops\\_told\\_to\\_meet\\_quotas.html](http://www.nydailynews.com/ny_local/2010/11/08/2010-11-08_cops_told_to_meet_quotas.html).

<sup>10</sup> Hoffer, Jim, "NYPD Officer Claims Pressure To Make Arrests," WABC News, March 3, 2010. Article incorporated by reference herein and available online at <http://abclocal.go.com/wabc/story?section=news/investigators&id=7305356>.

<sup>11</sup> Rayson, Graham, "The NYPD Tapes, Part 2: Bed-Stuy Street Cops Ordered: Turn This Place Into A Ghost Town." Village Voice, May 11, 2010. Article incorporated by reference herein and available online at <http://www.villagevoice.com/2010-05-11/news/nypd-tapes-part-2-bed-stuy/>.

33. The existence of the aforesaid unconstitutional arrest quota custom and/or policy may further be inferred from the testimony of above-referred former NYPD Officer Steve Anderson, who stated that he gave the drugs that he had obtained in a nightclub in Queens to former NYPD Officer Henry Tavaréz because Officer Tavaréz had been having trouble meeting his quotas and was consequently in danger of losing his assignment. See fn5.

34. The existence of the aforesaid unconstitutional arrest quota custom and/or policy may further be inferred from the recently filed lawsuit by the New York Civil Liberties Union, Matthews v. City of New York, Raymond Kelly, et al., (12CV1254) (Jones, J), brought by and on behalf of an NYPD officer alleging harm from retaliatory conduct against him following his criticism of the arrest quota system in his precinct.

35. The existence of the aforesaid unconstitutional arrest quota custom and/or policy may further be inferred from the Month to Date Officer Activity Report from Sunday January 1, 2012 to Sunday January 15, 2012, attached hereto as “**Exhibit Y**,”

36. The existence of the aforesaid unconstitutional arrest quota custom and/or policy, and the NYPD’s knowledge that it exists and is improper can be inferred from the conduct towards NYPD Officer Adrian Schoolcraft when he reported to NYPD investigators the use and abuse of quota systems in the NYPD. This confidential report was leaked to his precinct commanding officer who ordered PO Schoolcraft to be taken from his home and committed to a mental psychiatric unit at Jamaica Hospital. See <http://www.villagevoice.com/2012-03-07/news/the-nypd-tapes-confirmed/>

## B. "CONTEMPT OF COP" ARRESTS

37. The findings of widespread police brutality and police abuse of authority in the Mollen Commission report were not unique to New York City; however, Respondent City of New York has remained uniquely intransigent in its refusal to meaningfully address these issues.

38. On February 28, 2008, the Seattle Post-Intelligencer published an investigative review of six (6) years of Seattle Municipal Court files, wherein the Post-Intelligencer's investigators found that African-Americans in that predominantly Caucasian city were arrested solely on charges of "obstructing a public officer" and related crimes such as resisting arrest eight times as often as Caucasians.<sup>12</sup>

39. The Seattle Post-Intelligencer's investigative review cited above also found that the Seattle City Attorney's Office dropped nearly half of all Seattle criminal cases predicated solely on charges of "obstructing a public officer" and related crimes such as resisting arrest between January 2002 and 2008. See fn6.

40. In response to Seattle Police officers' questionable arrest activities discussed above, "Leo Poort, the [Seattle Police] department's legal adviser, included warnings about obstruction arrests in... his top twelve (12) tips to officers for 'avoiding civil liability lawsuits.' 'Don't arrest for 'contempt' of cop,' he wrote in tip No. 3. 'Officers must be thick skinned and not unduly influenced by the attitudes of persons they contact. Flunking the 'attitude' test (is) not a bookable offense.'" See fn6.

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<sup>12</sup> Nalder, Kamb and Lathrop, "Blacks Are Arrested on 'Contempt of Cop' Charge at Higher Rate," Seattle Post-Intelligencer, February 28, 2008. Article incorporated herein by reference and available online at [http://www.seattlepi.com/local/353020\\_obstructmain28.asp](http://www.seattlepi.com/local/353020_obstructmain28.asp)

41. In a review of San Jose criminal cases published on October 31, 2009, the San Jose Mercury News reported that the Santa Clara County Prosecutor declined to prosecute over one-third (33.33...%) of resisting arrest cases brought by San Jose police, a rate that is markedly disproportionate to the Santa Clara County Prosecutor's general twenty percent (20%) decline-to-prosecute rate.<sup>13</sup>

42. The San Jose Mercury News investigation cited above also found that the San Jose Police Department did not sustain or substantiate civilian complaints with respect to any of the ninety-nine (99) use-of-force cases that it reviewed in 2008, even though the San Jose Independent Police Auditor disagreed with police findings in twenty-five (25) of those 99 cases. See fn7.

43. In response to the San Jose Mercury News investigation cited above, the San Jose Police Department instituted a new policy of tracking arrests where it appears that resisting arrest is being used as a cover charge to justify unnecessary and excessive police uses of force on civilians. See fn7.

44. A November 19, 1997 New York Times special report on police brutality predicated on perceived or actual disrespect of New York City Police Officers noted that at that time, Defendant City of New York did not monitor or track police use or levying of charges such as disorderly conduct or resisting arrest.<sup>14</sup>

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<sup>13</sup> Webby, Sean, "Mercury News investigation: San Jose police often use force in resisting-arrest cases," San Jose Mercury News, October 31, 2009. Article incorporated by reference herein and available online at [http://www.mercurynews.com/top-stories/cj\\_13686438?nclick\\_check=1](http://www.mercurynews.com/top-stories/cj_13686438?nclick_check=1)

<sup>14</sup> Sontag, Deborah, and Barry, Dan, "CHALLENGE TO AUTHORITY: A special report.; Disrespect as Catalyst for Brutality," New York Times, November 19, 1997. Article incorporated by reference herein and available online at <http://query.nytimes.com/gst/fullpage.html?res=9807E7D9163BF93AA25752C1A961958260&scp=8&sq=contempt+of+cop&st=cse&pagewanted=all>

45. November 19, 1997 New York Times special report on police brutality predicated on perceived or actual disrespect of New York City Police Officers noted that at that time, Defendant City of New York did not monitor or track police use or levying of charges such as disorderly conduct or resisting arrest, despite considerable anecdotal evidence that New York City Police Officers were arresting individuals on those and other like charges to justify use of force and/or to punish those individuals for “contempt of cop.” See fn8.

46. The above-cited New York Times special report noted that Los Angeles had already instituted a system for tracking the initiation and dispositions of “contempt of cop” and “cover charge” charges such as resisting arrest and disorderly conduct as of the time of that article’s publication in 1997. See fn3. Upon information and belief, the “contempt of cop” and “cover charge” charges levied most regularly by New York City Police Officers are disorderly conduct, resisting arrest, and obstruction of governmental administration.

47. Upon information and belief, “contempt of cop” and “cover charge” charges such as disorderly conduct, resisting arrest, and obstruction of governmental administration are relatively easy for police to levy in the absence of actual probable cause because they may arise out of nearly any police-civilian interactions.

48. Upon information and belief, “contempt of cop” and “cover charge” charges such as disorderly conduct, resisting arrest, and obstruction of governmental administration are relatively easy for police to levy in the absence of actual probable cause because they can be levied solely upon the allegations of the arresting officer(s) without reference to physical evidence or witness observation of criminal acts.

49. Upon information and belief, to date, Respondent City of New York has not implemented any particular, training, oversight measures or policies designed or intended to curtail the improper use by New York City Police Officers of so-called “contempt of cop” and “cover charge” charges such as disorderly conduct, resisting arrest, and obstruction of governmental administration.

50. Upon information and belief, and despite due and repeated notice that New York City Police Officers have an ongoing decades-old custom or practice of charging individuals with crimes and violations such as resisting arrest, disorderly conduct, and obstruction of governmental administration for personal vindication and/or as pretexts to justify use of force, to date, Respondent City of New York has not implemented any particular training, oversight measures or policies designed or intended to curtail the improper use by New York City Police Officers of so-called “contempt of cop” and “cover charge” charges such as disorderly conduct, resisting arrest, and obstruction of governmental administration.

51. Upon information and belief, and despite due and repeated notice that New York City Police Officers have an ongoing custom or practice of charging individuals with crimes and violations such as resisting arrest, disorderly conduct, and obstruction of governmental administration as pretexts to justify punitive false arrests undertaken in the absence of probable cause, to date, Respondent City of New York has not implemented any particular training, oversight measures or policies designed or intended to curtail the improper use by New York City Police Officers of so-called “contempt of cop” and “cover charge” charges such as disorderly conduct, resisting arrest, and obstruction of governmental administration.

52. Upon information and belief, and despite due and repeated notice that New York City Police Officers such as the Defendant Police Officers have charged and continue to charge individuals with crimes and violations such as resisting arrest, disorderly conduct, and obstruction of governmental administration as pretexts to justify punitive false arrests undertaken in the absence of probable cause, to date Respondent City of New York has not implemented any particular oversight measures or policies designed or intended to curtail the improper use by New York City Police Officers of so-called “contempt of cop” and “cover charge” charges such as disorderly conduct, resisting arrest, and obstruction of governmental administration.

### C. STOP AND FRISK

53. A 2007 NYPD report revealed that over a half-million pedestrians in New York City were stopped by the NYPD during the calendar year 2006.

54. Nearly ninety (90%) percent of the persons stopped, according to this NYPD report, were minorities.

55. In 2008, the Center for Constitutional Rights brought a Federal Lawsuit against the NYPD related to this Stop and Frisk conduct.

56. This case is captioned, Floyd v. City of New York, United States District Court, Southern District of New York, 08 CV 1034.

57. This lawsuit alleged that the NYPD engaged in unconstitutional pattern and practice of using race and/or national origin rather than reasonable suspicion as the determinative factor in deciding whether to stop and frisk individuals, in violation of the Fourth Amendment.

58. The Plaintiffs in Floyd allege that these Constitutional violations are “the result of, and are directly and proximately caused by, policies, practices and/or customs devised, implemented and enforced by the City, Commissioner Kelly and Mayor Bloomberg.”

59. The Court in Floyd, in ruling against the Defendants’ motion for summary judgment accepted that almost twenty-five (25%) percent of the recorded stops between 2004 and 2009 lacked ‘sufficiently detailed documentation to assess their legality.’

Floyd, (decision of 8/31/11, page 62/86).

60. In this same opinion, the Court found sufficient material facts in dispute to allow the claim to go forward that the stop and frisk policy was so manifest, that it implied “the constructive acquiescence of senior policy-making officials.”

61. In February 2012, Plaintiff City Councilmember Rodriguez and Plaintiff City Councilmember Williams sought to introduce legislation into the City Council of the City of New York that would create additional burdens upon NYPD who stopped individuals, including, handing out their business card identifying the officers by name, and handing out a document that sets forth the rights of those stopped to consent or decline to the search they were about to undergo.

#### **D. FLAKING/ TESTILYING**

62. The July 7, 1994 Mollen Commission Report (“The Report”) was prepared for and at the request of the Respondent City of New York, and therefore knowledge of its contents may be imputed to Respondent City of New York.

63. Among the species of police corruption explored in The Report, particular note

was made of the practice of “testilying,” or false testimony and falsification of records in connection with arrests. The Report at 36.

64. The Mollen Commission found “testilying” to be “probably the most common form of police corruption facing the criminal justice system, particularly in connection with arrests for possession of narcotics and guns.” Id.

65. The Mollen Commission explained that officers are particularly prone to engage in “testilying” with respect to said charges because “[t]he vast majority of charges for narcotics or weapons possession crimes result in pleas without the necessity of grand jury or trial testimony, thus obviating officers’ concerns about the risk of detection and possible exposure to criminal charges of perjury.” The Report at 37.

66. The Mollen Commission made particular note of “testilying” in an undisclosed unit of the NYPD’s narcotics division, “where... [The Mollen Commission’s] analysis of police records and intelligence sources indicated that the incidence of falsifications might run high.” The Report at 38-39.

67. The Report continues: “While we cannot disclose the details of our investigation because we have referred the evidence to a prosecutor, the evidence suggests that certain officers in this unit falsified documents and may have committed testimonial perjury to conceal Constitutional violations. Even more troubling, the evidence suggests that the unit’s commanding officer not only tolerated, but encouraged, this unlawful practice.” The Report at 39 (emphasis added).

68. Upon information and belief, in response to these findings, the NYPD adopted a policy, that absent exceptional circumstances, any Police Officer found to have lied would be terminated from the NYPD.

69. Upon information and belief, this policy is not being followed.
70. In 2004, then Lieutenant Carolyn Fanale, swore in a criminal complaint that she was hit in the head by the defendant, thereby providing sufficient information for the accusatory instrument to be converted to an actual complaint.
71. During an interview with the Civilian Complaint Review Board, Lieutenant Fanale stated that she was never hit in the head by the defendant, but that it must have been some other female officer.
72. Lieutenant Fanale was not terminated from the NYPD for lying, quite the contrary, she was promoted and is presently a Captain in the intelligence division at One Police Plaza.
73. In 2007, Sergeant Timothy Horohoe was interviewed by the Civilian Complaint Review Board in relation to this conduct in Times Square in knocking bicyclist Richard Vazquez from his bicycle and arresting Vazquez.
74. The CCRB substantiated an excessive force claim against Sgt. Horohoe and also brought *sua sponte*, a separate claim that Sgt Horohoe had lied to the CCRB during its investigation.
75. Sgt. Horohoe's employment with NYPD was not terminated, in fact, he continued in a position of training hundreds of recent NYPD Academy graduates who policed Times Square as part of "Operation Impact," a foot patrol program which is one of the most common postings for rookie officers upon academy graduation.
76. The practice of officers "testilying" with respect to narcotics charges continues in the NYPD to date.
77. Upon information and belief, the practice of officers "testilying" with respect to

narcotics charges continues to be employed with particular frequency by narcotics officers in Brooklyn and Queens.

78. In 2008, now-former NYPD undercover officer Steve Anderson was caught on video purchasing three bags of cocaine from an employee of a nightclub in Queens.<sup>15</sup>

79. Anderson did not arrest the person who sold the drugs to him. *Id.*

80. Instead, Anderson provided the drugs to then-fellow NYPD undercover officer Henry Tavaréz. *Id.*

81. Tavaréz then used the drugs to support the false arrests of four people. *Id.*

82. As a result of this and like incidents, prosecutors in Brooklyn and Queens have dismissed charges against approximately four hundred (400) individuals whose arrests were believed to have been tainted by the corrupt acts of NYPD officers. *Id.*

83. Another detective from the same unit, Jason Arbeeny, was recently convicted of various crimes in relation to his own 2007 conduct of planting a bag of crack cocaine in the car of a Coney Island couple to support narcotics charges against said couple.<sup>16</sup>

84. In that case, on November 1, 2011, “[b]efore announcing the verdict, Justice Reichbach scolded the department for what he described as a widespread culture of corruption endemic in its drug units. ‘I thought I was not naïve,’ he said. ‘But even this court was shocked, not only by the seeming pervasive scope of misconduct but even more distressingly by the seeming casualness by which such conduct is employed.’” *Id.*

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<sup>15</sup> Jim Dwyer, “The Drugs? They Came From The Police,” *New York Times*, October 13, 2011, incorporated by reference herein and available online at <http://www.nytimes.com/2011/10/14/nyregion/those-drugs-they-came-from-the-police.html?ref=nyregion>

<sup>16</sup> Tim Stellow, “Detective is Found Guilty of Planting Drugs,” *New York Times*, November 1, 2011, incorporated by reference herein and available online at [http://www.nytimes.com/2011/11/02/nyregion/brooklyn-detective-convicted-of-planting-drugs-on-innocent-people.html?\\_r=2&partner=rss&emc=rss](http://www.nytimes.com/2011/11/02/nyregion/brooklyn-detective-convicted-of-planting-drugs-on-innocent-people.html?_r=2&partner=rss&emc=rss)

85. Justice Reichbach continued: “Anything goes in the never-ending war on drugs... and a refusal to go along with questionable practices raise the specter of blacklisting and isolation.” Id.

86. The practice of false drug arrests is colloquially referred to as “flaking.”<sup>17</sup>

### **III. FAILURES OF NYPD OVERSIGHT AND SELF-POLICING LEAD TO LACK OF ACCOUNTABILITY FOR POLICE MISCONDUCT CREATING LACK OF TRUST OF THE COMMUNITY IN THE NYPD**

#### **A. IAB**

87. The Internal Affairs Bureau has as its mission, in part, to investigate incidents of individual police misconduct and corruption, but not department-wide problems.

88. Between 1994 and 2006, the number of complaints IAB received about suspected police corruption and misconduct more than tripled, rising from 14,789 to 44,994.

89. However, during this same time period, the number of serious misconduct IAB investigations dropped from 2,258 to 1,057.

90. In 1994, the IAB was investigating about fifteen percent (15%) of the complaints (tips) it received.

91. By 2006, that number fell to just Two point Three percent (2.3%).

92. Excessive force used in an arrest has risen in the IAB from 1994 to 2006, and had become one of the most common type of IAB cases.

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<sup>17</sup> Parascandola, Kappstatter, Doyle and Schapiro, “Cop Morale Low After String of NYPD Scandals Puts Department Under Fire,” New York Daily News, October 23, 2011, incorporated by reference herein and available online at [http://articles.nydailynews.com/2011-10-23/local/30329895\\_1\\_bronx-cop-internal-affairs-bureau-captains-endowment-association](http://articles.nydailynews.com/2011-10-23/local/30329895_1_bronx-cop-internal-affairs-bureau-captains-endowment-association)

93. In 1993, excessive force only accounted for less than one percent (1%) of all IAB serious misconduct investigations, by 2007, this figure rose so that almost 20 percent of all IAB investigations were over use of excessive force.
94. Command Discipline procedures are to be used by supervising NYPD officers to self-police low levels of misconduct.
95. Command Discipline is split into two levels of discipline with the less serious level being controlled at the supervising officer level, and normally resulting in penalties form verbal instructions to loss of vacation days.
96. Often times, more serious command discipline charges are mischaracterized as less serious to protect an NYPD officer form more serious penalties.
97. Upon information and belief, when an individual officer seeks to take a vacation day, a certain paperwork is to be filed.
98. Failure to file such paperwork would serve to give the officer a paid day off without a concurrent deduction in their vacation days, in effect, defrauding the tax payers of New York City of one day's pay.
99. When an officer is caught failing to file such paperwork, this misconduct is covered up as a less serious command discipline, such as failure to file correct paperwork, rather than a more serious charge involving improper payment.
100. In order for self-policing to work within the NYPD, confidentiality must be guaranteed.

101. Upon information and belief, within the NYPD, confidentiality does not exist and cannot be relied upon by either rank and file members of the force or supervisors.
102. As an example, the information provided to investigators by NYPD PO Adrian Schoolcraft was to be confidential information.
103. However, within a few weeks, PO Schoolcraft's commanding officer had the knowledge that he had filed such a report with NYPD investigators.
104. As a further example of the lack of confidentiality within the NYPD, the investigation into the ticket fixing scandal led to the arrest of an IAB Lieutenant whose sole culpability involved leaking information about the investigation to union representatives.

### **B. CCRB**

105. The New York Civil Liberties Union report on the CCRB's activities from the time of the Mollen Commission Report until twelve years later, 1994 through 2006.
106. The NYCLU report entitled "Mission Failure: Civilian Review of Policing in New York City 1994-2006" ("NYCLU Report".)<sup>18</sup>, reviewed, collated and summarized information from the CCRB's Annual Reports and other sources, resulting in the following findings:
- a. CCRB complaint data indicates that serious police misconduct, including improper threats and use of force, occurs with significant frequency, with allegations of excessive force in half of all complaints filed with the CCRB. NYCLU Report at 4.
  - b. The NYPD takes no disciplinary action whatsoever against nearly 30% of officers named in substantiated CCRB complaints, and gave only

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<sup>18</sup> Available online at [http://www.nyclu.org/files/ccrb\\_failing\\_report\\_090507.pdf](http://www.nyclu.org/files/ccrb_failing_report_090507.pdf)

“instructions” to nearly a third of officers who were disciplined following substantiated CCRB complaints between 2000 and 2005. *Id.* at 5.

c. “In recent years it appears that the NYPD has adopted a radically more lenient disciplinary standard as regards acts of police misconduct directed at civilians. In 2004 the police department ordered instructions in approximately 30 percent of all disciplinary actions related to a substantiated CCRB complaint. In 2005 instructions represented nearly 60 percent of such disciplinary actions; and in 2006 instructions rose to 72 percent of all disciplinary actions related to police misconduct directed at civilians. Suspension of a police officer has become an extraordinarily rare occurrence, even when egregious acts of misconduct are involved.” *Id.* at 6.

107. Defendant City of New York’s knowledge of its continuing failure to abate the above-referred practices and customs can be shown with reference to the following facts reported to the City in the *2006 Annual Report* of the CCRB:<sup>19</sup>

a. Only 12,059 of the 29,446 cases of alleged police misconduct closed by the CCRB between 2002 and 2006 received full investigations. *CCRB 2006 Annual Report*, 93.

b. Only 1,441 of the 29,446 cases of alleged police misconduct closed by the CCRB between 2002 and 2006 resulted in a finding of even one substantiated allegation. *Id.*

c. The NYPD either took no disciplinary action whatsoever or merely issued instructions in 1,062 of the 1,918 cases of CCRB-substantiated police misconduct closed by the department between 2002 and 2006. Some of these cases had been forwarded to the NYPD by the CCRB before 2002. *Id.* at 101.

d. In the five years between 2002 and 2006 only one (1) NYPD officer was subject to employment termination as a result of allegations of misconduct substantiated by the CCRB. *Id.* at 100.

e. The CCRB substantiated only 3.5% of the excessive force allegations reported between 2002 and 2006. *Id.* at 95.

108. The failure of the CCRB to be a trusted avenue for community members to challenge unlawful police conduct help to ensure that there is a lack of accountability for misconduct by NYPD officers, and directly lead to distrust between the

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<sup>19</sup> 2001-2010 CCRB Reports available online at <http://www.nyc.gov/html/ccrb/html/reports.html>

community and the NYPD.

### C. CCPC

109. The CCPC lacks subpoena power and funding to effectively monitor the NYPD and act as the dual approach independent police commission urged by the Mollen Commission.
110. Evidence of the inability of the CCPC to assist in combating corruption and ensuring command accountability can be seen by the CCPC head, Mark Pomerantz, resigning from his position as chairman of CCPC, stating, “[d]oing the job in the right way, in the absence of subpoena power, requires ongoing discussion with the Police Department about the commission's jurisdiction and access to information.” Pomerantz went on to note that his attempts to investigate various forms of police misconduct were rendered futile because the police could (and did) simply refuse to provide information necessary to investigate.
111. Further evidence of the inability of the CCPC to assist in combating NYPD corruption and ensuring command accountability can be seen by the CCPC head, Richard Davis, stating on or about March 20, 2012, that no new special commission like the Mollen Commission is currently needed, what is needed is more effective ongoing oversight over the NYPD. *See* <http://nyls.mediasite.com/mediasite/SilverlightPlayer/Default.aspx?peid=85a87d71238d47a1b4c0d423bb67ffb71d> at 54 minutes.

112. Discipline within the NYPD is to begin when an officer is identified as having committed an act of wrongdoing.
113. According to the NYPD Patrol Guide, 206-01, a Supervisor is to file a specific NYPD report (PD 468-123) if they have heard or viewed an act of police misconduct.
114. Once the PD 468-123 is filed, it should be entered within a Command Discipline Log according to NYPD PG 206-02.
115. At that point, policy states that an evaluation is to take place to determine whether the charge is a serious charge that would require referral to the Internal Affairs Bureau ("IAB") or to the Deputy Commissioner of Trials ("DCT"), or if it is a less serious charge and can be handled at the Command Discipline level.
116. According to NYPD OG 206-05, If the charge is deemed serious, it is filed as charges and specifications and forwarded to referred to the Department Advocate Office ("DAO).
117. Upon information and belief, the Command Discipline is misused by NYPD members and Supervisors in order to reduce the penalties suffered by members of the service ("MOS") who commit acts of misconduct.
118. One specific manner in which the Command Discipline regulations are misused is the misclassification of serious charges that would require the filing of Charges and Specifications, as less serious charges that allow for a penalty such as the loss of vacation days, or the lesser penalty of verbal instructions.

119. An independent oversight body could both audit the NYPD's past use of the Command Discipline rules and guidelines, and monitor its current application of these guidelines.
120. An independent oversight body could work with the NYPD to develop rules that would facilitate best practices for police management that are clearly lacking today.
121. Currently, MOS who have been found guilty of misconduct by the DCT or who suffer from persistently poor performance are monitored by the Department's Performance Monitoring Unit ("PMU").
122. Commanders must make periodic reports on monitored officers to PMU, which PMU members may use to confer with or make recommendations to those commanders or supervised officers.
123. These interventions are purely disciplinary in character, and performance improvement in and of itself will not necessarily remove officers from increased scrutiny.
124. The Commission to Combat Police Corruption ("CCPC") monitors PMU performance as well, and has found that PMU fails to follow up on approximately half of the negative performance information reported to them by commanders of officers under monitoring. CCPC, A FOLLOW-UP REVIEW OF THE NEW YORK CITY POLICE DEPARTMENT'S PERFORMANCE MONITORING UNIT, April 2006. ("CCPC Report") Available online at

[http://www.nyc.gov/html/ccpc/downloads/pdf/performance\\_monitoring\\_april\\_2006.pdf](http://www.nyc.gov/html/ccpc/downloads/pdf/performance_monitoring_april_2006.pdf) and incorporated herein by reference.

125. The CCPC faults PMU's poor performance in updating the background paperwork of officers under monitoring. This paperwork is nominally updated every six months, but the CCPC found that less than half of the files on officers under PMU monitoring were in fact updated on the mandated semi-annual basis. CCPC Report at 12-13.

126. The Department's current record retention policy mandates the removal of records of low and intermediate level PMU monitoring from officers' Central Personnel Index files ("CPI") after differing periods of time. CCPC Report at 4.

127. This policy is facially counterproductive; the removal of low level disciplinary actions from CPIs actively prevents monitored officers' future supervisors from identifying and meaningfully addressing patterns of negative behavior.

#### **IV. THE FINANCIAL COST OF THIS UNCHECKED NYPD MALFEASANCE AND WRONGDOING HAS HAD NO EFFECT ON THE NYPD CONDUCT**

128. The City Comptroller's most recently issued claims report (issued June 11, 2011) and available online at [http://comptroller.nyc.gov/bureaus/bia/pdf/2011\\_Claims\\_Report.pdf](http://comptroller.nyc.gov/bureaus/bia/pdf/2011_Claims_Report.pdf) reviews claims from 2006 through 2010.

129. The City Comptroller's report shows that in the years 2006 to 2010, tort claims against the NYPD for negligence, excessive force, false arrests, and other civil rights violations have cost the city over Five Hundred Million Dollars (\$500,000,000.00).

130. Moreover, this report indicates that the claims have increased in number and cost throughout the reporting period. (See Comptroller's report at 50-51).
131. Despite this remarkable and unprecedented outlay of City funds to compensate victims of alleged NYPD negligence and misfeasance, the NYPD has made no changes in respect to its current enforcement policies and practices.
132. Virtually zero dollars (\$0.00) of this Half a Billion dollars (\$500,000,000.00) paid due to NYPD malfeasance, comes from the NYPD budget, or pension program, or the privately funded NYPD Foundation.
133. Therefore, the NYPD sustains no cognizable financial damage due to their bad conduct.
134. During this same time period, the City of New York has had to make drastic changes and reductions to the budgets of many of the social programs relied upon by the citizenry of this great city.
135. As an example, in 2010 budget cuts the Department of Education's budget was cut by Three Hundred Fifty Million dollars (\$350,000,000.00), while the NYPD was asked to cut Three Hundred Fifty (350) civilian positions, and to extend the fleet lifecycle of their motor fleet. See "List Of NYC Agency Cuts, Layoffs," November 10, 2010, CBS 2 New York, available online at <http://newyork.cbslocal.com/2010/11/18/list-of-nyc-agency-cuts-layoffs/> and incorporated herein by reference.
136. In the following round of budget cuts, the the Department of Education's budget was cut by an additional Nine Hundred Twenty Six Million Dollars (\$926,000,000.00). In the same round of budget cuts, proposed cuts of Two Hundred

Fifty Three Million Dollars to the NYPD budget were reduced by One Hundred Sixty Million Dollars (\$160,000,000.00) through negotiations between the Mayor and the City Council, so that the NYPD's budget was only cut by Ninety Three Million Dollars (\$93,000,000.00) approximately ten percent (10%) of the burden borne by the Department of Education.. *See* Citizens' Budget Commission, "The New York City Budget Since the Recession: Seven Rounds of Cuts and the Deepest Still to Come," February 7, 2011, available online at <http://www.cbcny.org/cbc-blogs/blogs/new-york-city-budget-recession-seven-rounds-cuts-and-deepest-still-come> and incorporated herein by reference.

137. As a further example, on or about Friday, April 30, 2010, St. Vincent's Hospital was closed due to budget cuts. See Jonathan D. Rockoff, "St. Vincent's Closes Doors," May 1, 2010, Wall Street Journal, available online at <http://online.wsj.com/article/SB10001424052748703871904575216531731237488.html> and incorporated by reference herein.

138. This list could go on, but it indicates that the failure of the City to hold the NYPD accountable for their bad acts not only destroys the trust between the NYPD and the citizens who give them their authority, but also costs these same citizens education dollars, art dollars, medicare dollars, hospital dollars.

139. According Walter Mack, NYPD Deputy Commissioner at the Internal Affairs Bureau from 1993-1995, in 1993 Defendant Commissioner Raymond Kelly agreed to implement a computer system to assimilate all data that came in via 1983 litigation, and provide this data to the IAB.

<http://nyls.mediasite.com/mediasite/SilverlightPlayer/Default.aspx?peid=85a87d7123>

8d47a1b4c0d423bb67ffb71d at 53 minutes.

140. Upon information and belief, and another showing that effective oversight of the NYPD does not currently exist, this promised implementation was never effected.