

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RHEANNONE BALL,

Plaintiffs,

-v-

**Complaint and Demand for Jury
Trial**

CITY OF NEW YORK, New York City
Police Department ("NYPD") Deputy Inspector
ANTHONY BOLOGNA (Tax ID 877323); NYPD
Chief JOSEPH ESPOSITO; NYPD Supervisory
Officers JOHN ROE's 1 through 3; NYPD Police
Officer ("P.O.") RICHARD VIENCE (Shield No.
05993), and NYPD P.O. JOHN DOE's 4 through 15
(the names John Roe and John Doe being fictitious, as
the true names and shield numbers are presently
unknown), in their individual capacities,

13-CV-5563

ECF Case

Defendants.

"What a huge debt this nation owes to its 'troublemakers.' From Thomas Paine to Martin Luther King, Jr., they have forced us to focus on problems we would prefer to downplay or ignore. Yet it is often only with hindsight that we can distinguish those troublemakers who brought us to our senses from those who were simply... troublemakers. Prudence, and respect for the constitutional rights to free speech and free association, therefore dictate that the legal system cut all non-violent protesters a fair amount of slack." Garcia v. Bloomberg, 11-CV-6957 (JSR), 2012 WL 2045756, at *1 (S.D.N.Y. June 7, 2012).

Plaintiff RHEANNONE BALL ("BALL"), by her attorney JANE L. MOISAN of Rankin & Taylor, PLLC, hereby states and alleges:

PRELIMINARY STATEMENT

1. This is a civil rights action brought to vindicate plaintiff's rights under the First, Fourth and Fourteenth Amendments of the Constitution of the United States, through the Civil Rights

Act of 1871, as amended, codified as 42 U.S.C. § 1983, with pendant claims under the Constitution and laws of the State of New York.

2. Plaintiff's rights were violated on September 24, 2011 when she was violently assaulted and arrested by defendant INPSECTOR ANTHONY BOLOGNA ("BOLOGNA") and defendants police officers ("P.O.") JOHN DOE's 4 through 15 while she attended an Occupy Wall Street demonstration.
3. Plaintiff seeks an award of compensatory and punitive damages and attorneys' fees.
4. Plaintiff also seeks injunctive relief in the form of a permanent injunction requiring the defendant CITY OF NEW YORK ("CITY") to create and implement a policy regarding the use of force upon persons involved in public demonstrations that conforms with federal constitutional standards and to create and implement reporting systems to record all uses of force by NYPD officers during public demonstrations, with the Court to retain jurisdiction of this matter to ensure compliance by the defendants.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over federal claims pursuant to 28 U.S.C. §§ 1331, 1343 (3-4). This action is brought pursuant to 42 U.S.C. §§ 1983, 1988 for violations of plaintiff's rights under the First, Fourth and Fourteenth Amendments to the Constitution of the United States.
6. Venue is proper pursuant to 28 U.S.C. § 1391 in that plaintiff's claims arose in the Southern District of New York.
7. An award of costs and attorneys' fees is authorized pursuant to 42 U.S.C. § 1988.

PARTIES

8. Plaintiff BALL was at all times relevant to this action, a resident of the State of New York and Kings County.
9. Defendant CITY is a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to maintain a police department which acts as its agent in the area of law enforcement and for which it is ultimately responsible. Defendant CITY assumes the risks incidental to the maintenance of a police force and the employment of police officers as said risks attach to the public consumers of the services provided by NYPD.
10. Defendant NYPD CHIEF JOSEPH ESPOSITO (“ESPOSITO”) is and was at all times the Chief of the NYPD and is responsible, in whole and/or in part, for the creation, implementation, promulgation and enforcement of the policies, practices and/or customs complained of herein, including the deployment of orange netting. He is sued in his individual capacity.
11. Defendants BOLOGNA, Supervisory Officers JOHN ROE’s 1 through 3, JOHN DOE’s 4 through 15, and P.O. RICHARD VIENCE (“VIENCE”), (referred to collectively as the “individual defendants”), are and were at all times relevant herein, officers, employees and agents of the NYPD. The individual defendants are being sued herein in their individual capacities.
12. At all times relevant herein, the individual defendants were acting under color of state law in the course and scope of their duties and functions as agents, servants, employees and officers of NYPD, and otherwise performed and engaged in conduct incidental to the performance of their lawful functions in the course of their duties. They were acting for and on behalf of the

NYPD at all times relevant herein, with the power and authority vested in them as officers, agents and employees of the NYPD and incidental to the lawful pursuit of their duties as officers, employees and agents of the NYPD.

13. The true names and shield numbers of defendants Supervisory Officers JOHN ROE's 1 through 3 and P.O. JOHN DOE's 4 through 15 are not currently known to the plaintiff. However, all of said defendants are employees or agents of the NYPD. Accordingly, said defendants are entitled to representation in this action by the New York City Law Department ("Law Department") upon their request, pursuant to N.Y. General Municipal Law § 50-E. The Law Department, then, is hereby put on notice (a) that plaintiff intends to name said officers as defendants in an amended pleading once their true names and shield numbers become known to the plaintiff and (b) that the Law Department should immediately begin preparing their defense in this action.
14. Defendants' acts hereafter complained of were carried out intentionally, recklessly, with malice and gross disregard for plaintiff's rights.
15. At all relevant times, the defendants were engaged in a joint venture, assisting each other in performing the various actions described herein and lending their physical presence and support and the authority of their offices to one another.

STATEMENT OF FACTS

16. The events herein complained of occurred principally on September 24, 2011 in the vicinity of Union Square during a demonstration of at least a thousand people organized as Occupy Wall Street protesters at approximately 2:00 p.m. and thereafter, when the individual defendants used unreasonable force and falsely arrested plaintiff BALL during the execution of a mass arrest.

17. On that day, the march had commenced at approximately 12:00 p.m., leaving Liberty Plaza and heading north up Broadway towards Union Square.
18. Plaintiff BALL had been part of the march when it arrived at Union Square from downtown Manhattan at approximately 1:30 p.m., carrying a sign that read, “PROTECT NYPD PENSIONS.”
19. Upon information and belief, while plaintiff BALL and other demonstrators were inside Union Square, NYPD officers deployed orange netting across 14th Street, the southern boundary of the park.
20. Upon information and belief, pursuant to customary practice, defendant ESPOSITIO’s office would have to receive notice of and give consent for the use of orange nets to stop and detain persons participating in the march at Union Square and for subsequent police actions directed at participants.
21. As plaintiff BALL attempted to exit Union Square at its south east corner via the crosswalk at Union Square East and 14th Street, she was violently and without justification seized from behind by defendant BOLOGNA.
22. Defendant BOLOGNA and defendants P.O. DOE’s 4 through 6 inexplicably grabbed plaintiff BALL causing her to choke, hoisting her into the air, and throwing her to the ground.
23. Defendants P.O.’s DOE’s 4 through 6 proceeded to hold plaintiff BALL face down on the street and cuff her hands behind her back while the crowd chanted “SHAME ON YOU” and defendants Supervisory Officers JOHN ROE’s 1 through 3 and P.O.’s 7 through 15 observed the incident.

24. Due to the shockingly disproportionate level of violence that marked the conduct of the individual defendants during this incident, many media sources, including the Daily News and CNN, covered the event, and images of plaintiff BALL's arrest were prevalent throughout coverage of the Occupy Wall Street movement.
25. Plaintiff BALL was then taken to the NYPD 13th Precinct Office and transferred from there to Central Booking for processing at approximately 10:00 p.m.
26. Plaintiff BALL was charged under Docket 2011NY070107 with New York State Penal Law § 205.30, Resisting Arrest and § 240.20(6) Disorderly Conduct, which was falsely sworn to by defendant VIENCE.
27. Upon information and belief, plaintiff BALL remained in custody for over twenty four (24) hours, and was released on her own recognizance at arraignment at approximately 5:00 p.m. on September 25, 2011.
28. After multiple court appearances, plaintiff accepted an Adjournment in Consideration of Dismissal, and the case was dismissed on December 12, 2012.
29. Plaintiff BALL has suffered emotional and psychological harms as a result of the incident, including fear of police.

**FIRST CLAIM
DEPRIVATION OF RIGHTS
UNDER THE UNITED STATES CONSTITUTION THROUGH 42 U.S.C. § 1983
(Against All Defendants)**

30. Plaintiff BALL incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.
31. Defendants, under color of state law, subjected plaintiff BALL to the foregoing acts and omissions without due process of law and in violation of the rights, privileges and immunities secured by the First, Fourth, and Fourteenth Amendments to the United States

Constitution through 42 U.S.C. § 1983, including, without limitation, deprivation of the following constitutional rights:

- a. freedom from unreasonable seizure, including the excessive use of force;
- b. freedom from unlawful detention, meaning wrongful detention without good faith, reasonable suspicion or legal justification, and of which plaintiff was aware and did not consent;
- c. freedom from interference with activity protected by the First Amendment;
- d. freedom from retaliatory use of force;
- e. freedom from abuse of process; and
- f. freedom from deprivation of liberty without due process of law.

32. Defendants' deprivation of plaintiff BALL's constitutional rights resulted in the injuries and damages set forth above.

SECOND CLAIM
FAILURE TO INTERVENE – FOURTH AMENDMENT – 42 U.S.C. § 1983
(Against Defendant Richard Vience and Defendants Supervisory Officers John Roes 1 through 3 and Defendants P.O.'s 4 through 15)

33. Plaintiff BALL incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.

34. Members of the NYPD have an affirmative duty to assess the constitutionality of interactions between their fellow members of service and civilians and to intervene where they observe another member of the Police Department or other law enforcement agency employing unjustified and excessive force against a civilian.

35. The individual defendants, working as a unit, were present for and/or participated in the above-described incidents and witnessed defendants BOLOGNA and P.O. JOHN DOES 4 through 6 use unlawful force against plaintiff BALL.

36. Defendant BOLOGNA's and defendants P.O.'s JOHN DOE's 4 through 6's use of force against plaintiff BALL was obviously excessive and unjustified under the circumstances, yet defendants Supervisory Officers JOHN ROE's 1 through 3 and P.O.'s JOHN DOE's 7 through 15 took no action and made no effort to intervene, halt or protect plaintiff BALL from being subjected to excessive force by defendant BOLOGNA.

37. Defendant Supervisory Officers JOHN ROE's 1 through 3 and P.O.'s JOHN DOE's 7 through 15 violations of plaintiff's constitutional rights by failing to intervene in defendant BOLOGNA's and defendants P.O. JOHN DOE's 4 through 6's clearly unconstitutional use of force resulted in the injuries and damages set forth above.

THIRD CLAIM
MONELL CLAIM AGAINST DEFENDANT CITY – 42 U.S.C. § 1983
(Against Defendant City of New York)

38. Plaintiff BALL incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.

39. All of the acts and omissions of the named and unnamed individual defendants described above were carried out pursuant to overlapping policies and practices of defendant CITY which were in existence at the time of the conduct alleged herein and were engaged in with the full knowledge, consent, and cooperation and under the supervisory authority of the CITY and its agency, the NYPD.

40. Defendant CITY and the NYPD, by their policy-making agents, servants and employees, authorized, sanctioned and/or ratified the individual defendants' wrongful acts; and/or failed to prevent or stop those acts; and/or allowed or encouraged those acts to continue.

41. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers and officials pursuant to customs, policies, usages, practices,

procedures and rules of defendant CITY and the NYPD, all under the supervision of ranking officers of the NYPD.

42. The aforementioned customs, practices, procedures and rules of defendant CITY and the NYPD include, but are not limited to, the following unconstitutional practices: (a) using excessive force on persons engaged in activity protected by the First Amendment; (b) unlawful detention of civilians engaged in activity protected by the First Amendment; (c) retaliating against bystanders and witnesses to misconduct by other police officers; (d) failing to supervise, train, instruct and discipline police officers and encouraging their misconduct, including but not limited to defendant BOLOGNA; and (e) discouraging police officers from reporting the corrupt or unlawful acts of other police officers and retaliating against officers who report police misconduct.
43. The existence of the aforesaid unconstitutional customs and practices, **specifically with regard to the use of excessive force, unlawful detention, interference with protected First Amendment activity, retaliatory use of force, abuse of process and deprivation of liberty without due process of law against individuals apparently associated with Occupy Wall Street while engaged in protected First Amendment activity**, are further evidenced, inter alia, by the following incidents involving NYPD officers and OWS protestors:¹

September 19, 2011

- a. On September 19, 2011, an NYPD officer “reached over a curbside barricade” and grabbed an OWS protester. The protester backed away, and the officer “lunged forward, holding onto the man and toppling the metal barricade.” The officer then

¹ All of the foregoing allegations are taken from the research compiled by The Global Justice Clinic at the New York University School of Law and the Walter Leitner International Human Rights Clinic at the Leitner Center for International Law and Justice at Fordham Law School in their publication entitled *Suppressing Protest: Human Rights Violations in the U.S. Response to Occupy Wall Street*, published July 25, 2012, *available online at* <http://www.documentcloud.org/documents/403969-suppressing-protest.html> (last visited July 25, 2012).

brought the protester to the ground. The journalist stated that the incident happened after the officer “ordered [the man] ...to keep moving” and the man “spoke to the inspector for a moment, then lifted his hands and said that he was having difficulty moving.”²

September 20, 2011

- b. On September 20, 2011, police surrounded an OWS protester, who appeared to be moving away from the officers, and threw him several feet off an elevated section of tarp onto the ground.³
- c. An NYPD officer grabbed a man (who was holding a camera and appeared to be documenting the arrest of another protester) by the arm and pulled him several feet back. It appeared that the man was given no warning before being grabbed and pulled.⁴
- d. Video shows that two officers dragged a protester by his legs to the edge of the sidewalk and bound his hands with flex-cuffs.⁵ A second video shows the same protester lying on the sidewalk with his hands under his back, bound with flex-cuffs. One hand is visibly more discolored than the other and blood is on one of the protester’s fingers. The protester stated “this is really, really tight, it’s...cutting circulation off my hands. It hurts a lot.”⁶
- e. An NYPD officer punched an OWS protester in the head, grabbed him by the neck and pulled him to the ground, without evident provocation.⁷ A journalist also reported the incident and provided a segment of the above video, stating that the video “shows an officer in a white shirt throwing a right-handed punch at a young man wearing a T-shirt and glasses.”⁸

September 24, 2011

² Colin Moynihan, *Wall Street Protests Continue, With at Least 6 Arrested*, N.Y. TIMES (Sept. 19, 2011, 12:28 PM), <http://cityroom.blogs.nytimes.com/2011/09/19/wall-street-protests-continue-with-at-least-5-arrested/>.

³ WeAreTheOther99, *Wall St Occupiers - Zuccotti Park Violent Arrest - 9/20/11 #OccupyWallStreet*, YOUTUBE (Sept. 20, 2011), http://www.youtube.com/watch?v=hTJH4ZZU_oA (throw to ground at 0:23).

⁴ LibertyPlazaRev, *“I Can’t Breathe!” - Police Shoving at 10:30AM at Liberty Plaza #Occupywallstreet*, YOUTUBE (Sept. 20, 2011), <http://www.youtube.com/watch?v=ck5fgzK24hg&feature=related> (grab and pull at 2:18).

⁵ greekcabanaboy, *Occupy Wall Street Violence... Are We Free?*, YOUTUBE (Sept. 21, 2011), <http://www.youtube.com/watch?v=4ChtkSparT0&feature=related> (drag at 1:46).

⁶ FilteredInc, *Occupy Wall Street Violent Treason Police Crime Pig Brutality – Victim Jason Ahmadi Others*, YOUTUBE (Sept. 20, 2011), <http://www.youtube.com/watch?v=nbOXXOrx6FY> (discoloration and statements at 2:06).

⁷ LibertyPlazaRev, *09 21 2011 Police Forcefully Grab a Young Man! #occupywallstreet*, YOUTUBE (Sept. 21, 2011), <http://www.youtube.com/watch?v=Pu8mlfBrpy8&feature=related%20%281:30%29> (punch and pull to ground at 1:24).

⁸ Colin Moynihan, *For Commander Tied to Punching Incident, Evidence of a Blow Weeks Earlier*, N.Y. TIMES (Oct. 20, 2011, 12:53 PM), <http://cityroom.blogs.nytimes.com/2011/10/20/for-commander-tied-to-punching-incident-evidence-of-a-blow-weeks-earlier/>.

- f. On September 24, 2011, a journalist stated that police threw him against a wall while he was attempting to interview protesters. The journalist stated that he was holding a microphone and wearing an ID badge at the time.⁹
- g. Video shows that an officer reached across orange netting to grab a protester and pulled her to the ground; other officers then dragged her to the curb by her backpack, the straps of which appeared to be wrapped around her neck.¹⁰
- h. Video shows that an OWS protester was being surrounded and held by three officers. It is unclear whether or not the protester was passively resisting their attempts to lead him away. One of the officers then pushed him to the ground, and the officers then proceeded to handcuff and arrest the protester.¹¹
- i. Video shows that an officer grabbed an individual (who was holding a camera) by his head and swung him against a car and to the ground. Video appears to show that the protester was attempting to document the arrest of another protester prior to being thrown.¹² A second video shows that the protester was kneeling down and documenting an arrest when an officer pushed him away. The protester was attempting to get closer to the arrest when another officer pushed him backward even further, at which point a third officer threw him to the ground. It is unclear whether the protester initiated contact with the second pushing officer.¹³ The protester stated in an interview that he was filming “police brutality” when he was pushed and thrown down, and that two officers hit him with batons which “burst open” his shin.¹⁴
- j. Video shows that two NYPD officers pulled an OWS protester to the ground. Prior to the incident, the protester was standing in the street, holding up a flag and yelling, “Is this what you’re about?”¹⁵ Another video appears to show that one of the officers knelt with his knee on the protester’s throat for approximately three seconds.

⁹ John Farley, *Jailed for Covering the Wall Street Protests: Getting Arrested Alongside Citizen Journalists Gave Me a Taste of the Risks These Non-Professionals Take*, SALON.COM (Sept. 28, 2011), http://www.salon.com/2011/09/28/wall_street_protest_arrested/.

¹⁰ LibertyPlazaRev, *Unbelievable Protest Footage. NYPD Drag Girl Across the Street*, YOUTUBE (Sept. 24, 2011), <http://www.youtube.com/watch?v=eU9Dx0x9h4A> (grab and pull at 3:18, drag at 3:23).

¹¹ LibertyPlazaRev, *NYPD Officers Give Peaceful Protester a Concussion During Occupy Wall Street*, YOUTUBE (Sept. 24, 2011), <http://www.youtube.com/watch?v=PcBX5lupbjQ> (push to ground at 0:03).

¹² LibertyPlazaRev, *Unbelievable Protest Footage. NYPD Drag Girl Across the Street*, YOUTUBE (Sept. 24, 2011), <http://www.youtube.com/watch?v=eU9Dx0x9h4A> (throw to ground at 3:05).

¹³ AndroidArm, *NYPD Pepper Sprays Peaceful Protesters*, YOUTUBE (Sept. 24, 2011), <http://www.youtube.com/watch?v=nMoKsZp5iao> (pushes at 0:36 and 0:39).

¹⁴ Ariel Finegold, *Swat Alums Face Brutality During “Occupy Wall Street,”* DAILY GAZETTE (Oct. 3, 2011), <http://daily.swarthmore.edu/2011/10/03/swat-alums-face-police-brutality-during-occupy-wall-street-2/> (interviewing the videographer allegedly thrown to the ground).

¹⁵ LibertyPlazaRev, *Unbelievable Protest Footage. NYPD Drag Girl Across the Street*, YOUTUBE (Sept. 24, 2011), <http://www.youtube.com/watch?v=eU9Dx0x9h4A> (pull to ground at 6:17).

- k. Video shows that an officer pushed three protesters from the street to the sidewalk. The third protester was already walking toward the sidewalk when he was pushed.¹⁶
- l. A journalist stated he witnessed “about 20 or 30 police officers tackle people and prod them roughly with police batons.”¹⁷
- m. A journalist who was arrested reported he met a woman “in visible pain from the plastic handcuffs” while riding in a police van. The journalist reported that the woman was arrested after she took a picture of the protests.¹⁸

October 5, 2011

- n. On October 5, 2011, video shows that an NYPD officer struck an OWS protester with a one-handed baton swing while holding onto the protester’s arm. Several more officers then ran in and threw the protester to the ground. It is unclear from the video whether the protester was resisting the officer or whether there was another cause for the baton use.¹⁹
- o. Video news report shows that an NYPD officer took at least nine two-handed overarm swings at OWS protesters with his baton. The officer appeared to connect on at least three swings, although the video does not clearly show the swings landing. A reporter stated in the news report that he “took a hit from a nightstick in the stomach.”²⁰
- p. Video shows that an NYPD officer took two one-handed swings with his baton at OWS protestors. It appears that the officer also swung the baton a third time, although the officer’s arm and baton are out of the viewing frame. The video also appears to show that an officer struck the man recording the video with a baton while simultaneously yelling, “back up!” The officer did not appear to give the videographer any time to comply before striking him.²¹ A second video appears to show an officer hitting a protester with a one-handed baton swing. Although the circumstances prior to the swing are unknown, the protester appeared to be seated on

¹⁶ greekcabanaboy, *Occupy Wall Street Police Abuse*, YOUTUBE (Sept. 24, 2011), https://www.youtube.com/watch?feature=player_embedded&v=uiraDbcx14c#! (pushes at 1:03).

¹⁷ John Farley, *Jailed for Covering the Wall Street Protests: Getting Arrested Alongside Citizen Journalists Gave Me a Taste of the Risks These Non-Professionals Take*, SALON.COM (Sept. 28, 2011), http://www.salon.com/2011/09/28/wall_street_protest_arrested/.

¹⁸ John Farley, *Jailed for Covering the Wall Street Protests: Getting Arrested Alongside Citizen Journalists Gave Me a Taste of the Risks These Non-Professionals Take*, SALON.COM (Sept. 28, 2011), http://www.salon.com/2011/09/28/wall_street_protest_arrested/.

¹⁹ TheThirdAlbum, *Occupy Wall Street “Peaceful Until Tonight” Oct 5, 2011*, YOUTUBE (Oct. 7, 2011), <http://www.youtube.com/watch?v=BRKPEQLDZ7o> (baton swing at 3:19, throw to ground at 3:23).

²⁰ *Occupy Wall Street Arrests; Fox 5 Crew and Protesters Hit by Pepper Spray, Batons*, MYFOXNY.COM (Oct. 5, 2011, 7:11 PM), <http://www.myfoxny.com/story/17398216/occupy-wall-street-arrests-fox-5-crew-and-protesters-hit-by-pepper-spray-batons> (allegation in video at 0:45).

²¹ wearechange, *Luke Rudkowski Attacked by Police, Baton to the Gut at Occupy Wall Street Arrests*, YOUTUBE (Oct. 5, 2011), <http://www.youtube.com/watch?v=-YXuvhg8Ahw> (baton swings at 0:25, videographer hit at 0:45).

the ground and did not appear to be threatening the officer. The actual contact is not clearly shown in the video.²²

October 14, 2011

- q. On October 14, 2011, two journalists reported, “photographs from the scene showed an [NYPD] officer behind the barricade directing a stream of pepper spray at people trying to shove their way past.”²³ A reporter stated in a video news report that “Fox 5 photographer Roy Isen got sprayed with mace” while covering the OWS protests.²⁴ A second video shows an officer spraying pepper spray at least twice into a crowd of OWS protesters and at least one journalist. It is unclear whether the video depicts the incident described in the news reports or a separate incident. It is also unclear whether the officer was a member of the Disorder Control Unit (the only unit in the NYPD authorized to use pepper spray for disorder control).²⁵ A third video also appears to show police spraying protesters with pepper spray, followed by shouts of “pepper spray!” from the crowd. It is unclear whether this video shows the same instance as the first video or the news reports, or whether it depicts a separate incident.²⁶
- r. Video shows that an NYPD officer sprayed multiple OWS protesters with pepper spray. The video appears to show that the officer sprayed continuously for approximately eight seconds, pointing the spray at any protester who came near.²⁷
- s. A journalist reported that an NYPD officer “grabbed an [OWS] protester wearing a green shirt. Then the [officer] punched the man, knocking him to the ground.”²⁸ Video shows that the officer punched a protester in the head. The protester was backing away from the officer at the time of the punch and appeared to make a downward swiping motion with his arm prior to the punch; it is unclear what the intent of this motion was.²⁹ In an interview, the protester stated that he did not

²² SurvivalWithBushcraf, *Police Brutality – Wall Street Protesters Maced, Punched, Kicked, Clubbed Oct. 5 2011 8:45 PM*, YOUTUBE (Oct. 6, 2011), <http://www.youtube.com/watch?v=DVH2iS38JS4> (baton swing at 0:36).

²³ Andy Newman & Colin Moynihan, *23 Arrested Wednesday in Wall St. Protest*, N.Y. TIMES (Oct. 6, 2011, 10:22 AM), <http://cityroom.blogs.nytimes.com/2011/10/06/23-arrested-wednesday-in-wall-st-protest/>.

²⁴ *Occupy Wall Street Arrests; Fox 5 Crew and Protesters Hit by Pepper Spray, Batons*, MYFOXNY.COM (Oct. 5, 2011, 7:11 PM), <http://www.myfoxny.com/story/17398216/occupy-wall-street-arrests-fox-5-crew-and-protesters-hit-by-pepper-spray-batons> (allegation in video at 0:45).

²⁵ glassbeadian, *Police Club, Pepper Spray #occupywallstreet Protestors @ Wall Street 10.05.11*, YOUTUBE (Oct. 5, 2011), <http://www.youtube.com/watch?v=ELEBAGIool0> (pepper spray at 0:23).

²⁶ wearechange, *Luke Rudkowski Attacked by Police, Baton to the Gut at Occupy Wall Street Arrests*, YOUTUBE (Oct. 5, 2011), <http://www.youtube.com/watch?v=YXuvhg8Ahw> (pepper spray at 0:16).

²⁷ SurvivalWithBushcraf, *Police Brutality – Wall Street Protesters Maced, Punched, Kicked, Clubbed Oct. 5 2011 8:45 PM*, YOUTUBE (Oct. 6, 2011), <http://www.youtube.com/watch?v=DVH2iS38JS4> (pepper spray at 0:48).

²⁸ Colin Moynihan, *For Commander Tied to Punching Incident, Evidence of a Blow Weeks Earlier*, N.Y. TIMES (Oct. 20, 2011, 12:53 PM), <http://cityroom.blogs.nytimes.com/2011/10/20/for-commander-tied-to-punching-incident-evidence-of-a-blow-weeks-earlier/>.

²⁹ ReasonTV, *NYPD Cop Punches Protester at Occupy Wall Street, 10/14/11*, YOUTUBE (Oct. 14, 2011), <http://www.youtube.com/watch?v=JZcJ31g0ScQ&feature=related> (punch at 1:41).

provoke the officer. He also stated: “I was walking away from him, I was not walking toward him . . . I was going away. I didn’t say anything [to the officer].”³⁰

- t. A journalist stated he was struck in the shoulder without warning by a detective wearing a suit while taking video.³¹
- u. Video shows that an officer drove a scooter at a crowd of people, including journalists and legal observers. The video then shows a legal observer lying on the ground screaming, his foot under the scooter.³² Another video shows the observer kicked the scooter off or away from his leg, at which point officers dragged the observer several feet and began to cuff him. While he was being cuffed, an officer pushed the observer’s face into the pavement by pressing his baton across the back of the observer’s neck. The same video contains an interview with the observer’s legal counsel, who stated the observer suffered facial lacerations and was hospitalized.³³

October 15, 2011

- v. On October 15, 2011, video shows an officer punched a protester three times in the head while two other officers attempted to pull the protester away from a crowd, presumably to arrest him. Before the incident, the protester appeared to push an officer away before other officers began to pull him out of the crowd.³⁴
- w. A journalist asked a non-uniformed officer for his name at a march, the officer pushed the journalist against a wall and held him there, threatening him by stating if he kept asking questions, he would get “his fucking ass beat.” The journalist recorded interviews with two bystanders immediately after the incident. One bystander stated he witnessed the officer using abusive language toward the journalist and that the officer “put his chest in your face and pushed you around.” The other bystander told the journalist the officer “[got] up in your face and [shouted] at you. He pressed you against the wall of the supermarket.”³⁵

³⁰ Dan Freed, *Protester Hit by Cop Tells His Story*, THESTREET (Oct. 14, 2011, 2:58 PM), <http://www.thestreet.com/video/11278124/protester-hit-by-cop-tells-his-story.html> (statements at 0:18 and 0:40).

³¹ Tweet by Michael Tracey (Journalist), TWITTER (Oct. 14, 2011, 7:57 AM), <https://twitter.com/mtracey/status/124816134380855296> (stating the allegation and linking to a picture of the detective allegedly responsible).

³² Greenwichdiva, *Occupy Wall Street Protest March Marred By Video Appearing to Show NYPD Scooter Hit Man.mp4*, YOUTUBE (Oct. 14, 2011), <http://www.youtube.com/watch?v=BGuPV0bPR0> (officer driving scooter at 0:13, legal observer on ground and screaming at 0:20). See also RussiaToday, *Video: ‘Occupy Wall Street’ NYPD ‘Runs Over’ Protester with Scooter*, YOUTUBE (Oct. 14, 2011), <http://www.youtube.com/watch?v=cyyDjHy4S7Y> (contact with scooter at 0:06).

³³ LeakSourceArchive, *Occupy Wall Street: Interview with Lawyer Representing Protester Run Over by NYPD Motorcycle*, YOUTUBE (Oct. 15, 2011), <http://www.youtube.com/watch?v=jWGSz-YwOkM> (kicked scooter, drag, push into ground, and baton at 2:54; statement of observer’s injuries at 0:28).

³⁴ dr3amstat3s, *Police and Protesters Clash @ Occupy Wall Street*, YOUTUBE (Oct. 17, 2011), <http://www.youtube.com/watch?v=50OPmupLeY4&feature=related> (punch at 0:49).

³⁵ mtraceyvideos, *Eyewitnesses Describe the Violent Actions of NYPD Official*, YOUTUBE (Oct. 17, 2011), http://www.youtube.com/watch?v=d5i8MzcnDd8&feature=channel_video_title (statements from witnesses beginning at 0:20).

- x. Video shows an officer swinging his baton in a one-handed overhead swing at least two times into a crowd of protesters. It appeared the officer was attempting to force protesters to release their grip on a metal barricade; police were attempting to move the barricade several feet over and protesters appeared to grab onto it as it moved by them. The officer appeared to strike at protesters' hands, after which police successfully moved the barricade away from the crowd. It is unclear whether the baton swings made contact with protesters. A witness stated she observed an officer hitting a protester with an overhead baton swing. It is unclear the witness's description is of the same incident or a separate one.³⁶
- y. CBS News reported "[p]olice, some in riot gear and mounted on horses, tried to push [protesters] out of the square and onto the sidewalks in an attempt to funnel the crowds away."³⁷ Video shows officers on horseback pushed a crowd of protesters back. A journalist reported that at one point, "[a] mounted officer spurred his horse forward, ramming demonstrators, and the scene quickly descended into chaos."³⁸

October 26, 2011

- z. On October 26, 2011, video appears to show an officer punched an individual three times while the protester was on the ground (the actual contact is blocked from view). It is unclear from the video what circumstances preceded the punches.³⁹
- aa. Video shows an officer swung at a protester four times with one-handed overhead baton swings. Video clearly shows at least one of the swings struck the protester in the right shoulder; the other swings appeared to land on the protester's shoulder as well, but are less clear. The officer appeared to be attempting to force the protester to release his grip on another protester, whom the police were trying to remove from the crowd.⁴⁰
- bb. Video appears to show an officer swung his baton at a protester with a one-handed overhead swing (the actual contact is blocked from view). The officer appeared to be attempting to keep other protesters away from the person he was holding down on the ground.⁴¹

November 15, 2011

- cc. In the early morning hours of November 15, 2011, scores of NYPD officers descended on Liberty Plaza to forcefully evict the protestors from their symbolic

³⁶ dr3amstat3s, *Police and Protesters Class @ Occupy Wall Street*, YOUTUBE (Oct. 17, 2011), <http://www.youtube.com/watch?v=50OPmupLeY4&feature=related> (baton swings at 0:11).

³⁷ *Thousands of Protesters Fill NYC's Times Square*, CBS NEWS (Oct. 15, 2011, 4:59 PM), http://www.cbsnews.com/2100-201_162-20120944.html.

³⁸ Michael Tracey, *Why Did the NYPD Use Horses on Occupy Wall Street Protesters?*, NATION (Oct. 25, 2011), <http://www.thenation.com/article/164167/why-did-nypd-use-horses-occupy-wall-street-protesters#>.

³⁹ DacocoaProductions, *#OWS 10-26-11 City Hall to Union Square NYPD Part 4*, YOUTUBE (Oct. 27, 2011), <http://www.youtube.com/watch?v=rNPB-vb34A0&feature=fvwlrel> (punches at 3:49).

⁴⁰ *Id.* (baton swings at 2:01).

⁴¹ *Id.* (baton swing at 2:38).

- around-the-clock encampment. Hours later, demonstrators obtained a temporary restraining order from a Justice of the New York County Supreme Court which ordered the police could not prevent demonstrators from being in Liberty Plaza pending further hearing. Despite the unambiguous court order, however, the NYPD ignored the order and prevented demonstrators from being in the park pending the hearing.⁴²
- dd. Two journalists reported being pushed by police; one of the journalists was attempting to document an arrest at the time.⁴³
- ee. The New York Times and multiple other news organizations and advocacy groups sent a letter to the NYPD alleging that, after announcing that credentialed press must “leave the park immediately or be subject to arrest,” a Community Affairs officer “grabbed one newspaper photographer and dragged him from the park.”⁴⁴
- ff. A journalist reported an officer shoved a legal observer, also a retired judge, against a wall after she demanded the officer stop beating a protester.⁴⁵ The legal observer described the incident in an interview: the officer “said, ‘Lady, do you want to get arrested?’ And I said, ‘Do you see my hat? I’m here as a legal observer.’ He said, ‘Do you want to get arrested?’ And he pushed me up against the wall.”⁴⁶
- gg. A civil complaint alleged officers tackled City Council member Ydanis Rodriguez to the ground and struck him.⁴⁷ A journalist reported that the City Council member stated that the officer “threw his body in front of me and started hitting my head on the street . . . I was assaulted by NY police officers.” Neither the complaint nor the journalist report indicates whether officers used weapons.⁴⁸ Another journalist

⁴² Order, *In the Matter of the Application of Jennifer Waller, et al. v. The City of New York, et al.*, 112957/2011 (Sup. Ct., N.Y. Co. Part 21), November 15, 2011, at 1-3, available online at <http://lawprofessors.typepad.com/files/ows111511.pdf>

⁴³ Tweet by Julie Shapiro (Journalist, DNAinfo.com), TWITTER (Nov. 15, 2:14 AM), <https://twitter.com/julieshapiro/status/136341232812167168> (“Got shoved by an NYPD officer for the first time. Getting scary down here.”); Tweet by Josh Harkinson (Journalist, Mother Jones Magazine), TWITTER (Nov. 15, 2011, 4:16 AM), <https://twitter.com/JoshHarkinson/status/136371962011332608> (“Cops just violently shoved me away as I tried to shoot this man in a stretcher being loaded into ambulance twitpic.com/7efa2v”).

⁴⁴ Letter from George Freeman, Vice President & Asst. Gen. Counsel, N.Y. Times Co., et al., to Paul J. Browne, Deputy Comm’r of Pub. Info., N.Y.C. Police Dep’t (Nov. 21, 2011), available at <http://www.nyclu.org/files/releases/DCPI%20Letter%20-%20Signed%2011-21-11.pdf>.

⁴⁵ *You Want to Get Arrested, Lady? The Retired Judge Shoved Up Against a Wall and Threatened by NYPD at Occupy Wall Street Clashes*, MAILONLINE.COM (Nov. 20, 2011, 10:53 AM), <http://www.dailymail.co.uk/news/article-2063716/Occupy-Wall-Street-Retired-JUDGE-shoved-wall-threatened-NYPD.html>.

⁴⁶ *Former Seattle Police Chief Norm Stamper on Paramilitary Policing from WTO to Occupy Wall Street*, DEMOCRACY NOW! (Nov. 17, 2011), http://www.democracynow.org/2011/11/17/paramilitary_policing_of_occupy_wall_street (providing a video interview given by the legal observer who was allegedly pushed, stating what occurred at 41:05).

⁴⁷ Complaint at ¶ 508, *N.Y.C. Council Member Rodriguez v. Deputy Inspector Winski*, 2012 WL 1470305 (S.D.N.Y.) (No. 1:12CV03389).

⁴⁸ Cindy Y. Rodriguez, *Ydanis Rodriguez Arrested: New York City Council Member Hit and Arrested During Police Raid at Zuccotti Park*, HUFFINGTON POST (Nov. 15, 2011, 10:00 AM), http://www.huffingtonpost.com/2011/11/15/ydanis-rodriguez-arrested-hit-occupy-wall-street-raid_n_1094645.html.

reported that “when [the City Council member] emerged after 20 hours in custody, he had a gash over his eye that he says was the result of police brutality.”⁴⁹ The City Council member was initially charged with resisting arrest, but his charges were dropped. The City Council member stated that he “was acting legally as an observer, which is [his] right as an elected official.”⁵⁰

- hh. A civil complaint stated several allegations of excessive force by officers against protester Michael Rivas: “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.”⁵¹
- ii. A civil complaint alleged officers tackled a protester, an Iraq war veteran, to the ground and struck him “repeatedly.” The complaint does not state where the protester was struck or whether it was with weapons. The alleged victim had allegedly attempted to pull a fellow protester away who was being “brutalized by police officers while he was on the ground, not resisting.”⁵²
- jj. A journalist reported that another reporter stated that she witnessed officers throwing a third reporter in a “choke-hold.” The witnessing reporter also stated that police were not discriminating between press and protesters.⁵³
- kk. A news organization reported officers used batons and pepper spray on protesters who refused to leave Liberty Plaza and engaged in a soft lock, in which they “lock[ed] arms together in the middle of the park.” It is unclear whether the police’s use of weapons was justified.⁵⁴ Two journalists reported that, after making an announcement to clear the park, police “began throwing out tents, cuffing occupiers and using pepper spray.”⁵⁵

November 17, 2011

- ll. On November 17, 2011, video appears to show an officer grabbing or pushing a protester’s backpack while she is in the street. The protester appears to move or be moved to a sidewalk. The officer pursued her, grabbed her backpack again, pulled her to the ground and dragged her back into the street. The officer also appeared to be

⁴⁹ John Del Signore, *Charges Dropped Against Councilman Arrested And Roughed Up At Zuccotti Park Raid*, GOTHAMIST (Apr. 5, 2012, 1:43 PM), http://gothamist.com/2012/04/05/charges_dropped_against_councilman.php.

⁵⁰ *Charges Dropped Against Councilman Arrested at Occupy Wall Street*, CBS NEW YORK (Apr. 5, 2012, 8:37 AM), <http://newyork.cbslocal.com/2012/04/05/charges-dropped-against-councilman-arrested-at-occupy-wall-street/>.

⁵¹ Complaint at ¶ 667, *N.Y.C. Council Member Rodriguez v. Deputy Inspector Winski*, 2012 WL 1470305 (S.D.N.Y.) (No. 1:12CV03389).

⁵² *Id.* at ¶ 534.

⁵³ Brian Stelter & Al Baker, *Reporters Say Police Denied Access to Protest Site*, N.Y. TIMES (Nov. 15, 2011, 11:06 AM), <http://mediadecoder.blogs.nytimes.com/2011/11/15/reporters-say-police-denied-access-to-protest-site/>.

⁵⁴ *Occupy Wall Street Evicted in Late Night Raid; Lawyers Secure Injunction to Reopen Zuccotti Park*, DEMOCRACY NOW! (Nov. 15, 2011), http://www.democracynow.org/2011/11/15/occupy_wall_street_evicted_in_late.

⁵⁵ Lila Shapiro & Maxwell Strachan, *Occupy Wall Street: New York Police Department Evicts Protesters, Clears Zuccotti Park [Latest Updates]*, HUFFINGTON POST (Nov. 15, 2011, 5:59 AM), http://www.huffingtonpost.com/2011/11/15/zuccotti-park-cleared-occupy-wall-street_n_1094313.html.

pulling the protester by her hair while dragging her along the ground by her backpack.⁵⁶

- mm. Video shows that an officer punched a protester three times in the head and shoulder. At the time, the protester was in a soft lock, in which he linked arms with other protesters and sat in the street, and police were attempting to pull him away. The video shows that the officer tried to separate the protester several times by pulling him, but did not attempt any other methods before punching the protester.⁵⁷
- nn. Video shows that, while attempting to pull a protester from a crowd, an officer threw another protester to the ground who was standing between police and their target. There is no discernible provocation shown in the video for the use of force. The video then shows another officer appearing to strike the apprehended protester several times with downward jabbing motions of his baton (the actual contact is blocked from view). The officers appeared to be struggling to pull the protester out of the crowd. It is unclear whether anything occurred prior to the events shown in the video that could have justified the use of force.⁵⁸
- oo. Video appears to show an officer striking a protester with three one-handed overhead baton swings, although the protester is surrounded by officers and the contact is blocked from view.⁵⁹ A journalist reported more general allegations of baton use by police, stating that on November 17, “officers swung batons at protesters who crowded the streets.” A photograph included in the journalist’s article shows a police officer with his baton raised, as if about to strike into a crowd of protesters. It is unclear whether the report and the photo depict the same incident as the video or a separate one.⁶⁰
- pp. A reporter stated in a video interview that an officer struck her in the arm with a baton while she was wearing a “clearly marked” press pass. The reporter was attempting to film police as they were pushing a barricade into protesters. She stated: “as I approached the crowd, a police officer yelled at me to get away and before I had a chance to react, he swung his baton and hit me here in the shoulder. It wasn’t that intense, but it was just a shock.”⁶¹

⁵⁶ buzzvideo, *OWS Blockade Girl Pulled Off Sidewalk By Her Hair*, YOUTUBE (Nov. 18, 2011), http://www.youtube.com/watch?v=K8X-xorFTSg&feature=player_embedded#! (pull to ground and drag at 0:02).

⁵⁷ RTAmerica, *NYPD Blast LRAD Sonic Weapon Against OWS Protest*, YOUTUBE (Nov. 17, 2011), <http://www.youtube.com/watch?v=jKRQodSK7dU&feature=youtu.be> (punches at 1:08).

⁵⁸ yesmenmedia, *NYPD Officer #2886 Beats OWS Protester (17.11.2011)*, YOUTUBE (Nov. 18, 2011), http://www.youtube.com/watch?v=O1TXFal5_XQ&feature=related (throw to ground at 0:01, baton jabs at 0:09).

⁵⁹ OccupyTVNY, *NYPD Crashes Dance Party - N17 | Occupy Wall Street Video*, YOUTUBE (Nov. 17, 2011), <http://www.youtube.com/watch?v=xFlpAqZJGYQ&feature=related> (baton swings at 0:46 and shown again in slow-motion at 1:04).

⁶⁰ Andy Newman, *Clashes and More Than 240 Arrests on Protest’s ‘Day of Action’*, N.Y. TIMES (Nov. 17, 2011, 8:13 AM), <http://cityroom.blogs.nytimes.com/2011/11/17/protesters-and-officers-clash-near-wall-street/?ref=occupywallstreet> (reporting that police used batons on protesters and providing a link to a photo gallery, in which the ninth picture shows an officer with baton raised).

⁶¹ RTAmerica, *NYPD Blast LRAD Sonic Weapon Against OWS Protest*, YOUTUBE (Nov. 17, 2011), <http://www.youtube.com/watch?v=jKRQodSK7dU&feature=youtu.be> (allegations at 1:41).

- qq. A reporter stated in a video interview that another reporter was “slammed against a wall and taken away in handcuffs.”⁶²
- rr. Video appears to show that police pushed a woman onto the hood of a car. The woman then fell to the ground and did not get up for several seconds. When she got up, the woman was holding a microphone; the video’s caption states that the woman is a “news reporter.”⁶³ A news report provides a video of the same incident from another angle and identifies the individual who was pushed as “Daily Caller reporter Michelle Fields.”⁶⁴
- ss. Video appears to show an officer pulled a woman to the ground (the video only partially shows the woman falling to the ground). Several seconds later, the video shows police putting flex-cuffs on a woman who is face-down on the ground; it is unclear whether this woman is the same one who was pulled to the ground. The person filming the video can clearly be heard shouting “she’s a journalist!” several times. Video then shows the woman against a wall with flex-cuffs on her wrists. She says to the person filming, “look at the cuffs, look how fucking tight they have these cuffs on me.” Video appears to show some discoloration in the woman’s hands. The video’s caption identifies the woman as a journalist and radio host and states that “she was indiscriminately grabbed from the crowd while moving away from the chaos, as instructed to do by NYPD... a police officer rush[ed] her from behind and body slam[med] her to the pavement.”⁶⁵ A radio station that produces a show titled “Occupy Wall Street Radio,” which “broadcasts the voice of the 99%,” lists the woman as a host in charge of media and direct action.⁶⁶
- tt. A letter from the New York Times and multiple other news organizations and advocacy groups sent to the NYPD alleged that an officer grabbed and threw a photographer to the ground, causing her to “hit[] her head on the pavement.” The photographer had proper credentials that were “clearly visible.” The incident occurred after two other officers gave the photographer conflicting instructions on where to walk.⁶⁷

⁶² Id. (allegation at 2:05).

⁶³ RestoreLiberty2012, *Occupy Wall Street – Female Reporter Violently Shoved Into Taxi – Nov. 17*, YouTube (Nov. 20, 2011), <http://www.youtube.com/watch?v=KEjVsLG4GA8> (push onto car at 0:06).

⁶⁴ *Chaos in the City: NYPD Manhandles Daily Caller Video Reporter During ‘Occupy’ Protest [Video]*, DAILY CALLER (Nov. 18, 2011, 1:47 AM), <http://dailycaller.com/2011/11/18/chaos-in-the-city-nypd-manhandles-daily-caller-video-reporter-during-occupy-protest-video/#oid=FidXkwMzpJHYEEPzTkbC7NcJmEY6rW4X> (push to ground at 0:24).

⁶⁵ TheShamarReoprt, *Journalist, Faith Laugier - Attacked, Assaulted and Arrested by NYPD: The Shamar Report*, YOUTUBE (Nov. 17, 2011), <http://www.youtube.com/watch?v=00CLssMbc-k> (alleged grab and throw to ground at 0:07).

⁶⁶ *Occupy Wall Street Radio*, WBAI: FREE SPEECH RADIO 99.5FM PACIFICA RADIO IN NEW YORK CITY, <http://www.wbai.org/program.php?program=28> (last visited July 19, 2012) (“[o]n the show, a roundtable of hosts and producers will be your path to the action of the Occupy Movement day. Join . . . Faith Laugier (Media & Direct Action) for your daily updates.”).

⁶⁷ Letter from George Freeman, Vice President & Asst. Gen. Counsel, N.Y. Times Co., et al., to Paul J. Browne, Deputy Comm’r of Pub. Info., N.Y.C. Police Dep’t (Nov. 21, 2011), *available at* <http://www.nyclu.org/files/releases/DCPI%20Letter%20-%20Signed%2011-21-11.pdf>.

- uu. The letter also alleged that an officer pushed a journalist, wearing visible press credentials, “with both his arms, forcing the reporter to fall backwards, landing on her right elbow.” The officer then “proceeded to pick her up by her collar while yelling ‘stop pretending.’ The reporter went to [a hospital] for treatment of her injuries.”⁶⁸
- vv. Video shows that an officer pulled a protester forward from a crowd; the reason for pulling him is unclear. The officer, accompanied by another officer, then attempted to pull the protester further forward by his shirt and arm, but the protester appeared to hold himself in place by holding onto a pole. A third officer approached the protester from behind and, without apparent warning, appeared to strike him twice with two downward jabs of his baton. The baton-wielding officer then pushed the protester forward until he released his grip on the pole, at which point officers placed him under arrest.⁶⁹ Two other videos also show the third officer made a downward jabbing motion with his baton in the direction of the protester, although the actual contact is blocked from view in all of the videos.⁷⁰
- ww. Video shows two officers taking at least six one-handed overhead baton swings into a crowd of protesters. The officers appeared to be attempting to apprehend a protester who was being pulled back into the crowd by other protesters; the baton swings appeared to be aimed at forcing the protesters in the crowd to release the first protester.⁷¹
- xx. A letter from the New York Times and multiple other news organizations and advocacy groups sent to the NYPD alleged that two officers struck a photographer “in the chest, knees and shin” with a metal barricade as he was attempting to take pictures of a bloodied protester being arrested.⁷²

November 30, 2011

- yy. On November 30, 2011, a protester stated that an officer hit her twice with his scooter while the protester was participating in a march.⁷³

December 12, 2011

⁶⁸

Id.

⁶⁹

AMV0530, *OWS-Police Brutality - NYPD - NOV 17*, YOUTUBE (Nov. 17, 2011), <http://www.youtube.com/watch?v=rOG4ZvaspCc&feature=related> (pull at 1:03, baton jabs at 1:16).

⁷⁰

spendnysf, *Occupy Wall Street Day of Action Protest Baton Beating*, YOUTUBE (Nov. 18, 2011), <http://www.youtube.com/watch?v=R4nJ9gd1CW4> (baton jabs at 0:14); Clarknt87, *Occupy Wall Street #n17*, YOUTUBE (Nov. 17, 2011), http://www.youtube.com/watch?v=aq0uF79_IK4&feature=player_embedded#! (baton jabs at 1:19).

⁷¹

DoccupyWallStreet, *Police Violence and Batons 11/17/11 (Violence @ 0:45)*, YOUTUBE (Nov. 17, 2011), <http://www.youtube.com/watch?v=xZH3zOsGV-M> (baton swings at 0:51).

⁷²

Letter from George Freeman, Vice President & Asst. Gen. Counsel, N.Y. Times Co., et al., to Paul J. Browne, Deputy Comm’r of Pub. Info., N.Y.C. Police Dep’t (Nov. 21, 2011), *available at* <http://www.nyclu.org/files/releases/DCPI%20Letter%20-%20Signed%2011-21-11.pdf>.

⁷³

Tweet by @DaynaR, TWITTER (Nov. 30, 2011, 7:47 PM), <https://twitter.com/daynar/status/142042203412365313> (“[a]lso, the officer driving motorbike 257 hit me with his slow-moving, completely harmless vehicle twice while we were marching up Broadway.”).

zz. A journalist was taking video of the police arresting protesters when an officer asked him if he had press credentials and then threw him to the ground and arrested him.⁷⁴ A relative of the journalist saw him “standing near the crowd, taking video,...when [she] looked back in his direction, [she] saw his blue hood on the ground. [She] ran toward him . . . [He] was face down on the ground being handcuffed, his glasses flung across the floor and people screaming, ‘Stop, stop, he didn’t do anything!’”⁷⁵

December 17, 2011

aaa. On December 17, 2011, a journalist witnessed his “colleague, a credentialed cameraman,” get “punched in the kidney three times.”⁷⁶ The same journalist stated on March 18 that he saw the same officer who punched the cameraman.⁷⁷

bbb. A journalist for The Guardian wearing a press ID stated was grabbed by an officer who “push[ed] his fist into [his] throat” despite the journalist’s cries that he was press.⁷⁸ A New York Times journalist, upon speaking with the Guardian journalist, stated that the officer used the Guardian journalist as a “de facto battering ram to push back protesters.”⁷⁹

ccc. Video shows an officer twice shoved a Democracy Now! cameraman holding a camera.⁸⁰

December 31, 2011 – January 1, 2012

ddd. On December 31, 2011 to January 1, 2012, video shows that two officers sprayed a crowd with pepper spray from behind a metal barricade being pushed or pulled by both police and protesters at Liberty Plaza. Shortly after, an unknown substance appears to be sprayed or thrown back across the barricade in the direction of the

⁷⁴ BreakThruRadioTV, *OWS Arrest: John Knefel - BreakThruRadioTV [ep9]*, YOUTUBE (Dec. 16, 2011), <http://www.youtube.com/watch?v=lHuhWOuQsw> (allegation at 1:38).

⁷⁵ Molly Knefel, *Busted for Tweeting*, SALON.COM (Dec. 13, 2011, 9:02 AM), http://www.salon.com/writer/molly_knefel/.

⁷⁶ Tweet by Ryan Devereaux (Journalist, Guardian), TWITTER (Dec. 17, 2011, 3:58 PM), <https://twitter.com/rdevro/status/148145075015254016> (“My colleague, a credentialed cameraman, was punched in the kidney three times. #D17 #ows”).

⁷⁷ Tweet by Ryan Devereaux (Journalist, Guardian), TWITTER (Mar. 18, 2011, 12:53 AM), <https://twitter.com/rdevro/status/181241913809190913> (“The sergeant who throw the girl is the same one that punched my cameraman and told me he “didn’t give a fuck” about my press pass. #m17”).

⁷⁸ Tweet by Ryan Devereaux (Journalist, Guardian), TWITTER (Dec. 17, 2011, 12:49 PM), <https://twitter.com/rdevro/status/148142787035004928> (“I was just manhandled by massive police officer. I was standing on the sidewalk. He was pushing his fist into my throat. #D17 #ows”); Tweet by Ryan Devereaux (Journalist, Guardian), TWITTER (Dec. 17, 2011, 12:53 PM), <https://twitter.com/rdevro/status/148143806640959488> (“I repeatedly said I was trying to get back and he wouldn’t let me go. Eventually he pulled me away to arrest me. I kept telling I was press.”); Tweet by Ryan Devereaux (Journalist, Guardian), TWITTER (Dec. 17, 2011, 12:55 PM), <https://twitter.com/rdevro/status/148144387212324865> (“My neck is red, my press pass was ripped. I was doing nothing but standing on the sidewalk doing my job. #D17 #ows”).

⁷⁹ Michael Powell, *The Rules on News Coverage Are Clear, but the Police Keep Pushing*, N.Y. TIMES (Jan. 2, 2012), <http://www.nytimes.com/2012/01/03/nyregion/at-wall-street-protests-clash-of-reporting-and-policing.html>.

⁸⁰ carlosmandelbaum, *Occupy Wall Street #D17 | Police Violate Constitution and Lose | 12/17/11*, YOUTUBE (Dec. 18, 2011), <http://www.youtube.com/watch?v=isiJpkBvmYk&feature=related> (pushes at 3:10).

police. It is unclear whether the officers who used the pepper spray were members of the Disorder Control Unit.⁸¹ A second video appears to show one of the same two officers spraying pepper spray again a few seconds after the spraying of the unknown substance.⁸² In a third video, a livestreamer commented that “pepper spray has been sprayed” and “the police have used pepper spray just now.”⁸³ A journalist reported that “at least one officer fired an arch of pepper spray into the crowd behind [the] barricades.”⁸⁴

eee. A journalist for the New York Times reported that an officer “began pushing” another Times reporter. The journalist stated that “[a]fter the reporter asked the captain to stop, another officer threatened to yank away his police press pass.”⁸⁵ Two other journalists for the New York Times reported that “one officer used two hands to repeatedly shove backwards a credentialed news photographer who was preparing to document an arrest.” It is unclear whether this report pertains to the same incident as the previous report.⁸⁶

fff. Lawyers representing a legal observer stated that eight officers “charged toward [the legal observer], forcing his upper body onto the hood of a parked car, where they roughly grabbed [his] arms and forced them high behind his back” Before the incident, the legal observer had been recording the names of arrestees as they were led to a police van. At the time when he was arrested, the legal observer was speaking on his cell phone. The district attorney declined to prosecute the legal observer (who had been charged with disorderly conduct).⁸⁷ Video confirms the legal observer was speaking on the phone when an officer approached him. The legal observer walked toward the sidewalk, but the officer grabbed him and pushed him onto the hood of a parked car. Three other officers then came over and helped the officer cuff the legal observer. At one point, eight officers surrounded the legal observer.⁸⁸

⁸¹ OccupyVictoryMT, *Occupy Wall St & NYPD New Year’s Eve Barricade Struggle Excerpt*, YOUTUBE (Jan. 1, 2012) <http://www.youtube.com/watch?v=5eME7YDW930> (pepper spray at 0:52 and 0:58, protester spraying back at 0:53).

⁸² Blazedroots, *NYPD Gets Pepper Sprayed*, YOUTUBE (Feb. 19, 2012), http://www.youtube.com/watch?v=RjONPcdS4HY&feature=youtube_gdata_player (pepper spray at 0:04, protester spraying back at 0:05).

⁸³ Timcast, *Timcast Recorded Live on 12/31/11 at 10:38 PM*, USTREAM (Dec. 31, 2011, 10:38 PM), <http://www.ustream.tv/recorded/19502443> (allegations at 20:38, 21:10).

⁸⁴ Colin Moynihan and Elizabeth Harris, *Surging Back into Zuccotti Park, Protesters Are Cleared by Police*, N.Y. TIMES (Dec. 31, 2011, 9:58 PM), <http://cityroom.blogs.nytimes.com/2011/12/31/protesters-surge-back-into-zuccotti-park/?ref=nyregion> (last updated Jan. 1, 2012, 2:10 AM).

⁸⁵ Michael Powell, *The Rules on News Coverage Are Clear, but the Police Keep Pushing*, N.Y. TIMES (Jan. 2, 2012), <http://www.nytimes.com/2012/01/03/nyregion/at-wall-street-protests-clash-of-reporting-and-policing.html>.

⁸⁶ Colin Moynihan and Elizabeth Harris, *Surging Back into Zuccotti Park, Protesters Are Cleared by Police*, N.Y. TIMES (Dec. 31, 2011, 9:58 PM), <http://cityroom.blogs.nytimes.com/2011/12/31/protesters-surge-back-into-zuccotti-park/?ref=nyregion> (last updated Jan. 1, 2012, 2:10 AM).

⁸⁷ Complaint at ¶¶ 28-33, 37, *Damian Treffs v. City of New York*, No. 12-CV-3030 (S.D.N.Y. filed Apr. 17, 2012).

⁸⁸ Christopher Robbins, *Legal Observer Sues City After Bogus NYPD Arrest*, GOTHAMIST (Apr. 17, 2012, 3:06 PM), http://gothamist.com/2012/04/17/legal_observer_sues_city_after_bogu.php (providing a video recorded by Tim Pool; push against car at 10:25).

ggg. A journalist witnessed a protester get “punched in the face as he was arrested. Police said, ‘Stop resisting.’”⁸⁹

March 17-18, 2012

hhh. On March 17-18, 2012, video shows an officer pushed a photographer, who was holding a camera and appeared to be wearing a press pass, several times as the photographer attempted to document another arrest.⁹⁰

iii. Video shows an officer grabbed a protester out of the arms of another officer, who appeared to be walking him toward a different group of police. The protester appeared to attempt to keep his right arm free to hold a camera in the air. Approximately six other officers then surrounded the protester, grabbed at his head and arms, ripped the mask off his face and pushed him to the ground.⁹¹

jjj. A journalist reported an officer grabbed a protester “by the bottom of her throat and shoved her head against the hood of a car,” and that another officer then “forcefully pressed her head against the car.”⁹²

kkk. A journalist reported a man told him that the police pushed him away while the man was videotaping an officer interrogating a protester.⁹³

lll. A journalist reported a photographer stated that an officer struck a protester with his megaphone.⁹⁴ The photographer told the journalist the officer “smashed his megaphone into the back of the kid’s head.”⁹⁵

mmm. A journalist reported that a protester “said that officers pushed him in several directions and that as he tried to walk away, he was struck from behind in the neck. ‘One of the police ran and hit me with a baton,’ he said.”⁹⁶

⁸⁹ Tweet by Ryan Devereaux (Journalist, Guardian), TWITTER (Jan. 1, 2012, 2:15 AM), <https://twitter.com/rdevro/status/153373642519097344> (“I watched this protester, i I [sic] Anthony got punched in the face as he was arrested. Police said, “Stop resisting.” #ows [pic.twitter.com/UAHB2J0Q](https://twitter.com/UAHB2J0Q)”).

Note: Content and authorship of tweet confirmed to Research Team by Ryan Devereaux.

⁹⁰ wearechange, *OWS Afternoon Arrests – 6 Month Anniversary – Raw Footage*, YOUTUBE (Mar. 18, 2011), <http://www.youtube.com/watch?v=okkXZBXpHvU&feature=plcp> (pushes at 7:07).

⁹¹ wearechange, *OWS Afternoon Arrests – 6 Month Anniversary – Raw Footage*, YOUTUBE (Mar. 18, 2011), <http://www.youtube.com/watch?v=okkXZBXpHvU&feature=plcp> (grab at 4:11, mask rip at 4:18, push to ground at 4:25).

⁹² Colin Moynihan, *Scores Arrested as the Police Clear Zuccotti Park*, N.Y. TIMES (Mar. 17, 2012), <http://cityroom.blogs.nytimes.com/2012/03/17/arrests-made-as-protesters-mark-occupy-wall-streets-six-month-anniversary/>.

⁹³ *Id.*

⁹⁴ Nick Pinto, *For Occupy Wall Street, A Day of Re-occupation, Re-eviction, And a Lot of Violent Arrests*, VILLAGE VOICE (Mar. 18, 2012), http://blogs.villagevoice.com/runninscared/2012/03/for_occupy_wall.php (reporting that “C.S. Muncy, who photographed the arrest, described a police officer smashing his megaphone into the back of the man’s head,” and providing a picture of the alleged strike).

⁹⁵ Tweet by Nick Pinto (Journalist, Village Voice), TWITTER (Mar. 17, 2012, 8:54 PM), <https://twitter.com/macfathom/status/181242024475889664> (“@csmuncyphoto says he has shots of that Crosby Street arrest. ‘The cop smashed his megaphone into the back of the kid’s head.’”).

nnn. A journalist reported that officers threw down and beat a photographer with batons, even after he had shown his press pass. The journalist reported the photographer “yelled several times, ‘I’m PRESS! PRESS!’ yet was slammed on the head [with a baton] twice after he’d been thrown to the ground when the police shoved back the protesters.” In the same report, the photographer stated: “there was another push from the police – they saw me fall Just didn’t care. . . . Then came the batons. I couldn’t see if the people that were on top of me previously got hit at all but I certainly did, twice to the back and once on the head.”⁹⁷

ooo. A protester stated that after a crowd was pushed from one sidewalk to another, a group of officers came charging at the crowd, swinging their batons “indiscriminately.” Approximately 7-10 people fell to the ground, and officers hit them with batons. The protester wrote that he “saw batons swinging at a pile of people that had been dominoed into each other by the police mercilessly pushing back...”⁹⁸

ppp. A journalist reported a protester stated “[p]olice broke my left thumb and possibly my jaw. My right ear is bleeding and theres [sic] a footprint on my face.”⁹⁹

qqq. A journalist reported that police “allegedly slammed” a man “against a glass window.” The journalist provided video of the events leading up to the alleged incident and a picture showing a visible crack in the glass after the incident.¹⁰⁰ Another journalist stated that he witnessed police “slam a protester into [a] door,” and that the protester was “punched in the face.” The journalist also posted a picture of a pane of glass with large cracks in it and stated that “[t]his was the result.”¹⁰¹

rrr. A news report quoted a protester who alleged that an officer “stomped on the back of [a protester’s] neck as his head was up on a step.”¹⁰²

March 20-21, 2012

⁹⁶ Colin Moynihan, *Scores Arrested as the Police Clear Zuccotti Park*, N.Y. TIMES (Mar. 17, 2012) <http://cityroom.blogs.nytimes.com/2012/03/17/arrests-made-as-protesters-mark-occupy-wall-streets-six-month-anniversary/>.

⁹⁷ Greg Palast, *Update: Cops Beat Our Cameraman ZD Roberts*, GREGPALAST.COM (Mar. 18, 2012), <http://www.gregpalast.com/cops-beat-our-cameraman-zd-roberts/> (last updated Mar. 19, 2012).

⁹⁸ Tim Weldon, *Accounting for Violence*, WALKING LION (Mar. 19, 2012), <http://www.walkinglion.org/2012/03/accounting-for-violence.html>.

⁹⁹ Ben Yakas, *Video: NYPD Officer Allegedly Slammed OWS Medic’s Head into Glass*, GOTHAMIST (Mar. 18, 2012), http://gothamist.com/2012/03/18/nypd_officer_allegedly_smashed_ows.php (quoting a tweet from protester Shawn Carrie).

¹⁰⁰ Ben Yakas, *Video: NYPD Officer Allegedly Slammed OWS Medic’s Head into Glass*, GOTHAMIST (Mar. 18, 2012), http://gothamist.com/2012/03/18/nypd_officer_allegedly_smashed_ows.php.

¹⁰¹ Tweet by Ryan Devereaux (Journalist, Guardian), TWITTER (Mar. 18, 2012, 1:20 AM), <https://twitter.com/rdevro/status/181248759529869312/photo/1> (“Just saw police slam a protester into this door, 55 East 10th. This was the result. Arrestee was punched in the face. [pic.twitter.com/BKw7eN4N](https://twitter.com/BKw7eN4N)”).

¹⁰² Ben Yakas, *Video: NYPD Officer Allegedly Slammed OWS Medic’s Head into Glass*, GOTHAMIST (Mar. 18, 2012), http://gothamist.com/2012/03/18/nypd_officer_allegedly_smashed_ows.php (quoting a tweet from protester Shawn Carrie).

sss. On March 20-21, 2012, in an interview with CBS News, a woman said she was thrown by an officer and that she suffered a concussion.¹⁰³ A journalist reported that “dozens of officers plunged into [a] crowd from two directions, shoving protesters and causing some to stumble backward and fall. Officers threw two people to the ground, including a woman who lay on her back for several minutes before an ambulance arrived to attend her.”¹⁰⁴ Video shows a woman lying motionless on the ground for several minutes, being tended to by Occupy medics.¹⁰⁵

March 24, 2012

ttt. On March 24, 2012, a journalist stated police “stomped” on a man’s head.¹⁰⁶

uuu. Video shows officers arrested a protester and bound his hands with flex-cuffs. The protester asked officers at least ten times to remove or loosen the flex-cuffs, several times stating that he could not feel his hands. Police did not respond to his requests and left him cuffed for at least eight minutes after his initial request for the flex-cuffs to be removed.¹⁰⁷

April 16, 2012

vvv. On April 16, 2012, a journalist reported: “[a]s a crowd of protesters began shouting and milling near the bottom of the steps of Federal Hall, a police commander grabbed a demonstrator from behind, threw him to the sidewalk and arrested him.”

www. A journalist reported a protester “said that a wave of officers had passed when an officer trailing behind shoved a man in the back.”¹⁰⁸

May 20, 2012

¹⁰³ CBS New York, *Hundreds Of OWS Protesters, NYPD Clash In Union Square Park*, CBS NEWS NEW YORK (Mar. 21, 2012), <http://newyork.cbs.local.com/2012/03/21/hundreds-of-ows-protesters-nypd-clash-in-union-square-park/> (quoting an Occupy medic, Maria Tardif, as saying: “I was thrown over an officer who was bending down. I hit the back of my head, I have a concussion”).

¹⁰⁴ Al Baker and Colin Moynihan, *Occupy Protesters are Arrested at Union Square Park*, N.Y. TIMES (Mar. 21, 2012), <http://cityroom.blogs.nytimes.com/2012/03/21/police-and-protesters-clash-at-union-square-park/?ref=occupywallstreet>.

¹⁰⁵ wearechange, *NYPD Tramples Injured Protester at Union Square*, YOUTUBE (Mar. 21, 2012), http://www.youtube.com/watch?v=UDWHRTX9Yrk&feature=plcp&oref=http%3A%2F%2Fwww.youtube.com%2Fuser%2Fwearechange%2Fvideos%3Fsort%3Ddd%26view%3D0%26page%3D2&has_verified=1 (injured woman at 5:06).

¹⁰⁶ Tweet by Nick Pinto (Journalist, Village Voice), TWITTER (Mar. 18, 2012, 12:54 AM), <https://twitter.com/macfathom/status/183627222333128704> (“[a]nother guy, de-arrested after police stomped his head is dpkayed [sic] on the sidewalk as street medics attend. #OWS”).

Note: Content and authorship of tweet confirmed to Research Team by Nick Pinto.

¹⁰⁷ NewYorkRawVideos, *Arrests at M24 Protest Police Brutality / Fire Ray Kelly March March 24 2012 Occupy Wall Street*, YOUTUBE (Mar. 25, 2012), <http://www.youtube.com/watch?v=45VsFdu0Qq0> (requests to remove or loosen flex-cuffs at 4:03, 4:17, 4:49, 4:58, 5:06, 5:32, 5:55, 6:05, 6:29, and 7:09).

¹⁰⁸ Colin Moynihan, *Wall Street Protesters Lying on Sidewalk Are Arrested*, N.Y. TIMES (Apr. 20, 2012, 8:56 PM), <http://cityroom.blogs.nytimes.com/2012/04/20/wall-st-protesters-lying-on-sidewalk-are-arrested/>.

xxx. On May 30, 2012, video shows that an officer pushed a legal observer to the ground.¹⁰⁹

June 13, 2012

yyy. On June 13, 2012, a journalist reported that witnesses stated that an officer kicked a man in the head while he was being held to the ground.¹¹⁰

July 11, 2012

zzz. On July 11, 2012, video shows that an officer appeared to push a protester. Another officer grabbed the protester by the head and threw him to the ground.¹¹¹ A journalist reported “an officer threw [the protester] to the ground in a headlock...”¹¹²

aaaa. Video shows an officer pushed a livestreaming videographer. He was subsequently arrested with no apparent cause.¹¹³

44. The existence of the aforesaid unconstitutional customs and practices, **specifically with regard to the failure to supervise, train, instruct and discipline police officers and encouraging their misconduct**, are further evidenced, inter alia, by the following:

- a. The Report of the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department (“Mollen Commission Report”), dated July 7, 1994, states:

In the face of this problem [of corruption], the [NYPD] allowed its systems for fighting corruption virtually to collapse. It has become more concerned about the bad publicity that corruption disclosures generate than the devastating consequences of corruption itself. As a result, its corruption control minimized, ignored and at times concealed corruption rather than root it out. Such an institutional reluctance to uncover corruption is not surprising. No institution wants its reputations tainted – especially a Department that needs the

¹⁰⁹ NewYorkRawVideos, *NYC Casseroles Night - May 30 2012 Arrest footage & Repression - Occupy Wall St*, YOUTUBE (May 31, 2012) <http://www.youtube.com/watch?v=U2MwrjaclyE> (push to ground at 8:03).

¹¹⁰ Colin Moynihan, *Protesters Arrested in Quebec Solidarity March*, N.Y. TIMES (June 14, 2012, 3:13 PM), <http://cityroom.blogs.nytimes.com/2012/06/14/protesters-arrested-in-quebec-solidarity-march/> (last updated Jun. 15, 2012) (interviewing a witness who stated that “[w]hile [the man] was restrained, a police officer came over and gave him two very hard kicks with his boot downward on the side of the guy’s head, on his left temple” and that he and other witnesses asked for the officer’s badge number, but the officer hid his badge and rode off in a van).

¹¹¹ frozac, *JRozLive*, USTREAM (July 11, 2012), <http://www.ustream.tv/channel/jrozlive> (push and throw to ground at 7:36).

¹¹² Kristen Gwynne, *J11: Zuccotti Re-Occupation Stirs Nostalgia for Last Fall*, ALTERNET (July 12, 2012, 8:02 AM), http://www.alternet.org/newsandviews/article/1026807/j11%3A_zuccotti_re-occupation_stirs_nostalgia_for_last_fall/.

¹¹³ frozac, *JRozLive*, USTREAM (July 11, 2012), <http://www.ustream.tv/channel/jrozlive> (push at 8:24, arrest at 13:53).

public's confidence and partnership to be effective. A weak and poorly resourced anti-corruption apparatus minimizes the likelihood of such taint, embarrassment and potential harm to careers. Thus there is a strong institutional incentive to allow corruption efforts to fray and lose priority – which is exactly what the Commission uncovered. This reluctance manifested itself in every component of the Department's corruption controls from command accountability and supervision, to investigations, police culture, training and recruitment. For at least the past decade, the system designed to protect the Department from corruption minimized the likelihood of uncovering it.¹¹⁴

- b. Accordingly, in 1990, the Office of the Special Prosecutor, which investigated charges of police corruption, was abolished.
- c. In response to the Honorable Judge Weinstein's ruling of November 25, 2009 in Colon v. City of New York, 09-CV-00008 (E.D.N.Y.), in which he noted a "widespread... custom or policy by the city approving illegal conduct" such as lying under oath and false swearing, Commissioner Kelly acknowledged, "When it happens, it's not for personal gain. It's more for convenience."¹¹⁵
- d. Regarding defendant CITY's tacit condonement and failure to supervise, discipline or provide remedial training when officers engage in excessive force, the Civilian Complaint Review Board is a city agency, allegedly independent of the NYPD, that is responsible for investigating and issuing findings on complaints of police abuse and misconduct.¹¹⁶ When it does, however, Commissioner Kelly controls whether the NYPD pursues the matter and he alone has the authority to impose discipline on the subject officer(s). Since 2005, during Commissioner Kelly's tenure, only one-quarter of officers whom the CCRB found engaged in misconduct received punishment more severe than verbal "instructions." Moreover, the number of CCRB-substantiated cases that the NYPD has simply dropped (i.e., closed without action or discipline) has spiked from less than 4% each year between 2002 and 2006, to 35% in 2007, and approximately 30% in 2008. Alarming, the NYPD has refused to prosecute 40% of the cases sent to it by the CCRB in 2009.¹¹⁷ As a result, the percentage of cases

¹¹⁴ Mollen Commission Report, pp. 2-3, available at http://www.parc.info/client_files/Special%20Reports/4%20-%20Mollen%20Commission%20-%20NYPD.pdf.

¹¹⁵ Oren Yaniv and John Marzulli, *Kelly Shrugs Off Judge Who Slammed Cops*, New York Daily News, December 2, 2009, available at http://www.nydailynews.com/news/ny_crime/2009/12/02/2009-12-02_kelly_shrugs_off_judge_who_rips_lying_cops.html.

¹¹⁶ In 2006, out of more than 10,000 allegations that were fully investigated, the CCRB substantiated only 594 (about 6%). In 2007, out of more than 11,000 allegations that were fully investigated, the CCRB substantiated only 507 (about 5%). See, CCRB Jan.-Dec. 2007 Status Report at p. 19, available at http://www.nyc.gov/html/ccrb/pdf/ccrbann2007_A.pdf. Upon information and belief, the low rate of substantiated complaints is due in part to the above-noted *de facto* policy and/or well-settled and widespread custom and practice in the NYPD whereby officers refuse to report other officers' misconduct or tell false and/or incomplete stories, *inter alia*, in sworn testimony and statements given to the CCRB, to cover-up civil rights violations perpetrated by themselves or fellow officers, supervisors and/or subordinates.

¹¹⁷ Christine Hauser, *Few Results for Reports of Police Misconduct*, New York Times, October 5, 2009, at A19.

where the CCRB found misconduct but where the subject officers were given only verbal instructions or the matter was simply dropped by the NYPD rose to 66% in 2007. Substantiated complaints of excessive force against civilians accounted for more than 10% of the cases that the NYPD dropped in 2007 and account for more than 25% of cases dropped in 2008.¹¹⁸

45. The existence of the aforesaid unconstitutional customs and practices, **specifically with regard to the failure to screen, supervise, train, instruct and discipline defendant BOLOGNA and encouraging his misconduct**, are further evidenced, inter alia, by the following civil rights actions in which he is a named defendant:

- a. Crisp v. City of New York, et al., 12-CV-5842 (RWS) (Inspector Bologna alleged to have used unconstitutional force in executing protester arrest on September 24, 2011);
- b. Lawler v. City of New York, et al., 12-CV-5843 (RWS) (Same);
- c. Posr v. Camejo, 07-CV-07583 (KPC) (S.D.N.Y.) (Inspector Bologna alleged to have ordered unlawful arrest of persons engaged in protected First Amendment activity);
- d. Cohen v. City of New York, 05-CV-06780 (RJS) (S.D.N.Y.) (Inspector Bologna participated in unlawful arrest of and swearing of false charges against Legal Observer during Critical Mass bicycle ride);
- e. Black v. City of New York, 05-CV-03616 (RJS) (S.D.N.Y.) (Inspector Bologna alleged to have ordered unlawful arrest of persons engaged in protected First Amendment activity);
- f. Greenwald v. City of New York, 05-CV-01566 (RJS) (S.D.N.Y.) (Inspector Bologna alleged to have executed unlawful mass arrest);
- g. Kalra v. City of New York, 05-CV-01563 (RJS) (S.D.N.Y.) (same);
- h. Hershey-Wilson v. City of New York, 05-CV-07026 (RJS) (S.D.N.Y.) (Inspector Bologna alleged to have ordered unlawful arrest of persons engaged in protected First Amendment activity);
- i. MacNamara v. City of New York, 04-CV-09216 (RJS) (S.D.N.Y.) (same); and
- j. Burley v. City of New York, 03-CV-00735 (WHP) (S.D.N.Y.) (Inspector Bologna alleged to have ordered and participated in unlawful arrest of class of persons engaged in protected First Amendment activity).

¹¹⁸ Daily News, *Editorial: City Leaders Must Get Serious About Policing the Police*, August 20, 2008.

46. The existence of the aforesaid unconstitutional customs and practices, **specifically with regard to the practice or custom of discouraging police officers from reporting the corrupt or unlawful practices of other police officers and of retaliating against officers who report misconduct**, are further evidenced, inter alia, by the following:

- a. Former New York County District Attorney Robert Morgenthau has been quoted as acknowledging that, in the NYPD, there is a “code of silence,” or a “code of protection” that exists among officers and that is followed carefully;
- b. In 1985, former NYPD Commissioner Benjamin Ward, testifying before a State Senate Committee, acknowledged the existence of the “code of silence” in the NYPD;
- c. Former NYPD Commissioner Robert Daly wrote in 1991 that the “blue wall of solidarity with its macho mores and prejudices, its cover-ups and silence, is reinforced every day in every way.”

47. The existence of aforesaid unconstitutional customs and policies may be inferred from repeated occurrences of similar wrongful conduct, as documented in the following civil rights actions filed against defendant CITY:

- a. Chelsea Elliot, et al. v. City of New York, et al., 12-CV-0992 (RWS) (S.D.N.Y.) (Inspector Bologna and officer defendants alleged to have used excessive unconstitutional force in executing unlawful arrests and assault and battery of protesters on September 24, 2011);
- b. Berg v. Kelly, 12-CV-3391, (TPG) (S.D.N.Y.) (NYPD officers detain approximately 100 “Occupy” demonstrators for two hours against their will on November 30, 2011 inside a pen built of interlocking metal barricades and then release them without charges);
- c. Garcia v. Bloomberg, 11-CV-6957 (JSR) (S.D.N.Y.) (NYPD arrest 700 “Occupy” demonstrators on the Brooklyn Bridge on October 1, 2011, for the simple act of walking on the bridge in what appeared to participants to be an action sanctioned by police present at the time);
- d. Trepps v. City of New York, 12-CV-3030 (HB) (S.D.N.Y.) (legal observer arrested while observing Occupy Wall Street march on January 1, 2012, without probable cause and false complaint sworn out against him); and

- e. Lambert v. City of New York, 153046-2011 (Sup. Ct., N.Y. Co.) (officers use excessive force against OWS protestor by affixing plastic handcuffs so tightly that it caused nerve damage, despite her repeated requests to the officers that the cuffs be loosened but were not).
48. The existence of the above-described unlawful de facto policies and/or well-settled and widespread customs and practices is known to, encouraged and/or condoned by supervisory and policy-making officer and officials of the NYPD and defendants CITY and ESPOSITO.
49. The actions of the individual police defendants resulted from and were taken pursuant to the above-mentioned de facto policies and/or well-settled and widespread customs and practices of the CITY, which are implemented by members of the NYPD, of engaging in systematic and ubiquitous perjury, both oral and written, to cover-up federal law violations committed against civilians by either themselves or their fellow officers, supervisors and/or subordinates. They do so with the knowledge and approval of their supervisors, commanders and defendants BOLOGNA and ESPOSITO who all: (i) tacitly accept and encourage a code of silence wherein police officers refuse to report other officers' misconduct or tell false and/or incomplete stories, inter alia, in sworn testimony, official reports, in statements to the CCRB and the Internal Affairs Bureau ("IAB"), and in public statements designed to cover for and/or falsely exonerate accused police officers; and (ii) encourage and, in the absence of video evidence blatantly exposing the officers' perjury, fail to discipline officers for "testilying" and/or fabricating false evidence to initiate and continue the malicious prosecution of civilians in order to cover-up civil rights violations perpetrated by themselves or fellow officers, supervisors and/or subordinates against those civilians.
50. All of the foregoing acts by defendants deprived the plaintiff of federally protected rights.

51. Defendant CITY knew or should have known that the acts alleged herein would deprive plaintiff BALL of her rights, in violation of the First, Fourth, and Fourteenth Amendments to the United States Constitution.
52. Defendant CITY is directly liable and responsible for the acts of the individual police defendants because it repeatedly and knowingly failed to properly supervise, train, instruct, and discipline them and because it repeatedly and knowingly failed to enforce the rules and regulation of defendant CITY and NYPD, and to require compliance with the Constitution and laws of the United States.
53. Despite knowledge of such unlawful de facto policies, practices and/or customs, these supervisory and policy-making officers and officials of the NYPD and the CITY, including defendants BOLOGNA, KELLY, and ESPOSITO, have not taken steps to terminate these policies, practices and/or customs, do not discipline individuals who engage in such policies, practices and/or customs, or otherwise properly train police officers with regard to the constitutional and statutory limits on the exercise of their authority, and instead sanction and ratify these policies, practices and/or customs through their active encouragement of, deliberate indifference to and/or reckless disregard of the effect of said policies, practices and/or customs upon the constitutional rights of persons in the City of New York.
54. The aforementioned policies, practices and/or customs of failing to supervise, train, instruct and discipline police officers and encouraging their misconduct are evidenced by the police misconduct detailed herein. Specifically, pursuant to the aforementioned policies, practices and/or customs, defendant BOLOGNA felt empowered to exercise unreasonable and wholly unprovoked force against plaintiff BALL. Pursuant to the aforementioned policies, practices

and/or customs, the individual defendants failed to intervene in or report other defendants' violation of plaintiff's rights.

55. Plaintiff BALL's injuries were a direct and proximate result of the defendant CITY and the NYPD's wrongful de facto policies and/or well-settled and widespread customs and practices and of the knowing and repeated failure of the defendant CITY and the NYPD to properly supervise, train and discipline their police officers.
56. The actions of the individual police defendants resulted from and were taken pursuant to the following de facto policies and/or well-settled and widespread customs and practices of the CITY, which implemented by agents or employees of the NYPD, of employing wholly unprovoked and excessive force.
57. Defendants, collectively and individually, while acting under color of state law, acquiesced in a pattern of unconstitutional conduct by subordinate police officers and defendant BOLOGNA and were directly responsible for the violation of plaintiff BALL's constitutional rights.

JURY DEMAND

58. Plaintiff BALL demands a trial by jury in this action on each and every one of his damage claims.

WHEREFORE Plaintiff BALL demands judgment against the defendants individually and jointly and pray for relief as follows:

- a. That she be compensated for violation of her constitutional rights, pain, suffering, mental anguish, and humiliation; and
- b. That she be awarded punitive damages against the individual defendants; and
- c. That she be compensated for attorneys' fees and the costs and disbursements of this action; and

- d. For such other further and different relief as to the Court may seem just and proper.

Dated: New York, New York
August 8, 2013

Respectfully submitted,

/s/

By:

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