

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

Ameer Benno, Esq.
BENNO & ASSOCIATES P.C.
30 Wall Street, 8th Floor
New York, NY 10005
Tel.: (212) 227-9300
abenno@ameerbenno.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
ALEX RODRIGUEZ,

Plaintiff,

vs.

THE CITY OF NEW YORK, DETECTIVE WALTER
MARIN, DETECTIVE KATHLEEN GRANT, DETECTIVE
EHTASHAM KHAN, SERGEANT ADAN MUNOZ, UC #
52, UC #286, DETECTIVE ANDREW PRENDERGAST,
DETECTIVE VINCENT BARASE, CAPTAIN GREGORY
STEWART, and “JOHN DOES 1-15” (names being fictitious
and presently unknown and intended to be the law
enforcement personnel involved in detention, battery,
searches, arrest, imprisonment and prosecution of plaintiff),
Defendants.

Index No.: 15-CV-793

**SECOND AMENDED
COMPLAINT**

JURY TRIAL REQUESTED

Plaintiff, by his attorneys, BENNO & ASSOCIATES P.C., complaining of Defendants, alleges
as follows, upon information and belief:

PRELIMINARY STATEMENT

1. Plaintiff brings this action for compensatory damages, punitive damages, and
attorney’s fees pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988 for violation of his civil
rights under 42 U.S.C. § 1983 and the First, Fourth, and Fourteenth Amendments to the United
States Constitution. Plaintiff also asserts claims under New York law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

JURISDICTION

2. The Court has jurisdiction over plaintiff’s federal law claims under 28 U.S.C §§ 1331, 1343(a), (3), and (4).

3. This Court may also exercise supplemental jurisdiction over the plaintiff’s state law claims that arise from the same facts and circumstances under 28 USC § 1367.

JURY TRIAL DEMANDED

4. Plaintiff demands trial by jury of all issues properly triable thereby.

VENUE

5. Venue is proper for the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. § 1391(b) and (c).

THE PARTIES

6. Plaintiff ALEX RODRIGUEZ is a United States citizen and a citizen of the City and State of New York.

7. That at all times herein mentioned, defendant CITY OF NEW YORK (hereinafter “CITY”) was and is a municipal corporation, duly organized and existing under and by virtue of the laws of the State of New York.

8. That at all times herein mentioned, defendant CITY operated, controlled and maintained a police force known as the New York Police Department (“hereinafter “NYPD”).

9. That at all times herein mentioned, defendant DETECTIVE WALTER MARIN (hereinafter, “MARIN”) was and is an NYPD officer employed by defendant CITY.

10. That at all times herein mentioned, defendant MARIN was acting within the course and scope of his employment with defendant CITY.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

11. That at all times herein mentioned, defendant MARIN was acting under color of state law.

12. Defendant MARIN is sued herein in both his individual and official capacities.

13. That at all times herein mentioned, defendant DETECTIVE KATHLEEN GRANT (hereinafter, "GRANT") was and is an NYPD officer employed by defendant CITY.

14. That at all times herein mentioned, defendant GRANT was acting within the course and scope of her employment with defendant CITY.

15. That at all times herein mentioned, defendant GRANT was acting under color of state law.

16. That defendant GRANT is sued herein in both her individual and official capacities.

17. That at all times herein mentioned, defendant DETECTIVE EHTASHAM KHAN (hereinafter, "KHAN") was and is an NYPD officer employed by defendant CITY.

18. That at all times herein mentioned, defendant KHAN was acting within the course and scope of his employment with defendant CITY.

19. That at all times herein mentioned, defendant KHAN was acting under color of state law.

20. Defendant KHAN is sued herein in both his individual and official capacities.

21. That at all times herein mentioned, defendant SGT. ADAN MUNOZ (hereinafter, "MUNOZ") was and is an NYPD officer employed by defendant CITY.

22. That at all times herein mentioned, defendant MUNOZ was acting within the course and scope of his employment with defendant CITY.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

23. That at all times herein mentioned, defendant MUNOZ was acting under color of state law.

24. Defendant MUNOZ is sued herein in both his individual and official capacities.

25. That at all times herein mentioned, defendant UC # 52 was and is an NYPD officer employed by defendant CITY.

26. That at all times herein mentioned, defendant UC # 52 was acting within the course and scope of his/her employment with defendant CITY.

27. That at all times herein mentioned, defendant UC # 52 was acting under color of state law.

28. Defendant UC # 52 is sued herein in both his/her individual and official capacities.

29. That at all times herein mentioned, defendant UC # 286 was and is an NYPD officer employed by defendant CITY.

30. That at all times herein mentioned, defendant UC # 286 was acting within the course and scope of his/her employment with defendant CITY.

31. That at all times herein mentioned, defendant UC # 286 was acting under color of state law.

32. Defendant UC # 286 is sued herein in both his/her individual and official capacities.

33. That at all times herein mentioned, defendant DETECTIVE ANDREW PRENDERGAST (hereinafter, "PRENDERGAST") was and is an NYPD officer employed by defendant CITY.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

34. That at all times herein mentioned, defendant PRENDERGAST was acting within the course and scope of his/her employment with defendant CITY.

35. That at all times herein mentioned, defendant PRENDERGAST was acting under color of state law.

36. Defendant PRENDERGAST is sued herein in both his/her individual and official capacities.

37. That at all times herein mentioned, defendant DETECTIVE VINCENT BARASE (hereinafter, "BARASE") was and is an NYPD officer employed by defendant CITY.

38. That at all times herein mentioned, defendant BARASE was acting within the course and scope of his/her employment with defendant CITY.

39. That at all times herein mentioned, defendant BARASE was acting under color of state law.

40. Defendant BARASE is sued herein in both his/her individual and official capacities.

41. That at all times herein mentioned, defendant CAPTAIN GREGORY STEWART (hereinafter, "STEWART") was and is an NYPD officer employed by defendant CITY.

42. That at all times herein mentioned, defendant STEWART was acting within the course and scope of his/her employment with defendant CITY.

43. That at all times herein mentioned, defendant STEWART was acting under color of state law.

44. Defendant STEWART is sued herein in both his individual and official capacities.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

45. That at all times herein mentioned, defendants JOHN DOES 1 through 15 were and are NYPD officers employed by defendant CITY.

46. That at all times herein mentioned, defendants JOHN DOES 1 through 15 were acting within the course and scope of their employment with defendant CITY.

47. That at all times herein mentioned, defendants JOHN DOES 1 through 15 were acting under color of state law.

48. The names “JOHN DOES 1 through 15” are fictitious, as these defendants’ true names are presently unknown.

49. These defendants are intended to be the law enforcement personnel involved in the detention, searches, arrest, and imprisonment of plaintiff.

50. That defendants JOHN DOES 1 through 15 are sued herein in both their individual and official capacities.

51. That at all times herein mentioned, defendant CITY was under an obligation to use reasonable care in the hiring, training, retention, and supervision of its employees, including, without limitation, defendants MARIN, GRANT, KHAN, MUNOZ, UC # 52, UC # 286, PRENDERGAST, BARASE, STEWART, and JOHN DOES 1-15.

52. At all relevant times herein, the individual defendants acted jointly and in concert with each other.

53. Each individual defendant had the duty and the opportunity to protect plaintiff from the unlawful actions of the other individual defendants, but each individual defendant failed and refused to perform such duty, thereby proximately causing plaintiff’s injuries.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

STATEMENT OF FACTS

54. The facts stated in this complaint are based, inter alia, on the personal knowledge of plaintiff regarding events in which he was directly involved and upon information and belief. The sources of “information and belief” factual statements are primarily documents from the underlying criminal prosecution and related public documents which are currently available to plaintiff. Those sources are incomplete, particularly, without limitation, as to numerous documents and court exhibits. This complaint is drawn without the benefit of full discovery proceedings.

55. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth at length herein.

56. On January 14, 2014 at approximately 8:00 p.m., at 54 Patchen Avenue, Brooklyn, New York 11221, plaintiff was falsely arrested by defendants.

57. Plaintiff, a self-employed livery cab driver, was lawfully parked in front of his home when defendants approached him in his vehicle and made this arrest.

58. Plaintiff’s car was a 2010 Toyota Camry.

59. Defendants were abusive to plaintiff and threatened the use of physical violence when arresting plaintiff.

60. Defendants proceeded to conduct a search of plaintiff’s car, without consent or probable cause, and unlawfully impounded the car.

61. Defendants then searched plaintiff’s person, without consent or probable cause, and confiscated his car keys, house keys, cellular phone, and wallet.

1
2 62. Plaintiff was then taken to a police precinct, brought into a room, and illegally
3 strip searched and subjected to a visual body cavity search in front of approximately five police
4 officers.

5 63. While at this precinct, Plaintiff was neither photographed nor fingerprinted.

6 64. Plaintiff was then taken to a different precinct where he was searched again.
7 Defendants continued to use abusive language and threatened plaintiff, and informed plaintiff
8 that his car was “gone.” Upon information and belief, plaintiff’s vehicle was never returned to
9 him and he remains without his vehicle presently.

10 65. Plaintiff was then taken to Central Booking where he remained falsely imprisoned
11 for an extended period of time.

12 66. Plaintiff was never at any point given a lawyer, seen by a judge, or told what he
13 was being charged with. After some time, plaintiff was then told by defendants that he was free
14 to leave.

15 67. Defendants engaged in the above-described conduct intentionally and/or with
16 deliberate indifference to plaintiff’s constitutional and civil rights.

17 68. Further, in connection with defendants’ unlawful arrest, imprisonment, and
18 prosecution of plaintiff, defendants illegally seized plaintiff’s vehicle without any probable cause,
19 privilege, or consent, and, upon information and belief, thereafter brought civil forfeiture
20 proceedings against plaintiff with respect to plaintiff’s car.

 69. Defendants brought said civil forfeiture proceeding with the intent to harm plaintiff
without economic or social excuse or justification.

1
2 70. In bringing the civil forfeiture proceeding, defendants were seeking a collateral
3 advantage or corresponding detriment to plaintiff which was outside the legitimate ends of the
4 process. This included, but was not limited to, covering up defendants' illegal actions in knowingly
5 arresting plaintiff without any legal basis, justification, or probable cause, in fabricating allegations
6 against plaintiff, and in perjuring themselves in court proceedings and documents.

7 71. As a result of the foregoing, plaintiff sustained, inter alia, loss of earnings, loss of
8 enjoyment of life, loss of liberty, emotional distress, mental anguish, embarrassment and
9 humiliation, shame, indignity, damage to reputation, loss of property, loss of use and enjoyment
10 of his property, incurred monetary costs, economic loss, and deprivation of his constitutional
11 rights.

12 72. The amount of damages sought in this action exceeds the jurisdictional limits of
13 all lower Courts that might otherwise have jurisdiction.

14 **FIRST CLAIM FOR RELIEF AGAINST DEFENDANTS**
MARIN, GRANT, KHAN, MUNOZ, UC # 52, UC # 286, PRENDERGAST, BARASE,
STEWART, AND DOES 1-15

15 **(False Arrest/Imprisonment Claim Under 42 U.S.C. § 1983)**

16 73. Plaintiff repeats and realleges each and every allegation set forth above as though
17 fully set forth at length herein.

18 74. Defendants, while acting in concert and within the scope of their employment and
19 authority, and without a warrant, seized plaintiff, forcibly put plaintiff into handcuffs, placed
20 plaintiff under arrest without any reasonable cause to believe that plaintiff had committed, was
committing, or was about to commit any offense, and caused plaintiff to be imprisoned and
incarcerated at various facilities, and thereby deprived plaintiff of his rights, liberties, and

1
2 freedoms under color of state law, including plaintiff's right to be free from unreasonable
3 searches and seizures under the Fourth and Fourteenth Amendments to the United States
4 Constitution.

5 **SECOND CLAIM FOR RELIEF AGAINST DEFENDANTS**
MARIN, GRANT, KHAN, MUNOZ, UC # 52, UC # 286, PRENDERGAST, BARASE,
STEWART, AND DOES 1-15

6 **(Excessive Force Claim Under 42 U.S.C. § 1983)**

7 75. Plaintiff repeats and realleges each and every allegation set forth above as though
8 fully set forth at length herein.

9 76. Defendants, acting in concert and within the scope of their employment and
10 authority, used objectively unreasonable force in arresting plaintiff, in violation of plaintiff's
11 right to be free from unreasonable seizure under the Fourth and Fourteenth Amendments to the
12 United States Constitution.

13 **THIRD CLAIM FOR RELIEF AGAINST DEFENDANTS**
MARIN, GRANT, KHAN, MUNOZ, UC # 52, UC # 286, PRENDERGAST, BARASE,
STEWART, AND DOES 1-15

14 **(Malicious Prosecution Claim Under 42 U.S.C. § 1983)**

15 77. Plaintiff repeats and realleges each and every allegation set forth above as though
16 fully set forth at length herein.

17 78. Defendants, acting in concert and within the scope of their employment and
18 authority, caused plaintiff to be prosecuted with malice and without probable cause – a
19 prosecution that terminated in plaintiff's favor – in violation of plaintiff's right to be free from
20 unreasonable seizures under the Fourth and Fourteenth Amendments to the United States
Constitution.

1
2 **FOURTH CLAIM FOR RELIEF AGAINST DEFENDANTS**
3 **MARIN, GRANT, KHAN, MUNOZ, UC # 52, UC # 286, PRENDERGAST, BARASE,**
4 **STEWART, AND DOES 1-15**

5 **(Malicious Abuse of Process Claim Under 42 U.S.C. § 1983)**

6 79. Plaintiff repeats and realleges each and every allegation set forth above as though
7 fully set forth at length herein.

8 80. Defendants, acting in concert and within the scope of their employment and
9 authority, employed regularly issued process against plaintiff compelling the performance or
10 forbearance of prescribed acts. The purpose of activating the process was intent to harm plaintiff
11 without economic or social excuse or justification, and the defendants were seeking a collateral
12 advantage or corresponding detriment to plaintiff which was outside the legitimate ends of the
13 process. Such collateral objective included, but was not limited to, covering up defendants'
14 illegal actions in knowingly arresting plaintiff without any legal basis, justification, or probable
15 cause.

16 81. The acts and conduct of the defendants were the direct and proximate cause of
17 injury and damage to plaintiff and that by virtue of the aforementioned acts, plaintiff was
18 deprived of his rights, privileges and immunities secured by the Constitution of the United States,
19 including his rights under the Fourth and Fourteenth Amendments to the U.S. Constitution to be
20 free from unreasonable or unlawful searches and seizures and to due process of law.

1
2 **FIFTH CLAIM FOR RELIEF AGAINST DEFENDANTS**
3 **MARIN, GRANT, KHAN, MUNOZ, UC # 52, UC # 286, PRENDERGAST, BARASE,**
4 **STEWART, AND DOES 1-15**

5 **(Illegal Search Under 42 U.S.C. § 1983)**

6 82. Plaintiff repeats and realleges each and every allegation set forth above as though
7 fully set forth at length herein.

8 83. Defendants, acting in concert and within the scope of their employment and
9 authority, without legal basis, justification, reasonable suspicion, or probable cause, subjected
10 plaintiff to unlawful strip search and a body cavity search.

11 84. The acts and conduct of the defendants were the direct and proximate cause of
12 injury and damage to plaintiff and that by virtue of the aforementioned acts, plaintiff was
13 deprived of his rights, privileges and immunities secured by the Constitution of the United States,
14 including his rights under the Fourth and Fourteenth Amendments to the U.S. Constitution to be
15 free from unreasonable or unlawful searches and seizures and to due process of law.

16 **SIXTH CLAIM FOR RELIEF AGAINST DEFENDANTS**
17 **MARIN, GRANT, KHAN, MUNOZ, UC # 52, UC # 286, PRENDERGAST, BARASE,**
18 **STEWART, AND DOES 1-15**

19 **(Failure-to-Intervene Claim Under 42 U.S.C. § 1983)**

20 85. Plaintiff repeats and realleges each and every allegation set forth above as though
fully set forth at length herein.

86. Each individual defendant had an affirmative duty to intervene on behalf of
plaintiff, whose constitutional rights were being violated in that defendant's presence by other
police officers, but failed to intervene to prevent the unlawful conduct, despite having had a

1
2 realistic opportunity to do so, in violation of plaintiff’s right under the First, Fourth, and
3 Fourteenth Amendments to the United States Constitution.

4 **SEVENTH CLAIM FOR RELIEF AGAINST DEFENDANT CITY**
5 **(Municipal Liability “Monell” Claim under 42 U.S.C. § 1983)**

6 87. Plaintiff repeats and realleges each and every allegation set forth above as though
7 fully set forth at length herein.

8 88. The individual defendants, singly and collectively, while acting within the scope
9 of their employment and authority and under color of state law, engaged in conduct that
10 constituted customs, policies, practices, procedures, rules, or usages of the NYPD and their
11 specific precinct(s) forbidden by the Constitution of the United States.

12 89. The foregoing customs, policies, practices, procedures, rules, and usages include,
13 but are not limited to, making arrests without probable cause, subjecting individuals to excessive
14 force, and committing perjury.

15 90. The abuse to which plaintiff was subjected was consistent with an
16 institutionalized practice of the NYPD, which was known to and ratified by defendant CITY.

17 91. Despite knowledge of these institutionalized practices, defendant CITY has at no
18 time taken any effective action to prevent NYPD personnel from continuing to engage in this
19 type of misconduct.

20 92. Defendant CITY had prior notice of the vicious propensities of defendants
MARIN, GRANT, KHAN, MUNOZ, UC # 52, UC # 286, PRENDERGAST, BARASE,
STEWART, AND DOES 1-15, but took no steps to train them, correct their abuse of authority,
or to discourage their unlawful use of authority.

1
2 93. The failure of defendant CITY to properly train defendants MARIN, GRANT,
3 KHAN, MUNOZ, UC # 52, UC # 286, PRENDERGAST, BARASE, STEWART, AND DOES
4 1-15 included the failure to instruct them in applicable provisions of the State Penal Law of the
5 State of New York, federal and state constitutional limitations, and the proper and prudent use of
6 force.

7 94. Defendant CITY authorized, tolerated as institutionalized practices, and ratified
8 the misconduct detailed above by, among other things:

- 9 a. Failing to properly discipline, train, restrict, and control employees,
10 including defendants MARIN, GRANT, KHAN, MUNOZ, UC # 52, UC #
11 286, PRENDERGAST, BARASE, STEWART, AND DOES 1-15, known
12 to be irresponsible in their dealings with citizens of the community;
- 13 b. Failing to take adequate precautions in the training, hiring, promotion, and
14 retention of police personnel, including specifically defendants MARIN,
15 GRANT, KHAN, MUNOZ, UC # 52, UC # 286, PRENDERGAST,
16 BARASE, STEWART, AND DOES 1-15.
- 17 c. Failing to forward to the office of the District Attorney of Kings County
18 evidence of criminal acts committed by police personnel;
- 19 d. Failing to establish or assure the functioning of a bona fide and meaningful
20 departmental system for dealing with complaints of police misconduct, but
instead responding to these types of complaints with bureaucratic power
and official denials calculated to mislead the public.

1
2 e. That the failure to supervise and/or train by defendant CITY of defendants
3 MARIN, GRANT, KHAN, MUNOZ, UC # 52, UC # 286,
4 PRENDERGAST, BARASE, STEWART, AND DOES 1-15 rose to the
5 level of deliberate indifference to the consequences of its actions, and
6 indifference to plaintiff's rights, privileges and immunities secured by the
7 Constitution of the United States of America, inter alia, plaintiff's Fourth
and Fourteenth Amendment rights.

8 95. The NYPD has inadequately screened, hired, retained, trained, and supervised its
9 employees, including the individual defendants herein, to respect the constitutional rights of
10 those individuals with whom NYPD police officers come in contact.

11 96. The foregoing customs, policies, practices, procedures, rules, and usages
12 constituted deliberate indifference to plaintiff's safety, well-being, and constitutional rights.

13 97. The foregoing customs, policies, practices, procedures, rules, or usages were the
14 direct and proximate cause of the constitutional violations suffered by plaintiff.

15 98. The foregoing customs, policies, practices, procedures, rules, or usages were the
16 moving force behind the constitutional violations suffered by plaintiff.

17 **EIGHTH CLAIM FOR RELIEF AGAINST DEFENDANTS**
18 **MARIN, GRANT, KHAN, MUNOZ, UC # 52, UC # 286, PRENDERGAST, BARASE,**
19 **STEWART, AND DOES 1-15**

20 **(Illegal Seizure of Property Under 42 U.S.C. § 1983)**

99. Plaintiff repeats and realleges each and every allegation set forth above as though
fully set forth at length herein.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

100. Defendants, acting in concert and within the scope of their employment and authority, illegally, improperly and unlawfully seized plaintiff's vehicle without any legal basis, probable cause, privilege, or consent.

101. That the seizure of plaintiff's vehicle was objectively unreasonable and in violation of the plaintiff's constitutional rights.

Supplemental State Law Claims

102. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth at length herein.

103. Within ninety (90) days after the claims herein arose, plaintiff duly served upon, presented to, and filed with defendant CITY OF NEW YORK a Notice of Claim setting forth all facts and information required under New York General Municipal Law § 50-e.

104. More than thirty (30) days have elapsed since the presentation of plaintiff's claims to defendant CITY. And defendant CITY has wholly neglected or refused to make an adjustment or payment thereof.

105. This action was commenced within one (1) year and ninety (90) days after the claims accrued.

106. Plaintiff has complied with all conditions precedent to maintaining the instant action.

107. That all of the causes of action pleaded herein fall within one or more of the exceptions set forth in New York's Civil Practice Law & Rules § 1602 with respect to joint and several liability.

1
2 **NINTH CLAIM FOR RELIEF AGAINST DEFENDANTS**
3 **MARIN, GRANT, KHAN, MUNOZ, UC # 52, UC # 286, PRENDERGAST, BARASE,**
4 **STEWART, AND DOES 1-15**

5 **(False Arrest/Imprisonment Claim Under New York Law)**

6 108. Plaintiff repeats and realleges each and every allegation set forth above as though
7 fully set forth at length herein.

8 109. Defendants, acting in concert and within the scope of their employment and
9 authority, arrested and caused plaintiff to be imprisoned without probable cause to believe that
10 plaintiff had committed any crime or offense, and without any warrant or authority to do so.

11 110. Defendant CITY is also liable for the damages suffered by plaintiff as a result of
12 the conduct of its agents, servants, and/or employees under the doctrine of respondeat superior.

13 **TENTH CLAIM FOR RELIEF AGAINST DEFENDANTS**
14 **MARIN, GRANT, KHAN, MUNOZ, UC # 52, UC # 286, PRENDERGAST, BARASE,**
15 **STEWART, AND DOES 1-15**

16 **(Assault Claim Under New York Law)**

17 111. Plaintiff repeats and realleges each and every allegation set forth above as though
18 fully set forth at length herein.

19 112. Defendants, acting in concert and within the scope of their employment and
20 authority, placed plaintiff in apprehension of imminent harmful and offensive bodily contact.

113. Defendant CITY is also liable for the damages suffered by plaintiff as a result of
the conduct of its agents, servants, and/or employees under the doctrine of respondeat superior.

1
2 **ELEVENTH CLAIM FOR RELIEF AGAINST DEFENDANTS**
3 **MARIN, GRANT, KHAN, MUNOZ, UC # 52, UC # 286, PRENDERGAST, BARASE,**
4 **STEWART, AND DOES 1-15**

5 **(Battery Claim Under New York Law)**

6 114. Plaintiff repeats and realleges each and every allegation set forth above as though
7 fully set forth at length herein.

8 115. Defendants, acting in concert and within the scope of their employment and
9 authority, made offensive contact with plaintiff without privilege or consent.

10 116. Defendant CITY is also liable for the damages suffered by plaintiff as a result of
11 the conduct of its agents, servants, and/or employees under the doctrine of respondeat superior.

12 **TWELFTH CLAIM FOR RELIEF AGAINST DEFENDANTS**
13 **MARIN, GRANT, KHAN, MUNOZ, UC # 52, UC # 286, PRENDERGAST, BARASE,**
14 **STEWART, AND DOES 1-15**

15 **(Malicious Prosecution Claim Under New York Law)**

16 117. Plaintiff repeats and realleges each and every allegation set forth above as though
17 fully set forth at length herein.

18 118. Defendants, acting in concert and within the scope of their employment and
19 authority, caused plaintiff to be prosecuted with malice and without probable cause – a
20 prosecution that terminated in plaintiff’s favor.

119. Defendant CITY is also liable for the damages suffered by plaintiff as a result of
the conduct of its agents, servants, and/or employees under the doctrine of respondeat superior.

1
2 **THIRTEENTH CLAIM FOR RELIEF AGAINST DEFENDANTS**
3 **MARIN, GRANT, KHAN, MUNOZ, UC # 52, UC # 286, PRENDERGAST, BARASE,**
4 **STEWART, AND DOES 1-15**

5 **(Abuse of Process Claim Under New York Law)**

6 120. Plaintiff repeats and realleges each and every allegation set forth above as though
7 fully set forth at length herein.

8 121. Defendants, acting in concert and within the scope of their employment and
9 authority, employed regularly issued process against plaintiff compelling the performance or
10 forbearance of prescribed acts. The purpose of activating the process was intent to harm plaintiff
11 without economic or social excuse or justification, and the defendants were seeking a collateral
12 advantage or corresponding detriment to plaintiff which was outside the legitimate ends of the
13 process. Such collateral objective included, but was not limited to, covering up defendants'
14 illegal actions in knowingly arresting plaintiff without any legal basis, justification, or probable
15 cause.

16 122. Defendant CITY is also liable for the damages suffered by plaintiff as a result of
17 the conduct of its agents, servants, and/or employees under the doctrine of respondeat superior.

18 **FOURTEENTH CLAIM FOR RELIEF AGAINST DEFENDANTS**
19 **MARIN, GRANT, KHAN, MUNOZ, UC # 52, UC # 286, PRENDERGAST, BARASE,**
20 **STEWART, AND DOES 1-15**

(Violation Of Plaintiff's Rights Under The New York State Constitution)

123. Plaintiff repeats and realleges each and every allegation set forth above as though
fully set forth at length herein.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

124. Defendants, acting in concert and within the scope of their employment and authority, retaliated against plaintiff for protesting police misconduct, in violation of plaintiff's right to freedom of speech under Article I, Section 8 of the New York State Constitution.

125. Defendants, acting in concert and within the scope of their employment and authority, violated plaintiff's right to be free of unreasonable and unlawful searches and seizures under Article I, § 12 of the New York State Constitution.

126. Defendants, acting in concert and within the scope of their employment and authority, consciously disregarded known and excessive risks to plaintiff's liberty and welfare and engaged in a deliberate and unjustified effort to manufacture guilt against plaintiff in furtherance of a plan to secure and sustain an unjust conviction against her.

127. Upon information and belief, this included a course of conduct and pattern of behavior whereby defendants, inter alia, created and fabricated evidence to create the appearance of probable cause to believe that plaintiff had committed one or more offenses, intentionally and maliciously concealed material exculpatory evidence, and unduly influenced the statements and testimony of witnesses by means of threats, coercion, violence, or deceit.

128. That by virtue of the aforementioned acts, defendants deprived plaintiff of his liberty and property without due process of law, in contravention of Article I, § 6 of the New York State Constitution.

129. Defendant CITY is also liable for the damages suffered by plaintiff as a result of the conduct of its agents, servants, and/or employees under the doctrine of respondeat superior.

1
2 **FIFTEENTH CLAIM FOR RELIEF AGAINST DEFENDANTS**
3 **MARIN, GRANT, KHAN, MUNOZ, UC # 52, UC # 286, PRENDERGAST, BARASE,**
4 **STEWART, AND DOES 1-15**

5 **(Intentional Infliction Of Emotional Distress)**

6 130. Plaintiff repeats and realleges each and every allegation set forth above as though
7 fully set forth at length herein.

8 131. Defendants, acting in concert and within the scope of their employment and
9 authority, engaged in the aforesaid conduct which was extreme, outrageous, shocking and which
10 exceeded all reasonable bounds of decency.

11 132. Defendants' extreme and outrageous conduct was intended to cause and did cause
12 severe emotional distress to plaintiff.

13 133. Defendant CITY is liable for the damages suffered by plaintiff as a result of the
14 conduct of its agents, servants and/or employees, under the doctrine of respondeat superior.

15 **SIXTEENTH CLAIM FOR RELIEF AGAINST DEFENDANTS**
16 **MARIN, GRANT, KHAN, MUNOZ, UC # 52, UC # 286, PRENDERGAST, BARASE,**
17 **STEWART, AND DOES 1-15**

18 **(Negligent Infliction Of Emotional Distress)**

19 134. Plaintiff repeats and realleges each and every allegation set forth above as though
20 fully set forth at length herein.

135. Defendants, acting in concert and within the scope of their employment and
authority, engaged in the aforesaid conduct in a manner that was careless and negligent as to the
emotional health of plaintiff.

136. Defendant CITY is liable for the damages suffered by the plaintiff as a result of
the conduct of its agents, servants and/or employees, under the doctrine of respondeat superior.

**SEVENTEENTH CLAIM FOR RELIEF AGAINST DEFENDANTS
MARIN, GRANT, KHAN, MUNOZ, UC # 52, UC # 286, PRENDERGAST, BARASE,
STEWART, AND DOES 1-15**

(Negligence / Gross Negligence)

137. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth at length herein.

138. That the aforesaid incident and resulting injuries to plaintiff were due to the negligence and/or gross negligence of defendants, and each of them, in the manner in which they performed their duties as officers of the NYPD; in failing to exercise reasonable care in connection with the performance of their duties; in failing adequately to evaluate the situation confronting them; and in otherwise being negligent and/or grossly negligent.

139. That the aforementioned incident and injuries to plaintiff were caused solely and wholly by reason of the recklessness, carelessness, and negligence and/or gross negligence of defendants herein and without any negligence on the part of plaintiff contributing thereto.

140. Defendant CITY is liable for the damages suffered by the plaintiff as a result of the conduct of its agents, servants and/or employees, under the doctrine of respondeat superior.

**EIGHTEENTH CLAIM FOR RELIEF AGAINST DEFENDANT CITY
(Negligent Screening, Hiring, Supervision, And Retention Claim Under New York Law)**

141. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth at length herein.

142. Defendants failed to use reasonable care in the screening, hiring, supervision, and retention of the NYPD employees who participated in the above unlawful conduct.

143. Defendant CITY is also liable for the damages suffered by plaintiff as a result of the conduct of its agents, servants, and/or employees under the doctrine of respondeat superior.

1
2 **NINETEENTH CLAIM FOR RELIEF AGAINST DEFENDANTS**
3 **MARIN, GRANT, KHAN, MUNOZ, UC # 52, UC # 286, PRENDERGAST, BARASE,**
4 **STEWART, AND DOES 1-15**

5 **(Negligent Training Claim Under New York Law)**

6 144. Plaintiff repeats and realleges each and every allegation set forth above as though
7 fully set forth at length herein.

8 145. Defendants failed to use reasonable care in the training of the NYPD employees
9 who participated in the above unlawful conduct.

10 146. Defendant CITY is also liable for the damages suffered by plaintiff as a result of
11 the conduct of its agents, servants, and/or employees under the doctrine of respondeat superior.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands the following relief jointly and severally against all the defendants:

- a. Compensatory damages in an amount to be determined at trial;
- b. Punitive damages in an amount to be determined at trial;
- c. Attorney’s fees pursuant to 42 U.S.C. § 1988;
- d. An award of plaintiff’s costs of suit;
- e. Pre-judgment and post-judgment interest;
- f. Such other relief as this Court deems just and proper.

Dated: New York, New York
October 6, 2015

Respectfully submitted,

BENNO & ASSOCIATES P.C.

By:  _____

Ameer Benno
30 Wall Street, 8th Floor
New York, NY 10005
Tel.: (212) 227-9300
abenno@ameerbenno.com

Attorneys for Plaintiff