No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DAGHRIB SHAHEED, WAHEEDAH SHAHEED - PETITIONER

vs.

STEPHAN KROSKI, NEW YORK CITY POLICE OFFICER; IN AN INDIVIDUAL AND OFFICIAL CAPACITY, PAUL BLISS, NEW YORK CITY POLICE OFFICER; IN AN INDIVIDUAL AND OFFICIAL CAPACITY, LYDIA FIGUEROA, NEW YORK CITY POLICE OFFICER; IN AN INDIVIDUAL AND OFFICIAL CAPACITY, CITY OF NEW YORK – RESPONDENTS

Appendices: Volume 1 of 2

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of November, two thousand twenty.

Present:

JON O. NEWMAN,
ROBERT A. KATZMANN,
JOSEPH F. BIANCO,
Circuit Judges.

DAGHRIB SHAHEED, WAHEEDAH SHAHEED,

Plaintiffs-Appellants,

v. Nos. 19-90, 19-94

STEPHAN KROSKI, NEW YORK CITY POLICE OFFICER; IN AN INDIVIDUAL AND OFFICIAL CAPACITY, PAUL BLISS, NEW YORK CITY POLICE OFFICER; IN AN INDIVIDUAL AND OFFICIAL CAPACITY, JONATHAN RODRIGUEZ, NEW YORK CITY POLICE OFFICER; IN AN INDIVIDUALAND OFFICIAL CAPACITY, LYDIA FIGUEROA, NEW YORK CITY POLICE OFFICER; IN AN INDIVIDUAL AND OFFICIAL CAPACITY, CITY OF NEW YORK,

Defendants- Appellees,

POLICE OFFICER KISHON HICKMAN, POLICE OFFICER CHRISTOPHER MITCHELL, POLICE OFFICER ALEX PEREZ, POLICE OFFICER WILLIAM MORRIS, POLICE COMMISSIONER JAMES O'NEILL, POLICE OFFICER JOHN ESSIG, POLICE OFFICER RODNEY HARRISON, POLICE OFFICER ANDREW CAPUL, POLICE OFFICER ROBERT LUKACH, POLICE OFFICER WILSON ARAMBOLES, NEW YORK CITY POLICE DEPUTY INSPECTOR, IN AN INDIVIDUAL AND OFFICIAL CAPACITY, POLICE OFFICER FAUSTO PICHARDO, POLICE OFFICER TIMOTHY WILSON, POLICE OFFICER MARLON LARIN, POLICE OFFICER BRIAN FRANKLIN, POLICE OFFICER ERIC PAGAN, POLICE OFFICER HUGH MACKENZIE, POLICE OFFICER CHARLES EWINGS, POLICE SERGEANT MEDINA, POLICE OFFICER EDWARD SALTMAN, POLICE OFFICER DANIEL TROYER, POLICE OFFICER AWILDA MELHADO, POLICE OFFICER DARREN MCNAMARA, POLICE OFFICER ANTHONY SELVAGGI, POLICE OFFICER ETHAN ERLICH, POLICE OFFICER HENRY MEDINA, POLICE OFFICER EDWARD BIRMINGHAM, IN AN INDIVIDUAL AND OFFICIAL CAPACITY, POLICE OFFICER CLIFFORD PARKS, POLICE OFFICER ANTONIO RIVERA, JOHN DOE, NEW YORK CITY POLICE DETECTIVE (FICTITIOUS NAME); IN AN INDIVIDUAL AND OFFICIAL CAPACITY, JAMES DOE, NEW YORK CITY POLICE DETECTIVE (FICTITIOUS NAME); IN AN INDIVIDUAL AND OFFICIAL CAPACITY, JANE DOE, NEW YORK CITY POLICE OFFICER (FICTITIOUS NAME); IN AN INDIVIDUAL AND OFFICIAL CAPACITY,

Defendants.

For Plaintiffs-Appellants:	LAWRENCE P. LABREW, Esq., Law Office of Lawrence LaBrew, New York, NY.
For Defendants-Appellees:	ASHLEY R. GARMAN (Richard Dearing, Deborah A. Brenner, *on the brief*), Assistant Corporation Counsel, *for* James E. Johnson, Corporation Counsel of the City of New York, New York, NY.

Appeal from a judgment of the United States District Court for the Southern District of New York (Engelmayer, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Plaintiffs-appellants Daghrib and Waheedah Shaheed appeal from an order of the district court entering judgment in favor of the defendants-appellees New York City police officers. The Shaheeds brought several claims under 42 U.S.C. § 1983 arising out of two incidents, the first on June 6, 2012 and the second on June 29–30, 2012, during which the defendant officers entered the Shaheeds' apartment. The district court whittled down these claims at the motion to dismiss, summary judgment, and trial stages. The Shaheeds' remaining claims were rejected by the jury, and the district court then denied the Shaheeds' motion for judgment as a matter of law or a new trial. We construe[1] the Shaheeds' arguments in this appeal as challenges to (1) the district court's grant of summary judgment to the defendants on the Shaheeds' false arrest, false imprisonment, and malicious prosecution claims arising out of the June 29–30 incident, and (2) the jury's verdict in favor of the defendants on the Shaheeds' false arrest and false imprisonment claims arising out of the June 6 incident. Familiarity with the underlying facts and procedural history of the case is assumed.

[1] Plaintiffs' brief is deficient in several respects, most glaringly in its failure to comply with Federal Rule of Appellate Procedure 28's requirement that the brief specify which of the district court's many rulings plaintiffs challenge. *See* Fed. R. App. P. 28(a)(6) (requiring an appellant's brief to include, *inter alia*, "a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record"). Although "[a]n appellant's failure to comply with Rule 28 invites dismissal of the appeal," *Taylor v. Harbour Pointe Homeowners Ass'n*, 690 F.3d 44, 48 (2d Cir. 2012), we nonetheless exercise our discretion to proceed to the merits of the appeal "because plaintiffs' claims [we]re substantial enough to merit a trial, and declining to consider this appeal would unfairly penalize plaintiffs for [their attorney's] failings as an advocate," *Amnesty Am. v. Town of W. Hartford*, 361 F.3d 113, 133 (2d Cir. 2004). However, we place the plaintiffs' attorney, Lawrence LaBrew, "on notice that his continued failure to comply with Rule 28 or any other of the Rules of Appellate Procedure will result in discipline." *Id.*

As to the first set of challenges, "[w]e review a district court's grant of summary judgment *de novo*, construing the evidence in the light most favorable to the non-moving party and drawing all reasonable inferences in its favor." *Allianz Ins. Co. v. Lerner*, 416 F.3d 109, 113 (2d Cir. 2005).[2] "We will affirm the judgment only if there is no genuine issue as to any material fact, and if the moving party is entitled to a judgment as a matter of law." *Id.*

The district court dismissed plaintiffs' false arrest, false imprisonment, and malicious prosecution claims arising out of the June 29–30 incident on the ground that the officers had at least arguable probable cause to believe that plaintiffs had obstructed governmental administration. "A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act . . . ." N.Y. Penal Law § 195.05. Probable cause is a complete defense to false arrest, false imprisonment, and malicious prosecution claims, *see Betts v. Shearman*, 751 F.3d 78, 82 (2d Cir. 2014), and even "arguable" probable cause would support an independent defense of qualified immunity, *see Cerrone v. Brown*, 246 F.3d 194, 202–03 (2d Cir. 2001).

Plaintiffs appear to challenge the district court's probable cause determination on two grounds. First, plaintiffs argue that the Family Court order was not a search warrant and did not authorize defendants to enter their apartment during the June 29–30 incident, and so defendants therefore were not "performing an official function" within the meaning of § 195.05.

[2] Unless otherwise indicated, in quoting cases, all internal quotation marks, alterations, emphases, footnotes, and citations are omitted.

The problem with plaintiffs' argument is that New York Family Court orders provide an independent basis for police officers to enter peoples' homes. We have repeatedly recognized that, "[i]n child-abuse investigations, a Family Court order is equivalent to a search warrant for Fourth Amendment purposes." *Southerland v. City of New York*, 680 F.3d 127, 144 n.15 (2d Cir. 2012); *see also* N.Y. Fam. Ct. Act § 1034(2)(c) (vesting Family Court judges with the power to order investigations and providing that the procedure for issuing such orders "shall be the same as for a search warrant under . . . the criminal procedure law"); *Nicholson v. Scoppetta*, 344 F.3d 154, 176 (2d Cir. 2003) ("We have said previously that a Family Court order is probably the equivalent of a warrant for Fourth Amendment purposes."); *Tenenbaum v. Williams*, 193 F.3d 581, 602 (2d Cir. 1999) ("In the context of a seizure of a child by the State during an abuse investigation, . . . a court order is the equivalent of a warrant."). Moreover, New York law contemplates that instruments other than traditional search warrants may authorize entry for police officers who are assisting officers of the New York City Administration for Children's Services ("ACS"). N.Y. Fam. Ct. Act § 1034(2)(f) (stating that "law enforcement may not enter the premises where the child or children are believed to be present without a search warrant *or another constitutional basis for such entry*" (emphasis added)). The Family Court order accordingly authorized the defendants' entry during the June 29–30 incident, and the defendants were therefore "performing an official function" within the meaning of the obstructing governmental administration statute.

Second, plaintiffs argue that their refusal to open the door to their apartment was "pure speech" and thus did not satisfy the "physical force or interference" element of the obstructing governmental administration statute. N.Y. Penal Law § 195.05. Plaintiffs cite the Court of Appeals' decision in *Matter of Davan L.* for the proposition that "purely verbal interference may not satisfy the 'physical' component under Penal Law § 195.05." 689 N.E.2d 909, 910 (N.Y.

1997). They also cite a Criminal Court decision, *People v. Offen*, for the proposition that "it is no crime to refuse to open a door to police officers." 408 N.Y.S.2d 914, 916 (Crim. Ct. 1978).

But plaintiffs' refusal to allow officers to lawfully enter their home was *not* pure speech, and New York courts have found that one can obstruct governmental administration by refusing to comply with a search warrant.[3] In *People v. Paige*, for example, the Third Department upheld a defendant's conviction for obstructing government administration where that defendant refused to let police officers into the residence of a third party for whom police officers had an arrest warrant. 911 N.Y.S.2d 176, 179 (App. Div. 3d Dep't 2010), *aff'd*, 945 N.E.2d 1028 (N.Y. 2011). And in *People v. Nesbitt*, the Third Department (again) upheld a defendant's conviction where the defendant refused to let police officers into an apartment to effectuate arrest warrants against him. 894 N.Y.S.2d 545, 548–49 (App. Div. 3d Dep't 2010). Similarly, our decision in *Lennon v. Miller*, 66 F.3d 416 (2d Cir. 1995), further supports the conclusion that plaintiffs obstructed governmental administration in the instant case, and that their actions were not pure speech. In *Lennon*, the plaintiff was told by a police officer that her husband had a right to take the car she was using. *Id.* at 419. Instead of yielding the vehicle, the plaintiff entered it, locked the doors, attempted to start it, and refused to get out. *Id.* The police officer forcibly removed the plaintiff from the car and arrested her for obstructing governmental administration, and we held that there was arguable probable cause for her arrest because "[w]hen she refused to leave the car, it was reasonable for [the officers] to construe her actions as 'interference.'" *Id.* at 424.

Moving to the plaintiffs' second set of challenges, the Shaheeds appeal the district court's entry of judgment for defendants on plaintiffs' false arrest and false imprisonment claims arising

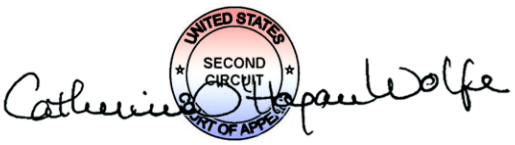
[3] *Offen* is accordingly distinguishable, as the police in that case had not obtained a warrant. *See* 408 N.Y.S.2d at 914–15.

out of the June 6 incident. Here, again, plaintiffs' primary contention is that the Family Court orders did not authorize defendants to enter their apartment during the June 6 incident. And for all the same reasons as above, plaintiffs are mistaken in their view that Family Court orders cannot authorize police officers to enter people's homes. Although plaintiffs fail to specify which aspects of the proceedings they are challenging—whether the district court's decision to instruct the jury that the Family Court orders authorized defendants to enter plaintiffs' apartment on June 6, the jury's verdict in favor of defendants, or the district court's denial of plaintiffs' motion for a new trial—their argument provides no basis for reversal of any of these decisions.[4]

We have reviewed the plaintiffs' remaining arguments and find in them no basis for reversal. For the reasons stated herein, the order and judgment of the district court are **AFFIRMED**.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk



[4] Neither did the district court err in precluding plaintiffs from challenging the validity of the Family Court orders. This argument bears on the district court's denial of plaintiffs' motion in limine, in which plaintiffs sought to introduce the testimony of Waheedah's minor daughter, and on the district court's denial of plaintiffs' motion for a new trial, in which plaintiffs argued that they should have been permitted to introduce evidence that Waheedah did not neglect her children. We review these decisions for abuse of discretion, *see Nimely v. City of New York*, 414 F.3d 381, 392–93 (2d Cir. 2005); *Leopold v. Baccarat, Inc.*, 174 F.3d 261, 269 (2d Cir. 1999), but regardless of the standard of review, the district court did not err. As the district court noted, the Family Court orders were facially valid, and there was no evidence that defendants were involved in obtaining the orders.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 22nd day of May, two thousand and nineteen,

Before: Susan L. Carney,
Circuit Judge.

Daghrib Shaheed,

Plaintiff - Appellant,

v.

Stephan Kroski, et al.,

Defendants- Appellees,

ORDER

Docket No. 19-90

Waheedah Shaheed,

Plaintiff - Appellant,

v.

City of New York, et al,

Defendants – Appellees.

Docket No. 19-94

IT IS HEREBY ORDERED that the above-captioned appeals are consolidated.

For the Court:
Catherine O'Hagan Wolfe,
Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

DAGHRIB SHAHEED,

Plaintiff,

-v-

THE CITY OF NEW YORK, NEW YORK CITY POLICE OFFICER STEPHAN KROSKI, NEW YORK CITY POLICE OFFICER PAUL BLISS, NEW YORK CITY POLICE OFFICER JONATHAN RODRIGUEZ, NEW YORK CITY POLICE OFFICER LYDIA FIGUEROA, NEW YORK CITY POLICE LIEUTENANT KISHON HICKMAN, NEW YORK CITY POLICE OFFICER CHRISTOPHER MITCHELL, NEW YORK CITY POLICE OFFICER ALEX PEREZ, NEW YORK CITY POLICE CHIEF WILLIAM MORRIS, NEW YORK CITY POLICE COMMISSIONER JAMES P. O'NEIL, NEW YORK CITY DEPUTY POLICE CHIEF JOHN ESSIG, NEW YORK CITY ASSISTANT CHIEF RODNEY HARRISON, NEW YORK CITY DEPUTY CHIEF ANDREW CAPUL, NEW YORK CITY POLICE INSPECTOR ROBERT LUKACH, NEW YORK CITY POLICE DEPUTY INSPECTOR WILSON ARAMBOLES, NEW YORK CITY POLICE INSPECTOR FAUSTO PICHARDO, NEW YORK CITY POLICE CAPTAIN TIMOTHY WILSON, NEW YORK CITY DEPUTY INSPECTOR MARLON LARIN, NEW YORK CITY POLICE CAPTAIN BRIAN FRANKLIN, NEW YORK CITY POLICE INSPECTOR ERIC PAGAN, NEW YORK CITY POLICE LIEUTENANT HUGH MACKENZIE, NEW YORK CITY POLICE SERGEANT CHARLES EWINGS, NEW YORK CITY POLICE SERGEANT MEDINA, NEW YORK CITY POLICE OFFICER EDWARD SALTMAN, NEW YORK CITY POLICE OFFICER DANIEL TROYER, NEW YORK CITY POLICE OFFICER AWILDA MELHADO, NEW YORK CITY POLICE DETECTIVE DARREN MCNAMARA, NEW YORK CITY POLICE DETECTIVE ANTHONY SELVAGGI, NEW YORK CITY POLICE DETECTIVE ETHAN ERLICH, NEW YORK CITY POLICE DETECTIVE HENRY MEDINA, NEW YORK CITY POLICE DETECTIVE EDWARD BIRMINGHAM,

14 Civ. 7424 (PAE);
15 Civ. 3480 (PAE)

OPINION & ORDER

NEW YORK CITY POLICE DETECTIVE CLIFFORD PARKS, NEW YORK CITY POLICE DETECTIVE ANTONIO RIVERA, NEW YORK CITY POLICE OFFICER JAMES DOE (fictitious name),

Defendants.

WAHEEDA SHAHEED,

Plaintiff,

-v-

THE CITY OF NEW YORK, POLICE OFFICER STEPHAN KROSKI, NEW YORK CITY POLICE OFFICER PAUL BLISS, NEW YORK CITY POLICE OFFICER JONATHAN RODRIGUEZ, NEW YORK CITY POLICE OFFICER LYDIA FIGUEROA, NEW YORK CITY POLICE LIEUTENANT KISHON HICKMAN, NEW YORK CITY POLICE OFFICER CHRISTOPHER MITCHELL, NEW YORK CITY POLICE OFFICER ALEX PEREZ, NEW YORK CITY POLICE CHIEF WILLIAM MORRIS, NEW YORK CITY POLICE COMMISSIONER JAMES P. O'NEIL, NEW YORK CITY DEPUTY POLICE CHIEF JOHN ESSIG, NEW YORK CITY ASSISTANT CHIEF RODNEY HARRISON, NEW YORK CITY DEPUTY CHIEF ANDREW CAPUL, NEW YORK CITY POLICE INSPECTOR ROBERT LUKACH, NEW YORK CITY POLICE DEPUTY INSPECTOR WILSON ARAMBOLES, NEW YORK CITY POLICE INSPECTOR FAUSTO PICHARDO, NEW YORK CITY POLICE CAPTAIN TIMOTHY WILSON, NEW YORK CITY DEPUTY INSPECTOR MARLON LARIN, NEW YORK CITY POLICE CAPTAIN BRIAN FRANKLIN, NEW YORK CITY POLICE INSPECTOR ERIC PAGAN, NEW YORK CITY POLICE LIEUTENANT HUGH MACKENZIE, NEW YORK CITY POLICE SERGEANT CHARLES EWINGS, NEW YORK CITY POLICE SERGEANT MEDINA, NEW YORK CITY POLICE OFFICER EDWARD SALTMAN, NEW YORK CITY POLICE OFFICER DANIEL TROYER, NEW YORK CITY POLICE OFFICER AWILDA MELHADO, NEW YORK CITY POLICE DETECTIVE DARREN

MCNAMARA, NEW YORK CITY POLICE DETECTIVE ANTHONY SELVAGGI, NEW YORK CITY POLICE DETECTIVE ETHAN ERLICH, NEW YORK CITY POLICE DETECTIVE HENRY MEDINA, NEW YORK CITY POLICE DETECTIVE EDWARD BIRMINGHAM, NEW YORK CITY POLICE DETECTIVE CLIFFORD PARKS, NEW YORK CITY POLICE DETECTIVE ANTONIO RIVERA, NEW YORK CITY POLICE OFFICER JAMES DOE (fictitious name),

Defendants.

PAUL A. ENGELMAYER, District Judge:

Plaintiffs Daghrib Shaheed and Waheedah Shaheed bring these consolidated actions under 42 U.S.C. § 1983 and state law against the City of New York (the "City") and numerous New York Police Department ("NYPD") officers. Plaintiffs bring claims of false arrest, false imprisonment, excessive force, deprivation of due process, intentional infliction of emotional distress, assault, battery, and malicious prosecution. They further allege that the City failed to properly train and supervise its officers.

Pending now is defendants' motion to dismiss Plaintiffs' First Amended Complaint ("FAC")[1] as to: (1) all claims against Lieutenant Kishon Hickman, Police Officer Christopher Mitchell, Police Officer Alex Perez, Police Chief William Morris, Police Commissioner James P. O'Neil, Deputy Police Chief John Essig, Chief Rodney Harrison, Deputy Chief Andrew Capul, Police Inspector Robert Lukach, Deputy Inspector Wilson Aramboles, Police Inspector Fausto

[1] This case began as two separate cases, which were later consolidated. Plaintiffs filed two non-identical versions of their amended complaint on separate dockets. No. 14 Civ. 7424, Dkt. 65; No. 15 Civ. 3480, Dkt. 56. The two versions allege the same essential facts but are told from the perspective of the respective plaintiffs. The Court consolidated the two cases by an order dated December 28, 2016. No. 14 Civ. 7424, Dkt. 57; No. 15 Civ. 3480, Dkt. 48. Defendants move to dismiss both complaints. The Court here refers to the two versions of the amended complaint collectively as the FAC.

Pichardo, Captain Timothy Wilson, Deputy Inspector Marlon Larin, Police Captain Brian Franklin, Police Inspector Eric Pagan, Lieutenant Hugh MacKenzie, Sergeant Charles Ewings, Sergeant Medina, Police Officer Edward Saltman, Police Officer Daniel Troyer, Police Officer Awilda Melhado, Detective Anthony Selvaggi, Detective Ethan Erlich, Detective Henry Medina, Detective Edward Birmingham, Detective Clifford Parks, and Detective Antonio Rivera (collectively, the "Newly Added Defendants");[2] and (2) all claims of municipal liability.

For the reasons that follow, the Court grants both motions.

I. Background

A. Factual Background[3]

Plaintiffs' claims arise from incidents on June 6, 2012; June 29, 2012, and June 30, 2012. The Court sets out the facts alleged as to each.

1. June 6, 2012

a. Entry into the Apartment

On June 6, 2012, at approximately 6:30 p.m., officers of the NYPD, led by Officer Stephan Kroski, knocked on the door of the home of Waheedah Shaheed and her daughter Daghrib Shaheed. No. 14 Civ. 7424, Dkt. 65 ¶ 49; No. 15 Civ. 3480, Dkt. 56 ¶ 50. Officers accompanying Kroski included Police Officer Paul Bliss, Police Officer Jonathan Rodriguez,

[2] In listing the names of the Newly Added Defendants in the motion to dismiss, defendants omit the name of newly added defendant Detective Darren McNamara. *See* No. 14 Civ. 7424, Dkt. 72 at 7. The Court, however, will *sua sponte* treat the motion to dismiss to applying to McNamara, as defendants' arguments about the lack of allegations of personal involvement apply equally to him.

[3] The Court draws these facts principally from the FAC, No. 14 Civ. 7424, Dkt. 65; No. 15 Civ. 3480, Dkt. 56. *See DiFolco v. MSNBC Cable LLC*, 622 F.3d 104, 111 (2d Cir. 2010) ("In considering a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), a district court may consider the facts alleged in the complaint, documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint."). The Court accepts all factual allegations in the FAC as true, drawing all reasonable inferences in Plaintiffs' favor. *See Koch v. Christie's Int'l PLC*, 699 F.3d 141, 145 (2d Cir. 2012).

Police Officer Christopher Mitchell, Police Lieutenant Kishon Hickman, and several unnamed "John Doe" officers. No. 14 Civ. 7424, Dkt. 65 ¶ 49.

Noah Shaheed—son of Waheedah and brother to Daghrib—asked Kroski if he had a warrant. Kroski responded that he did not need one. *Id.*; No. 15 Civ. 3480, Dkt. 56 ¶ 51. The defendant officers then forced their way into plaintiffs' apartment "without the authority of either a search or arrest warrant." No. 15 Civ. 3480, Dkt. 56 ¶ 52.

Once inside the apartment, Kroski informed Daghrib that the officers had come to the apartment to see Daghrib's "babies." No. 14 Civ. 7424, Dkt. 65 ¶ 52. Daghrib did not have any children and told this to Kroski. *Id.* ¶¶ 49, 52. Daghrib then asked the officers to leave if they did not have a warrant. Kroski again asserted that he did not need one. No. 15 Civ. 3480, Dkt. 56 ¶ 53.

b. Detention of Daghrib Shaheed

An officer identified only as "John Doe" in the FAC grabbed Daghrib and dragged her into the kitchen of her apartment. No. 14 Civ. 7424, Dkt. 65 ¶ 53. Daghrib asked Doe if she was under arrest; he said no but then put handcuffs on Daghrib. *Id.* ¶¶ 54–55. During this time, officers searched Daghrib's bedroom and damaged her bed. *Id.* ¶ 56.

Bliss then entered the kitchen and asked Daghrib where her children were. *Id.* ¶ 57. Daghrib again stated that she did not have any children. *Id.* Bliss grabbed her arm and forcefully pulled her out of the apartment, refusing her request for time to put on her shoes. *Id.* Officer Bliss stated, "You don't need shoes savage." *Id.* Bliss also told fellow officers, "Let's take this savage in," and "This monkey needs to shut up." *Id.* ¶ 58. While transporting Daghrib to the 25th Precinct, he also said to her, "You know what you savage bitch, you can't even take

care of the babies that you have." *Id.* When the vehicle arrived at the 25th Precinct, Officer Bliss "yanked" Daghrib out of the vehicle, causing her to hit her head against the car. *Id.* ¶ 59.

Doe then searched Daghrib and took her cell phone, which contained video footage of the events of June 6, 2012. *Id.* ¶ 60. The cell phone was never returned to Daghrib. *Id.*

After Daghrib asked to be taken to the hospital, Rodriguez escorted her to Mount Sinai Hospital, where she was handcuffed to a bed. *Id.* ¶ 61. Daghrib was suffering from pain in her left arm and had injuries including "a bone bruise, a shoulder joint tear, substantial pain and suffering and mental distress." *Id.* She was then brought back to the 25th Precinct and placed in a cell, still without shoes. *Id.* ¶ 62.

After two days, she was arraigned and charged with (1) resisting arrest in violation of New York Penal Law § 205.30; and (2) obstruction of governmental administration in the second degree in violation of New York Penal Law § 195.05. *Id.* ¶ 64. After the events of June 6, 2012, Kroski would "from time to time . . . follow [Daghrib] in his police car when he would see [her] in public." *Id.* ¶ 66. On September 18, 2013, the case against Daghrib was dismissed on the merits. *Id.* ¶ 65.

c. Detention of Waheedah Shaheed

At the time of the officers' entry into the apartment, Waheedah was in her bedroom. No. 15 Civ. 3480, Dkt. 56 ¶ 54. Waheedah suffers from health conditions, including a terminal cancer (end stage multiple myeloma) and a heart condition (severe mitral regurgitation). *Id.* ¶ 49. She also requires a rollator to walk. *Id.*

Kroski went to Waheedah's bedroom door and twice stated, "Get up you're coming with me." *Id.* ¶ 54. When Waheedah asked Kroski if he had a warrant, Kroski stated, "Well no." *Id.*

Waheedah refused to go with Kroski, got out of bed, and told him to leave her home. *Id.* ¶¶ 54, 56.

Kroski then grabbed Waheedah by both arms and threw her to the floor of her apartment. *Id.* ¶ 57. As Waheedah attempted to get back on her feet, Kroski punched Waheedah in the eye, causing Waheedah to fall once more to the floor of her apartment. *Id.* Kroski then began to choke Waheedah. *Id.* Fearing that Kroski would kill her, Waheedah squeezed Kroski's testicles in an act of self-defense. *Id.* An unnamed officer in the room removed Kroski from atop Waheedah and was forced to restrain Kroski, who again attempted to attack Waheedah. *Id.* ¶ 58. Kroski then smashed Waheedah's rollator. *Id.*

Officer Aguilar, who was also in the room at this time, handcuffed Waheedah. *Id.* ¶ 59. When Waheedah asked if she was under arrest, Aguilar responded that she was not. *Id.* Aguilar simply stated that "they" had instructed the officers to detain her. *Id.* Waheedah asked who "they" were. Aguilar said he did not know. *Id.*

Bleeding from the mouth and having difficulty breathing, Waheedah asked to be taken to the hospital. *Id.* ¶ 60. She made her previous health conditions known to one of the officers. *Id.* Notwithstanding her request, the officers removed Waheedah from her apartment and took her to the precinct, where she was detained in a jail cell. *Id.* ¶ 61.

As the officers escorted Waheedah out of her apartment unit, she noticed more NYPD officers lining the hallway. *Id.* When she was escorted out of her apartment building, Waheedah observed at least ten police cars parked in the vicinity. *Id.*

Waheedah again asked to be taken to a hospital. *Id.* Her request again was ignored. *Id.* It was not until the following morning, June 7, 2012, that Waheedah was removed from her cell and transported to a hospital. *Id.* ¶ 62. Waheedah remained in the hospital until June 16, 2012.

Id. ¶ 63. Waheedah was handcuffed, shackled at the ankles, and watched by an NYPD officer during the entire hospital stay. *Id.* At no time before or during her time at the hospital was Shaheed brought before a judge. *Id.*

On June 16, 2012, Waheedah was given a Desk Appearance Ticket that charged her with Assault in the Second Degree, a Class D felony, for her alleged attack on Kroski. The ticket instructed her to appear in court on July 26, 2012. *Id.* ¶ 64. On September 18, 2013, the case against Waheedah was dismissed on the merits. *Id.* ¶ 65.

2. June 29, 2012

On June 29, 2012, at around 6:30 PM, Detective Darren McNamara knocked on the Shaheeds' apartment door. *Id.* ¶ 66. Before opening the door, Noah Shaheed asked McNamara if he had a warrant. *Id.* McNamara responded in the affirmative, but failed to produce any document authorizing entry. *Id.* When Waheedah refused to open the door, McNamara said something to the effect of, "open the door and we can do this the easy way, or we can do this the hard way, and it'll be wors[e] than June 6th." *Id* ¶ 67. After entry was refused, McNamara and the unnamed officers who accompanied him continued banging on the door for two hours, at which point Shaheed's apartment's electricity and air conditioning were terminated. *Id.* ¶ 68; *see also* No. 14 Civ. 7424, Dkt. 65 ¶¶ 68–70.

3. June 30, 2012

On June 30, 2012, an emergency services unit forced its way into the apartment. No. 15 Civ. 3480, Dkt. 56 ¶ 69. Upon entry, the officers pointed assault rifles at the apartment's occupants and demanded they get on the floor. *Id.* The officers damaged property inside the residence and killed the family's pet hamster. *Id.* ¶ 70. One officer stated that they planned "to tear the walls down to find your brother." Dkt. No. 7424, No. 65 ¶ 71.

Both Waheedah and Daghrib were searched and handcuffed inside the apartment. *Id.* ¶ 72; No. 15 Civ. 3480, Dkt. 56 ¶ 70. They were both physically removed from her building, where again they noticed several police officers in the vicinity of the building's parking lot. Dkt. No. 7424, No. 65 ¶ 72; No. 15 Civ. 3480, Dkt. 56 ¶ 70.

Daghrib was placed into an ambulance and taken to Harlem Hospital, where she was later released from custody. Dkt. No. 7424, No. 65 ¶¶ 73–74.

Waheedah was taken first to Harlem Hospital and then to the precinct. No. 15 Civ. 3480, Dkt. 56 ¶ 71. Later in the afternoon, Waheedah was taken from the hospital to the precinct, where she was again incarcerated. *Id.* ¶ 72. In her jail cell, Waheedah experienced pain and difficulty breathing, but was given neither her pain nor her heart medications. *Id.*

The next day, July 1, 2012, Waheedah was transported to 100 Centre Street in New York County to be arraigned. *Id.* ¶ 73. Before she could be arraigned, the severity of Shaheed's pain required her to be transferred to the Bellevue Hospital emergency room. *Id.* There, Troyer read aloud her medical assessment to other NYPD officers in the precinct. *Id.* ¶ 74. The assessment made clear that Waheedah was suffering from stage four cancer and congestive heart failure. *Id.*

Kroski arrived at Bellevue Hospital to transport Waheedah back to the precinct and said to her, "Don't look at me cause it might set me off, and I don't know what I'll do to you." *Id.* ¶ 73. Waheedah spent another night in the precinct. *Id.*

The next day, July 2, 2012, Waheedah was arraigned on a charge of obstruction of governmental administration in the second degree in violation of New York Penal Law § 195.05 for failing to provide entry to McNamara and the unnamed officers who accompanied him during the June 29, 2012 arrest. *Id.* ¶¶ 74–75. On April 2, 2014, this case against Waheedah was dismissed on the merits and sealed. *Id.* ¶ 77.

B. Procedural History

On September 12, 2014, Daghrib filed her initial complaint in this action, bringing claims against the City as well as Kroski, Bliss, Rodriguez, Officer Lydia Figueroa, and several "Doe" officers. No. 14 Civ. 7424, Dkt. 1. On March 4, 2015, defendants filed an answer. No. 14 Civ. 7424, Dkt. 15.

Also on March 4, 2015, the case was selected for mediation. On March 15, 2015, a final report of the mediator stated that mediation had been unsuccessful. No. 14 Civ. 7424, Dkt. 18.

On May 4, 2015, Waheedah filed her initial complaint in this action, also bringing claims against the City as well as Kroski, Bliss, Rodriguez, Figueroa, and several "Doe" officers. No. 15 Civ. 3480, Dkt. 1.

On December 28, 2016, this Court consolidated the two cases and set a deadline for the filing of an amended complaint. No. 14 Civ. 7424, Dkt. 57; No. 15 Civ. 3480, Dkt. 48.

On January 9, 2017, Daghrib filed her version of the amended complaint. No. 14 Civ. 7424, Dkt. 60. On January 20, 2017, Waheedah filed her version of the amended complaint, No. 15 Civ. 3480, Dkt. 56. As noted, the Court treats these two filings, collectively, as the FAC. The FAC added claims against the Newly Added Defendants.

On January 24, 2017, defendants filed a partial motion to dismiss, No. 14 Civ. 7424, Dkt. 70; No. 15 Civ. 3480, Dkt. 61, as well as a supporting memorandum of law, No. 14 Civ. 7424, Dkt. 72; No. 15 Civ. 3480, Dkt. 60, and declaration, No. 14 Civ. 7424, Dkt. 71; No. 15 Civ. 3480, Dkt. 62. On February 7, 2017, plaintiffs filed a memorandum of law in opposition to the partial motion to dismiss. No. 14 Civ. 7424, Dkt. 75; No. 15 Civ. 3480, Dkt. 65.

II. Applicable Legal Standards

To survive a motion to dismiss under Rule 12(b)(6), a complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S.

544, 570 (2007). A claim has "facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A complaint is properly dismissed where, as a matter of law, "the allegations in a complaint, however true, could not raise a claim of entitlement to relief." *Twombly*, 550 U.S. at 558.

In considering a motion to dismiss, a district court must "accept[ ] all factual claims in the complaint as true, and draw[ ] all reasonable inferences in the plaintiff's favor." *Lotes Co., Ltd. v. Hon Hai Precision Indus. Co.*, 753 F.3d 395, 403 (2d Cir. 2014) (quoting *Famous Horse Inc. v. 5th Ave. Photo Inc.*, 624 F.3d 106, 108 (2d Cir. 2010)). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Iqbal*, 556 U.S. at 678. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* "[R]ather, the complaint's *factual* allegations must be enough to raise a right to relief above the speculative level, *i.e.*, enough to make the claim plausible." *Arista Records, LLC v. Doe 3*, 604 F.3d 110, 120 (2d Cir. 2010) (quoting *Twombly*, 550 U.S. at 555, 570) (internal quotation marks omitted) (emphasis in *Arista Records*).

III. Discussion

Defendants seek dismissal of (1) all claims against the Newly Added Defendants, on the ground that the FAC fails to allege the personal involvement of these defendants in the alleged misconduct; and (2) the municipal liability claim against the City, on the ground that the FAC fails to state a claim under *Monell v. Department of Social Services*, 436 U.S. 658 (1978). The Court addresses these issues in turn.

A. Claims Against the Newly Added Defendants

The FAC fails to state a claim against the Newly Added Defendants.

Section 1983 provides redress for a deprivation of federally protected rights by persons acting under color of state law. 42 U.S.C. § 1983. To prevail on a § 1983 claim, a plaintiff must establish (1) the violation of a right, privilege, or immunity secured by the Constitution or laws of the United States (2) by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 155–57 (1978).

To establish personal liability under § 1983, a plaintiff must show that the defendant was "personally or directly involved in the violation, that is, that there was 'personal participation by one who ha[d] knowledge of the facts that rendered the conduct illegal.'" *Harris v. Westchester Cty. Dep't of Corr.*, No. 06 Civ. 2011 (RJS), 2008 WL 953616, at *9 (S.D.N.Y. Apr. 3, 2008) (quoting *Provost v. City of Newburgh*, 262 F.3d 146, 155 (2d Cir. 2001)); *accord Farrell v. Burke*, 449 F.3d 470, 484 (2d Cir. 2006) ("It is well settled in this Circuit that personal involvement of defendants in alleged constitutional deprivations is a prerequisite to an award of damages under § 1983." (internal quotation marks and citation omitted)).

Personal involvement in a § 1983 violation may be shown by evidence that the defendant: (1) directly participated in the alleged violation; (2) failed to remedy the violation after learning about it; (3) created a policy or custom under which the violation occurred; (4) was grossly negligent in supervising subordinates who caused the unlawful condition or event; or (5) exhibited deliberate indifference by failing to act on information indicating that the violation was occurring. *Colon v. Coughlin*, 58 F.3d 865, 873 (2d Cir. 1995); *Washington v. Kelly*, No. 03 Civ. 4638 (SAS), 2004 WL 830084, at *3 (S.D.N.Y. Apr. 13, 2004).

Here, plaintiffs' § 1983 claims against the individual defendants sound in false arrest and imprisonment, excessive force, deprivation of due process, and malicious prosecution. Yet the

FAC does not allege any facts indicating the personal involvement of the Newly Added Defendants in any of the claimed constitutional violations.

In fact, of the entire aforementioned list of Newly Added Defendants, the FAC only mentions actions of Troyer, Hickman, Mitchell, and McNamara. And there is no allegation that any of these officers played any part in any of the alleged violations. None are alleged to have ever entered plaintiffs' apartment, detained or had any physical contact with either plaintiff, or had any role in their prosecutions. As to Troyer, he is alleged only to have informed other police officers of Waheedah's heart condition and cancer on July 1, 2012 (after Waheedah disclosed these conditions to officers on June 6, 2012). No. 15 Civ. 3480, Dkt. 56 ¶¶ 60, 74. As to McNamara, he is alleged only to have knocked on plaintiffs' door on June 29, 2012, and demanded entry unsuccessfully. No. 14 Civ. 7424, Dkt. 65 ¶¶ 68–70; No. 15 Civ. 3480, Dkt. 56 ¶¶ 66–68. And as to Hickman and Mitchell, these officers are alleged only to have "accompanied" Kroski to the door of plaintiffs' apartment when Kroski began "banging on the door" and "demanding entry." No. 14 Civ. 7424, Dkt. 65 ¶ 49. The FAC contains no allegations that Hickman and Mitchell took any action after the officers entered the apartment. The FAC does not even clearly allege that Hickman and Mitchell ever entered the apartment; it describes a general group of officers identified only as "Defendant Police Officers" entering, *id.*, but it also notes that, when Waheedah was removed from the apartment, she observed that "several police officers" were still outside, "lin[ing] the hallway outside of her apartment," No. 15 Civ. 3480, Dkt. 56 ¶ 61.

These allegations are insufficient to establish personal liability under § 1983 as to any of the Newly Added Defendants. And with respect to the claims brought under state law—which include false arrest, false imprisonment, intentional infliction of emotional distress, malicious

prosecution, assault, and battery—the FAC fails too to state these claims, which derive from acts allegedly committed in the course of plaintiffs' arrests and prosecutions and, as discussed above, the FAC does not allege that any of the Newly Added Defendants personally participated in plaintiffs' arrests and prosecutions. *See Hardee v. City of N.Y.*, No. 10 Civ. 7743 (PAE), 2014 WL 4058065, at *8 n. 4 (S.D.N.Y. Aug. 14, 2014) (dismissing assault and battery claim against an individual officer where it was "undisputed that [the officer] did not take part in [the plaintiff's] arrest" and the plaintiff's "assault and battery claim stem[med] from acts allegedly committed during his arrest").

Accordingly, the Court grants defendants' motion to dismiss all claims brought against the Newly Added Defendants.

B. Municipal Liability Claim Against the City of New York

The Court also holds that the FAC fails to state a municipal liability claim against the City.

Municipal liability in a § 1983 action may not be based on a theory of *respondeat superior* or vicarious liability. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978). Rather, to hold a municipality liable under § 1983 for the unconstitutional actions of its employees, the plaintiff must prove that there was a municipal policy or custom that directly caused her to be subjected to a constitutional violation. *Wray v. City of New York*, 490 F.3d 189, 195 (2d Cir. 2007); *see Amnesty Am. v. Town of W. Hartford*, 361 F.3d 113, 125 (2d Cir. 2004) ("[C]onstitutional torts committed by city employees without official sanction or authority do not typically implicate the municipality in the deprivation of constitutional rights, and therefore the employer-employee relationship is in itself insufficient to establish the necessary causation." (internal quotation marks and citation omitted)).

A plaintiff can establish the existence of a policy or custom by demonstrating:

> (1) a formal policy officially endorsed by the municipality; (2) actions taken by government officials responsible for establishing the municipal policies that caused the particular deprivation in question; (3) a practice so consistent and widespread that, although not expressly authorized, constitutes a custom or usage of which a supervising policy-maker must have been aware; or (4) a failure by policymakers to provide adequate training or supervision to subordinates to such an extent that it amounts to deliberate indifference to the rights of those who come into contact with the municipal employees.

Brandon v. City of New York, 705 F. Supp. 2d 261, 276–77 (S.D.N.Y. 2010) (collecting cases) (internal citations omitted); *Calderon v. City of New York*, 138 F. Supp. 3d 593, 611–12, No. 14 Civ. 1082 (PAE), 2015 WL 5802843, at *14 (S.D.N.Y. Oct. 5, 2015), *reconsideration in part granted on other grounds*, 2015 WL 6143711 (S.D.N.Y. Oct. 19, 2015); *Spears v. City of New York*, No. 10 Civ. 3461 (JG), 2012 WL 4793541, at *11 (E.D.N.Y. Oct. 9, 2012). It is well established that an allegation of "a single incident, especially one involving only actors below the policy-making level," does not "'suffic[e] to impose liability under *Monell*, unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker.'" *Simpson v. Town of Warwick Police Dep't*, 159 F. Supp. 3d 419, 439 (S.D.N.Y. 2016) (quoting *Oklahoma City v. Tuttle*, 471 U.S. 808, 823–24 (1985)); *accord Brogdon v. City of New Rochelle*, 200 F. Supp. 2d 411, 427 (S.D.N.Y. 2002) ("A single incident by itself is generally insufficient to establish the affirmative link between the municipal policy or custom and the alleged unconstitutional violation.").

Here, assuming *arguendo* that plaintiffs' can establish that any individual defendant officer violated plaintiffs' rights, the *Monell* claim still fails because the FAC does not allege that the alleged constitutional violations resulted from a municipal policy, custom, or practice. The FAC does not claim, for example, that New York City had an official or *de facto* policy of arresting individuals in their homes without warrants, or of using excessive force, or that repeated incidents of similar misconduct by New York City police officers reveal such a custom.

The FAC also does not allege that Kroski or any officer involved in the events of June and July 2012 were municipal policymakers.

To be sure, the FAC does contain conclusory allegations that "proper training or supervision would have enabled Defendant New York City Police Officers to understand that" they could not enter Plaintiffs' home without a warrant and use excessive force. *See, e.g.*, No. 15 Civ. 3480, Dkt. 56 ¶ 132–33. But plaintiffs "cannot, through conclusory allegations, merely assert the existence of a municipal policy or custom"; rather, they "'must allege facts tending to support, at least circumstantially, an inference that such a municipal policy or custom exists.'" *Masciotta v. Clarkstown Cent. Sch. Dist.*, 136 F. Supp. 3d 527, 546 (S.D.N.Y. 2015) (quoting *Santos v. New York City*, 847 F. Supp. 2d 573, 576 (S.D.N.Y. 2012)); *see also id.* ("[M]ere allegations of a municipal custom, a practice of tolerating official misconduct, or inadequate training and/or supervision are insufficient to demonstrate the existence of such a custom.").

Moreover, inadequate supervision may serve as the basis for § 1983 liability only "where a policymaking official exhibits deliberate indifference to constitutional deprivations caused by subordinates, such that the official's inaction constitutes a 'deliberate choice,' that acquiescence may 'be properly thought of as a city policy or custom that is actionable under § 1983.'" *Amnesty Am.*, 361 F.3d at 126 (quoting *City of Canton v. Harris*, 489 U.S. 378, 388 (1989) (internal quotation marks omitted)). Deliberate indifference "may be inferred where 'the need for more or better supervision to protect against constitutional violations was obvious,' but the policymaker 'fail[ed] to make meaningful efforts to address the risk of harm to plaintiffs.'" *Cash v. Cty. of Erie*, 654 F.3d 324, 334 (2d Cir. 2011) (quoting *Vann v. City of New York*, 72 F.3d 1040, 1049 (2d Cir. 1995); *Reynolds v. Giuliani*, 506 F.3d 183, 192 (2d Cir. 2007)); *accord Missel v. Cty. of*

Monroe, 351 F. App'x 543, 546 (2d Cir. 2009) (summary order). Here, the FAC makes no concrete allegations as to the deliberate indifference of any policymaking official.

In their opposition brief, plaintiffs cite *Turpin v. Mailet*, in which the Second Circuit suggested that "a single, unusually brutal or egregious beating administered by a group of municipal employees may be sufficiently out of the ordinary to warrant an inference that it was attributable to inadequate training or supervision amounting to deliberate indifference . . . on the part of officials in charge." 619 F.2d 196, 202 (2d Cir. 1980). The FAC, however, depicts a scenario in which an individual municipal employee—rather than the "group of municipal employees" contemplated in *Turpin*, *see id.*—administered a beating. In fact, the FAC makes clear that Kroski's attack on Waheedah was an individual effort, as it describes how another officer in the room restrained Kroski from continuing his attack. 15 Civ. 3480, Dkt. 56 ¶ 58. The other alleged uses of force in the FAC are primarily incidents in which a sole officer grabbed or dragged Plaintiffs roughly. *See, e.g.*, 14 Civ. 7424, Dkt. 65 ¶ 53 (Doe "grabbed" Daghrib and "dragged" her into the kitchen); *id.* ¶ 57 (Bliss "grabbed [Daghrib] by the arm, and forcefully removed [her] from [her] apartment"); *id* ¶ 59 (Bliss "yanked [Daghrib] out of the car causing [her] to hit her head against the car while being pulled out of the vehicle"). The fact that an individual officer "may be unsatisfactorily trained will not alone suffice to fasten liability on the city, for the officer's shortcomings may have resulted from favors other than a faulty training program." *City of Canton v. Harris*, 489 U.S. 378, 390–91 (1989). *Turpin* is thus inapposite: the allegations of force in the FAC, even if they held to be excessive force, are insufficient to establish the City's liability.

Plaintiffs also liken this case to *Bordanaro v. McLeod*, in which the First Circuit upheld a verdict against a municipality after its police force's night watch, without a warrant, shot down

the plaintiffs' motel room door and proceeded to brutally beat the plaintiffs inside the motel room. 871 F.2d 1151, 1154 (1st Cir. 1989). *Bordanaro* has yet to be adopted in this Circuit and thus is "not binding precedent on this Court." *Grays v. City of New Rochelle*, 354 F. Supp. 2d 323, 325 (S.D.N.Y. 2005). And *Bordanaro* is distinguishable. There, the "entire night watch," not a single officer as alleged here, participated in the beating the plaintiffs. 871 F.2d at 1156. In language relevant here, *Bordanaro* stated that "evidence of a single event alone cannot establish a municipal custom or policy" unless "other evidence of the policy has been presented and the 'single incident' in question involves the concerted action of a large contingent of individual municipal employees." *Id.* at 1156–57; *see Powell v. Murphy*, 972 F. Supp. 2d 335, 345 (E.D.N.Y. 2013), *aff'd*, 593 F. App'x 25 (2d Cir. 2014) ("Plaintiff . . . overlooks the point that *Bordanaro* also held that a plaintiff cannot establish a municipal policy or custom where, as here, he presents evidence concerning only a single event."). The plaintiffs in *Bordanaro* also adduced evidence permitting a factfinder to infer that the particular police force had developed a "widespread" and "flagrant" practice of breaking down people's doors and entering their homes without warrants. *See id.* at 1157. No such allegations have been made here.

Accordingly, the Court holds that the FAC fails to state a *Monell* claim against the City.

CONCLUSION

For the reasons above, the Court grants defendants' motion to dismiss all claims against the Newly Added Defendants, including Detective Darren McNamara, and to dismiss plaintiffs' municipal liability claim against the City.

The Clerk of the Court is respectfully directed to close the motions pending at No. 14 Civ. 7424, Dkt. 70; and No. 15 Civ. 3480, Dkt. 61.

SO ORDERED.

Paul A. Engelmayer
United States District Judge

Dated: July 17, 2017
New York, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAGHRIB SHAHEED,

Plaintiff,

-v-

THE CITY OF NEW YORK, NEW YORK CITY POLICE OFFICER STEPHAN KROSKI, NEW YORK CITY POLICE OFFICER PAUL BLISS, NEW YORK CITY POLICE OFFICER JONATHAN RODRIGUEZ, and NEW YORK CITY POLICE OFFICER LYDIA FIGUEROA,

Defendants.

WAHEEDAH SHAHEED,

Plaintiff,

-v-

THE CITY OF NEW YORK, NEW YORK CITY POLICE OFFICER STEPHAN KROSKI, NEW YORK CITY POLICE OFFICER PAUL BLISS, NEW YORK CITY POLICE OFFICER JONATHAN RODRIGUEZ, and NEW YORK CITY POLICE OFFICER LYDIA FIGUEROA,

Defendants.*

14 Civ. 7424 (PAE);
15 Civ. 3480 (PAE)

OPINION & ORDER

* The Clerk of Court is respectfully directed to amend the captions for these consolidated cases as set forth above.

PAUL A. ENGELMAYER, District Judge:

Plaintiffs Daghrib Shaheed ("Daghrib") and Waheedah Shaheed ("Waheedah") bring these consolidated actions under 42 U.S.C. § 1983 and New York state law against the City of New York (the "City") and several New York Police Department ("NYPD") officers. As a result of this Court's prior decision dismissing plaintiffs' federal claims for municipal liability, plaintiffs' remaining claims are for false arrest, false imprisonment, deprivation of substantive due process, excessive force, malicious prosecution, intentional infliction of emotional distress, assault, and battery. These claims arise from two incidents: one on June 6, 2012 (the "June 6 incident"), and the other taking place between June 29 and June 30, 2012 (the "June 29–30 incident").

Pending now is defendants' motion for partial summary judgment. Defendants seek summary judgment in their favor on: (1) all claims arising out of the June 29–30 incident; (2) both plaintiffs' claims for deprivation of substantive due process and intentional infliction of emotional distress arising out of the June 6 incident; and (3) Daghrib's claims for excessive force, assault, and battery arising out of the June 6 incident.

For the reasons that follow, the Court grants the motion in all respects except insofar as it seeks dismissal of Daghrib's claims for excessive force, assault, and battery arising out of the June 6 incident. The effect of this decision is to dismiss all claims arising out of the June 29–30 incident and to preserve for trial all claims arising out of the June 6 incident save the claims for deprivation of substantive due process and intentional infliction of emotional distress.

I. Background

A. Factual Background[1]

[1] As explained in the Court's prior opinion, this case began as two separate cases, which were later consolidated. As a result, each plaintiff's amended complaint appears on a separate docket.

1. The Parties

In June 2012, plaintiff Waheedah Shaheed lived with her four children: plaintiff Daghrib Shaheed, age 25; Noah Shaheed, age 20; I.O., age 15; and A.A., age 11. Pl. Counter 56.1 ¶¶ 4–5. At all relevant times, the family lived together in an apartment on East 129th Street in Manhattan. *Id.* ¶ 6. Waheedah and Daghrib were tenants on the lease of the apartment. *Id.* ¶ 7.

At all relevant times, each of the four individual defendants was an NYPD police officer. *Id.* ¶ 3. Each was assigned to the 25th Precinct in Harlem. *Id.*

2. The ACS Investigation

On May 29, 2012, officials at I.O.'s school reported seeing marks on I.O.'s arm, which they believed resulted from self-inflicted harm. *Id.* ¶ 8. The school requested that Waheedah take I.O. to receive medical care. *Id.* ¶ 9; *see also* Arko Decl. Ex. I ("Waheedah Dep.") at 80. Waheedah, who suffers from several health conditions, including cancer (multiple myeloma) and

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See No. 14 Civ. 7424, Dkt. 65; No. 15 Civ. 3480, Dkt. 56. Apart from the complaints, which allege the same essential facts but raise slightly different claims, the materials on each docket are identical as relevant here. Accordingly, unless otherwise specified, all docket numbers cited in this opinion refer to the docket in 14 Civ. 7424.

The Court draws its account of the underlying facts from the parties' respective submissions on the motion for summary judgment, including defendants' Statement Pursuant to Local Civil Rule 56.1, *see* Dkt. 98 ("Def. 56.1"); plaintiffs' counter-statement, *see* Dkt. 108 ("Pl. Counter 56.1"); the Declaration of Christopher G. Arko in support of defendants' motion, Dkt. 99 ("Arko Decl."), with attached exhibits; and the declaration of Lawrence P. LaBrew in opposition to defendants' motion, Dkt. 110 ("LaBrew Decl."), with attached exhibits.

Citations to a party's 56.1 statement incorporate the evidentiary materials cited therein. When facts stated in a party's 56.1 statement are supported by testimonial, video, or documentary evidence and not denied by the other party, or denied by a party without citation to conflicting admissible evidence, the Court finds such facts to be true. *See* S.D.N.Y. Local Civil Rule 56.1(c) ("Each numbered paragraph in the statement of material facts set forth in the statement required to be served by the moving party will be deemed to be admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in statement required to be served by the opposing party."); *id.* Rule 56.1(d) ("Each statement by the movant or opponent . . . controverting any statement of material fact[] must be followed by citation to evidence which would be admissible, set forth as required by Fed. R. Civ. P. 56(c).").

a heart condition (mitral regurgitation), explained that she was not feeling well enough to go and that school officials were overreacting. Waheedah Dep. at 43, 80. After Waheedah refused to come to the school, I.O. was sent by ambulance to the hospital with the school nurse. *See* Pl. Counter 56.1 ¶ 9; Waheedah Dep. at 80–81.

Although the hospital released I.O. to Noah, *see* Waheedah Dep. at 81, the New York City Administration for Children's Services ("ACS") opened an investigation against Waheedah for inadequate medical care and inadequate guardianship, Pl. Counter 56.1 ¶ 10. Between May 29, 2012 and June 6, 2012, ACS Child Protective Specialist Shannon Aste called and visited Waheedah several times to inform her of the investigation and to discuss the allegations. Pl. Counter 56.1 ¶ 11. At each visit, Waheedah refused to let Aste into her apartment. *Id.*

On June 5, 2012, Aste told Waheedah over the phone that Waheedah was required to appear at a child safety conference the next day, and that her failure to appear might result in ACS's seeking court intervention. Arko Decl. Ex. K ("Aste Decl.") at ¶ 10. Waheedah did not appear at the conference. *Id.* ¶ 11.

On June 6, 2012, ACS filed a neglect petition in Manhattan Family Court. *Id.* ¶ 12. That same day, Manhattan Family Court Judge Clark V. Richardson signed an Order on Application for Temporary Removal of Child. It authorized ACS to remove I.O. and A.A. from their mother's home. Arko Decl. Ex. L. Judge Richardson found that ACS had made reasonable efforts to eliminate the need for removal notwithstanding Waheedah's resistance, and that removal was necessary due to "imminent danger to [the] child." *Id.* at 2.

3. The June 6 Incident

a. Entry into the Apartment

On June 6, 2012, at approximately 6:30 p.m., Officers Stephan Kroski and Jonathan Rodriguez received a radio transmission advising that ACS workers needed assistance executing

a removal order at the Shaheed apartment. Pl. Counter 56.1 ¶ 14. The officers responded to the building and met with several ACS workers outside. *Id.* ¶ 15. The ACS workers informed the officers that they had an order permitting them to remove children from an apartment in the building. *Id.* ¶ 16. They showed Kroski a document that he reviewed and understood to be a removal order. *Id.*

The officers and ACS workers entered the building. Kroski knocked on the apartment door. *Id.* ¶¶ 17, 19. At this time, only Waheedah, Daghrib, and Noah were in the apartment. *Id.* ¶ 18. Noah opened the door. Kroski informed him that he had a court order authorizing removal of a child from the apartment. *Id.* ¶¶ 20–21.

The parties dispute what happened next. *See id.* ¶ 22. Kroski testified that Noah demanded to see a warrant, pushed Kroski in the chest, and refused to let him enter the apartment. *See* Arko Decl. Ex. E ("Kroski Decl.") ¶ 11. Noah, however, testified that Kroski stuck his foot inside the door and, as Noah tried to "hold [his] ground," grabbed Noah by the wrist and started forcing his way into the apartment. *See* Arko Decl. Ex. J ("Noah Dep.") at 54–55, 59.

Eventually, Kroski and Rodriguez managed to enter the apartment. Pl. Counter 56.1 ¶ 22. Once inside, the officers tussled with Noah as they attempted (ultimately successfully) to place him in handcuffs. *Id.* ¶ 23; *see also* Noah Dep. at 65–67. Rodriguez and Noah wound up falling to the floor together. *See* Arko Decl. Ex. F ("Rodriguez Decl.") ¶ 13.

Meanwhile, Waheedah came out of her room to investigate. Pl. Counter 56.1 ¶ 24. Seeing the police, she demanded that Kroski tell her what the officers were doing in her home. *Id.* ¶ 25. After demanding to see a warrant, Waheedah ordered the officers to leave her home. *Id.*

What followed is also in dispute. All agree that a physical fight broke out involving at least Kroski and Waheedah. *Id.* 26. In Kroski's telling, Waheedah yelled at him and punched him in the mouth, leading Kroski to tackle her and attempt to place her in handcuffs. *See* Kroski Decl. ¶¶ 16–19. In Waheedah's telling, Kroski initiated the confrontation by punching her in the face. *See* Waheedah Dep. at 106, 118. Daghrib's testimony corroborates Waheedah's, stating that Kroski, unprompted, punched Waheedah in the face and "slammed her to the floor." *See* Arko Decl. Ex. H ("Daghrib Dep.") at 66. Kroski testified further that Daghrib jumped on his back and wrapped her legs around his upper body. *See* Kroski Decl. ¶ 22. Daghrib, however, testified that she never attacked Kroski and instead was "grabbed and placed into the kitchen" by an unknown officer. *Id.* at 69, 74. All agree that, at some point, Waheedah "grabbed" Kroski's testicles and squeezed them "as hard as she possibly could." Pl. Counter 56.1 ¶ 27.

Following this scrum, Daghrib was placed in handcuffs. *Id.*. Officer Paul Bliss, who had arrived after receiving Rodriguez's radio call for assistance, then took hold of Daghrib's arm. *Id.* ¶¶ 28–29. Daghrib testified that Bliss "grabb[ed] her left arm so hard that [she felt] a lot [of] pain." Daghrib Dep. at 75. Daghrib testified further that after she informed Bliss that he was hurting her, he "tightened his grip." *Id.*

Waheedah, Daghrib, and Noah were all removed from the building and transported to the 25th Precinct. Pl. Counter 56.1 ¶ 29. Daghrib was then taken to the emergency room, where she complained of a cut and pain to her left arm, and received x-rays and a pain reliever, before she was taken back to the 25th Precinct. *Id.* ¶ 32. She was then taken to Manhattan Central booking, arraigned, and released. *Id.* ¶ 33. Waheedah, meanwhile, was taken to Mount Sinai Hospital, where she was admitted and issued a desk appearance ticket. *Id.* ¶ 34.

The New York County District Attorney's Office charged Waheedah and Daghrib with assault in the second degree, resisting arrest, and obstructing governmental administration. *Id.* ¶ 36. On September 18, 2013, these charges were dismissed and sealed. *See* Arko Decl. Exs. Q, R.

4. Continued Investigation and the June 29–30 Incident

On June 13, 2012, Aste learned that I.O. and A.A. had gone to live with their father in Yonkers, New York. Pl. Counter 56.1 ¶ 37. The next day, ACS obtained a court order permitting this living arrangement after it was determined that the father's home did not pose a danger to the children. *Id.* ¶ 38.

On June 25, 2012, however, Aste learned from the father that I.O. and A.A. had returned to Waheedah's home. *Id.* ¶ 39. That same day, Aste went to Waheedah's apartment and, after Waheedah refused to allow her in, spoke to Waheedah through the door. *Id.* ¶ 40.

On June 26, 2012, Judge Richardson signed a second order permitting ACS to remove I.O. and A.A. from Waheedah's home. *Id.* ¶ 41. That afternoon, Aste brought the order to the 25th Precinct, where police informed her that the order was insufficient on its face to permit forced entry should Waheedah refuse to allow entry. *Id.* ¶ 42. Accompanied by police, Aste then returned to the Shaheed apartment, where, after Waheedah refused to allow her in, she once again spoke to Waheedah through the door. *Id.* ¶¶ 43–44.

On June 27, 2012, according to Aste's testimony, Aste returned to the apartment and slipped under the door a "Notice of Existence" of the ACS investigation, an "Order of Protection" against Waheedah in favor of I.O. and A.A., the June 6 and June 26 court orders, and the neglect petitions filed on behalf of I.O. and A.A. Aste Decl. ¶ 24.

On June 29, 2012, ACS obtained a third order from Judge Richardson. Pl. Counter 56.1 ¶ 45. This order found "probable cause to believe that an abused or neglected child may be"

present at the Shaheed apartment. Arko Decl. Ex. N (the "June 29 order"). Accordingly, the order authorized agents, accompanied by police, "to enter the above premises using forcible entry to determine if the children . . . are present and proceed thereafter with a child protective investigation pursuant to § 1034(2)(c) of the New York Family Court Act, and . . . take whatever appropriate actions pursuant to § 690.50(1) of the New York Criminal Procedure Law." *Id.*

Accordingly, on the evening of June 29, 2012, several ACS workers traveled to the 25th Precinct to request assistance with executing the June 29 order. Pl. Counter 56.1 ¶ 47. The police agreed to assist. Several officers accompanied ACS workers to the Shaheed apartment. *Id.* ¶ 48. Of the officers who assisted in executing the June 29 order, only Officer Lydia Figueroa is a defendant here.

On the night of June 29, 2012, Waheedah, Daghrib, Noah, and I.O. were in the apartment. *Id.* ¶ 49. An officer knocked and asked the occupants to open the door. *Id.* ¶ 51. Waheedah instructed Noah not to open the door. *Id.* ¶ 52. Waheedah and Daghrib heard the police say through the door that they had a warrant, but they refused to open the door. *Id.* ¶¶ 53–54. Instead, according to their testimony, plaintiffs asked the police to slide the warrant under the door, which the officers never did. *See* Waheedah Dep. at 175; Daghrib Dep. at 112. In contrast, Figueroa testified that the officers "slid[] a document that [Figueroa] understood to be the court order under the door, but the document was pushed back out into the hallway." Figueroa Decl. ¶ 13.

At an impasse, the police requested backup. Pl. Counter 56.1 ¶ 55. An extensive, hours-long negotiation ensued, during which multiple officers and an imam tried unsuccessfully to convince Waheedah and her family to open the door. *Id.* ¶ 55. Figueroa was not involved in these negotiations. *Id.* ¶ 56.

After several hours, the police forced the door open and entered the apartment. *Id.* ¶ 57. Waheedah, Daghrib, Noah, and I.O. were all in Waheedah's bedroom when the police entered. *See* Waheedah Dep. at 189; Daghrib Dep. at 122. According to Daghrib, six or seven officers entered the apartment with guns drawn, aimed toward the inhabitants, and ordered the family to get down on the floor. *See* Daghrib Dep. at 123. Although Waheedah suggested in her testimony that Daghrib might have "tripped or slipped, or was pushed to the floor," *see* Waheedah Dep. at 191, Daghrib testified that she complied with the order, *see* Daghrib Dep. at 123. Daghrib also testified that the officers pulled Waheedah off the bed by her ankle, *see* Daghrib Dep. at 124, but Waheedah testified that it was I.O. who was pulled off the bed by her leg, *see* Waheedah Dep. at 191.

Ultimately, all agree that both Waheedah and Daghrib were handcuffed and removed from the building. Pl. Counter 56.1 ¶ 59. Although Figueroa was in the apartment building throughout the evening and was later assigned to process Waheedah's arrest paperwork, *see* Arko Decl. Ex. G ("Figueroa Decl.") ¶¶ 6, 11, 25, she never entered the Shaheeds' apartment or observed what transpired inside, never made physical contact with plaintiffs, never pointed her gun at anyone, and did not assist in handcuffing plaintiffs, Pl. Counter 56.1 ¶ 60.

Plaintiffs were taken directly from the apartment building to Harlem Hospital in an ambulance. Pl. Counter 56.1 ¶ 62. At the hospital, Daghrib complained of minor back pain and was given a pain reliever without having x-rays taken. *Id.* ¶ 63. Waheedah reported a headache brought on by stress and lack of food, as well as unexplained soreness in her back. *Id.* ¶ 64.

Daghrib was released from the hospital without being arrested. *Id.* ¶ 65. Waheedah was taken to the 25th Precinct and from there to Central Booking in Manhattan. *Id.* ¶ 66. Thereafter, she was taken to Bellevue Hospital for her back pain, where she received pain medication and an

x-ray. *Id.* ¶ 67. After she was released from Bellevue, Waheedah was returned to Central Booking, where she was arraigned and released. *Id.* ¶ 68. On June 30, 2012, the New York County District Attorney's Office charged Waheedah with obstructing governmental administration. *Id.* ¶ 69; Arko Decl. Ex. O. On April 2, 2014, the charge was dismissed and sealed. Pl. Counter 56.1 ¶ 70.

B. Procedural History

On September 12, 2014, Daghrib filed her initial complaint in this action, bringing claims against the City of New York, Kroski, Bliss, Rodriguez, Figueroa, and several "Doe" officers. Dkt. 1. On March 4, 2015, defendants filed an answer. Dkt. 15. On May 4, 2015, Waheedah filed her initial complaint, bringing claims against the same defendants. No. 15 Civ. 3480, Dkt. 1. On August 11, 2015, defendants filed an answer. No. 15 Civ. 3480, Dkt. 11.

On December 28, 2016, this Court consolidated the two cases and set a deadline for the filing of an amended complaint. *See* Dkt. 57.

On January 20, 2017, Daghrib filed her version of the amended complaint. Dkt. 65 ("Daghrib Am. Compl."). The same day, Waheedah filed her version of the amended complaint, No. 15 Civ. 3480, Dkt. 56. ("Waheedah Am. Compl.")

On January 24, 2017, defendants filed a partial motion to dismiss. Dkt. 70. On July 17, 2017, this Court issued an Opinion and Order granting defendants' motion to dismiss all federal claims against the City of New York, as well as all claims against the individual defendants added in the amended complaints. *See* Dkt. 91.

On August 10, 2017, defendants filed a motion for summary judgment, Dkt. 97, a Rule 56.1 statement, Dkt. 98, the Arko Declaration, Dkt. 99, and a memorandum of law, Dkt. 100 ("Def. Mem."). On September 11, 2017, after some ECF filing mishaps, plaintiffs filed their Rule 56.1 counter statement, Dkt. 108, a memorandum of law in opposition, Dkt. 109 ("Pl.

Opp."), and the LaBrew Declaration, Dkt. 110. On September 20, 2017, defendants filed their reply memorandum of law. Dkt. 112 ("Def. Reply").

II. Legal Standards Governing Motions for Summary Judgment

To prevail on a motion for summary judgment, the movant must "show[] that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The movant bears the burden of demonstrating the absence of a question of material fact. In making this determination, the Court must view all facts "in the light most favorable" to the non-moving party. *Holcomb v. Iona Coll.*, 521 F.3d 130, 132 (2d Cir. 2008); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

If the movant meets its burden, "the nonmoving party must come forward with admissible evidence sufficient to raise a genuine issue of fact for trial in order to avoid summary judgment." *Jaramillo v. Weyerhaeuser Co.*, 536 F.3d 140, 145 (2d Cir. 2008). "[A] party may not rely on mere speculation or conjecture as to the true nature of the facts to overcome a motion for summary judgment." *Hicks v. Baines*, 593 F.3d 159, 166 (2d Cir. 2010) (internal quotation marks and citation omitted). Rather, the opposing party must establish a genuine issue of fact by "citing to particular parts of materials in the record." Fed. R. Civ. P. 56(c)(1)(A); *see also Wright v. Goord*, 554 F.3d 255, 266 (2d Cir. 2009).

"Only disputes over facts that might affect the outcome of the suit under the governing law" will preclude a grant of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In determining whether there are genuine issues of material fact, the Court is "required to resolve all ambiguities and draw all permissible factual inferences in favor of the party against whom summary judgment is sought." *Johnson v. Killian*, 680 F.3d 234, 236 (2d

Cir. 2012) (quoting *Terry v. Ashcroft*, 336 F.3d 128, 137 (2d Cir. 2003)) (internal quotation marks omitted).

III. Discussion

Defendants seek dismissal of (1) all claims arising out of the June 29–30 incident; (2) both plaintiffs' claims for deprivation of substantive due process and intentional infliction of emotional distress arising out of the June 6 incident; and (3) Daghrib's claims for excessive force, assault, and battery arising out of the June 6 incident. The Court will address each in turn.[2]

A. Claims Arising Out of the June 29–30 Incident

Defendants seek summary judgment on behalf of Figueroa and the City[3] on all of plaintiffs' claims arising out of the June 29–30 incident: (1) false arrest and false imprisonment under federal and state law; (2) malicious prosecution under federal and state law; (3) excessive force under federal law and assault and battery under state law; (4) deprivation of substantive due process under federal law; and (5) intentional infliction of emotional distress under state law.[4]

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[2] The Court notes at the outset that plaintiffs' eight-page opposition brief is, on most issues, profoundly underdeveloped. Nevertheless, "Rule 56 does not allow district courts to automatically grant summary judgment on a claim simply because the summary judgment motion, or relevant part, is unopposed." *Jackson v. Fed. Express*, 766 F.3d 189, 194–95 (2d Cir. 2014). Accordingly, in evaluating defendants' motion, the Court has canvassed the record and attempted to bring plaintiffs' strongest possible arguments to bear.

[3] Figueroa is the only individual defendant alleged to be personally involved in the June 29–30 incident, while the City remains amenable to suit on plaintiffs' state law claims notwithstanding this Court's prior opinion regarding *Monell* liability. *See L.B. v. Town of Chester*, 232 F. Supp. 2d 227, 239 (S.D.N.Y. 2002) ("Unlike cases brought under § 1983, municipalities may be liable [under New York law] for the common law torts, like false arrest and malicious prosecution, committed by their employees under the doctrine of *respondeat superior*.").

[4] Each plaintiff brings all of these claims except false arrest and malicious prosecution, which only Waheedah claims.

1. False Arrest and False Imprisonment

a. Governing Law

"A § 1983 claim for false arrest, resting on the Fourth Amendment right of an individual to be free from unreasonable seizures, including arrest without probable cause, is substantially the same as a claim for false arrest under New York law." *Weyant v. Okst*, 101 F.3d 845, 852 (2d Cir. 1996), *cert. denied*, 528 U.S. 946 (1999) (internal citations omitted); *accord Jenkins v. City of New York*, 478 F.3d 76, 84 (2d Cir. 2007). And "[t]he common law tort of false arrest is a species of false imprisonment," such that the two share the same elements under New York law. *See Singer v. Fulton Cty. Sherriff*, 63 F.3d 110, 118 (2d Cir. 1995).[5] Accordingly, under New York law, a plaintiff bringing a claim for false arrest or false imprisonment must show that "(1) the defendant intended to confine [the plaintiff], (2) the plaintiff was conscious of the confinement, (3) the plaintiff did not consent to the confinement and (4) the confinement was not otherwise privileged." *Id.* at 118 (quoting *Broughton v. State of New York*, 37 N.Y.2d 451, 456 (1975)).

The dispute here centers on whether plaintiffs' confinement was privileged. A confinement is privileged where the arresting officer has probable cause to arrest. *See Jocks v. Tavernier*, 316 F.3d 128, 135 (2d Cir. 2003); *Jenkins*, 478 F.3d at 84 ("The existence of probable cause to arrest constitutes justification and is a complete defense to an action for false arrest, whether that action is brought under state law or under § 1983." (internal quotation marks and citation omitted)). Probable cause exists "when the arresting officer has knowledge or reasonably trustworthy information sufficient to warrant a person of reasonable caution in the

[5] Waheedah brings false arrest and false imprisonment claims arising from the June 29–30 incident, whereas Daghrib alleges only false imprisonment.

belief that an offense has been committed by the person to be arrested." *Singer*, 63 F.3d at 119 (internal quotation marks omitted). "When determining whether probable cause exists courts must consider those facts *available to the officer* at the time of the arrest and immediately before it." *Panetta v. Crowley*, 460 F.3d 388, 395 (2d Cir. 2006) (internal quotation marks and citation omitted).

"[P]robable cause does not require an awareness of a particular crime, but only that some crime may have been committed." *Ackerson v. City of White Plains*, 702 F.3d 15, 20 (2d Cir. 2012) (internal quotation marks and citation omitted); *see also Zellner v. Summerlin*, 494 F.3d 344, 369 (2d Cir. 2007) ("[A]n arrest is not unlawful so long as the officer ha[d] . . . probable cause to believe that the person arrested . . . committed any crime."). Where an arrest is supported by probable cause, a person may be arrested for any offense committed in an officer's presence, no matter how minor, so long as that offense is a crime. *See Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001) ("If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender.").

Meanwhile, even absent probable cause to arrest the plaintiff, an officer will be entitled to qualified immunity if "arguable probable cause" existed—*i.e.*, if "a reasonable police officer in the same circumstances and possessing the same knowledge as the officer in question *could* have reasonably believed that probable cause existed in the light of well established law." *Cerrone v. Brown*, 246 F.3d 194, 202–03 (2d Cir. 2001) (internal quotation marks and citation omitted). The doctrine of qualified immunity provides a complete defense where "either (a) it was objectively reasonable for the officer to believe that probable cause existed, or (b) officers of reasonable competence could disagree on whether the probable cause test was met." *Golino v.*

City of New Haven, 950 F.2d 864, 870 (2d Cir. 1991). The purpose of the doctrine is to "give[] government officials breathing room to make reasonable but mistaken judgments" and to protect "all but the plainly incompetent or those who knowingly violate the law." *City & Cty. of San Francisco v. Sheehan*, 135 S. Ct. 1765, 1774 (2015) (internal quotation marks omitted) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011)).

On summary judgment, the existence of probable cause or arguable probable cause may be determined as a matter of law where "there is no dispute as to the pertinent events and the knowledge of the officers." *Weyant*, 101 F.3d at 852; *see also McKelvie v. Cooper*, 190 F.3d 58, 63 (2d Cir. 1999).

b. Discussion

Plaintiffs allege that they were subjected to false arrest or imprisonment on June 29–30 because they were confined without probable cause. *See* Waheedah Am. Compl. ¶¶ 101–16, 167–71; Daghrib Am. Compl. ¶¶ 97–105, 151–55. The officers lacked probable cause, plaintiffs argue, because refusing to open the door to their apartment on June 29–30 amounted to "[m]ere speech," and therefore could not form the basis of probable cause for obstructing governmental administration. *See* Pl. Opp. at 5–7 (citing *Matter of Davan L.*, 91 N.Y.2d 88, 91 (1997)). For the following reasons, the Court holds that the officers had at least arguable probable cause to arrest plaintiffs, and that the false arrest and false imprisonment claims against Figueroa and the City therefore must be dismissed.[6]

[6] Although Figueroa did not enter the apartment or physically effect either plaintiff's arrest, she did fill out Waheedah's arrest paperwork based on her observations outside the apartment and information provided by other officers. *See* Figueroa Decl. ¶¶ 25–26. Accordingly, defendants concede Figueroa's personal involvement. They argue only that the arrest was supported by probable cause. Def. Mem. at 10–16, 18–20.

"A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force, or interference." N.Y. Penal Law § 195.05. Accordingly, the elements of the crime are: (1) intent; (2) preventing or attempting to prevent the performance of an official function; by (3) intimidation, physical force, or interference. *See People v. Stumpp*, 493 N.Y.S.2d 679, 680 (Dist. Ct. 1985), *aff'd*, 505 N.Y.S.2d 758 (App. Term 1986).

It is undisputed that executing a Family Court order constitutes performance of an official function. The stated purpose of the Family Court Act is to provide a process under which "the state, through its family court, may intervene against the wishes of a parent on behalf of a child." N.Y. Fam. Ct. Act. § 1011. Accordingly, an officer executing a Family Court order acts with the authority of the state on behalf of a child and thereby performs an official function.

Moreover, plaintiffs reasonably could have been understood by an arresting officer to have obstructed the officers' entry through interference. The officers were in possession of a lawful order authorizing entry, *see* June 26 order;[7] the officers announced their intention to execute that order, *see* Pl. Counter 56.1 ¶ 53; and plaintiffs nevertheless refused to open the door, *see* Pl. Counter 56.1 ¶ 54. This is sufficient to generate probable cause to arrest for obstruction of governmental administration. *See Esmont v. City of New York*, 371 F. Supp. 2d 202, 210 (E.D.N.Y. 2005) ("Probable cause to arrest for a violation of § 195.05 may be predicated on, amongst other things, obstructing a lawful search."); *cf. Quon v. Henry*, No. 14-cv-9909 (RJS), 2017 WL 1406279, at *7 (S.D.N.Y. Mar. 27, 2016) (probable cause where plaintiff refused to

[7] "A Family Court order is equivalent to a search warrant for Fourth Amendment purposes." *Southerland v. City of New York*, 680 F.3d 127, 144 (2d Cir. 2012).

open door for firefighters who identified themselves and explained that they needed to enter to remedy a fire hazard). That is so, notwithstanding plaintiffs' "mere speech" argument derived from *Davan L.*, because a refusal to act may itself constitute interference under New York law, regardless of any associated speech. *See, e.g.*, *Lennon v. Miller*, 66 F.3d 416, 424 (2d Cir. 1995) ("When [plaintiff] refused to leave the car, it was reasonable for [officers] to construe her actions as 'interference' and to arrest her for [obstruction of governmental administration].").

Plaintiffs marshal in their defense one New York trial court opinion stating, "although not an issue before the court, it is observed that it is no crime to refuse to open a door to police officers." Pl. Opp. at 6 (quoting *People v. Offen*, 408 N.Y.S.2d 914, 916 (Crim. Ct. 1978)). In *Offen*, however, the police had not secured a warrant. *See Offen*, 408 N.Y.S.2d at 916 (adding that officers might respond to a suspect's refusal to open a door by "obtain[ing] a warrant"). Where, as here, the officers have obtained an entry order akin to a warrant and supported by probable cause,[8] and where the officers have announced their intention to execute that order, refusal to open the door may constitute interference and therefore may generate probable cause to arrest.

The foregoing is sufficient to put to rest plaintiffs' arguments as briefed. Yet the Court has identified one remaining impediment to defendants' motion: Both Daghrib and Waheedah testified that the officers refused to slide the June 29 order under the apartment door for their inspection. *See* Daghrib Dep. at 112; Waheedah Dep. at 175. Defendants, for their part, claim that they did slide the order under the door, only to have it pushed back out. *See* Figueroa Decl. at 2. But because the Court must view the facts in the light most favorable to plaintiffs in

[8] *See* N.Y. Fam. Ct. Act § 1034(c) ("[T]he procedure for granting an order pursuant to this subdivision shall be the same as for a search warrant under . . . the criminal procedure law.").

resolving defendants' motion, the Court must assume that defendants refused to furnish the June 29 order for inspection. This, in turn, raises two possible arguments for plaintiffs.

First, plaintiffs might argue that the officers' failure to permit visual inspection of the warrant prior to execution was unreasonable under the Fourth Amendment, in which case plaintiffs could not have been arrested for obstructing a *lawful* search, as required by § 195.05. This argument, however, finds no support in the case law. The Second Circuit has held that a violation of Federal Rule of Criminal Procedure 41(f)(1)(C), which requires an executing officer to provide a copy of a warrant *after* seizing property, is not *per se* an unconstitutional act. *See United States v. Burke*, 517 F.2d 377, 386–87 (2d Cir. 2015). This holding, involving an express requirement of the Federal Rules of Criminal Procedure, strongly suggests that a failure to provide a warrant *before* entry—which is not required by any Federal Rule—likewise is not *per se* unconstitutional. Nevertheless, the Court has not found any opinion so holding, and the Supreme Court has expressly reserved judgment on the question, *see Groh v. Ramirez*, 540 U.S. 551, 562 n.5 (2004) ("Whether it would be unreasonable to refuse a request to furnish the warrant at the outset of the search when, as in this case, an occupant of the premises is present and poses no threat to the officers' safe and effective performance of their mission, is a question that this case does not present."). This uncertain case law scuttles plaintiffs' claims, as the doctrine of qualified immunity ensures that "[g]overnment actors performing discretionary functions are 'shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Lennon*, 66 F.3d at 420 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

Second, and relatedly, plaintiffs might argue that because they never saw the warrant, they could not have formed the intent to obstruct a lawful search—*i.e.*, that they subjectively

believed they were obstructing only an illegal search. But the intent requirement under § 195.05 concerns only the suspect's "intent to prevent the public servant from engaging in a specific official function," *Dowling v. City of New York*, No. 11-CV-4954 (NGG) (RML), 2013 WL 5502867, at *4 (E.D.N.Y. Sept. 30, 2013) (quotation marks omitted), not the plaintiffs' subjective estimation of the lawfulness of the official function. There is no question here that plaintiffs intended to prevent the officers from engaging in the specific official function (entering the apartment) with which they were tasked. *See, e.g.*, Waheedah Dep. at 179. Furthermore, in any event, probable cause to arrest does not require certainty as to intent on the part of an arresting officer; rather, the officer need only have "knowledge . . . sufficient to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested." *Singer*, 63 F.3d at 119 (internal quotation marks omitted). Here, even if the officers refused to furnish the order for plaintiffs' inspection, in the context of a weeks-long ACS investigation involving repeated contact with the same individuals, the officers' clear announcement that they had an entry order, and plaintiffs' unambiguous intent to keep the officers out of their apartment, an officer of reasonable caution easily could have concluded that plaintiffs intended to obstruct a lawful search, and therefore reasonably could have determined that probable cause existed. At minimum, qualified immunity protects such a determination. *See Cerrone*, 246 F.3d at 202–03.

Accordingly, on any theory of false arrest or false imprisonment, the officers are entitled to qualified immunity. And because plaintiffs have not made out a claim against any of the officers individually, plaintiffs' claims against the City fail in turn. *See Wende C. v. United Methodist Church*, 776 N.Y.S.2d 390, 395 (4th Dep't 2004) ("In the absence of any wrongful or actionable underlying conduct . . . there can be no imposition of vicarious liability . . . pursuant

to the doctrine of *respondeat superior*."); *accord Trivedi v. Golub*, 847 N.Y.S.2d 211, 212 (2d Dep't 2007).[9]

2. Malicious Prosecution

Just as "probable cause is a complete defense to a constitutional claim of false arrest and false imprisonment, . . . continuing probable cause is a complete defense to a constitutional claim of malicious prosecution." *Betts v. Shearman*, 751 F.3d 78, 82 (2d Cir. 2014) (citation omitted). The same is true under New York law. *See Russell v. Smith*, 68 F.3d 33, 36 (2d Cir. 1995). Thus, "when a court finds there was probable cause for an arrest, and in the absence of some indication that the authorities became aware of exculpatory evidence between the time of the arrest and the subsequent prosecution that would undermine the probable cause which supported the arrest, no claim for malicious prosecution may lie." *Johnson v. City of Mount Vernon*, No. 10 CV 7006 (VB), 2012 WL 4466618, at *5 (S.D.N.Y. Sept. 18, 2012); *see also Rizzo v. Edison, Inc.*, 172 F. App'x 391, 393–94 (2d Cir. 2006) ("As no exculpatory evidence became known after Plaintiff's arrest, there was also probable cause to prosecute her."). These principles apply with equal force in the qualified immunity context. *See, e.g.*, *Betts*, 751 F.3d at 82–83 (qualified immunity on false arrest yielded qualified immunity on malicious prosecution); *Pinter v. City of New York*, 448 F. App'x 99, 105 n.6 (2d Cir. 2011) ("[O]ur finding that the officers had arguable

[9] It is true that as to federal claims brought under § 1983, qualified immunity "has no bearing on the liability of municipalities." *Askins v. Doe No. 1*, 727 F.3d 248, 254 (2d Cir. 2013). That is so because under federal law, municipalities are held liable "if they adopt customs or policies that violate federal law and result in tortious violation of a plaintiff's rights, regardless of whether it was clear at the time of the adoption of the policy or at the time of the tortious conduct that such conduct would violate the plaintiff's rights." *Id.* Here, in contrast, the Court has already dismissed any claims sounding in municipal policy, *see* Dkt. 91 at14–18, and plaintiffs have not offered any authority suggesting, *contra Wende C.*, 776 N.Y.S.2d at 395, that the City may be held liable for conduct as to which no particular officer may be held liable.

probable cause to arrest Pinter necessarily entitles the defendants to qualified immunity on his malicious prosecution claim as well.").

Here, as explained above, there was at least arguable probable cause to arrest Waheedah. And Waheedah does not allege that any exculpatory facts came to light between her arrest and prosecution. *See* Waheedah Am. Compl. ¶¶ 148–52, 186–90 (alleging only that her prosecution arose from an arrest without probable cause). Accordingly, her claims for malicious prosecution must be dismissed.

3. Excessive Force, Assault, and Battery

a. Governing Law

"[E]xcept for § 1983's requirement that the tort be committed under color of state law, the essential elements of [excessive force and state law assault and battery claims are] substantially identical." *Posr v. Doherty*, 944 F.2d 91, 94–95 (2d Cir. 1991). In either case, "[p]olice officers' application of force is excessive . . . if it is objectively unreasonable 'in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.'" *Maxwell v. City of New York*, 380 F.3d 106, 108 (2d Cir. 2004) (quoting *Graham*, 490 U.S. at 397; *see also Nimely v. City of New York*, 414 F.3d 381, 391 (2d Cir. 2005) (plaintiff alleging battery by police officer under New York state law must prove that the officer's conduct "was not reasonable within the meaning of the New York statute concerning justification of law enforcement's use of force in the course of their duties"). This analysis looks to a number of factors, "including 'the need for the application of force, the relationship between the need and the amount of force that was used, the extent of injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.'" *Figueroa v. Mazza*, 825 F.3d 89, 105 (2d Cir. 2016) (quoting

Johnson v. Newburgh Enlarged Sch. Dist., 239 F.3d 246, 251–52 (2d Cir. 2001)). The evaluation of a police officer's use of force must be from the understanding of a reasonable police officer at the incident, and not from hindsight. *Graham*, 490 U.S. at 396.

"[I]t is . . . well established that '[n]ot every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates a [plaintiff's] constitutional rights.'" *Mesa v. City of New York*, No. 09 Civ. 10464 (JPO), 2013 WL 31002, at *18 (S.D.N.Y. Jan. 3, 2013) (second alteration in original) (quoting *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973)). After all, "[t]he right to effectuate an arrest does include 'the right to use some degree of physical coercion.'" *Id.* (quoting *Esmont*, 371 F. Supp. 2d at 214). To that end, "[r]easonable arrests tend to involve handcuffing the suspect, and handcuffs lose their effectiveness if they are not attached tightly enough to prevent the arrestee's hands from slipping out." *Id.* (quotation marks omitted). Further, when a plaintiff suffers only a *de minimis* injury, it is harder for the plaintiff to establish that the force used was excessive. *See Yang Feng Zhao v. City of New York*, 656 F. Supp. 2d 375, 390 (S.D.N.Y. 2009). Nevertheless, medical treatment is not a required element of an excessive force claim. *Robison v. Via*, 821 F.2d 913, 924 (2d Cir. 1987).

Meanwhile, "[e]ven if defendants' actions were unreasonable under current law, qualified immunity protects officers from the sometimes hazy border between excessive and acceptable force." *Kerman v. City of New York*, 261 F.3d 229, 239 (2d Cir. 2001) (alteration and quotation marks omitted). "If the officer's mistake as to what the law requires is reasonable the officer is entitled to the immunity defense." *Id.* (alteration and quotation marks omitted).

In all events, "[g]iven the fact-specific nature of the inquiry, granting summary judgment against a plaintiff on an excessive force claim is not appropriate unless no reasonable factfinder

could conclude that the officers' conduct was objectively unreasonable." *Amnesty Am. v. Town of W. Hartford*, 361 F.3d 113, 123 (2d Cir. 2004).

b. Discussion

At the outset, plaintiffs' claims of excessive force, assault, and battery arising from the June 29–30 incident fail as against Figueroa for a simple reason: Figueroa, the only individual defendant present at the apartment that evening, never "entered plaintiffs' apartment, never made physical contact with plaintiffs inside of 26 E. 129th Street, did not point her gun at anyone, did not assist in handcuffing plaintiffs, and did not observe what transpired inside of plaintiffs' apartment." Def. 56.1 ¶ 60. Plaintiffs do not dispute these facts; instead, they claim only that Figueroa "arrested" Waheedah, citing Waheedah's arrest form signed by Figueroa. *See* Pl. Counter 56.1 ¶ 60. As there is no allegation that Figueroa applied (or threatened to apply) any force at all, she cannot be held liable for excessive force, assault, or battery.

Meanwhile, as against the City, plaintiffs' claims fail for two independent reasons. First, plaintiffs have abandoned any claim for excessive force arising from the June 29–30 incident. *See* Pl. Opp. at 7 (addressing only Daghrib's June 6 excessive force claim). Accordingly, the June 29–30 excessive force claims are properly dismissed. *See Jackson*, 766 F.3d at 196 ("Generally, but perhaps not always, a partial response reflects a decision by a party's attorney to pursue some claims or defenses and to abandon others.").

Second, in any event, the only arguable application of force alleged in the complaints is the officers' "point[ing] their rifles at everyone inside the residence" at the conclusion of an hours-long negotiation. Waheedah Am. Compl. ¶ 69; *see also* Daghrib Am. Compl. ¶ 71. Without more, such allegations are inadequate. Where, as here, the suspects have not been restrained and the police have not uttered any threats, "[i]t is not objectively unreasonable for

police officers to merely point a gun when executing a search warrant at a private residence." *Askins v. City of New York*, No. 09 Civ. 10315 (NRB), 2011 WL 1334838, at *3 (S.D.N.Y. Mar. 25, 2011); *see also Dunkelberger v. Dunkelberger*, No. 14-CV-3877 (KMK), 2015 WL 5730605, at *15 (S.D.N.Y. Sept. 30, 2015) (citing the "vast majority of cases within the Second Circuit hold[ing] that merely drawing weapons when effectuating an arrest does not constitute excessive force as a matter of law"). Accordingly, the claims for excessive force, assault, and battery must be dismissed.[10]

4. Substantive Due Process

The amended complaints allege that the officers' conduct in arresting plaintiffs without probable cause and beating them in the process so "shock[ed] the conscience" as to create a violation of plaintiffs' right to substantive due process. *See* Waheedah Am. Compl. ¶ 123 ("Plaintiff states that [defendants] denied the Plaintiff substantive due process, and that the intentional conduct of [defendants] 'shocks the conscience' in relation to the Plaintiff's arrest."); *id.* ¶ 124 ("[Defendants] conducted a reckless investigation in that [they] seized/arrested the Plaintiff without probable cause, or arguable probable cause, to believe that the Plaintiff had committed a crime"); *id.* ¶ 126 ("Plaintiff states that she was beaten seized/arrested for not consenting to open her door when [defendants] demanded entry to Plaintiff's residence."); Daghrib Am. Compl. ¶¶ 112–15 (same).

[10] In each of their depositions, Waheedah and Daghrib suggested that the other was subjected to some modicum of force not referenced in the pleadings. *See* Waheedah Dep. at 191 ("I don't know if [Daghrib] tripped or slipped, or was pushed to the floor."); Daghrib Dep. at 124 ("One [officer] grabbed [Waheedah] by the ankle and pulled her off of the bed."). Neither plaintiff mentioned such force in her own deposition. *See, e.g.*, Waheedah Dep. at 191 (testifying it was I.O. who was pulled off the bed by her leg). In the face of this conflicting testimony (not to mention plaintiffs' abandonment of the claims), the Court will not allow plaintiffs to insulate each other from summary judgment "simply by testifying . . . to facts *not* alleged in their pleadings." *Rojas v. Roman Catholic Diocese of Rochester*, 660 F.3d 98, 106 (2d Cir. 2011).

These claims sound entirely in the Fourth Amendment's prohibition on unreasonable seizures. And where "the Fourth Amendment provides a more 'explicit textual source of constitutional protection,' . . . the Fourth Amendment, rather than substantive due process, should serve as 'the guide for analyzing these claims.'" *Russo v. City of Bridgeport*, 479 F.3d 196, 209 (2d Cir. 2007) (quoting *Graham v. Connor*, 490 U.S. 386, 395 (1989)). Accordingly, the claims for substantive due process must be dismissed. *See, e.g.*, *Ambrose v. City of New York*, 623 F. Supp. 2d 454, 474 n.9 (S.D.N.Y. 2009) ("Plaintiff's allegations of false arrest and malicious prosecution state a claim *only* under the Fourth Amendment, and not under the Due Process Clause of the Fourteenth Amendment.").[11]

5. Intentional Infliction of Emotional Distress

"Under New York law, a claim for intentional infliction of emotional distress must satisfy an 'exceedingly high legal standard.'" *DiRuzza v. Lanza*, 685 F. App'x 34, 36 (2d Cir. 2017) (quoting *Chanko v. Am. Broad. Cos. Inc.*, 27 N.Y.3d 46, 57 (2016)). First, the tort "may be invoked only as a last resort, to provide relief in those circumstances where traditional theories of recovery do not." *Salmon v. Blesser*, 802 F.3d 249, 256 (2d Cir. 2015) (citation and quotation marks omitted). And second, a party alleging intentional infliction must plead and prove conduct "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of

[11] In their opposition brief, plaintiffs also argue that they were deprived of *procedural* due process. *See* Pl. Opp. at 4 (arguing Waheedah was denied procedural due process because her children were removed without her having "notice and an opportunity to be heard"); *id.* at 8 (arguing that removal of Waheedah's children constituted a substantive due process violation because "[t]here was never an order to enter the home and remove the children"). These claims fall well outside the scope of the pleadings, which do not raise any allegations concerning the removal of children, let alone the procedural aspect of the Due Process Clause. Accordingly, the Court takes no view on the merits of such claims. *See Coram Healthcare Corp. v. Cigna*, No. 00 Civ. 2677 (RMB), 2002 WL 32910044, at *11 ("It is inappropriate to raise new claims for the first time in submissions in opposition to summary judgment.").

decency, [so as] to be regarded as atrocious, and utterly intolerable in a civilized community." *Chanko*, 27 N.Y.3d at 56.

Plaintiffs' claims fail at each step. First, although plaintiffs do not specify what conduct underlies the intentional infliction claims, the amended complaints are directed entirely at defendants' physical violence and plaintiffs' arrests and prosecution. Such conduct clearly "falls well within the ambit of other traditional tort liability" (*e.g.*, claims for assault and battery, false arrest, and malicious prosecution). *Salmon*, 802 F.3d at 256 (quoting *Fischer v. Maloney*, 43 N.Y.2d 553, 557–58 (1978)). Plaintiffs therefore have not alleged conduct that is irremediable through traditional tort remedies.

In any event, the Court has already held that the officers acted at all times with at least arguable probable cause. Plaintiffs therefore have failed to provide evidence of conduct "beyond all possible bounds of decency . . . and utterly intolerable in a civilized society." *Chanko*, 27 N.Y.3d at 56.

B. Substantive Due Process and Intentional Infliction of Emotional Distress Arising Out of the June 6 Incident

Plaintiffs' state-law claims for deprivation of substantive due process and intentional infliction of emotional distress arising out of the June 6 incident fail for much the same reasons. Like their claims arising from the June 29–30 incident, plaintiffs' claims arising from the June 6 incident sound entirely in false arrest, malicious prosecution, and assault and battery. Their specific claims for deprivation of substantive due process and intentional infliction are no different. *See* Waheedah Am. Compl. ¶¶ 117–21, 172–75; Daghrib Am. Compl. ¶¶ 106–10, 156–59. Because the due process claims sound in the Fourth Amendment, that amendment must serve as "the guide for analyzing these claims." *Graham*, 490 U.S. at 395. And because each of these claims is remediable through the traditional theories of recovery listed above, no claim for

intentional infliction of emotional distress will lie. *See Salmon*, 802 F.3d at 256. Accordingly, plaintiffs' claims for deprivation of substantive due process and intentional infliction of emotional distress arising from the June 6 incident are dismissed.

C. Daghrib's Claims for Excessive Force, Assault, and Battery Arising Out of the June 6 Incident

Daghrib's excessive force, assault, and battery claims arising from the June 6 incident, analyzed under the same framework set forth above with respect to the analogous June 29–30 claims, currently depend on disputed facts and competing inferences. Viewing the facts in the light most favorable to Daghrib, a reasonable juror could conclude that Bliss's conduct was objectively unreasonable. Accordingly, the Court denies defendants' bid for summary judgment.

Daghrib testified that she witnessed Kroski punch her mother in the face without provocation. Daghrib Dep. at 70. In response, Daghrib testified, she did not attack Kroski, but was handcuffed by Bliss. *See id.* at 74. While this handcuffing alone likely would not constitute excessive force, *see Mesa*, 2013 WL 31002, at *18, Daghrib claims that Bliss grabbed her left arm "so hard that [she] remember[ed] feeling a lot of pain," Daghrib Dep. at 75. She immediately "let him know," after which Bliss "tightened his grip." Daghrib Dep. at 75.

Defendants do not dispute this framing. Instead, they offer—without any legal citation—a two-sentence conclusion that such force is "*de minimis* and not objectively unreasonable." Def. Mem. at 21. The Court is unpersuaded. While a reasonable jury may well conclude that Bliss's use of force was reasonable under the circumstances, Daghrib's testimony might also lead a reasonable juror to conclude that the force used was greater than reasonably necessary. Particularly salient, in the Court's judgment, is the allegation that Daghrib informed Bliss that she was in pain, whereupon he tightened his grip. *See, e.g.*, *Lemmo v. City of New York*, No. 08 Civ. 2641 (RJD), 2011 WL 4592785, at *8 (E.D.N.Y. Sept. 30, 2011) (denying officers summary

judgment on excessive force claim where they tightened "handcuffs . . . to their maximum, for apparently gratuitous reasons," and "kneed and stepped on" suspect's lower back). Viewed in the light must favorable to plaintiff, this arguably gratuitous and/or malicious conduct could be held unreasonable. Accordingly, Daghrib's testimony precludes entry of judgment in defendants' favor as to her June 6 excessive force, assault, and battery claims.[12]

CONCLUSION

For the foregoing reasons, the Court grants defendants' motion for summary judgment insofar as it seeks dismissal of plaintiffs' claims arising out of the June 29–30 incident. Further, the Court dismisses plaintiffs' claims for deprivation of substantive due process and intentional infliction of emotional distress arising from the June 6 incident. However, the Court denies defendants' motion for summary judgment as to Daghrib's claims for excessive force, assault, and battery arising out of the June 6 incident.

The Clerk of the Court is respectfully directed to close the motions pending at No. 14 Civ. 7424, Dkt. 97; and No. 15 Civ. 3480, Dkt. 87. An order will issue shortly as to next steps in this matter.

SO ORDERED.

Paul A. Engelmayer
United States District Judge

Dated: March 2, 2018
New York, New York

[12] Likewise, these claims survive as against the City, because a reasonable juror could conclude not only that Bliss's application of force was unreasonable, but also that he acted within the scope of his employment. *See Campos v. City of New York*, 821 N.Y.S.2d 19, 23 (1st Dep't 2006).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAGHRIB SHAHEED,

Plaintiff,

-v-

THE CITY OF NEW YORK, NEW YORK CITY POLICE OFFICER STEPHAN KROSKI, NEW YORK CITY POLICE OFFICER PAUL BLISS, NEW YORK CITY POLICE OFFICER JONATHAN RODRIGUEZ, and NEW YORK CITY POLICE OFFICER LYDIA FIGUEROA,

Defendants.

WAHEEDAH SHAHEED,

Plaintiff,

-v-

THE CITY OF NEW YORK, NEW YORK CITY POLICE OFFICER STEPHAN KROSKI, NEW YORK CITY POLICE OFFICER PAUL BLISS, NEW YORK CITY POLICE OFFICER JONATHAN RODRIGUEZ, and NEW YORK CITY POLICE OFFICER LYDIA FIGUEROA,

Defendants.

14 Civ. 7424 (PAE);
15 Civ. 3480 (PAE)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

This case involves claims that in June 2012, defendants twice entered plaintiffs' apartment to execute removal orders and thereupon met with resistance from plaintiffs. On March 2, 2018, this Court issued an Opinion and Order granting in part and denying in part

defendants' motion for partial summary judgment. *See* Dkt. 115.[1] This decision resulted in the dismissal of all claims arising out of the second episode (the "June 29–30 incident"), with several claims arising out of the first episode (the "June 6 incident") remaining to be tried. *See id.* at 28. Plaintiffs now ask the Court to enter partial final judgment under Federal Rule of Civil Procedure 54(b), or, in the alternative, to reconsider the March 2 Opinion and Order. *See* Dkts. 130–31; *see also* Dkt. 134 (defendants' opposition). For the following reasons, the motion is denied.

I. Partial Final Judgment

"In general, there is a historic federal policy against piecemeal appeals." *Novick v. AXA Network, LLC*, 642 F.3d 304, 310 (2d Cir. 2011) (quoting *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980)). "Not all final judgments on individual claims should be immediately appealable, even if they are in some sense separable from the remaining unresolved claims." *Curtiss-Wright*, 446 U.S. at 8. The entry of a final judgment is generally appropriate "only after all claims have been adjudicated." *Harriscom Svenska AB v. Harris Corp.*, 947 F.2d 627, 629 (2d Cir. 1991).

Rule 54(b) provides an exception to this general rule. It states:

> When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay.

Fed. R. Civ. P. 54(b).

Whether to grant a Rule 54(b) motion is left to the discretion of the district court. *See Curtiss-Wright*, 446 U.S. at 8. In deciding a Rule 54(b) motion, a District Court "must take account of both the policy against piecemeal appeals and the equities between or among the

[1] All docket numbers cited herein refer to the docket in 14 Civ. 7424.

parties." *Novick*, 642 F.3d at 310. A decision to grant a Rule 54(b) motion is to be made "in the interest of sound judicial administration." *Info. Res., Inc. v. Dun & Bradstreet Corp.*, 294 F.3d 447, 451 (2d Cir. 2002) (quotation marks omitted). Factors to consider are "whether the claims under review [a]re separable from the others remaining to be adjudicated and whether the nature of the claims already determined [i]s such that no appellate court would have to decide the same issues more than once even if there were subsequent appeals." *Curtiss-Wright*, 446 U.S. at 8.

Here, plaintiffs argue primarily that separate judgments would be appropriate because the surviving claims—*i.e.*, those arising from the June 6 incident—are distinct from the claims that the Court dismissed—*i.e.*, those arising from the June 29–30 incident. *See* Dkt. 130 at 4. The Court is unpersuaded, for several reasons.

First, plaintiffs appear to ignore that the March 2 Opinion and Order addressed several claims arising out of the June 6 incident, and dismissed two of them. *See* Dkt. 115 at 26–28. Accordingly, were the Court to certify the March 2 Opinion and Order as a final order, as plaintiffs request, *see* Dkt. 130 at 2, plaintiffs could then appeal to the Second Circuit the dismissal of claims arising out of the June 6 incident, as to which several claims are due to be tried in October. *See* Dkt. 127.

Second, in any event, even if the Court were to limit its certification to claims arising out of the June 29–30 incident, it does not follow, as plaintiffs suggest, that "there is no risk of duplicative appeals." *Id.* at 3. On the contrary, the two incidents are closely intertwined. They involve the successive efforts of the New York City Administration for Children's Services (and one Child Protective Specialist in particular) to remove the same minor children from plaintiffs' home, each time with the assistance of the New York City Police Department. As a result, piecemeal appeals here would require "two (or more) three-judge panels to familiarize

themselves with [the case] in successive appeals from successive decisions on interrelated issues." *Novick*, 642 F.3d at 311 (quotation marks omitted).

Nor would "postponing appeal until after a final judgment has been entered . . . cause unusual hardship or work an injustice." *See Hogan v. Consolidated Rail Corp.*, 961 F.2d 1021, 1026 (2d Cir. 1992). As to this issue, plaintiffs contend that delay would force them to "mount two separate lawsuits against a single group of defendants." Dkt. 130 at 4. But plaintiffs' premise that certifying an appeal of the March 2, 2018 Opinion Order would avoid the need for two trials is incorrect. Even assuming that the Court certified an appeal as to the dismissed claims and the Second Circuit then vacated the March 2 Opinion and Order, there is no realistic possibility that the Circuit would act and remand the case for reinstatement of those claims before trial on the surviving claims, which is set to begin on October 15, 2018. Accordingly, accepting plaintiffs' premise that the dismissed claims will one day be revived by the Second Circuit, even under the most optimistic projections, this will come after trial on the surviving claims, making separate trials inevitable. In any event, as the Second Circuit has repeatedly explained, "the interrelationship of the dismissed and surviving claims is generally a reason for *not* granting a Rule 54(b) certification." *Hogan*, 961 F.2d at 1026. Here, given the nexus between the dismissed and surviving claims, "the remaining proceedings in the district court may illuminate appellate review of the dismissed claims." *Id.* (quotation marks omitted). The Court therefore denies plaintiffs' request for separate judgments.[2]

[2] The parties are, of course, at liberty to settle the remaining claims, and the Court continues to encourage the parties to pursue such a settlement. While the parties may choose to pursue a global settlement, they are also free to construct a settlement that preserves plaintiffs' right to appeal the March 2, 2018 dismissal of certain claims.

II. Reconsideration

In the alternative, plaintiffs seek reconsideration of the March 2 Opinion and Order. *See* Dkt. 130 at 2. Indeed, plaintiffs' memorandum of law is devoted almost entirely to disputing certain premises of the Court's prior decision. *See* Dkt. 131. This bid is easily denied.

First, this District's Local Rules require that "a notice of motion for reconsideration . . . be served within fourteen (14) days after the entry of the court's determination of the original motion." S.D.N.Y. Local Civil Rule 6.3. Plaintiffs' motion comes more than three months too late. *See* Dkts. 115, 130.

Second, the standard governing motions for reconsideration "is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked." *Analytical Surveys, Inc. v. Tonga Partners, L.P.*, 684 F.3d 36, 52 (2d Cir. 2012) (quotation marks omitted); *see also* S.D.N.Y. Local Rule 6.3 (requiring the movant to "set[ ] forth concisely the matters or controlling decisions which counsel believes the Court has overlooked"). Such a motion "is neither an occasion for repeating old arguments previously rejected nor an opportunity for making new arguments that could have been previously advanced." *Associated Press v. U.S. Dep't of Def.*, 395 F. Supp. 2d 17, 19 (S.D.N.Y. 2005). Here, plaintiffs do not claim to have discovered new evidence or an intervening change in law. Rather, they merely flesh out arguments that, as noted in the March 2 Opinion and Order, were "profoundly underdeveloped" the first time around. Dkt. 115 at 12 n.2. The Court will not grant plaintiffs a "second bite at the apple." *Goonan v. Fed. Reserve Bank of N.Y.*, No. 12 Civ. 3859 (JPO), 2013 WL 1386933, at *2 (S.D.N.Y. Apr. 5, 2013).

CONCLUSION

For the foregoing reasons, plaintiffs' Rule 54(b) motion is denied. The Clerk of Court is respectfully directed to terminate the motion pending at Dkt. 130.

SO ORDERED.

Paul A. Engelmayer
United States District Judge

Dated: July 18, 2018
New York, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

DAGHRIB SHAHEED,
WAHEEDAH SHAHEED,

Plaintiffs,

v.

STEPHAN KROSKI,
PAUL BLISS,
JONATHAN RODRIGUEZ,

Defendants.

----------x

New York, N.Y.

14 Civ. 7424 (PAE)
15 Civ. 3480 (PAE)

October 10, 2018
2:40 p.m.

Before:

HON. PAUL A. ENGELMAYER,

District Judge

APPEARANCES

LAW OFFICES OF LAWRENCE LaBREW
Attorneys for Plaintiffs
BY: LAWRENCE LaBREW

ZACHARY W. CARTER
Corporation Counsel for the City of New York
BY: CHRISTOPHER G. ARKO
ASHLEY R. GARMAN
Assistant Corporation Counsel

(Case called)

THE DEPUTY CLERK: Counsel, state your appearance for the record, please.

MR. LaBREW: Good afternoon, your Honor. Lawrence LaBrew for the plaintiffs Daghrib Shaheed and Waheedah Shaheed.

THE COURT: Good afternoon, Mr. LaBrew.

MR. ARKO: For defendant City of New York, Officer Stephan Kroski, Officer Paul Bliss and Officer Jonathan Rodriguez; Christopher Arko, New York City Law Department. Good afternoon, your Honor.

THE COURT: Good afternoon.

MS. GARMAN: Good afternoon, your Honor. Also for defendants, Assistant Corporation Counsel Ashley Garman.

THE COURT: Good afternoon, Ms. Garman.

You may all be seated.

I have a formidable set of topics to take up with you today. Before I do, though, Mr. Smallman has just handed up a subpoena for the Law Department and this is, what? To produce the certified copy of one of the June 6 orders?

MR. ARKO: Correct. That's what we filed for ECF, it is docket number 21913.

THE COURT: I am happy to sign this. I think it has got a signature for the Clerk of Court but I think they will accept mine in its stead.

MR. ARKO: Thank you, your Honor.

THE COURT: So, I have a long list of things to cover with you today but, by far, I expect the most time-consuming will be the motions *in limine* insofar as there are a number of motions *in limine* from each side. So, I'm about to read aloud, into the record, my ruling on all the motions *in limine* which in turn is going to be clarifying as to a lot of the trial logistics issues and other issues we have to take up. So, bear with me. I'm going to motor through this as quickly as I reasonably can and after I deal with the motions *in limine*, I will go through the rest of the batting order, if you will, in terms of topics for us to take up. And, at the end, there will be an opportunity for you to raise issues with me that I haven't anticipated.

A jury trial in this matter is set to begin on Monday, October 15, 2018. In advance of trial, each party has moved, *in limine*, on a variety of matters. Both parties have submitted helpful briefs for which the Court thanks counsel.

I am about to put on the record the bases for the Court's ruling on the motions *in limine*. There will not be a written decision. Instead, the Court will issue only a brief bottom-line order setting out the fact of the disposition of the motions. So, if the reasons for Court's ruling or, for that matter, the nuances of any of the rulings are important to you, you will need to order today's transcript.

The Court will begin with a brief statement of the

legal standards governing motions *in limine*. "The purpose of an *in limine* notion is to aid the trial process by enabling the Court to rule in advance of trial on the relevance of certain forecasted evidence, as to issues that are definitely set for trial, without lengthy argument at, or interruption of, the trial. Evidence should not be excluded on a motion *in limine*, unless such evidence is clearly inadmissible on all potential grounds." *Hart v. RCI Hospitality Holdings, Inc.*, 90 F.Supp. 3d 250, 257-58 (S.D.N.Y. 2015). A Court's ruling on such a motion is "subject to change when the case unfolds, particularly if the actual testimony differs from what was contained in a party's proffer." *Luce v. United States*, 469 U.S. 38, 41 (1984).

Several issues raised by these motions *in limine* turn on application of Federal Rule of Evidence 403. That rule provides that a District Court may exclude "relevant evidence" Defined elsewhere as material evidence having "any tendency to make a fact more or less probable than it would be without the evidence," Federal Rule of Evidence 401, if it's probative value is substantially outweighed by a danger of one or more of the following: "unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Federal Rule of Evidence, 403.

The Court first analyzes plaintiff's motions before

turning to defendant's motions.

Plaintiffs first ask the Court to admit the testimony of Ikhlas, Hannah Olodan, the daughter and sister of plaintiffs. The Court denies this motion. The surviving claims in this case relate exclusively to the events of one day: June 6, 2012. As the record shows, and as I understand is undisputed, Ikhlas Hannah Olodan was not present during that incident.

Plaintiffs have not identified any relevant testimony that Ms. Olodan could give as to that incident. She was not a percipient witness to it and she has no personal knowledge of it. Any account Ms. Olodan could give of the events of June 6, 2012, would necessarily be inadmissible hearsay.

Plaintiffs seek to use Ms. Olodan's testimony to address other matters. Plaintiffs appear to envision that she would address the factual circumstances that underlie the family court removal order that caused the police to come to the house on June 6. Plaintiffs also appear to envision that she would address interactions between herself and ACS that took place after the June 6, 2012 incident. To be quite clear, both of those matters are irrelevant to the surviving claims in this case. This litigation does not concern the legal rightness or wrongness of the Family Court removal order that led defendants to come to the residence on June 6. The order is facially valid and legally operative. The Court will not

permit plaintiffs to litigate the facts underlying it or to seek to question its legitimacy. Testimony as to events involving the family members at issue predating June 6 is irrelevant, and the Court will exclude it, whether from Ms. Olodan or any other witness. And, the Court has dismissed plaintiffs' claims based on events post-dating the June 6 incident, that is, relating to the June 29-30 incident. The Court will not permit testimony on those later events, again whether from Ms. Olodan or any other witness. Accordingly, the Court precludes any testimony from Ms. Olodan as irrelevant.

Plaintiffs next ask the Court to take judicial notice of what appears to be a large subset of New York State family Court Law and New York State Criminal Procedure Law. Plaintiffs do not specify more concretely what they have in mind. That motion is denied.

The Court will instruct the jury on the relevant law underlying plaintiffs' claims in this action, that is, the elements of these claims. The Court will not grant plaintiffs' blanket motion to take judicial notice of whole areas of state law whose relevance to the case at hand plaintiffs have not elucidated.

For the avoidance of doubt, the Court will explain to the jury that the Family Court order authorized defendants to enter plaintiffs' home and that this order was the functional equivalent of a valid search warrant. See, *Southerland v. City*

of New York, 680 F.3d 127, 144 (2d Cir. 2012). That much legal background is proper. The Court will not, however, invite evidence or argument as to the underlying family Court proceeding. And, the Court will not permit plaintiffs to challenge or question the validity or wisdom of any decisions made in that proceeding. This trial is not a forum for plaintiffs to challenge A C S' judgment of their fitness as caretakers or the validity of the order permitting the two minor children to be removed from the home on June 6, 2012.

This trial is, instead, to be tightly focused on the physical altercation between plaintiffs and defendants on the evening of June 6, 2012. It follows that references to laws governing the ACS regime and investigation, and the Family Court hearing, both of which are outside the scope of this proceeding, are out of bounds. Those events do not speak to whether plaintiffs were or were not, on June 6, 2012, falsely arrested or falsely imprisoned, maliciously prosecuted, or subjected to excessive force or assault and battery. There are to be no references in opening statements tending to call into question the legal validity of the order that authorized entry on June 6.

Apart from the irrelevance of the underlying Family Court and ACS records and events, I note that the events before these bodies would naturally bring up consideration of persons, entities, facts, and concepts that are separate from the events

at issue in this case. Even if the underlying facts of the Family Court and ACS proceedings had some passing relevance, and no showing has been made, their probative value would be vastly outweighed by the capacity of evidence about these extraneous matters to confuse and distract the jury from the narrow issues before them.

Plaintiffs next seek to offer plaintiffs' mug shots into evidence. Plaintiffs intend to use these mug shots, apparently, to prove that the defendants have malice towards plaintiffs. Waheedah Shaheed's mug shot is from the June 29-30th, 2012 arrest, Daghrib Shaheed's mug shot is from the June 6, 2012 arrest.

Because the claims arising out of the June 29-30, 2012 incident are no longer at issue in this case, the Court denies plaintiffs' motion to introduce Waheedah's mug shot into evidence. It is completely irrelevant.

Plaintiffs may introduce Daghrib's mug shot from the June 6, 2012 incident, provided that the mug shot is properly authenticated. But, they may do so only for limited purposes. The mug shot may be offered as evidence that Daghrib was arrested on that particular date. And it may be offered as photographic evidence of her physical condition following her arrest, provided that plaintiffs lay the proper foundation for submitting such evidence.

Plaintiffs may not, however, argue that the taking or

the retention of the mug shot was unlawful, or that the act of taking or retaining the mug shot is probative of any element of any surviving cause of action. The taking or retention of the mug shot is not evidence of malice in connection with the underlying event. And, plaintiffs have not brought any claim in this lawsuit that the retention of the mug shot after charges were dropped was unlawful causing damages. As the parties are aware, last week, 11 days before trial, plaintiffs' counsel, extremely belatedly, sought to file an amended complaint adding such a claim. The Court denied that application as, frankly, outrageously late, and as necessitating, by its nature, a reopening of discovery and a delay of trial. The Court will not permit evidence or argument in this trial as to any alleged violations of law in connection with the retention of the mug shot.

Next, plaintiffs seek to offer into evidence the desk appearance ticket that defendant Officer Kroski issued to Waheedah Shaheed. Plaintiffs appear to surmise that Officer Kroski issued the desk appearance ticket instead of arresting Waheedah Shaheed because Kroski felt guilty for having "attacked an ill, defenseless woman." Citing docket 164 at page 10. Plaintiffs' theory appears to be that a desk appearance ticket was technically improper for the conduct charged, and the fact that Officer Kroski thereby went lenient on Waheedah must reflect consciousness of guilt for having

previously mistreated her.

The Court will permit the fact that Waheedah was not arrested but instead given a desk appearance ticket to be received because it bears on damages. The less restrictive treatment of her, in which she was not kept in custody thereafter, is germane to the extent to which she can claim injury from a purported false arrest.

However, the Court will not permit plaintiffs to develop whether a desk appearance ticket was unauthorized or improper as a matter of police procedure. Any deviation from procedure of this nature would not tend to make any of plaintiffs' claims more likely true. And, plaintiffs' theory that Officer Kroski so acted out of unexpressed guilt or remorse is completely conjectural. Plaintiffs have not proffered any basis for this surmise. The Court will not allow this theory to be pursued as a means of establishing and developing the fact of a technical misstep by the officer that led him to treat a plaintiff more leniently in allowing her release on a mere desk appearance ticket. The Court has found that circumstance irrelevant. It appears, instead, to be a way to put before the jury the fact of a separate, benign, goof-up by the officer which plaintiffs apparently intend to exploit as bad character evidence. That, of course, is improper under Federal Rule of Evidence 404. And even if the officer's misapplication of the rules had some passing relevance, the

probative value of this evidence would be substantially outweighed by its capacity to confuse or distract the jury from the elements of claims to be tried which involve, again, false arrest and imprisonment, malicious prosecution, and excessive force and assault and battery.

Finally, plaintiffs seek to introduce evidence of the later incident with the police on June 29-30, 2012. Again, the Court has dismissed all claims arising out of that incident. The circumstances of that incident are irrelevant to the events of nearly a month earlier that are at issue. Moreover, even if there were some limited probative value as to the later incident as to the claims to be tried, and no coherent indication of relevance whatsoever has been made, receiving evidence of a later incident involving the police and these same plaintiffs would have obvious capacity to distract and confuse the jury. It would also prolong the trial needlessly insofar as once one participant in the June 2th-30th events was permitted to testify about those events, it would presumably be necessary to permit the other participants to give their competing versions of events. Under both rules 402 and 403, therefore, this evidence is excluded. Absent an explicit advance ruling from the Court, plaintiffs are precluded from offering evidence as to the June 29-30 incident or referring to it in any statement to the jury.

That completes my discussion of plaintiffs' motions *in*

limine. The Court turns now to defendants' motions.

Defendants first ask that the Court amend the caption of this action to remove the City as a defendant in this matter, in any documents to be shown to the jury. Defendants acknowledge that on the state law claims that survive the City remains a defendant. The theory of the City's liability on those claims is solely one of respondeat superior. And, indeed, if any defendant is held liable on any state law claim, defendants concede that the City will be held liable, too, on that claim, again on a respondeat theory. That is because defendants "concede that the individual police defendants were acting within the scope of their employment when the alleged incident occurred." Docket 155 at 4.

As long as the City agrees now -- today -- that a judgment on any state law claim against any individual defendant will automatically result in the Court's entering judgment against the City, too, on that claim, on a respondeat theory, the Court will remove the City from the caption to be shown to the jury. That is because alerting the jury to the fact that the City is a named defendant has the potential to lead the jury to see the City as a deep pocket, which in turn could lead the jury to be more likely to hold an individual defendant liable for a larger judgment believing that the City, and not the defendant, would ultimately have to pay.

So, with that, defendant, do you agree that any

verdict against any individual defendant on a state law claim will necessarily require the Court's entry of a parallel judgment against the City?

MS. GARMAN: Yes, your Honor.

THE COURT: The Court then, on that categorical commitment by the defense, grants that motion. The documents shown to the jury containing the caption of the case are to list the defendants solely as the three officers. The jury is not, I repeat not, to be told that the City is a defendant. That is irrelevant to their determination of liability and damages on any claim. However, if any defendant is found liable on any state law claim, a parallel judgment will be entered against the City to the extent of that finding of liability.

Defendants next seek to preclude plaintiffs from first from suggesting that the City of New York may indemnify defendants; and second from referring to defense counsel as "City attorneys."

As to indemnification, plaintiffs are prohibited from addressing the possibility of indemnification. There is one caveat. It is possible that the issue of punitive damages will be permitted tolling to the jury. I do not know at this stage whether it will or will not. That will await my review of the trial evidence. If the issue of punitive damages does go to the jury, and if any defendant responds by referring to his own

impecuniousness as an argument for limited punitive damages, that would open the door to evidence of indemnification. For avoidance of doubt, unless the Court has affirmatively ruled that that door has been opened, there is to be no reference to indemnification.

As to how best to refer to defense counsel during the course of the trial, plaintiffs may not refer to defense counsel as "City attorneys." "Defense counsel" or "Corporation counsel" are satisfactory alternatives.

To avoid any potential prejudice, including to defendants themselves on the theory that jurors might expect police officers to be represented by their employer, the Court's preliminary remarks to the jury will state that for each defendant, being a member of the New York City Police Department, that defendant is represented by attorneys from the corporation counsel of the City of New York. So, in other words, the two defense lawyers who are here will be so described in terms of their organizational affiliate. As authority I would cite, as I have in many cases where I have given exactly this identical ruling. See *Williams v. McCarthy*, 05 Civ. 10230, 2007 Westlaw 3125314 at page 7, (S.D.N.Y. October 25, 2007), a decision by Judge Scheindlin.

Defendants next move to preclude plaintiffs from requesting a specific dollar figure from the jury. Plaintiffs have not come forward with any evidence of out-of-pocket

expenses such as medical bills occasioned by the conduct in this case. More generally, plaintiffs have not demonstrated how they could anchor any specific damages request in concrete evidence, e.g., an out-of-pocket outlay. Because plaintiffs have not articulated any reason to contravene the Second Circuit's "well-established policy disfavoring suggestions of specific damages figures," plaintiffs are precluded from making any such reference. See *Núñez v. Diedrick*, 2017 Westlaw 4350572 at page 3 (S.D.N.Y., June 12, 2017), a decision by Judge Sullivan.

Defendants next seek to preclude plaintiffs from inquiring into mor making reference to the disciplinary histories, if any, and personnel files of City employee witnesses. The Court grants this motion too. Plaintiffs have not identified any specific incidents or misconduct, or any finding of misconduct by any defendant officer. Still, less have plaintiffs identified any act of misconduct that could be probative at this trial of any substantive claim or of a witness' character for truthfulness or untruthfulness under Federal Rule of Evidence 608(b). Accordingly, such evidence is precluded. For avoidance of doubt, there is not to be questioning of witnesses about disciplinary history; that was to be explored in discovery and I will not permit the trial to descend into an exploratory inquiry into that. The relevant point here is that there has been no established incident of

any discipline that has been brought to my attention, let alone one that would survive the rules of evidence.

Defendants next move to preclude plaintiffs "from referring to and offering any evidence of NYPD procedure or patrol guide provisions." Docket 155 at page 8. This motion is also granted.

In seeking exclusion of this evidence, defendants argue that the patrol guide is irrelevant because NYPD procedure is distinct from the standards imposed by the federal constitution or the relevant state laws under which plaintiffs sue. Defendants argue that references to the patrol guide would only confuse the jury, likely leading the jury to assume that NYPD procedure sets out the standard to be used in evaluating defendants' allegedly unconstitutional or illegal actions. See docket 155 at pages 8 to 9.

I am, by no means, persuaded of the categorical proposition. I have admitted patrol guide evidence in other cases. To be sure, there can be circumstances in which deviations from standards in a patrol guide can be germane, as I have ruled in other cases where that was so. For example, I note that, as a colleague in the Eastern District has observed, "a growing number of Courts have held that in constitutional tort cases, expert testimony regarding sound professional standards governing a defendant's actions can be relevant and helpful." Citing *Nnodimele v. Derienzo*, 2016 Westlaw 3561708

at page 14 (E.D.N.Y., June 27, 2016) internal quotations omitted, and similarly, in 2013, the Seventh Circuit affirmed a decision to admit testimony regarding police procedure in a trial of a Section 1983 claim explaining that such evidence "would have helped the jury conclude that the departures from reasonable police practices were so important, severe, and numerous that they supported an inference that defendant acted deliberately to violate plaintiffs' rights." Id. at 722. And in previous cases where there has been a violation shown of patrol guide provisions I have permitted, in some circumstances, the fact of that violation to the extent it bore on the elements of the claims at issue.

In this case, however, plaintiffs have not identified any particular relevant portion of the NYPD patrol guide that was assertedly violated. Nor have they made any argument as to why the violation of any patrol guide provision, in the context of this particular case, would be probative of any element at issue. Accordingly, without making any broader statement about how these principles might apply in some other case, in this case the Court will preclude such evidence. Just as there is to be no questioning of any witness as to disciplinary complaints or disciplinary history, there is to be no reference to the patrol guide, whether in jury addresses or in questioning of any witnesses.

Defendants next request that the Court remove

dismissed defendant Officer Lydia Figueroa from the caption and preclude plaintiffs from mentioning her during the trial. This motion is granted.

Officer Figueroa's conduct is no longer at issue in this case and she was not present in the Shaheed apartment during the June 6, 2012 incident. She was sued in connection with claims relating to the later incident, on June 29-30th, which have since been dismissed. There is no conceivable relevance to the fact that Officer Figueroa was once a defendant in this litigation, and any allusion to her would tend to suggest other areas of assertedly illegal action by the police department towards these plaintiffs. The Court, accordingly, has removed Officer Figueroa from the caption since she is no longer a party to this case. The Court similarly precludes the parties from referencing Officer Figueroa before the jury. To be clear, this ruling binds the defendants equally as it binds plaintiffs. Defendants may not, for example, seek to capitalize on their success prior to trial in pruning the claims in this case. Defendants may not, for example, suggest that because claims against Officer Figueroa were dismissed as legally baseless, the surviving claims against the other defendants are more likely, too, to be deficient.

Defendants next seek to preclude plaintiffs from introducing evidence or argument concerning the CCRB and NYPD

investigations into the events underlying this lawsuit. Plaintiffs, notably, nowhere suggest that the findings from such investigations are admissible. And properly so. As a general matter, findings by a different body, whether exonerating or implicating a defendant, have little fair probative value. These investigations, by nature, are conducted without the benefit of the adversary system and they draw upon a pool of evidence that may be narrower than, or different from, the evidence at trial. Further, offering a disciplinary body's findings runs a substantial risk of juror confusion, permitting the jury to substitute for its own independent judgment based on the evidence, the earlier assessment of another investigative body or bodies based on a different pool of evidence. Accordingly, under any circumstance, the Court would preclude either party from making reference to the outcomes of a CCRB or NYPD investigation.

Here, of course, there is even more reason to reach the same outcome, and that is because there does not appear even to have been any such finding. It appears to the Court that whatever investigation was commenced was terminated at plaintiffs' behest. That is all the more reason to exclude evidence of these proceedings.

Now, as to the fact that plaintiff initiated a complaint to the CCRB for the time being, the Court precludes that fact as irrelevant. But, the Court recognizes that,

depending on the direction trial takes, that fact could become relevant on one of two theories. First, if defendants suggest that plaintiffs sat on their hands prior to filing this lawsuit, plaintiffs may rebut such an inference by noting their earlier initiation, long before bringing this case, of a CCRB complaint. And second, if defendants introduce evidence or argument suggesting that this action is motivated solely by the prospect of financial gain, it may -- emphasis may -- become relevant to rebutting that inference, the fact that plaintiffs initiated a CCRB complaint, an action taken presumably at the time without any expectation of compensation.

For avoidance of doubt, plaintiffs are precluded, for the time being, from referring, in any way, to the CCRB complaint or any other investigation or introducing evidence of it or its initiation. In the event plaintiffs counsel concludes that the defense has opened the door to such evidence, you are to first, plaintiffs counsel, seek a ruling from the Court to that effect.

Defendants next seek to bar plaintiffs from referring to unrelated instances of police misconduct, class actions, or criminal investigations. The Court grants this motion with regard to prior police misconduct. There is to be no -- zero -- commentary on police misconduct outside the four corners of the surviving in this case. The conduct of other officers, whether in this city or elsewhere, is completely

irrelevant to what happened on June 6, 2012, and it is potentially highly prejudicial. If there is an attempt in argument or questioning to allude to police misconduct extraneous of the events of June 6, 2012, the Court will decisively and emphatically shut it down. Just because one police officer behaved badly and violated somebody's civil rights simply does not speak to whether these police officers behaved badly or violated somebody's civil rights on a particular day, any more than a police officer's good behavior or noble behavior on a particular day, speaks to whether these officers behaved nobly or well or lawfully in connection with this incident. It simply is irrelevant.

Defendants similarly seek to preclude references to ACS' history outside the scope of this case. The Court will permit limited facts sufficient to establish the context leading to the officers coming to the house on the evening of June 6, 2012, i.e., we are not to hear testimony about ACS as relates to other children. I will instruct the jury that this background as to how the officers came to come there on June 6 is solely to give context to this incident. The Court, though, will not permit counsel to relitigate or reopen any ACS or state court findings. Again, this case is not about plaintiffs' parenting or about ACS' views of plaintiffs parenting. This case is about the conduct of the defendants in executing the functional equivalent of a valid search warrant.

Defendants next move to preclude any evidence or argument related to plaintiffs' dismissed claims including those arising out of the June 29th-30th, 2012 incident. I think I have already covered this in connection with an earlier motion by plaintiffs, but for avoidance of doubt I will say it again, the Court precludes all parties, without advance authorization from the Court, from referring to any of the dismissed claims or the second incident from June 29-30th, 2012 as to which all claims have been dismissed. The fact that such claims were once brought and the fact that they have since been dismissed is irrelevant to the surviving claims.

Defendants next seek to preclude plaintiffs from challenging the merits of the ACS investigation and the family court removal order. For the reasons covered earlier, the Court grants this motion. I note, too, that ACS and its employees are not parties to this action. Their conduct is not at all at issue.

Defendants next move to preclude testimony from Waheedah Shaheed's children who were not present during the June 6, 2012 incident, and also testimony from two ACS employees. This Court has already precluded, in a ruling on a motion by plaintiffs, the testimony of Ms. Olodan. For the same reasons, the Court holds that testimony by Waheedah Shaheed's children who were not present during the June 6 events at issue in this lawsuit is precluded. On this basis,

the Court precludes the testimony of Abdul Malik Abdur-Rahim whom the Court understands to fit into this category, and as to whom no proffer of admissible testimony has been made.

As to the testimony by ACS employees, their testimony is inadmissible as well except to prove limited facts. These witnesses may be called to establish the existence of the ACS investigation, the order permitting the entry that occurred on June 6, and plaintiffs' notice of the status and the results of that investigation as of June 6, as of the entry into the home. These limited facts are relevant context for understanding and assessing the conduct of potentially both plaintiffs and defendants on June 6, 2012. For avoidance of doubt, the Court precludes testimony attempting to impeach ACS' work. ACS is not on trial here. Whatever plaintiffs feelings are about ACS' conduct within the scope of its duties, the order that resulted from ACS' investigation that permitted removal of the children is not challenged in this case and it was legally valid, it must be taken as such for the purposes of this trial.

Defendants next seek to move to preclude plaintiffs from testifying about complaints they apparently made to the U.S. Attorney's office and to state and local government officials. The Court grants this motion because such complaints are also irrelevant to any issue to be tried. But, there is one caveat. If defendants suggest that plaintiffs delayed in asserting their claims against defendants or brought

these claims solely for pecuniary gain, this may open the door to receipt of evidence about these complaints. Again, unless and until the Court has affirmatively so ruled, no party is to assume that the door to such evidence has been opened.

Defendants next move to preclude plaintiffs from arguing that Noah Shaheed's arrest and prosecution were unlawful, that any force used against him was excessive, or that he suffered any damages. The Court grants this motion, too. Noah Shaheed is not a party to this action. The lawfulness of actions against him is not at issue. However, the facts of his conduct at the house on June 6, and the police conduct towards him that day, are properly part of the narrative of this case. They offer context as to the contemporaneous conduct of the defendants and the plaintiffs. These facts are permitted to be developed, including through Noah Shaheed's first-hand testimony. I note that Noah Shaheed, unlike some of the other people at issue that I discussed earlier, was a participant and was a percipient witness to the events of June 6, 2012. He may testify factually about these events. He may not, however, testify about any legal claims he may have against defendants.

Defendants next seek to preclude plaintiffs from arguing that the Family Court removal order was insufficient to authorize defendants to enter plaintiffs' apartment lawfully. As the Court has previously noted, such argument would be

legally wrong. See, docket 115 at 16, note 7. "A Family Court order is equivalent to a search warrant for Fourth Amendment purposes." Citing *Southerland v. City of New York*, 680 F.3d 127, 144 (2d Cir. 2012). Plaintiffs are prohibited from stating or implying otherwise.

Defendants next move to preclude references to Waheedah Shaheed's terminal cancer and other pre-existing medical conditions. As an aside, I will express my regret that Ms. Shaheed has to contend with any medical condition like that and I am very empathetic to her for that reason. However, I'm obliged to apply the rules of evidence here and therefore to grant this motion to preclude references to her terminal cancer, and I do so under Rules 402 and 403. Waheedah Shaheed's medical condition that predates June 6, 2012 has nothing to do with whether her arrest was lawful or executed with excessive force. The police did not bring her cancer about. Her terminal cancer is irrelevant under Rule 402. Moreover, even if her illness somehow had some fleeting probative value, that value would be outweighed by the obvious capacity of this highly sympathetic fact of her severe illness to sway the jury. And, there has been no proffer of any medical evidence that defendants' dealings with Waheedah Shaheed harmed her medically in any way relevant to her cancer. Plaintiffs are precluded from referencing her cancer or suggesting that the defendants' conduct, on June 6, 2012,

caused or exacerbated this condition.

Defendants move next to preclude video footage depicting property damage to the inside of the Shaheed's apartment following their arrests. The Court will permit plaintiffs, in recounting the police conduct, to refer to property damage that occurred during the arrest. Such evidence is probative of the level of force used by one or more parties involved in the incident. For the time being, the Court is unpersuaded that video footage focused on property damage is proper here, as footage focused on such damage would tend to imply, wrongly, that there is a claim here for property damage, which there is not. However, plaintiffs are at liberty, by the close of business tomorrow, to furnish the Court with the video in question so that the Court can make this determination with reference to the specific footage at issue.

Finally, defendants move to preclude any testimony by Waheedah Shaheed's home health aide, Dianatou Chan, who plaintiffs contend was kidnapped by New York City police officers three years after the June 6, 2012 incident. This witness apparently was not present in the apartment during the June 6, 2012 incident and plaintiffs have not identified any relevant testimony that she would or could provide, nor have plaintiffs established how this witness could possibly offer non-hearsay testimony as to matters that are relevant in this case that are within her personal knowledge. Accordingly, the

Court holds that this testimony is inadmissible.

That concludes the Court's rulings on motions *in limine*. I noted during the course of the motions some rustling at the defense table, perhaps suggesting that I misapprehended a fact somewhere. I don't know if I did or didn't, but I will give you the opportunity if there is something that I misapprehended beginning with the defendants to say so.

MS. GARMAN: Just one moment, your Honor?

(Counsel conferring)

MR. ARKO: There was one issue.

Your Honor ruled that Waheedah Shaheed's two adult children may not testify. There were two other family members that -- or I should say plaintiffs intended to put forward, there was Carlene Johnson and Alana Martin and Carlene Johnson. They're not ACS workers, I believe they're plaintiffs --

THE COURT: Carlene Johnson and who is the other one?

MR. ARKO: Alana Martin. They're not ACS workers. I just thought perhaps maybe there was misunderstanding about that but it wasn't clear to me that your Honor ruled as to the admissibility of their testimony. I certainly understand the Court's ruling about the two children but we moved to exclude their testimony as well.

THE COURT: Johnson and Martin, you say?

MR. ARKO: Yes; Johnson and Martin. Yes.

THE COURT: Were they in the residence on June 6?

MR. ARKO: No.

THE COURT: Plaintiffs counsel, were they in the residency on June 6?

MR. LaBREW: No, they were not and they will not testify, your Honor.

THE COURT: Then they are, for the same reason as covered, precluded. I noticed, though, rustling and some discussion among the two of you when I was discussing the medical condition of Waheedah Shaheed. Was there some factual inaccuracy what I said?

MS. GARMAN: Again, just a moment, your Honor? I apologize.

(Counsel conferring)

MS. GARMAN: Your Honor, I usually have a loud enough voice so that is not an issue.

THE COURT: This is a funhouse of bad acoustics.

MS. GARMAN: I just wanted to clarify.

Yes, with respect to the motion that your Honor granted with respect to Ms. Shaheed's unfortunate terminal cancer diagnosis, we just want to clarify. We do seek to elicit testimony that she had a pre-existing condition for which she was taking -- she was already taking morphine and under the care of a home health aide for 40 hours a week. It's relevant because she was held in the -- she was at the hospital for a little bit over a week after this incident and we do seek

to elicit testimony and put on evidence to the effect that she was in the house, not solely related to injuries stemming from her arrest, but also because she had a pre-existing -- previously-scheduled medical appointment related to her prior conditions.

THE COURT: I need you to unpack the facts. Give me the sequence of events after June 6.

MS. GARMAN: After June 6, Waheedah Shaheed is taken to the hospital shortly after the midnight, so in the morning of June 7. She is in the hospital. She is seen at the emergency room for conditions she claims to have suffered during the arrest -- some rib injuries, an injury to her eye. After that, by her own testimony and as it played out in the medical records, she happened to already have an appointment scheduled with the oncology ward on June 7th later in that day, already scheduled. I understand it was a regular monthly appointment for an infusion related to her cancer. So, she is discharged from the emergency room and she goes to her oncology appointment, again regularly scheduled, not related to this incident. But, we anticipate that the jury -- and after that, she is admitted to Mount Sinai and she is there until June 19th.

THE COURT: And what is she admitted for?

MS. GARMAN: She is admitted for pain management because the hospital has concerns that she will not -- if she

goes back to the precinct and to Central Booking, she will not have access to morphine and other pain medication which she was already taking before the events of June 6 unfolded. She testified she took morphine that morning before the police ever even came to her house.

THE COURT: So in other words, after she goes to the oncology appointment, which from your point of view has nothing to do with this case --

MS. GARMAN: Correct.

THE COURT: -- she then goes to Mount Sinai, a different medical facility, and the reason is that the alternative to Mount Sinai was or might have been Central Booking?

MS. GARMAN: She goes to Mount Sinai emergency room and she is discharged from the emergency part and goes to the oncology ward where she was regularly receiving treatment. She is always at Mount Sinai, just different locations.

THE COURT: But you are saying that after going to the oncology appointment she doesn't come home?

MS. GARMAN: Correct.

THE COURT: Was she in police custody at the time?

MS. GARMAN: She was in police custody. And so, the medical records make it very clear that they are concerned about releasing her back to the precinct because she can't have her pain medication that she was already on.

THE COURT: Let me see if I get this right.

She is, on June 7th, before she is taken to the emergency room, she is placed under arrest.

MS. GARMAN: She is, yes. She is taken to the precinct for a period of time.

THE COURT: And what is the charge that is brought against her at the time?

MS. GARMAN: Assault in the second degree, obstructing governmental administration, and resisting arrest.

THE COURT: I see.

And she has not been presented as of this point for the purposes of setting bail or any bail application?

MS. GARMAN: That's correct.

THE COURT: And so, who decides that she will stay in the hospital for what amounts to the next 12 days?

MS. GARMAN: So, from the medical records it's clear that they are trying to get her a bedside arraignment out of this concern that she won't have access to her medical records. I'm not entirely sure -- I know a social worker was involved at some point in the decisions. I'm not sure who the decision-makers were but it was hospital personnel or medical or social worker personnel, who had the concerns because of her pre-existing conditions, and they were unable to -- they were going to try to get her to go to Bellevue, a different hospital, and then they were advised that they couldn't send a

female to Bellevue for a bedside arraignment. So, I don't exactly know who the decision makers were. It wasn't the police, it was just that she is continuing to be in police custody until they ultimately decide it is in her best interest I guess to give her the DAT so she doesn't have the continuing issue.

THE COURT: Whether did she get the Desk Appearance Ticket?

MS. GARMAN: June 16th.

THE COURT: So she is in the hospital through June 16th. When is she arraigned?

MS. GARMAN: Well, she was given the DAT on June 16th. She is arraigned sometime in July, I believe.

THE COURT: Sorry. Ordinarily within 24 to 48 hours a person is supposed to be arraigned so that, among other things, a bail determination gets made. Now, being in the hospital is different, of course, from being in a jail cell. Nevertheless, presumably somebody was supposed to arraign her.

MS. GARMAN: Well, the issue was that the hospital wasn't releasing her because of the concerns about her not getting her pain medication so it wasn't -- it was not the police officers who were holding her there.

THE COURT: Was there a police officer in the hospital while she was in the hospital?

MS. GARMAN: Yes.

THE COURT: For the entirety of the time?

MS. GARMAN: Up until June 16th.

THE COURT: In other words, for nine days she is not free to leave the hospital.

MS. GARMAN: That's correct but it wasn't -- the police officers weren't prohibiting her from getting arraigned in a timely fashion, it was the medical personnel, out of concern.

THE COURT: No, that doesn't follow. They could have sent somebody for -- it is not clear this is within the scope of the claims in the case but I am puzzled, somebody could have gone to the hospital during that nine-day period to arraign her.

MS. GARMAN: Well, they were trying to do that. Apparently -- I'm not sure of why but they can't do bedside arraignments at Mount Sinai and they were trying -- they were -- again, this is all from the medical records but it is very clear that they were trying to figure out where they could send her to arrange for a bedside arraignment.

THE COURT: I don't understand. If there is a bed in the hospital in Manhattan why didn't somebody just come to Mount Sinai and arraign them? My colleagues here have done bedside arraignments for people shot all over the city.

MS. GARMAN: Your Honor, I do not know. I know Mount Sinai is not a City hospital, I don't know if that has anything

to do with it. That, I do not know.

Our concern is that there is going to be testimony that she was in the hospital for some time and that she was admitted to the hospital, and without being able to elicit evidence that she -- that it was related to pre-existing conditions in some fashion, the jury will be mistaken in believing that she was there -- she was injured so badly by the defendants that she needed to be there for 12 days.

THE COURT: May I ask you another question?

Maybe the whole ruling is wrong because maybe, from the plaintiff's perspective, it's less likely that she initiated an altercation if she's on morphine or being treated for cancer. In other words, maybe the answer is although the briefing on the point left something to be desired, maybe the answer is it is just interwoven too much into the narrative here and while I need to instruct the jury that if they find liability, they need to sort out the damages attributable to the unlawful conduct, not to her pre-existing condition and let them sort it out as a matter of fact. Maybe it is just impossible to separate that thread.

MS. GARMAN: I think that's right, your Honor. I do apologize if the briefing left something to be desired or wasn't clear.

THE COURT: The whole sequence of events is only getting unspooled right now.

MS. GARMAN: Our concern, really, and the reason why you have that motion *in limine*, was to preclude the terminal nature of the cancer. I don't think we have an issue with --

THE COURT: I see.

MS. GARMAN: -- with the jury with the proper instruction. Of course, the fact that it was terminal and she had some testimony in her deposition that at one point in time she was given 10 days to live or something to that effect, we don't believe that those facts have any relevance.

THE COURT: Well, I mean, not to be crass, but it's not terminal yet. It has been six and a half years so the jury will know that any such projection was pretty wrong.

MS. GARMAN: Certainly, your Honor.

And then the other point of the motion *in limine*, which I do believe your Honor has also ruled on, is that we don't want any suggestion that the cancer -- she was in remission at the time. We don't want any suggestion that the defendants' actions caused her cancer to come back.

THE COURT: So, let me be more precise.

What you are seeking is really a much more narrow set of relief than your papers made clear. You don't want the terminal diagnosis to come in and you don't want any argument that the cancer got worse because of the events of June 6.

MS. GARMAN: Yes, your Honor.

THE COURT: All right.

Mr. LaBrew, I think the scope of my ruling, even if I were to follow that, has been significantly narrowed. I see you want to speak, I would be happy to get your perspective.

MR. LaBREW: Yes, I would like to clarify a few things --

THE COURT: Go ahead. Microphone, please.

MR. LaBREW: Yes, I would like to clarify a few things and give the Court a brief offer of proof insofar as some facts might have been not brought forth in the papers to give the Court a clearer factual basis to flesh this out.

THE COURT: Be my guest.

MR. LaBREW: Shortly, just briefly, when the police came in the house and they encounter Ms. Shaheed she had a rollator.

THE COURT: She had a?

MR. LaBREW: A rollator.

THE COURT: One of those walkers?

MR. LaBREW: Yes, sir, a walker. I guess that's what they call it.

I'm not going to get into the facts, but basically when the police encountered Ms. Shaheed, she was holding on to a walker. Officer Kroski socked her in the eye -- we are going to put the picture in with the black eye. She fell on the ground, he got on top of her and was strangling her, she grabbed his testicles. Okay. After all this fighting in the

apartment, she was taken to the hospital, Mount Sinai Hospital by the police.

Now, in the State of New York, under the Criminal Procedure Law in New York City, a person's got to be arraigned in 24 hours. It can be more, it can be less. Okay? And the world doesn't come to an end if you are not arraigned in 24 hours but the general rule is 24 hours, and if it is not 24 hours if you suffered some type of damage or something like that, you can make a claim for false imprisonment or whatever.

When she was taken to Mount Sinai Hospital she was in police custody. In New York City, as an Officer of the Court, I can state this as a matter of fact, in New York City they do hospital arraignments which means a judge, a DA, and a defense attorney get in a vehicle and go into a hospital and arraign a defendant if they can't be brought to Court. So, the fact that a defendant is in the hospital doesn't change the rule. It might be a little bit more than 24 hours but the rule still applies.

Now, as far as the argument that, or what was stated that Mount Sinai Hospital didn't want to release her because they were concerned would she get the proper treatment, that argument is misplaced and totally incorrect on the laws. When a person is arrested in New York State, especially for a felony, if they're in the hospital, the criminal justice system takes over. They're arraigned within 24 hours on the

accusatory instrument. If they're in police custody, the Eighth Amendment case law specifically says -- I can't cite the cases right off my head but you know all the cases, your Honor -- that once a person is in police custody, the police have an obligation to take care of their needs and whatever they know about. The City of New York has a specific hospital set up if someone needs extra care, meaning that they're taken to Bellevue. Also, if a person is detained at a New York City correctional facility, Rikers has medical services to take care of a patient. In effect, a civilian hospital has no authority whatsoever to tell the criminal justice system with a criminal defendant we are not going to let them go or we don't want to release them. The state steps in and takes over and says this person is in custody, they will appear before a judge in a certain amount of time. They will either be -- bail would either be set on them or they will be released on their own recognizance or they will be remanded and if they're in custody, we have an obligation to take care of them.

THE COURT: Mr. LaBrew, let me cut you off. This is helpful and what you have proffered aligns with my understanding. I am not disputing any of what you have said as a matter of what the proper procedure is. I did not find coherent the explanation of why it wasn't on the police to make sure that Ms. Shaheed was timely arraigned. The fact that she is in the hospital, if there is some cop there watching her, it

is clear she is still in custody.

MR. LaBREW: Correct.

THE COURT: Completely buying that.

I think the issue is the lawsuit here has not been about the failure to arraign her as a separate wrong. The lawsuit here is that she was falsely arrested. If she is falsely arrested then I think it follows that she was in custody until whatever the day is, the 16th, the 17th, something like that. It's not, I think, that somebody else who may well not have been these defendants, may have been a prosecutor, failed to get her arraigned. That's a bad thing. That's also not what this lawsuit is about.

The point here is that if you prevail in demonstrating to the jury that she was falsely arrested, you are on absolutely fair ground to argue that she was confined, she was imprisoned through and until whatever time, apparently the date, the 16th that she is released. I have completely got that.

I think that gives you what you need.

MR. LaBREW: Right. And I'm not trying to go in -- you know, they brought up terminal cancer.

THE COURT: Right.

MR. LaBREW: I really see no -- the fact that she has cancer, I think that is relevant. I don't necessarily have to go in that she has terminal cancer.

THE COURT: Look. I think we are all in agreement here, now that the facts have been unspooled for me, that the fact that she has cancer and that she is receiving certain forms of treatment including the morphine or the fact that she uses the walker, this is all part of the scene setting, it is part of the context, the jury needs to understand this. The fact that some doctor turned out, by the way wrongly, to project that she was terminal or at least terminal any time in the six years since June 12, that's irrelevant. I mean, that has nothing to do with the damages in this case. Agreed?

MR. LaBREW: I'm not bringing that out.

THE COURT: And you are not going to argue that whatever emotional damage she suffered, whether from the alleged false arrest or imprisonment or the physical mistreatment that is the basis of the excessive force assault and battery claims, you are not arguing that the terminal nature of her then diagnosis is germane to that, right?

MR. LaBREW: No, your Honor.

Basically what I'm arguing is this, and I'm going to be perfectly honest with you and I'm going to let the defendants know exactly what I'm going to say and I'm just going to put it right out here. Basically, I'm arguing that the police came into this apartment, they beat up everybody in the apartment, that a woman came up to them with a roller, they socked her in the eye and knocked her on the ground and

strangled her.

THE COURT: Yes.

MR. LaBREW: She was on morphine, she has cancer. Okay? She's got a black eye from getting socked in the eye and she grabbed the officer's testicles to get him off of her. After that they took her to the hospital, they didn't bring her in front of a judge, she sat in the hospital for whatever reason, whoever said what, she sat in the hospital for about 15, 16, whatever the days was, she sat there with a cop right next to her so she couldn't go anywhere, okay, and she was the one that was beat up by the cops.

THE COURT: Right. I got that and that's all fair game. The only question in that narrative, questions are, you are committing, are you not, to not bringing out the fact that she had a terminal diagnosis, correct?

MR. LaBREW: No. No. No.

THE COURT: Sorry. Are you committing that you won't?

MR. LaBREW: I am committing to that because I don't need that.

THE COURT: You don't need that.

MR. LaBREW: What I am going with is cops came in there and beat up a black woman with a roller, knocked her down, blacked her eye, and she went to the hospital.

THE COURT: All right. A couple of things in there.

That's all, the fact that they beat her up and that

she was in this medical condition is obviously fair game and frankly, you know, the jury is more likely to make certain judgments about who the aggressor was if they're aware of the conditions of the people at issue. It is not out of the question that somebody on morphine and with a walker would have attacked a cop. Maybe that person felt they could do so with impunity because no cop would hit back. I don't know. That's why we have juries.

MR. LaBREW: Right.

THE COURT: The jury sorts that out.

What are we going to do about the fact that she wasn't arraigned, though? In other words, the defense is not going to dispute that she was in custody up until the time that I guess the Desk Appearance Ticket issued; correct, defendant?

MS. GARMAN: That's correct.

THE COURT: The question is, it's not part of the cause of action here that the defendants didn't give her an arraignment in between. Somebody violated proper procedure there but (A) that's not what is pled here, and more to the point, there is no evidence that's been proffered to me that these defendants, who are the folks who were on the scene on June 6, were the decision makers in failing to get her an arraignment while she is in the hospital. In other words, somebody fell down on the job and that lapse gives you the ability to argue basically undisputedly that she remained in

custody through the Desk Appearance Ticket but I don't think it is proper to say that the separate wrong of failing to arraign her is germane here. The bottom line is it is just undisputed that she remained in custody through the Desk Appearance Ticket which, I take it, is the 19th or the 16th.

MR. LaBREW: Yes. I think it is the 16th or the 19th.

THE COURT: So whichever it is, it is either 10 days or 13 days, whatever, you have got that window of time if you establish the falsity of the arrest to show the confinement that followed it extends until the Desk Appearance Ticket. I don't think it is fair game to, unless you are proffering that there is evidence that these officers were the ones who decided to deny her an arraignment during that window, to fault them for that.

MR. LaBREW: I'm not going to say that they denied her arraignment because a police officer doesn't determine an arraignment.

THE COURT: Right.

MR. LaBREW: The police officer just brings that individual forth to the system and the system takes care of arraigning them once an accusatory instrument is drafted.

THE COURT: To be clear, I just want to make sure that I am setting clear ground rules. Terminal is out. Length of custody is in. Facts and circumstances of what happened in the house are all in, but the fact that she was denied an

arraignment is not in. I expect it will be undisputed that she was in custody up until the point of the Desk Appearance Ticket procuring her release?

MR. LaBREW: Right, but there is a few nuances there. I don't want to -- and I would come and ask for a side bar with the Court before I would even say anything about this. Here is my issue:

We are going to bring up that when a person arrests somebody, they're supposed to process them. Okay? And they're supposed to process them and take them to court so that the institutional part, as far as the court is concerned with the prosecution, can begin. So, in effect, once the officer moves a person forward in point in time where a criminal action commenced, then the criminal justice system takes over. Now, I'm not going to argue that this individual Kroski prevented her from getting an arraignment because he didn't have any power to determine when she was going to be arraigned.

THE COURT: Right.

MR. LaBREW: Okay.

THE COURT: I mean, was the prosecutor at some point made aware of the existence of this arrestee?

MR. LaBREW: Yes. As soon as the arrest was made then that arrest would have been sent over to the Manhattan District Attorney's office to the complaint room and then the complaint room and the Court would have been notified that they have a

body in the hospital that needs to be taken care of.

THE COURT: And that's the point. That's why all of this is out.

MR. LaBREW: Right.

THE COURT: In other words, because you didn't sue the prosecutor, you didn't sue the people in the complaint room. This lawsuit is, for better or worse, against three police officers. They are not accountable for what happens after they have been notified or after the prosecutor has been notified.

MR. LaBREW: Right. So I'm not saying he stopped her from getting arraigned. I am just saying that she was in the hospital and she didn't get -- just the straight fact.

THE COURT: Look. You are welcome to say that she was in the hospital that whole period of time and that she was in custody. What difference does it make that she was or wasn't arraigned? In other words, the relevant point is that she is undisputedly in police custody for 10 or 13 days. What difference does it make that she was not arraigned? The defense lawyers are not going to argue that some Judge forced her to be there and the bottom line is if the arrest was false, it's undisputed that the period of confinement extends up until the Desk Appearance Ticket. I don't understand why the detail of the failure to give her an arraignment is germane here. It is the length of custody that you care about and you have got a great fact there. You have got 10 or more days.

MR. LaBREW: Well, I think it is germane for the simple fact that the woman said in the hospital, for whatever reason, and I'm not even pointing fingers at who is at fault, but this is the United States of America, as y'all know, and she was not brought in front of a judge.

THE COURT: I got that.

MR. LaBREW: So, that's all I want to bring out, that she was not brought in front of the Judge.

THE COURT: Sorry. Forgive me, but I'm not going to permit it and the reason is what you just said. You don't care who is at fault but this trial is about who is at fault. It is not that these people work in the United States of America and therefore they are responsible for the lapses of somebody else in the system. You have told me that they alerted the DA's office. If somebody in the DA's office dropped the ball here, if there is a timely suit that can be brought against them for the failure to arraign, that could have been done and can be done, if still timely. And it is certainly the case that, as a matter of damages, the fact that the custody period extends as long as it did is fair game in this suit. The fact that an arraignment was not initiated was, under no version of the facts, the fault of these officers. In fact, it hasn't even been proffered that the officer who is sitting watch at the hospital is any of the defendants in this case. So, there is no reason to even think that they are aware of the failure of

an arraignment let alone the length of confinement.

So, the length of confinement is fair game but we have to move on here. I am precluding fact that she was denied an arraignment. What is important is that she was denied release, that she was kept in custody. You have got that, that's what you need for damages.

MR. LaBREW: Can I add one point, your Honor?

THE COURT: Go ahead.

MR. LaBREW: Thank you for your patience.

THE COURT: Yes.

MR. LaBREW: That police officer, an arresting officer, his obligation doesn't stop when he makes the arrest, he has got to process the arrest, and part of that duty is to take steps to bring that person to a Court. The police do that because in New York City, right down the street, when somebody gets arrested and comes into the court, they are still in the custody of the New York City Police Department until the New York City Police Department meets its duty and that person appears in front of a judge.

THE COURT: Okay, but you have told me that they alerted the DA's office that there is somebody in a hospital. That's discharging the duty. If somebody at the DA's office then drops the ball, so be it.

MR. LaBREW: No, that's not -- they alert the DA's office but even though the DA's office has been alerted, they

still have a duty to bring that personal to the Court to process the arrest because the DA's office is alerted that an arrest is coming in. The police officer still has to effectuate that arrest so that there can be a criminal prosecution. The DA's office cannot even go forward until the police officer comes to the DA's office and says this person has been arrested.

THE COURT: Right.

MR. LaBREW: I believe she's committed -- it is the same state and federal, she has committed X, Y, and Z charges.

THE COURT: Did your complaint get into this at all?

MR. LaBREW: My complaint says she was falsely arrested and falsely imprisoned.

THE COURT: I understand that. Did the fact of the non-arraignment play in at all?

MR. LaBREW: No.

THE COURT: This is the final pretrial conference. There is a new theory of wrong involving the failure to arraign that is not being clearly pegged to these officers and I'm --

MR. LaBREW: I'm not bringing this as a theory, your Honor. I am not bringing this as a cause of action. I am bringing it as a factual predicate.

THE COURT: I understand it, but you are holding them responsible for the failure to arraign and --

MR. LaBREW: No, not all, just -- I'm sorry for

interrupting.

The arresting officer, he doesn't control the arraignment, he controls bringing the person to the arraignment.

THE COURT: One moment.

Let me ask the defense counsel here, was a prosecutor notified of the fact of the arrest and when did it happen?

MS. GARMAN: Yes, your Honor. It happened immediately after the arrest. The officer did go to the hospital himself for treatment but he went to ECAB, I believe, early that morning.

THE COURT: I'm sorry. To what?

MS. GARMAN: I'm sorry, I don't even know what ECAB stands for.

THE COURT: I need some real help from you guys. You have to explain this to me without code language.

What happened here?

MR. ARKO: So, after the arrest was made, Officer Kroski went back to the precinct and he started doing the arrest processing and then he, himself, had to go to the hospital for the injury he suffered to his testicles. He got back to the precinct and he did not leave until he spoke to the district attorney's office at the early case assessment bureau, which is also known as ECAB. So, he did notify them about the arrest; I don't know when he first made contact but suffice to

say I believe the complaint was signed at 1:00 in the afternoon on June 7th.

THE COURT: Complaint was filed by whom?

MR. ARKO: Signed by Officer Kroski and sent to the district attorney's office, and then from there I don't know exactly when it was filed with the Court. But, at that point, Officer Kroski, essentially his involvement is finished, it is up to the DAs at that point.

THE COURT: Did any of the defendants here, were they the ones watching the plaintiff while she was in the hospital?

MR. ARKO: Not that we are aware of, no.

THE COURT: Is it correct that she was not arraigned until the Desk Appearance Ticket on or about the 16th?

MR. ARKO: She was released from custody and because it is a Desk Appearance Ticket, she had to come back to court at a later date which I think was July 19th.

THE COURT: She was not released from custody until the 16th?

MR. ARKO: Correct.

THE COURT: She was not arraigned at any time in between?

MR. ARKO: That's correct.

THE COURT: Is it clear that that was a violation for her to sit in the hospital for 10 days with a cop preventing her from leaving?

MR. ARKO: I can't speak to that. I don't know if it is the New York State Office of Court Administration's policy about where arraignments can be done. I don't want to wade into the weeds there but I don't believe we have enough information to say who specifically would make that call.

THE COURT: Let's forget the who. Put aside what I'm going to do about it in the context of the trial. Is there any possible justification, under the law, for holding her in custody for nine or 10 days before she is either released or arraigned? I mean, Mr. LaBrew's point about what country we are in becomes relevant here even if it may not bear on the trial evidence; that's clearly unconstitutional.

MR. ARKO: I think that the -- in fact, I know from review of the medical records there was a conversation between hospital staff at Mount Sinai and I don't know what authority it was, but I think someone either from the DA's office or the Court, trying to arrange an arraignment, but it is my understanding from a review of the records that Mount Sinai Hospital was informed you cannot do a bedside arraignment at that hospital, she had to be transported to Bellevue for that, and they weren't able to -- the hospital was not able to arrange the transport.

THE COURT: Look. I have heard enough to know the following:

We are not going to get into a trial within a trial

about who is responsible for the lapse in arraignment. It seems to me rather clear, unless the defense wants to submit a letter, that she was entitled to something better in terms of somehow being arraigned or having a judgment made as to the legitimacy of her being held. It may well be that a neutral magistrate on June 8th would have said, are you kidding me? She is not risk of flight, she is not danger to anybody. The usual standards do not justify holding her in custody. This was a one-off situation prevented by the circumstance of her children being taken.

I will tell you that if I were the Magistrate Judge or District Judge hearing an appeal on bail condition I would not regard her as a risk of flight or danger to the community. She is not a risk of flight because she is hooked up to morphine and she is ill, and she is not danger to the community because the only danger she presents is in the one-off situation when somebody comes to the house even if they're legally there.

So, it seems to me pretty apparent that had some Judge had occasion to pass judgment on this at an earlier time there is everybody possibility she would have been released from custody, at which point her being in the hospital would have purely been a medically-driven event.

That said, there is indication that I am seeing that these officers dropped the ball here and it would be a classic trial within a trial inadmissible under Rule 403, to start

litigating who is responsible for it. It seems to me that the right outcome here is to state that it is undisputed that she was in custody as a result of the arrest until her release on or about June 16th. And, frankly, it is a gift to the plaintiff that that is so because I'm not going to let you, defendants, try to break the causal chain as to damages by claiming that she should have been released earlier but the prosecutor messed up.

Frankly, this allows Mr. LaBrew to argue a longer period of damages and you have made no contrary argument, defendant, so you have waived any opportunity to go there. But, it seems to me Mr. LaBrew gets everything he wants here because he gets the entire period of custody as cognizable damages. Perhaps at some earlier time defendants, if you had wanted to litigate the issue that it was somebody else's fault that elongated the period of custody -- not traceable to these officers you could have -- but it is way too late for that.

So, I'm going to preclude Mr. LaBrew from bringing out the fact of no arraignment because it's not clear that that is the custody of the officers, and I'm going to preclude the defendants from -- sorry, I'm going to preclude Mr. LaBrew from bringing out the fact that there is no arraignment because there is no evidence that that is a lapse of the officers. It appears to have been somewhere in the confluence of prosecutors or the hospital. But, in any event, to explore that in front

of the jury would create a trial within a trial with all the distractions and delays inherent.

I'm also not going to permit the defense to argue that some portion of the period of time when she is at the hospital is not properly left at the officer's doorstep because you have waived the living day lights ought of that claim. You didn't even make that argument in your motion *in limine*. All you tried to do was get rid of the fact that the cancer has been diagnosed as terminal. The only reason the subject came up is because I ruled an your terminal motion. Mr. LaBrew is absolutely in fair game to argue that if there was a false arrest here, the custody that flowed from it extended until June 16th.

Okay. Am I clear?

MR. LaBREW: Yes, your Honor.

THE COURT: Defense?

MS. GARMAN: Yes, your Honor.

THE COURT: In a moment we are going to take a comfort break but let me see if there is any other sequels from my rulings on the motions *in limine*. Anything else that you were concerned about?

MS. GARMAN: Yes, your Honor, and I do apologize. I am mindful that there is a lot to cover today.

With respect to your Honor's rulings about ACS, we did have a couple points of clarification. I don't know if you

want to take a break first.

THE COURT: Let's finish that and then we will break.

MS. GARMAN: So, as your Honor I believe is aware, the underlying ACS -- the underlying allegation against Waheedah Shaheed was that her minor daughter was cutting herself and that Waheedah Shaheed was not getting her medical treatment. We certainly do not seek to prove that that is true or litigate the truth of that but in the context of providing background that I believe is critical to this case, we do seek to elicit the fact that those allegations were made and that Waheedah Shaheed was informed of those allegations.

THE COURT: Yes. I thought that was clear. In other words, the background of what the nature of the allegation was is fair game, it informs the mindset of both parties going into the incident.

MR. LaBREW: And similarly conversations, because we do have an ACS worker that we intend to call as a witness and her testimony would be regarding conversations she had with Waheedah Shaheed regarding that investigation, and specifically comments that Waheedah Shaheed made to the ACS worker.

THE COURT: What comments?

Well, with respect to the ACS worker's -- the comments that Waheedah Shaheed said to the ACS worker include such things as: *I do not believe that ACS should exist as an agency. I do not care if you get a court order to come into my*

home, you will have to find cops who are willing to taze me and make me have a heart attack in front of my children. You are going to face a lawsuit of mammoth proportions. Things of that nature that I think speak very clearly to her intent on the date of the arrest.

THE COURT: Look. This is why I think I clearly ruled that the context of the ACS visit is fair game but we are not going to litigate the validity of whether the kid was or wasn't cutting the kid's self. That is out of bound, it is not a family suit. But, the understanding of each party, the officers as well as the arrestees, is clearly fair game as to what the investigation was about and what the purposes were of the visit, as well as if these statements really happened you are at liberty to elicit that she said she was going to disobey valid process. That's fair game. I hope I was clear about that but if I wasn't, I hope I am being clear now.

MS. GARMAN: You were, your Honor. I wanted to, before we went into something before the injury --

THE COURT: My point is I'm not going to allow, to be litigated, the validity of the order that permitted the officers to enter. Ms. Shaheed has forums to challenge that but one of them is not resisting execution of a lawful court order. She may, if the jury finds that she interfered with a valid court order, that bears on whether or not they may find any or all of the causes of action here. I don't know what the

facts will be, but she can't take the law into her own hands and seek to disobey the order.

Now, it may be that the officers came in and punched her in the face. That is a different story. That obviously, if that is correct, as Mr. LaBrew proffers, that's a different story. But what can't be argued is this is an invalid order, she is entitled to disobey it.

MS. GARMAN: Understood, your Honor.

Somewhat relatedly, we want to clarify, we do seek to elicit testimony and evidence regarding Waheedah Shaheed's prior involvement with ACS in the past.

THE COURT: Was this in one of the motions *in limine*?

MS. GARMAN: It was not, your Honor, and we -- it was certainly contained in documents we produced during discovery so we were surprised that Mr. LaBrew did not move to preclude it, but we just want to make sure, again, so that there are no surprises at trial.

THE COURT: Right. I will be glad to hear you now but for future reference, this is sort of the reason we have motions *in limine*. With all the motions I got about how we should refer to you at trial, how do I not, and what I should do with the caption of the case, how is it that prior dealings with ACS wouldn't have been a much more relevant subject to get an advance Court ruling on?

MS. GARMAN: Apologies, your Honor.

Given that your Honor is very clear that you want to keep this trial contained, in an abundance of caution we want to make sure if we are eliciting evidence as impeachment your Honor --

THE COURT: I'm sorry. Is this impeachment? I don't understand. Why don't you proffer the evidence that you have in mind is and then explain to me what it is relevant to.

MS. GARMAN: Certainly, your Honor.

At her deposition Waheedah Shaheed denied ever having had her children removed by ACS before. She, in fact, has had her children removed by ACS on two prior occasions so it is relevant in the first instance because it goes directly to her credibility contradicting a statement she made under oath in this case. Also relevant given that her, again her intentions, her personal beliefs about ACS, speak to her state of mind at the time when she was resisting the lawful order from the Family Court.

THE COURT: How much information, how much are you going to seek to bring out about her prior dealings with ACS?

MS. GARMAN: Simply that she previously had her children removed from her on two prior occasions.

THE COURT: Same children?

MS. GARMAN: She has four children. I think one time two of them were removed and then the second time all four.

THE COURT: Will you be bringing out what the

condition was of the children the prior times or just the fact that they were removed?

MS. GARMAN: Just the fact that they were removed.

THE COURT: And you are offering that because it bears on the likelihood that she would resist the third time? Or to show that her denial of same in the deposition speaks to her truthfulness? Or both?

MS. GARMAN: The latter, the denial of it speaks to her truthfulness but also not that she's more likely to act in conformity with prior bad acts but that she has an axe to grind with ACS; she did not like them, consistent with statements that she made she doesn't respect their authority.

THE COURT: Let me see if I have this right. What years were the prior removals?

MS. GARMAN: 1999 and 2003.

THE COURT: And what you say happened is in those two years ACS removed her children. I take it there is no claim or evidence that there was any incident at the threshold then, they simply removed the children?

MS. GARMAN: Not entirely true, your Honor.

During the second incident, the second removal in 2003, Ms. Shaheed and Daghrib Shaheed, the other plaintiff in this case, were both arrested because Ms. Waheedah Shaheed had Daghrib take her siblings out of foster care and return them to Ms. Shaheed's home. They were both arrested for that and we

certainly seek to elicit that fact as well.

THE COURT: Wait a minute. Are you kidding me? Are you kidding me? That you are going to try to elicit a prior arrest without giving me notice in a motion *in limine*?

MS. GARMAN: Your Honor, we do apologize. We have gotten this information since the filing. We should have resubmitted --

THE COURT: Sorry. We are going to take a break right now so I don't say anything untoward but I expect a lot better. You have spent all this time with motions about how you should be referred to in court and you don't have the dignity to share with me in advance of this hearing and this ruling that you are going to try to a bring out a prior arrest?

MS. GARMAN: Your Honor.

THE COURT: This is federal court. It is out. It is unprofessional. It is out. It is not going to be allowed.

MS. GARMAN: Yes, your Honor.

THE COURT: I will be back in five minutes.

(recess)

THE COURT: Look. When we broke I had been just alerted by Ms. Garman that the City's hope is to elicit the fact that Ms. Shaheed had obstructed a prior Court order by essentially getting her kids improperly removed from some form of custody. When did you first tell plaintiffs counsel you intended to offer that in evidence at this trial?

MS. GARMAN: Your Honor, we did not specifically do so.

THE COURT: Did you generally do so? Is the answer you didn't do so?

MS. GARMAN: We did not do so.

THE COURT: Thank you.

When did you first learn about this? Did it come up in the deposition?

MS. GARMAN: Your Honor, it was contained in ACS records that were produced, I believe, before both Mr. Arko and myself got on the case so I don't specifically --

THE COURT: How many months ago did the City's legal team on this case have those records?

MR. ARKO: I'm not sure the exact date. I know it was sometime -- my understanding is sometime in the year, either late 2016 or early 2017.

THE COURT: Look. I appreciate that you have the unfortunate lot of being the people who come late to a case in which a woman with terminal cancer gets a black eye at the hands of the police and it is a challenging case to defend in some respects, but all the more reason to avoid unfair surprise. I mean, you know. The City has been chargeable for a year and three quarters with the knowledge that there has been prior incidents with ACS. It's one thing to say that her children were previously taken by ACS. That is one thing and I

am subject to hearing from Mr. LaBrew, very much open to that as relevant context. The idea that she engaged in misconduct at some prior time is why we have motions *in limine*, and you can understand the extreme unfairness to Mr. LaBrew and his client to spring this on him and me, let alone through the back door. The only reason this came out now was because I asked you if anyone had any follow-up to my rulings *in limine* and we started talking about terminal cancer. But, it appears to me that you didn't even come here with a game plan now to raise this issue but it is way too late. Way too late. It is just so unfair to the plaintiff.

If you were in his shoes you would say, your Honor, I need to develop context. This is a classic 404(b) situation, it is a bad act. I would like to litigate whether it is being offered for character as opposed to motive, intent, knowledge, preparation, absence of mistake, plan. Something like that. The 404(b) is almost the quintessential motion *in limine*.

What was the thought process of deciding not to include this fact that was known to the legal team since the Obama administration?

MS. GARMAN: Your Honor, and again we do very much apologize for bringing this to your Honor's attention. I do note I certainly was absolutely going to mention this today, it was on my list of things to mention. So, in any event, we were not going to surprise anyone with this at trial.

We only just received confirmation that these arrests were not sealed I believe earlier this week, if not yesterday. So, we do have new information that was not available even at the time of the making of the motions *in limine*. That being said, we certainly respect and understand your Honor's ruling. Just --

THE COURT: But, in fairness, you are not telling me there wasn't a way that -- you are not telling me that the fact of whatever you have just learned about the sealing prevented you from sharing with me or opposing counsel the possible bid to offer this evidence. I mean, there are many ways you can alert a Court to doing so without putting something on the docket of the case. If you needed to ask for the opportunity to brief something that was, for the time being, redacted because it included information confidential about the children or something there is every ability to do that, everyone does it.

Let me try it a little differently. When did you first begin to consider offering or trying to offer this evidence in trial? When is the first time you gave thought to it?

MS. GARMAN: In connection with preparing for the trial. I don't know that I know the specific date but it is within the past few weeks of getting acquainted with the file.

THE COURT: When were you assigned to the case?

MS. GARMAN: A month ago?

THE COURT: When, Mr. Arko, when were you assigned to the case?

MR. ARKO: I put in a notice of appearance in June of 2017.

THE COURT: So you have been with the case -- maybe my fire needs to be trained a little with respect on you but the trial team has apparently had this ACS file that reflects the theory of misconducted by Ms. Shaheed for a better part of two years. Fully respecting Ms. Garman's lot as the newcomer you are a collective, you are a unity. Somebody didn't take a look at this and say, *This is blockbuster evidence, this is what she does, Ms. Shaheed is a disobeyer of child services*. It is incredibly probative. With proper notice, depending on what the facts showed, it would have been great evidence. The problem is that, back to Mr. LaBrew, this is America, that means the Rules of Evidence apply, there is a sense of fairness and notice. There is no chance we could hold a trial next week if you were proposing to offer that because Mr. LaBrew would be entitled to brief this very explosive issue.

I expect a lot better. I'm a City resident. You are going to lose this case more likely than you would have had there been -- and maybe for a lot of money given who gets beat up here, you know, and you had this wonderful piece of evidence which is that the plaintiff claimant in the case has apparently

disobeyed or circumvented Child Services orders before and it comes out through the back door today.

MR. ARKO: Your Honor, just to clarify. The existence of the arrest and the prior ACS history were in the ACS records that were produced to Mr. LaBrew over a year ago.

THE COURT: Be that as it may, you know, it is on you to try to offer bad acts. Did you give 404(b) notice to Mr. LaBrew? Yes or no.

MS. GARMAN: No, your Honor.

THE COURT: Was that a deliberate decision? Were you aware of Rule 404(b)? I am asking Mr. Arko because he has been with the case longer.

I mean, I really don't like blaming Mr. LaBrew for this.

MR. ARKO: Yes, your Honor. I'm not trying to blame Mr. LaBrew. It is that we felt he was on adequate notice of it and didn't seek to exclude it so it is not something we necessarily thought to make a motion *in limine* about because there was no effort by Mr. LaBrew to keep it out. So, it's not something he didn't know about or was unaware of.

THE COURT: But I've got a gate keeper rule and 404(b) is about as big as it gets in terms of a Court's independent obligation to police stuff. Is it really the case because Mr. LaBrew didn't think to preclude it you were going to blithely offer it at trial and then we would have a side bar to

end all side bars working through what happened?

MS. GARMAN: Your Honor, we were not intending to blithely -- we were intending to raise it with your Honor today. We will not belabor this point. We certainly understand the Court's frustration.

Just for the record, both of the plaintiffs in this case denied ever previously being arrested and in addition to the other reasons, we believe this is relevant. And, as your Honor agrees, it is incredibly probative it is also incredibly probative of their credibility and their understanding of the oath that they've taken to tell the truth.

THE COURT: All right. Let me be precise about this. I don't know what the facts would ultimately be about these episodes but apparently your proffering that these two defendants, Waheedah in 1999 was arrested in connection with resisting, I guess, a child removal order and then in 2003 that Daghrib circumvented an order by removing the kids?

MS. GARMAN: No, your Honor.

In 2003 they were both arrested for circumventing the order.

THE COURT: Okay. Look. There would be a very interesting discussion about whether or not this comes in because we need to understand the facts and circumstances. It is nine years later, that's longer than one usually admits for similar act, and on the other hand it may be very similar in

the sense that it's probably the same kids and ACS. There would be an interesting discussion about whether or not the balance of probative value versus unfair prejudice and confusion favors admission.

This would be complicated. I need a real portrait of who is testifying about what, in detail. But, I was denied that and, as a result I, as a citizen of this City, are going to be paying more money if you lose this case because you didn't give a Federal Court notice of your desire to put in evidence what might be among your most powerful evidence. You need to tell your supervisors about this because this is not -- this is Federal Court, it is not kangaroo court, and it just grossly unfair to Mr. LaBrew and his clients, it is grossly unfair to the Court because I, if it isn't already obvious with all the trials that your colleagues have had in front of me, I appreciate advance notice and come up with thoughtful rulings based on briefing and, most of all, it is unfair to the citizens of New York who are going to have their representatives litigating with one hand tied behind their back because of a lapse of basic notice.

So, the answer is, unfortunately, the fact of prior arrests in connection with child removal activity is out. It has to be out because basic fairness to Mr. LaBrew's clients demands that. I will entertain the idea that there had been prior removals because that certainly goes to -- that's not a

bad act primarily on behalf of the Shaheeds, it goes to their motives and intentions as to why they might tend to resist ACS, they had been down this road before. But, the very pungent bad act of a prior crime, because there is no question, what you are claiming that the Shaheeds did in the past was not merely get arrested, you are claiming they committed a crime which is what led them to get arrested, is as powerful 404(b) evidence as it gets. Prior criminality. And I would have to really do a close review as to whether it's character, whether it is for some permitted element and the balance of factors and you have prevented a thoughtful decision on that so I have to exclude it.

MS. GARMAN: Yes, your Honor.

THE COURT: I mean, I'm sorry. And, Ms. Garman, I am particularly sorry because you are the newcomer here. The real fault, if I may, lies earlier in the process because the motions *in limine* were filed more than a month ago and this was, for all of the ticky-tack motions *in limine* which I was happy to rule on, there is the 800-pound gorilla of we would like to prove up the prior crimes of the two difficulties acting in concert in connection with ACS and their children, somehow went unbriefed.

MS. GARMAN: Your Honor, I appreciate that. We share responsibility and do apologize.

THE COURT: All right.

Mr. LaBrew, the open question for you and then we need to move on, is the fact of the prior removals by ACS, not the arrests but the fact of the prior removals. Is there a basis for excluding that?

MR. LaBREW: I have to look and get more information about that, your Honor. I had no in depth information about any prior removals. My information about both plaintiffs from actually looking at their rap sheets when they were in criminal court they have no -- nobody's been convicted of a crime.

THE COURT: Sorry. Mr. LaBrew. If you want to reopen the ruling that I just made in your favor you are welcome to do so.

MR. LaBREW: No. No.

THE COURT: I asked you a different question and the different question was because I will not permit to be elicited the fact of the prior arrests of your clients but the fact that the children had previously been removed from them by ACS is a different thing. That does not tend to tar them as law breakers, it has a much different probative value of showing that they had prior experience with ACS. That's germane as to motive, it is also potentially germane as to their awareness of the lawful process that is ACS. They can't claim the same level of perhaps confusion, maybe, maybe not they have a claim, but it doesn't have the pungent risk of unfair prejudice of a claim of prior criminality.

Is there a basis for excluding the fact that, putting aside an arrest, that children had previously been removed by ACS from these parents?

MR. LaBREW: Yes, your Honor. The probative value of 403 is outweighed by substantial prejudice. There is no factual basis on what allegedly happened with these alleged prior removals, what was the basis of these alleged prior removals, what actually even happened with regard to any of these incidents.

The next question is what are they trying to show with this information. Okay? If they're just trying to show bad character, that's highly prejudicial. And then it also tends to show some type of propensity for wrongdoing. And I think that what that would demonstrate or what that would inject into this trial with the jury would be highly prejudicial.

THE COURT: Let me get a distinct depiction from the plaintiff, now that I have ruled out the arrest, through whom would you be eliciting what information about the prior removals of the children?

MS. GARMAN: I would seek to question Ms. Shaheed herself about it and only about the fact that there were these prior removals.

THE COURT: You would just be saying, *Isn't it a fact that in 2003 ACS removed children from your house?*

MS. GARMAN: Correct. Maybe identify the children,

but yes.

THE COURT: Correct.

MS. GARMAN: Not for whatever reason, nothing else.

THE COURT: You are not going to be getting into their being arrested or circumventing because that's out.

MS. GARMAN: Correct.

THE COURT: But you would be establishing that the children were removed and that she did not like it.

MS. GARMAN: Yes, your Honor.

And we also potentially would elicit the similar information from the ACS worker who is assigned to the current case, based on her review of --

THE COURT: Does she have -- I think are you about to say based on her review of the file?

MS. GARMAN: Yes.

THE COURT: How is she competent to -- I mean that's hearsay, right?

MS. GARMAN: She will testify --

THE COURT: As something she read?

MS. GARMAN: Yes, your Honor, but I think in that sense we would be eliciting it for not for the truth but for her -- what she --

THE COURT: You care about it only for the truth. What you care about is once it is accepted that twice before these children had been removed from ACS, once one accepts that

as a truthful fact, it is significant motive evidence for you. It explains the mindset that the Shaheeds bring to this incident. I completely understand that, but it is only because it is for the truth that if it is not taken as true, who cares about what the mindset is of the ACS person. It is only relevant if one accepts it, that this historical event occurred, right?

MS. GARMAN: Yes, your Honor. The ACS worker will testify that when she's assigned a case as part of her work on the case she needs to get a background, to have knowledge about the family's prior involvement with ACS. We would simply -- which informs her, what she does and how she approaches investigating this case. The issue, your Honor, is that we anticipate that Ms. Shaheed is going to again, as she did previously under oath, is deny these prior removals.

THE COURT: Then prove them up in response.

In other words -- look. If you can get competent evidence of the prior removals for the truth of the matter asserted be my guest, but I'm not persuaded -- it would have been useful to have the point briefed -- that somebody who has read a file can offer that for the truth of the matter asserted and to offer it through the back door by saying it's not for the truth of the matter asserted but it is how I got prepared, doesn't really respond to what you are trying to use this for. You care about this because it explains Ms. Shaheed's state of

mind. Ms. Shaheed may deny it in which case, you know, you are going second, you can put it in anyway but you just need a competence witness.

MS. GARMAN: Yes, your Honor.

Well, the ACS worker would be able to lay a foundation for the actual underlying records which would be admissible under the business records.

THE COURT: I hope you are right but I'm not going to take a side bar for that. You need to get this right the first time. Were those part of the evidence that you offered in your joint pretrial order?

MS. GARMAN: No, your Honor. It would simply be impeachment if Ms. Shaheed denies having this happen.

THE COURT: During her deposition was she asked the question whether her children had previously been removed by ACS? Is.

MS. GARMAN: Yes.

THE COURT: What did she say?

MS. GARMAN: No.

THE COURT: Okay. And that's untrue you say?

MS. GARMAN: Correct.

THE COURT: So, look. Ms. Shaheed is, under the joint pretrial order, the Shaheeds are testifying first. Mr. LaBrew is not offering to call your clients, you are calling your clients. So, Mr. Shaheed calls his clients, you cross, they

deny. We now move to your case. Apart from what the plaintiff clients will testify about as to the defense and the events of June 6, you are at liberty to establish not merely to impeach but as substantive evidence the fact of the prior arrest, subject to my completing the colloquy that I'm in the middle of with Mr. LaBrew in my 403 ruling but, as you can tell, my instinct is to believe that the prior arrests, if competently -- excuse me not the prior arrests, the prior removals of children, if competently established, are fair game under Rule 403. I'm trying to understand how you are going to do that, though. Why don't you call somebody who removed the kids? I mean, let's get the eye witness.

MS. GARMAN: My hesitation is that someone who removed children in 1999 or 2003 is not someone we will be able to get but that's our problem.

THE COURT: Have you tried?

MS. GARMAN: No. We have not, your Honor.

THE COURT: Let me ask you a question. If you haven't tried, how were you going to get the arrests in? Just by having somebody talk about the review of some records?

MS. GARMAN: Your Honor, we were going to cross-examine Ms. Shaheed about them.

THE COURT: And apparently she was going to deny it because if she denied the arrest, the removals, was she also going to a deny the arrests? The problem is you are hoping

that Ms. Shaheed is going to say a bunch of stuff that you have no confidence she is going to stay, particularly as it relates to the removals where she denies that ever happened. If she denies that that happened, why is she going to acknowledge interfering with the removals or being arrested for interfering with those removals?

MS. GARMAN: With respect to the ACS removals and the information about her interference with those removals, that is contained in records that we believe we can lay a business record foundation for, that we would admit as impeachment evidence.

THE COURT: All right. If you are offering it as impeachment evidence then all you are saying is that the fact of the prior removals is not relevant for the fact that there were prior removals just to show that she is a liar. I'm puzzled here because a lot more thought needs to go into this. I mean if, from the City's perspective, the fact that there were prior removals is substantive important evidence, the fact that there were prior removals you presumably mean to argue affects the state of mind and the knowledge base and the intentions of somebody resisting a subsequent removal. They've been there before, it was unfun, they resisted this time. That's not because of impeachment, it explains how they are oriented or helps explain their state of mind. *Ladies and gentlemen, she's had her children removed twice before, this*

time she decided to resist. But that's not because it is impeachment. And the issue is really ultimately how are you going to get the fact before the jury?

Let me try it this way. I'm going to make a ruling today based on the premise that you have competent evidence of the fact of the prior removals. It is not clear to me at this point that you have lined that up. One can hypothesize means of getting the competent evidence, a percipient witness to the removals would be an obvious way. An appropriately certified business record would be another obvious way. Having some caseworker read some notes, barring more, is not, by any means, clearly a competent way any more than if I read to you some note before me that would be admitted for the truth of the matter asserted.

And so, I'm going to give you until the close of business Thursday to write me a letter explaining the means by which you intend to put this in evidence because I want to rule on this before we have a jury here.

MS. GARMAN: Yes, your Honor.

THE COURT: That's the best way to do this, that way you focus on it. But, assuming for argument's sake that you can get into evidence the fact that twice before her children were removed, explain to me the arguments you would make to the jury from that fact.

MS. GARMAN: That Ms. Shaheed has very strong feelings

about ACS; she does, based in part on the fact that they have removed her children on two prior occasions, she lied about that at her deposition, and she had every motive and intention, including with based on the statements that she made to the ACS worker about her intentions, of not complying with the Court order, that she had every motive and every intention on June 6, 2012, to resist any efforts to remove her children on that day.

THE COURT: Will the records or other evidence that you anticipate bringing to bear about the prior removals unpack the duration of the prior removals? Putting aside whether she acted to circumvent them, is the duration something that you are going able to get into evidence?

MS. GARMAN: We don't actually have that information at this moment.

THE COURT: So as the jury in our case will be left, it will unclear whether it was a day, a week, a month. We just don't know.

MS. GARMAN: That's correct.

THE COURT: Do you think you are going to be able to fill that gap or that is something you still don't know?

MS. GARMAN: We don't know. We will certainly try to get as much information as we can.

THE COURT: Mr. LaBrew, briefly, I am inclined to admit the fact of prior removals if it can be established by competent evidence. Accept the "if for now" because I haven't

received a letter from the City yet -- sorry to call you guys the City but it is just among friends without the jury. We don't know the means by which they're going to get that in but I'm assuming, for argument's sake, they will be able to solve that evidentiary problem. Assuming that they can, through competent evidence, establish the fact of prior removals but that any misconduct or any response by the Shaheeds is out, what's the basis for excluding that?

MR. LaBREW: It is prejudicial, your Honor. This is coming up at the last minute. I don't know all of the facts that the City wants to proffer regarding these alleged prior removals, if they in fact occurred. I don't know what, under what circumstances they occurred. That implicates other orders that the Court made in the case because they haven't really specified what children this is related to, okay, so theoretically speaking, if you are talking 10 or 15 years ago, you must be talking about the children that are actually going to testify on the stand that were in the apartment when the June 6 incident happened because Waheedah Shaheed said --

THE COURT: Sorry. What difference does it make whether it is the same children, some of the same children, or earlier children? I mean, if she's had an experience of ACS removing her children, why doesn't that directly bear on her motives and state of mind when the next ACS visit looms?

MR. LaBREW: Well, first, it is collateral. We

believe it is collateral.

Second --

THE COURT: Collateral doesn't mean it is admissible or inadmissible, it just means it is a separate incident.

MR. LaBREW: Right.

THE COURT: But, prior history is routinely admitted. The issue is explain to me what the unfair probative value is of the prior removals. I will instruct the jury that they're not to form a judgment in this case based on it is not about their child care and so the fact that there may have been an earlier basis to believe that the Shaheeds had been lousy parents -- my words now -- doesn't bear on whether or not they were falsely arrested. And that is equally true as to 2012, as to the earlier times. They will already be getting an instruction that clearly focuses them on the fact that they are not here being punished for child endangerment.

MR. LaBREW: Yes, but that instruction, if this evidence comes out, that instruction will be totally meaningless. We submit that if what they are trying to do is put forth on the stand then what we will have is a mini trial concerning child care and ACS and what happened in the past because, automatically, when they start talking about some type of alleged removals in the past that are unrelated to this case, automatically I'm going to have to address issues as to what was this all about, what happened here, who did this

involve, what removals are you even talking about.

THE COURT: Well, look. I assume that the defense will be able to put dates on the removals and it sounds like it is a very brief -- we will see the means by which it comes in but it ought to be a very brief portion of the testimony establishing simply the fact of two prior removals.

I have heard enough to rule and we need to move on. I will, subject to a sound evidentiary basis for admitting the fact of prior removals, I will permit the defense to establish, as substantive evidence, the fact that children of Waheedah Shaheed, which I take it would mean therefore a sibling of Daghrib Shaheed, were removed from the house. I will further permit the year in which the removal took place and the fact that it was at the hand of ACS. If the City is able to capture the period of time covered by the removal, all that comes in. However, any misconduct by either of plaintiffs in connection with the removal is categorically out for the reasons I have covered at length and the reason I am making this rule is, under Rule 403, the following:

The fact of prior removals of children from these very people, a memorable and significant event, clearly is germane to the motives and state of mind of them as an ensuing removal looms. It also tends to corroborate the oral statements that are being attributed to the Shaheeds that Ms. Garman proffered earlier. The fact that there had been this prior experience

clearly makes it more likely that the Shaheeds would come to this later removal with a resistant frame of mind and that frame of mind is directly relevant to who the aggressor was when the officers get to the apartment. So, I'm going to permit that.

I am mindful that there is some degree of countervailing prejudice, I don't think it is great and I think it can be modulated by an instruction to the jury. The countervailing prejudice is that it would logically appear to the jury that whatever the issues were in 2003, if that's the relevant date, that the Shaheeds had been -- Waheedah Shaheed had not been a fully compliant parent back then. The reason that I don't think ultimately that is unfair prejudice that matches let alone substantially outweighs the fair probative value of this is that we have much the same thing occurring in 2012 and I will instruct the jury as to both that ultimately the trial is not about the quality of the care, it has to do with what happened on June 6 and the jury is not to hold against them any conclusions they make about the quality or lack thereof of the parenting and I'm confident the jury will be able to heed that instruction.

With that, let me, because we need to move on, are there any other 404(b) issues that are out there that I need to be aware of?

MS. GARMAN: No, your Honor. Not for defense.

THE COURT: All right.

As to the separate offer of proofs that you made which is that she denied that, that's not necessary to my ruling. If it turns out that she, in her testimony, denies the prior removals and you are otherwise able to offer that up, you are at liberty to pursue that as impeachment evidence. But, to be clear, the ruling that I am making here is premised on its relevance as substantive evidence going to her state of mind approaching it on June 6.

Understood?

MS. GARMAN: Yes, your Honor.

THE COURT: All right.

MR. LaBREW: Briefly, your Honor?

THE COURT: New? I mean, I have ruled. You are going to have to get used to that when I rule, you move on. Is there some argument you have not yet made?

MR. LaBREW: Yes.

THE COURT: Go ahead.

MR. LaBREW: Basically, your Honor, the defendants were doing all the talking. Basically what they want to do is get up here and have the jury look at Ms. Shaheed as a woman that has historically neglected her children.

THE COURT: Well --

MR. LaBREW: And then the next issue that comes up, your Honor, the children are not allowed to testify based on

the Court's prior ruling about any of this alleged misconduct.

THE COURT: Sorry, Mr. LaBrew. To be quite clear, we are not litigating the validity of the warrant on June the 6th.

MR. LaBREW: No, I'm talking about the prior.

THE COURT: And the prior one simply is going to be that she's had prior experience with ACS removing her kids before. We are not going to get into what she was alleged to have done or not done at the time.

MR. LaBREW: Can I ask the Court just two questions?

THE COURT: You may make an argument. I am in the question business, but go ahead.

MR. LaBREW: Yes, yes, yes. You are right. No disrespect and I take that back.

Your Honor, first, I would like to know all the information about these alleged incidents that the defense is talking about that allegedly happen --

THE COURT: They say that this was produced in discovery. The lapse here was not a discovery one, it is a notice to the Court lapse.

MR. LaBREW: Well, if it was produced in discovery I would like to know where it was at because the discovery I got, most of the stuff was blacked out without a protective order and I didn't see any of that.

THE COURT: Let me ask.

City, defense, I assume you have Bates stamped

whatever you produced to the plaintiff? You have got some way you can just put in a letter what the numbers were of what you produced to him?

MR. ARKO: I can refer to the records -- we were unable to find a complete Bates stamped copy in the file. Again, it was transferred to me and I apologize to plaintiff for that but we did have -- the records were produced, I just don't know exact Bates Number that were assigned to them. There was some overlap in the Bates Numbering and we couldn't find a complete Bates Numbered set.

THE COURT: What is your basis for believing that the records that reflect the prior removals were produced to Mr. LaBrew?

MR. ARKO: I spoke about it with the attorney who had it before and it was transferred to me and that attorney's supervisor. Also, we did find part of the ACS records with Bates stamps on them in the file that they were in draft form, and also it is my understanding that there is a reference to those in response to discovery demands that were made by Mr. LaBrew and that's based on the totality of the Bates Numbering that was produced as it corresponds to what we now --

THE COURT: Look. I want all that stuff reproduced to Mr. LaBrew by 10:00 tomorrow morning.

MR. ARKO: Understood.

THE COURT: There is enough here to suggest to me that

it was produced to him. It was also the subject of questioning in the deposition which implies mutual awareness of it. But, just so that there is no doubt that Mr. LaBrew has everything you are referring to, that's fine. Keep in mind that we are looking at about a 60-second, two-minute snippet here which simply establishes the historical fact. I am not allowing the City to unpack the details of what happened, only the fact of the prior removals with the specifications that I authorized earlier.

Mr. LaBrew, we need to move on.

MR. LaBREW: Okay. I have a question about the Court's order that I didn't get a chance to even proffer because the defense went into --

THE COURT: Go ahead.

MR. LaBREW: With regard to the ACS workers, the defense started it off but I wrote down two points.

THE COURT: Microphone, please.

MR. LaBREW: I wrote down two points with regard to the ACS workers. You said that they could, with the defense, they could talk about the existence of the investigation and notice of the status. Then there was another point made that I didn't get down. Okay? Also, my question with regarding the existence of the investigation encompassed within that ruling, I'm assuming somebody is going to come in here and talk about something that they have first-hand knowledge about and that

this is not to go into some type of hearsay situation where I heard from this person and I heard from that person and this person told me that this person told them that. You know, I'm hoping that they have a witness with some first-hand knowledge to talk about the existence of the investigation.

THE COURT: Defense, I take it the police officers will simply describe the fact that they had a valid warrant or more. Who is going to describe what about the background here?

MS. GARMAN: The ACS worker who was assigned the case.

THE COURT: What will that person say?

MS. GARMAN: With respect to the background of the investigation?

THE COURT: With respect to 2012.

MS. GARMAN: Yes. She will say that she was assigned the case based on an allegation that the minor daughter was cutting herself. She will describe several phone conversations and an in-person conversation that she had with Ms. Shaheed and things that Ms. Shaheed told her directly.

THE COURT: Mr. LaBrew, that sounds fine to me.

MR. LaBREW: That sounds fine to me. I guess with the phone conversations we will reach that, I guess you could say it is part just as part of the event.

THE COURT: It is a statement of a party opponent. Come on.

MR. LaBREW: Okay. Okay.

THE COURT: That's blatantly admissible, it goes to the defendant's knowledge, intent and it is a statement of party opponent, your client who brought the lawsuit.

MR. LaBREW: My concern is this. I don't want somebody coming in here, getting on the stand, swearing to tell the truth, talking about what they heard that somebody told them and all of it is hearsay.

THE COURT: There has been no such proffer. I will reiterate that inadmissible hearsay is inadmissible. Okay? I don't know what more to say. That's very -- I'm not fighting you on the concept but there is no application here.

MR. LaBREW: Right. We haven't heard anything.

THE COURT: All right.

MR. LaBREW: I didn't get the other two points with regard to the ACS workers. I'm sorry.

THE COURT: Get the transcript.

MR. LaBREW: Okay. Good enough. Okay.

THE COURT: All right.

The next topic I want to take up involves the short description of the case for voir dire. A little later I'm going to get into mechanics of voir dire.

MR. LaBREW: I apologize, your Honor. One more minor point because it deals with this whole ACS issue and I appreciate the Court's patience.

I asked for a charge to the effect that based on the

New York State case law that the plaintiffs had no obligation to assist in this investigation.

THE COURT: We will deal with the charging conference at the time of the charge. Right now this is a pretrial conference and I will be happy to take up a charge at the time of the charging conference.

MR. LaBREW: Okay. Because I might open on that. That's on account I might want to open on something that will cause problems.

THE COURT: Well, the plaintiffs are not being accused of failing to do something affirmative, it is that they resisted the officers trying to take the kids; correct, defendants?

MR. ARKO: Yes, your Honor.

THE COURT: I think it is a red herring.

MR. LaBREW: Okay.

THE COURT: We are going to move on now.

What I want to do is read to you the description that I propose to give to the venire which is intending to be neutral, but I want to give it to you so that if there is anything factually wrong here or out of perspective you can comment, but for avoidance of doubt what I am about to read to you is not a forum in which to litigate the case. This is purely for the purposes of jury selection the jury has some idea what's coming. Here we go:

As I have explained, this is a civil case. It is entitled Daghrib Shaheed and Waheedah Shaheed versus Stephan Kroski, Paul Bliss, and Jonathan Rodriguez. There are two plaintiffs: Daghrib Shaheed and Waheedah Shaheed. There are three defendants: Stephan Kroski, Paul Bliss, and Jonathan Rodriguez. Each of the defendants is a detective with the New York City Police Department.

This case involves claims by the plaintiffs against the defendants. The claims arise out of an incident on June 6, 2012. That evening, the defendants executed a Court Order authorizing them to remove two children from an apartment based on a finding of imminent danger to the children. The plaintiffs, who are mother and sister and older sister of the children, were in the apartment. The plaintiffs claim that their civil rights were violated in connection with this incident. They bring claims under federal and state law. There are three sets of claims.

First. Plaintiffs claim that they were subject to what is called a false arrest, that is, that they were unlawfully arrested that evening.

Second. Plaintiffs claim that after their arrest they were subjected to what is called a malicious prosecution.

Third. Plaintiffs claim the defendants used excessive force towards them. The defendants deny these claims. They assert that plaintiffs' arrests and prosecutions were both

justified and that the force used by defendants in making these arrests is appropriate and not excessive.

That's what this case is about. This is a civil case and not a criminal case and no one will go to prison as a result of the verdict in this case. Rather, the plaintiffs are seeking money that they claim the defendants owe them in compensation for their alleged misconduct.

I have left out any reference to punishment because pending the outcome of the evidence, I do not know whether punitive damages will be submitted to the jury. Therefore, Mr. LaBrew, I am leaving out any reference to punishment and you should, too, in your opening statement, until it becomes clear that punitive damages are within the scope of the case. I will rule on that at the close of evidence. You will be able to sum up on that. But, for the time being, I don't want to notify the jury or state to the jury that there is a possibility of punishment here because that may or may not be, depending on what the evidence shows. This case may or may not be one where there is a factual basis for a punitive damages charge going to the jury.

So, that's not precluding any ruling later on, it is simply playing it cautious now because it is not clear to me one way or the other whether that will be a concept that ultimately goes to the jury.

With that, anybody have any objections or

modifications, factual or otherwise, to the proposed description for the venire?

MS. GARMAN: Two very minor, semantical things, your Honor.

THE COURT: Yes.

MS. GARMAN: All three are not detectives with the NYPD. I believe at the time they were all police officers; one is a detective now but we are fine with using police officers.

THE COURT: So, officer instead of detective. Thank you.

MS. GARMAN: And then the other thing, your Honor says the officers executed the order. I would suggest maybe attempted to execute because the children weren't there, they didn't actually, in fact, successfully execute it.

THE COURT: Attempted to execute it; is that correct?

MS. GARMAN: Yes. Something to that effect.

THE COURT: That evening the defendants attempted to execute a Court order...

Is that accurate?

MS. GARMAN: Yes.

THE COURT: Thank you. That's very helpful.

May I ask you, I want to make sure that my characterization of the order is correct. I wrote here: A Court order authorizing them to remove two children from the apartment based on a finding of imminent danger to the

children.

Is that factually accurate?

MS. GARMAN: Yes, with a very minor, again, semantical issue that there were two separate court orders, one per child.

THE COURT: Based on executing two court orders authorizing them to remove two children from an apartment, each based on the finding of imminent danger to the child?

MS. GARMAN: Yes.

THE COURT: Mr. LaBrew, just first of all, factually, do you dispute what was just proffered factually?

MR. LaBREW: I don't dispute it. I would like a little different choice in wording.

THE COURT: What would you like?

MR. LaBREW: The order, I would like it called what it is, a Family Court Order for Removal.

THE COURT: Two family Court orders.

MR. LaBREW: Two family Court removal orders.

THE COURT: I think that's well worth a defense because one of the issues that may be germane in voir dire is the experience that members of the venire have had with the Family Court and I think Mr. LaBrew's point is well taken that that addition may stir up any exposure that a member of the venire has had to the Family Court, which is all to the good. Good.

MR. LaBREW: And when they went with those orders they

went to execute those orders whether they got executed or not.

THE COURT: They attempted to execute is the language. Is that accurate?

MR. LaBREW: Yes, that's accurate.

THE COURT: Okay. Anything else?

MR. LaBREW: Also, where you said money that the plaintiffs owed them, I mean, that's not incorrect because we are here about money.

THE COURT: Money they owe them in compensation for their alleged misconduct.

MR. LaBREW: Yes. I would prefer that the plaintiffs seek compensation regarding the alleged acts of the defendants.

THE COURT: I think the way I have put it explains the purpose of it so I will overrule that. I think the way I have captured it which is the way I do it in each case has heretofore not been objected to.

MR. LaBREW: Well, your Honor, you are the judge.

THE COURT: Okay. Anything else with that description?

MR. LaBREW: Yes, Judge, with that description, I'm going to be stressing facts, I'm not going to be stressing money. So, you know, on behalf of the plaintiffs when you put money in there, what I am trying to do is I want the jury to look at the facts and make a decision and whatever they make a decision on as far as the plaintiffs' are concerned, that's

good. I am not saying give them this and give them that and I am --

THE COURT: And my ruling specifically prohibits you from seeking a dollar amount.

MR. LaBREW: Right, right, right.

THE COURT: My point is I need to explain what the relief sought is. It is not somebody going to jail. And in a civil case I always clarify for the members of the venire that this is about compensation, not jail.

MR. LaBREW: Can we say monetary compensation? I just don't like money because I just -- my --

THE COURT: No. I mean, I read Strunk & White in high school. Monetary compensation means money. We are going to use the one word.

Come on. Come on.

MR. LaBREW: Strunk & White is good. The elegance and style --

THE COURT: Money. All right.

Next. I want to quickly go through the joint pretrial order -- off the record.

(Discussion off record)

THE COURT: Can you go to the plaintiff's witness list? Because I think a number of the people are out and I want to see. On the witness list, the first two, Waheedah Shaheed and Daghrib Shaheed are clearly testifying. I have

included Olodan and Abdur Rahim.

Will you be calling, Mr. LaBrew, Noah Shaheed?

MR. LaBREW: Yes, your Honor.

THE COURT: So, 1, 2, and 5 and five are testifying. Carlene Johnson and Alana Martin are out. I have excluded -- actually, I don't know if I have been given any information about Deana Cucham.

Was that person on the scene on June 6?

MR. LaBREW: I think you excluded her, your Honor.

THE COURT: That person is out.

Winston Butler did he -- I assume it is a he -- witness any of the activities at issue?

MR. LaBREW: He didn't witness actual activities, he just witnessed the aftermath in the apartment.

THE COURT: I don't think -- are you proposing to call him?

MR. LaBREW: I am proposing we might not. If we did, it would be like two or three sentences.

THE COURT: I mean I think, look, if you want to get me the video let me see the video, as I offered the opportunity. That's the better evidence of the damage and let me take a look at it. If you get it to me by the time table I gave I will make a judgment whether that's in or out.

MR. LaBREW: And just regarding the video, the video that I provided to the defendant, that video is not coming in.

It was a video they took of the second incident showing damage.

THE COURT: Oh.

MR. LaBREW: There is a video of the first incident that doesn't show any damage, just people hollering.

THE COURT: So Mr. Butler, there is no video then coming in for the first episode, correct?

MR. LaBREW: No, no. Just a video where Ms. Daghrib Shaheed is hollering get off of my mother.

THE COURT: But it is not coming in is the point.

MR. LaBREW: The video is coming in but it doesn't really show any damage. You can't really see anything on it.

THE COURT: Sorry. You are offering a video. I guess we will get to the evidence as to the first episode.

MR. LaBREW: Yes, your Honor.

THE COURT: But, just as to witnesses -- and who is going to authenticate that video?

MR. LaBREW: Daghrib Shaheed can authenticate it. The whole family can authenticate the video.

THE COURT: One of the plaintiffs will.

MR. LaBREW: Yes, yes.

THE COURT: So you are not calling Mr. Butler I take it at this point?

MR. LaBREW: No, no. I don't think we need him. Nobody is disputing that the police came in there and something happened.

THE COURT: So you are calling Waheedah Shaheed, Daghrib Shaheed, and Noah Shaheed. That's your affirmative case, correct?

MR. LaBREW: Well, I mean, within the parameters that the Court has kindly set for me. I would like to call a lot of other people.

THE COURT: Sorry, sorry, sorry.

Within the rulings I have made --

MR. LaBREW: Right.

THE COURT: -- I just want to be clear that the three witnesses you are calling are the three Shaheeds.

MR. LaBREW: Correct.

THE COURT: Defense, you are proposing to call the three defendants. Are you going to call both ACS employees?

MS. GARMAN: Yes, your Honor.

THE COURT: All right. And are those along the lines of what you proffered earlier or is there something more I need to know about?

MS. GARMAN: No. The one ACS worker is the one we were speaking about before. The other one was actually there and witnessed the events of June 6, 2012.

THE COURT: Who was there on June 6?

MS. GARMAN: Januarie Joubert.

THE COURT: So that person is actually a witness to incident in question?

MS. GARMAN: Correct, in addition to witnessing a prior conversation with Mr. Shaheed himself.

THE COURT: And Shanon Aste is a context witness about the dealings with Ms. Shaheed leading up to June 6?

MS. GARMAN: Correct.

THE COURT: So, we are down to eight witnesses. Let me take a look at the physical evidence and under the plaintiffs exhibits I am going to exclude Exhibits 3 through 29, which are statutes.

MR. LaBREW: Right. You already ruled on that.

THE COURT: The two Family Court Orders, no. 2 is clearly out because it relates it a different date. No. 1 is undisputed, its admissibility. Continuing on, on page 2, 30 and 31 are out because they are statutes, not evidence. And, 32 through 34 are out because they are subsequent orders relating to different people but, in any event, having to do with other events on other days. 35 and 36 are out because -- and 38 are out because they are laws, not evidence. The Desk Appearance Ticket 37, it relates to June 6th, correct?

MR. LaBREW: Correct, your Honor.

THE COURT: Is there any objection to that coming in, defense?

MS. GARMAN: No, as long as a proper foundation is laid.

THE COURT: Right.

And then I don't understand what the police complaint report and arrest reports are. 39 through 42. Briefly, Mr. LaBrew, what is that about?

MR. LaBREW: The arrest report. I'm not admitting the arrest report.

THE COURT: So, 41 and 42 are out. What about the police complaint report, I mean as offered by you. What about 41 and 42?

MR. LaBREW: I'm not going to admit that. I don't think it is going to be any dispute about what they were arrested for.

THE COURT: So 39 through 42 are out.

MR. LaBREW: Right. I may admit the actual complaint that commenced the criminal proceeding.

THE COURT: Sorry. Are you looking at your own joint pretrial order?

MR. LaBREW: I don't have it in front of me, your Honor.

THE COURT: Did you bring it today since the conference is discussing joint pretrial order?

MR. LaBREW: I know exactly what you are talking about.

THE COURT: So are 39 and 40 in or out?

MR. LaBREW: 39 and 40 for police arrest paperwork.

THE COURT: No, they're police complaint reports; are

those in or out?

MR. LaBREW: Those are out.

THE COURT: And 41 and 42 the arrests are out, correct?

MR. LaBREW: Yes.

THE COURT: 43 and 44 are the complaints for Waheedah and Daghrib Shaheed respectively for June 6. Are those in or out?

MR. LaBREW: Those are in.

THE COURT: And 45, which is Noah Shaheed, that is out?

MR. LaBREW: Correct.

THE COURT: Defense, what about 43 and 44? Do you object to those?

MS. GARMAN: Again, provided that a proper foundation is laid, no.

THE COURT: Assuming it is authenticated you don't have other objection to it?

MS. GARMAN: Correct.

THE COURT: Okay.

MR. LaBREW: Your Honor, this came up in motion *in limine* on foundation. The witnesses can lay foundation for the document.

THE COURT: Look. I am assuming that you are all competent and will lay a proper foundation.

MR. LaBREW: Okay.

THE COURT: 46 is out, it relates to a subsequent incident. 47 which deals with Noah Shaheed is out. 48 and 49 I assume are in. These are the dispositions for the two plaintiffs as to June 6 incident?

MR. LaBREW: Yes, your Honor.

THE COURT: Defense, any objection to that?

MS. GARMAN: No.

THE COURT: You put down two stars so I am left to assume you objected for some reason but I don't know what it would be.

MS. GARMAN: Your Honor, we didn't put two stars because these were not identified by Bates numbers or otherwise provided to us so we just --

THE COURT: Do you have them now?

MS. GARMAN: We can surmise that these were the ones that were produced in discovery so we don't object.

THE COURT: Look. I'm going to ask each of you once I am done with this list to get to each other and to me a binder of your exhibits that you are proposing to offer consistent with what I have excluded. I don't know if you are planning, Mr. LaBrew, to renumber it since the vast majority of your exhibits are out or if you have already labeled your exhibits.

MR. LaBREW: I have not.

THE COURT: What I would like you to do is, by

Thursday, get me a binder of your exhibits relabeled with two copies for my chambers, two for the defense, but with an exhibit list so that we can all follow along.

MR. LaBREW: Okay.

THE COURT: In other words, consistent with -- don't be repopulating it with new stuff but just make the excisions from the current list of the things I have excluded.

MR. LaBREW: Okay. Because I wanted to wait and see what was happening here before I knew what was coming in.

THE COURT: Very good.

So, 50 and 51 are out because they relate to the other incident. 52 is a property invoice, that's not part of this case, we are not talking about property damage.

MR. LaBREW: No.

THE COURT: Medical records of Waheedah and Daghrib are 53 and 54. What's the story with that?

MR. LaBREW: This is just medical records related to the injuries for the first incident.

THE COURT: Okay. I can't tell who the -- is it a hospital? A doctor?

MR. LaBREW: Hospital records and from a doctor, and we are in the process of -- I spoke with the defendants, we are in the process of preparing that so that they can get a copy of that without --

THE COURT: Get it to them right away because I expect

that if it's proper medical records, the defendants will stipulate to it so that we don't have to bring in somebody who has got much better things to do than to authenticate medical records. But, they can't be expected to stipulate to medical records that are sight unseen.

MR. LaBREW: Okay.

THE COURT: You don't have a medical records custodian here so either they're coming in because they're certified or because they're stipulated to.

MR. LaBREW: Certified.

THE COURT: But the defendants need to see it because there is every possibility, particularly given the excesses on both sides of what you have each tried to put in, that the defense will say some but not all is acceptable to us and, you know, I don't want inadmissible stuff coming in. So, please, get it to them right away.

MR. LaBREW: Okay, your Honor.

THE COURT: 55 is out, that's Olodan's records.

56, plaintiff you are offering the medical records of Kroski without objection?

MR. LaBREW: Unless there is some objection from --

THE COURT: They've got two stars so they're not objecting, right?

MS. GARMAN: Subject to appropriate redactions. If they're the ones we produced we produced them with redactions

that we are happy with, so.

THE COURT: All right.

MR. LaBREW: I might not even offer that, your Honor. I can ask them that on the stand. I don't need records for that. He is not going to say he didn't go to the hospital.

THE COURT: 57, pictures of plaintiff's apartment. Defendants say this wasn't produced in discovery. Was it produced in discovery?

MR. LaBREW: I gave them pictures of the apartment from the first incident right after mediation and I sent them another copy of those pictures when they asked me for them and they said they couldn't find the disk.

THE COURT: Defendants, do you have any objection to these being received if it can be shown that they were produced in discovery?

MS. GARMAN: Our objection -- yes, your Honor, just based on relevance grounds. There is no claim related to negligence or property damage.

THE COURT: Okay. I need to know what the pictures show.

MR. LaBREW: The pictures show the apartment on the first incident, and one of the pictures show the police officers entering the apartment. A couple of the other pictures show the apartment. As I spoke with the defendants I told them, and we haven't taken these pictures yet, we might,

just to give --

THE COURT: Sorry. Wait. Whoa, whoa, whoa, whoa, whoa. It says -- oh, these are after the incident. So these are not to show the condition of the apartment, they are just to show the layout?

MR. LaBREW: Yes. Some pictures show, were taken right immediately after the incident, but we are going to just have some pictures just to show the layout of the apartment.

THE COURT: Well, if it is just the layout that's one thing. If there is personalty there that would tend to evoke sympathy, you shouldn't do that.

MR. LaBREW: No.

THE COURT: In other words, if what you are looking for is a floor plan or something that is tantamount to that, I would be favorably disposed if there is nothing that is tugging at the heart strings in there.

Defendant, on that premise, do you have any objection to pictures like that?

MS. GARMAN: It's difficult -- not having seen them it's difficult to make a determination either way, your Honor.

THE COURT: Get it to them by Thursday, please.

MR. LaBREW: Okay. And as an officer of the court, it is going to be just like the court said; pictures after the fact, it is show and tell.

THE COURT: Get it to them by Thursday, please,

because I can already see there are way too many unresolved issues here. At least that way we will know the defense will be in position to form a judgment.

MR. LaBREW: Okay.

THE COURT: Partial video footage of a portion of the incident.

Defendants, are you objecting to that? Mr. LaBrew you still intend to offer that, right?

MR. LaBREW: Yes, and that's the video we are talking about.

THE COURT: Defendants, you don't indicate any, that you are agreeing to its admission. Why not?

MS. GARMAN: Again, your Honor, as we noted, this is not identified by Bates Number or any type of other identifying feature and we have made efforts to clarify what Mr. LaBrew is talking about. If he is talking about the portion of the video that was exchanged in discovery, that limited portion, subject to assuming a foundation is laid we don't have an objection but, again, we aren't able to tell from what --

THE COURT: Mr. LaBrew began to briefly describe it to me. It sounds as if in one portion one of the plaintiffs is yelling to get one of the police officers off.

Mr. LaBrew, is that the video you are talking about?

MR. LaBREW: That is correct, your Honor, and I gave that video to the People in 2015. I gave that same video to

them again two days ago. I specifically said this is the video that we are going to introduce into evidence and everybody in the apartment can authenticate the video.

THE COURT: Okay. Look, Ms. Garman, do you know now what video he is referring to?

MS. GARMAN: I believe I do. Assuming it is the video that has been produced in discovery we do not have an objection if a foundation is laid.

THE COURT: Okay. Video footage of the damage to the apartment.

MR. LaBREW: That video is not coming in.

THE COURT: Not coming in.

Pictures of the apartment, floor plan of the apartment. Again, we have now got three different ways, 57, 60 and 61, that you appear to be trying to capture the layout. Subject to foundation, I will permit that in but I also expect that it will be denuded of any, you know, emotive aspects. I just really want something that can help the jury understand the flow of rooms and the like.

62, pictures of plaintiff's injuries after the incident. Who took those pictures?

MR. LaBREW: Ms. Shaheed took those pictures in her apartment and at the hospital. One of them shows Waheedah Shaheed with a black eye. The other one shows Daghrib Shaheed with the injuries to her arm.

THE COURT: And the two plaintiffs will be able to authenticate those as reflecting their condition on or about those dates.

MR. LaBREW: Yes, and they were provided to defense in 2015 and a couple of weeks ago.

THE COURT: Any objection, defense?

MS. GARMAN: Again, we would just like to -- I guess your Honor has already told plaintiffs counsel to get us a copy of the proposed photos. We want to make sure they are in fact the photos we received and not other photos.

THE COURT: Mr. LaBrew, just because it sounds like there is a chaotic quality about a lot of things going on between the parties here, get them a full set of your evidence, get us each a binder by Thursday with labels on it.

MR. LaBREW: Okay.

THE COURT: But I'm taking Ms. Garman to be saying if this is what she thinks it is she's not going to object as long as somebody is able to authenticate these photos as capturing the appearance of the people depicted on or about a given date after June 6, correct?

MR. LaBREW: Correct.

THE COURT: All right.

The chart of the New York State Court System is out. I don't think I need any more commentary on that.

The mug shot I have already ruled. On the mug shots,

the one from June 6 can come in if authenticated, the other is night.

Finally, Exhibit 66, which is another section of Criminal Procedure Law, is out.

All right. Defendants you have got just seven letters. No. 1, Family Court Order dated June 6. Mr. LaBrew, any objection?

MR. LaBREW: No.

THE COURT: Mount Sinai medical records of Waheedah Shaheed. Any objection, Mr. LaBrew?

MR. LaBREW: No.

THE COURT: No.

Mount Sinai medical records of Daghrib Shaheed -- and here we have got Bates numbers. Any objection to those?

MR. LaBREW: No.

THE COURT: Orthopedic records and rehab records of Daghrib, number D. Any objection?

MR. LaBREW: None, your Honor.

THE COURT: E and F, records of Kroski -- medical records of Kroski. Any objection?

MR. LaBREW: E and F?

THE COURT: E and F.

MR. LaBREW: I am assuming that's his medical records that I received.

THE COURT: It says here Presbyterian Hospital records

for Stephan Kroski with a Bates Number.

MR. LaBREW: Oh, that's no problem, your Honor. We are going to open on that.

THE COURT: And then G is medical records from the PD for Kroski as well.

MR. LaBREW: Oh, yes. We are going to open on that as well, too.

THE COURT: So, that's all in as well.

MR. LaBREW: Yes.

THE COURT: Plaintiff, now that we have significantly pruned the topics to be covered and the number of witnesses, I would like to think that I can tell the jury that we expect this trial to be over within three to four days. Is there any reason why that would be inaccurate? I mean this is, in the end there is a lot of intensity but it is about a very temporally narrow event followed by some medical stuff, medical evidence.

Look, I'm not going to -- I don't want to tell them something that is not true but I mean if you can't try this case efficiently and the defendants with it being one incident, one entry to an apartment followed by medical sequelae, three or four days, I expect you will be able to move this.

MR. LaBREW: I mean, your Honor, based on your rulings, it might be take about a week. I mean I'm not -- I tend to, at trial, I like to have my say, subject to the

discretion of the Court telling me that my say is about done.

THE COURT: Your clients are entitled to their day in court but they're entitled to their day in court with your being respectful of the time of the jury and your being mindful of the rules of evidence and that I work a very full day.

In my courtroom, counsel are to be in their seats ready to go by 9:00. We spend a half our before 9:00 and 9:30 dealing with evidentiary issues and stuff for the day because I do not like side bars unless utterly necessary. In case it isn't obvious by now, I try to rule on things before trial so that we can make maximum use of our greatest resource which is the jury's time. Is sit from 9:30 to 5:00, there is an hour lunch; 10-minute midmorning and midafternoon break.

It means we have, in practice, on-the-clock testimony of at least about six hours a day and there is only but so much here. My expectation is we will get jury selection done relatively quickly and you will be trying your case very promptly. I would like to be able to tell the jury that the parties are confident this case will be done within a week, and likely within three to four days.

MR. LaBREW: Well, your Honor --

THE COURT: I have had enough experience with this that unless there is something really out of the ordinary here there is only but so much content.

You tell me.

MR. LaBREW: It will probably be a week but I'm going to take some time with these police officers now.

THE COURT: Well, you can take some time on only events at issue, not disciplinary issues, we are not getting into race.

MR. LaBREW: No.

THE COURT: We are not putting the police department on trial. This is about conduct at a particular time and place.

MR. LaBREW: Right. We are talking about conduct at a particular time and place with these particular police officers.

THE COURT: Good.

MR. LaBREW: So I'm going to go in -- I'm not going to bite my tongue with these police officers.

THE COURT: It is not a matter of biting your tongue. The metaphors don't help me here. I am trying to figure out --

MR. LaBREW: I will say about a week. I just don't want the Court to tell the jury it is going to definitely be this and something is happening here because I have been doing this stuff a while myself, and you get in here and you think it is going to be this and then when you get in here it takes on a life of its own.

THE COURT: You deposed all three of the officers.

MR. LaBREW: I didn't need to depose the officers so

it is not deposition testimony, it is going to be just the facts.

THE COURT: Look. This is not investigative testimony.

MR. LaBREW: No. No.

THE COURT: You chose not to depose any witnesses?

MR. LaBREW: This is going to be just the facts. It should be quick, but depending on what they say, that will determine what happens here.

THE COURT: Defendants, what is your estimate of the length of the trial, given the rulings I have made?

MS. GARMAN: Certainly three to four days seems reasonable.

MR. LaBREW: Your Honor?

THE COURT: Yes.

MR. LaBREW: Just so we know, okay, these police officers came in here using racial language.

THE COURT: When did they come in here using racial language?

MR. LaBREW: Into Ms. Shaheed's house when they came --

THE COURT: You are at liberty to develop everything that happened. If they used racial language, that's part of the narrative, that's fine. I don't have any problem -- we are not expurgating what happened there and if they used racial

language, profanity, whatever was said was said. It is part of the incident. My point is we are not going to turn this into a parable about the police department. This is about a particular incident and just like the police department can't pull out 9/11 to save them, nor can you pull out a bad incident by somebody else to bury them. It is about what happened at that particular incident.

MR. LaBREW: I'm not going to pull out something from -- we are talking about the incident.

THE COURT: Okay.

Courtroom technology. Who is the one who is playing the video?

MR. LaBREW: I'm going to play the video I guess.

THE COURT: You need to get with Mr. Smallman sometime this week for a tutorial on how to use the technology here. I'm not going to have people fumbling in court.

MR. LaBREW: I don't want to do that.

THE COURT: Right. So, you need to contact Mr. Smallman and arrange a time to come in so that you are ready for prime time with that video. I have had too many occasions where lawyers don't do that and the jury is sitting there twiddling its thumbs. Fair warning, I expect you to be ready for prime time to use your exhibits whether putting them on the ELMO if it is something still, or putting it on the video but you need to be ready to do that. The video may well

be very interesting, powerful evidence, I don't know, but videos tend to be --

MR. LaBREW: I spoke with the deputy beforehand.

THE COURT: And he has given you a show and tell?

MR. LaBREW: He gave me a quick show and tell. He told me, he was stalking about arranging it today but it doesn't look like it, but I'm going to get in touch with him. He said after we got finished but it doesn't look like that is going to happen. But, I will take care of that so I understand what is going on here.

THE COURT: Very good.

Jury selection. I use the struck panel method. We are going to impanel eight jurors. We are not differentiating between alternates and regular jurors. All are jurors and all of them will sit. In other words, six is the constitutional minimum. I will impanel eight, that way if we lose one or two improperly during the course of what is a very short trial, we will have the constitutional minimum. But, if we don't, if we don't lose a juror, all eight of them will deliberate.

We will therefore, during jury selection, I will examine for cause 14 jurors and clear 14 jurors as against for-cause challenges. Each of you will then have three peremptory strikes going in this order: Plaintiff, defendant, plaintiff, defendant, plaintiff, defendant. We will do the strikes in my robing room and then I will come out and I will

announce which eight of the 14 are our jurors.

As is the case in federal court the Court, not counsel, does jury selection.

Any questions about the mechanics of jury selection?

MR. LaBREW: Yes, your Honor. Juror no. 1 will be where?

THE COURT: Right over here next to me. 1 through 8 in the front row, and the balance in the second row.

Who will be at the plaintiff's table. Will you be there with both of your clients, Mr. LaBrew?

MR. LaBREW: Yes, your Honor.

THE COURT: Will anyone else be there?

MR. LaBREW: No, your Honor.

THE COURT: At defense table, who will be there.

MS. GARMAN: Ms. Garman, myself and our three clients.

THE COURT: No one else, no paralegal or something like that?

MS. GARMAN: Correct.

THE COURT: When I go through jury selection, I do not expect any of you to speak to the jury. No good mornings, none of that. I will simply ask you at a particular point when I introduce the personnel. When I say, Ms. Shaheed, would you please rise and face the jury, and I will have her face the jury box and the back of the room, she will set down; next plaintiff the same; Mr. LaBrew; then you the same one by one,

and we will do the same thing for the defense table. Not an opportunity to talk with the jury, just to make sure that jurors are not acquainted with the various eight people across the two tables.

Mr. LaBrew, you asked in general whether we can take a break during the week for a medical adjournment. I think the answer is no. I would urge you, and I issued an order this morning so that you would have as prompt a heads up as I could give you. The jury time is valuable and we have a very good possibility of getting this case accomplished within a week. It makes a big difference to juries whether trials slip over into a second week. I would rather we use the time for the trial. I fully respect your client's interest at being at the entirety of the trial. Your client should try to see the doctor this week, if possible.

With respect, if there is something that needs attention, your client should see the doctor then or the week after trial or on the weekend, but we have had this trial scheduled for a while. There isn't a suggestion that there is something magic about next week as opposed to this week or the week after.

MR. LaBREW: Right. I have no problem with that. It is just she just informed me that a couple weeks ago a metal door hit her in the head on the job.

THE COURT: Right.

MR. LaBREW: So a situation may develop here where she gets dizzy and feels that she's getting ready to fall out. Because she went back to work and they sent her back home and that happened. So, that has been happening and she apprised me of that, I spoke with the deputy.

THE COURT: Will she be able to testify?

MR. LaBREW: She should be able to testify but periodically this pops up; the headaches, the dizziness.

THE COURT: Look. If this came up a few weeks ago I would hope that she would be on it and be getting whatever treatment she needs and I wish her the very best but there has not been a showing made to me that suggests we ought to be hypothetically carving up an afternoon or a morning for an as yet unscheduled medical appointment. She should try to schedule the appointment some other time.

MR. LaBREW: I told her that, your Honor, but I let the deputy know because she was very insistent with me about her condition and he told me not to worry about it. If something happens here, and you can call 911 --

THE COURT: If sometimes happens we have a court house nurse and we can call 911, but let's do our best, if something happens, to give a note to Mr. Smallman so that I can call a break because what I don't want --

MR. LaBREW: Is her to fall out in front of the jury?

THE COURT: What I don't want is to be having a

medical moment in front of the jury if we can avoid it. So, pass a note to Mr. Smallman if your client needs medical help and we will excuse the jury and we will get medical help and then we will continue on with the trial.

MR. LaBREW: Okay. That would be kind of prejudicial to the defense if she fell out in front of the jury.

THE COURT: It would be distracting to everybody. In the end, we are trying to focus, if it isn't obvious by now, on events in June of 2012 and I am really trying to get rid of extraneous stuff in all directions. And there is no suggestion of causation here of her condition now which appears to have been from some recent incident so the answer is it is just distracting, it lets them wonder and puts thoughts in people's head. So, let's keep it out of the view of the jury.

I would like you to, with the two binders you are going to give me by the end of the day Thursday, give me a numbered exhibit list and please label each exhibit. I will need an exhibit list for myself and one for my law clerk Mr. Stone.

Prior testimony. The defense did not -- Plaintiff did not call any of the defendants. Defense, did you call both plaintiffs?

MS. GARMAN: For deposition, your Honor?

THE COURT: Yes.

MS. GARMAN: Yes, we did; and they also both had 50(h)

hearing testimony.

THE COURT: All right. I'm glad I did not know that. Here is the important thing. I want copies, two copies of each set of prior testimony, number one.

Number two, focusing first on the depo testimony, if it is your intention to use prior testimony to examine you have already indicated you don't intend to offer, on its own terms, deposition testimony. You would be offering it in the course of examination and I appreciate that, that's the better way to do it and I am glad you are taking the same approach. So that we don't have any missteps, when you are using prior testimony I expect you to use the old conventional formulation, which is to say the first time out establish the fact of the prior testimony and that it was given under oath and that she testified truthfully. And then, having done that, just say, *And when you were questioned, were you asked the following questions and did you give the following answers?* At that point I want you to call out to me the page and line number so that you would say, *Your Honor, page 32, lines 1 through 10.* And then you need to pause. You need to pause for me to determine whether or not the prior testimony is, indeed, inconsistent with the current testimony. Very often counsel get that wrong or are just putting something out there that isn't inconsistent and if I say no, I won't allow it, it is because I'm making a judgment not for some other reason, but at

that point simply that an inconsistency hasn't been shown. If you want to go there, just formulate a question that more naturally captures the earlier question so that if the witness then denies it, then you have got the prior testimony as being clearly inconsistent. And, as you know, the prior testimony under those circumstances comes in not just for impeachment but for the truth of the matter asserted. Okay?

But, I have had people garble this and I don't want to be in a teaching moment during the trial so please do it that way.

MS. GARMAN: Certainly, your Honor.

THE COURT: Here is the next step which is, Mr. LaBrew, you will have copies of your client's prior depo testimony. Once in a blue moon you have a situation where the client denies giving the testimony that counsel has accurately read to them. We are not going to call, I hope, the court reporter from the deposition. I expect you, if counsel have faithfully read aloud an excerpt of the deposition and so the question is:

Were you asked the following questions and did you give the following answers?

What is the name of the two area local baseball teams?

Answer: *Yankees and the Mets.*

No, I didn't give that testimony -- and it is sitting there, right there, in black and white, I expect you to say,

your Honor, we will stipulate that that testimony was given. Otherwise, we will wind up in this ridiculous situation of my having to take judicial notice of it, which nobody wants, or our having to get the court reporter for the deposition which is a waste of everybody's time.

MR. LaBREW: I am assuming I had everybody review their testimony so what she said is what she said.

THE COURT: Right.

MR. LaBREW: So we won't even reach the issue where I will have to say -- I understand what you are saying. I don't think we are going to get there.

THE COURT: I don't think we will either and I will urge your client, because your client looks terrible if your client denies something that in black and white happened.

MR. LaBREW: Right.

THE COURT: But the problem is as a formal matter because the testimony isn't certified, unless I am to sort of generally take judicial notice of a photocopy, as a formal matter you would wind up in this ridiculous place where she won't acknowledge that that's her prior testimony, you would have to get the court reporter -- that's crazy. So, please, let her know that. If it comes to the point where she says I don't recall if I gave that testimony and defense counsel then puts it in front of her and says, look, I'm going to ask you to look at page 32, lines 1 through 10, and I ask you, again, did

you give the testimony I just read, I expect that she will say yes, because otherwise we are in this never-world where you then have to undermine her by saying we will stipulate the testimony is given, or I need to undermine her by stating that that was in fact the testimony, or we get the court reporter.

That's not a good look for anybody.

MR. LaBREW: I'm not trying to get to the last three options.

THE COURT: Look. Please, work with your client.

MR. LaBREW: Yes.

THE COURT: The prior testimony is what it is. There is always a moment in which somebody looks silly for giving prior testimony that is inconsistent their current testimony. If you prep with your client she will at least remember what it was and hopefully not run from it today in court or whatever, but I'm just offering you that I have seen play before. It's better for your client that she not be in that situation of being undermined. So, work with her on that.

MR. LaBREW: I will, your Honor. We are not going to have you take judicial notice of something.

THE COURT: Right. It is a bad look and I want you to, if it is going to come out as prior testimony because it is otherwise properly used by the defendant, let's do it in a clean way where your client owns that.

MR. LaBREW: And I will probably, since it has been

brought up, bring it up with her and let her explain.

THE COURT: Well, you can -- what do you mean let her explain?

MR. LaBREW: You know, if this issue about these prior removals, you know if --

THE COURT: I'm not talking about the substance. I don't know what the prior testimony is going to be. The issue is plaintiffs --

MR. LaBREW: The seizure.

THE COURT: Defendants will only get to it if your client runs from it.

MR. LaBREW: Right.

THE COURT: So, if your client testifies consistent with the prior testimony, there is no need to get to the prior testimony. The prior testimony comes in only if your client runs from it. Right?

MR. LaBREW: Right. She said what she said under oath.

THE COURT: Good.

MR. LaBREW: And I gave her the transcripts to review.

THE COURT: So, on Thursday, kindly get me copies of the prior testimony.

Now, as to the prior statements she gave was it to the -- what was the other statement, Ms. Garman, that you said that defendant gave?

MS. GARMAN: Both plaintiffs, and also the non-party Noah Shaheed gave 50(h) hearing testimony as well and we will provide your Honor with copies.

THE COURT: I need copies of that.

But here is the thing, 50(h) can't be referred to as such. It can't be referred to as a disciplinary proceeding that she asked to be under way or whatever. Please refer to that as a prior proceeding.

MS. GARMAN: Okay. We will just identify it as a prior proceeding by the date.

THE COURT: Right. It is testimony, right? It is under oath? So, did you give prior testimony in a proceeding on whatever that date is. But, for both of you, 50(h), disciplinary, is out. The relevant point is that she gave prior testimony under oath. Okay? So prior proceeding is the formulation for that.

Understood?

MR. LaBREW: Understood, your Honor.

MS. GARMAN: Yes, your Honor.

THE COURT: I think I have now exhausted everything on my list. Beginning with plaintiff, is there anything else you have to raise?

MR. LaBREW: Yes, your Honor. It is just that issue I brought up before as far as the jury instruction because I'm going to open on that.

THE COURT: What's the instruction that you are --

MR. LaBREW: I ask that, for an instruction that in a Family Court proceeding in New York State Court that a parent, (A) has a constitutional right to raise their child; and (B) a parent does not have to assist or work with ACS in any investigation of their children.

THE COURT: Look. I'm not going to give an instruction on the law. I think the way for you to do this is simply to say -- in other words, I may or may not have an occasion to give an instruction on the law at the end of the case. I'm not going to cherry pick bits and pieces of the law at the outset because otherwise it assigns way too much importance to one point. Your point here is under the warrant she was not obliged to hand over the child.

MR. LaBREW: Correct.

THE COURT: But, she's not accused of failing to hand over the child. She is accused of -- I think she was not charged with that either. She was charged with what -- let me ask Ms. Garman.

What was she charged with? Resisting arrest?

MS. GARMAN: Resisting arrest, obstruction of governmental administration, and assault on a police officer.

THE COURT: In other words, were the kids even in the house at the time?

MS. GARMAN: No.

MR. LaBREW: But the obstruction of governmental administration, that goes to the whole --

THE COURT: But the theory of the obstruction of governmental investigation, and your officers will explain what that's about, presumably is not failing to turn over the child. It is affirmatively interfering or obstructing.

MS. GARMAN: Correct.

THE COURT: The problem is it is a bit of a red herring to, you know -- they're not accused of failing to affirmatively hand over the child like I would hand you this pen. That's not the accusation and so I don't want you to be charging them on the law, you know. I am sure you can find an articulate way of capturing the idea that --

MR. LaBREW: You don't have to just hand over your child to Family Services, you have no obligation to do that.

THE COURT: You are walking right into their opening statement if you go there, but that's fine. I mean, they're going to say, and that's not what she is accused of doing, she is accused of hitting him in the face or whatever it is that they say that the --

MR. LaBREW: I will handle that, your Honor.

THE COURT: Look. I don't want representations of the law.

MR. LaBREW: Okay.

THE COURT: Let me ask you one final question.

Off the record.

(Discussion off record)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAGHRIB SHAHEED

Plaintiff

v.

THE CITY OF NEW YORK

NEW YORK CITY POLICE OFFICER STEPHAN KROSKI (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE OFFICER PAUL BLISS (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE OFFICER JONATHAN RODRIGUEZ (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE OFFICER LYDIA FIGUEROA (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE LIEUTENANT KISHON HICKMAN (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE OFFICER CHRISTOPHER MITCHELL (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE OFFICER ALEX PEREZ (In an Individual Capacity and In an Official Capacity)

Defendants

(Additional Defendants continued)

AMENDED COMPLAINT
Civil Case No. 14 cv 7424

NEW YORK CITY POLICE CHIEF WILLIAM MORRIS (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE COMMISSIONER JAMES P. O'NEIL (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY DEPUTY POLICE CHIEF JOHN ESSIG (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY ASSISTANT CHIEF RODNEY HARRISON (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY DEPUTY CHIEF ANDREW CAPUL (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE INSPECTOR ROBERT LUKACH (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE DEPUTY INSPECTOR WILSON ARAMBOLES (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE INSPECTOR FAUSTO PICHARDO (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE CAPTAIN TIMOTHY WILSON (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY DEPUTY INSPECTOR MARLON LARIN (In an Individual Capacity and In an Official Capacity)

Defendants (cont.)

NEW YORK CITY POLICE CAPTAIN BRIAN FRANKLIN (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE INSPECTOR ERIC PAGAN (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE LIEUTENANT HUGH MACKENZIE (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE SERGEANT CHARLES EWINGS (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE SERGEANT MEDINA (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE OFFICER EDWARD SALTMAN (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE OFFICER DANIEL TROYER (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE AWILDA MELHADO (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE DETECTIVE DARREN MCNAMARA (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE DETECTIVE ANTHONY SELVAGGI (In an Individual Capacity and In an Official Capacity)

Defendants (cont.)

NEW YORK CITY POLICE DETECTIVE ETHAN ERLICH (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE DETECTIVE HENRY MEDINA (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE DETECTIVE EDWARD BIRMINGHAM (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE DETECTIVE CLIFFORD PARKS (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE DETECTIVE ANTONIO RIVERA (In an Individual Capacity and In an Official Capacity)

NEW YORK CITY POLICE OFFICER JOHN DOE (fictitious (name) (In an Individual Capacity and In an Official Capacity)

Defendants

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1. Now comes the Plaintiff Daghrib Shaheed, by and through her attorney, Lawrence P. LaBrew, of the Law Office of Lawrence LaBrew, complaining against the Defendant City of New York, Defendant New York City Police Officers (In an Official Capacity and In an Individual Capacity), and several John Doe Defendant New York City Police Officers (fictitious names) (In Individual and In Official Capacities) and alleges as follows:

JURISDICTION AND VENUE

2. This action arises under the Constitution of the United States, particularly the First, Fourth, Eighth, and Fourteenth Amendments to the Constitution of the United States, the Due Process

Clause of the United States Constitution, and under the laws of the United States, particularly the Civil Rights Act, Title 42 U.S.C. §§ 1983 and 1988.

3. This action also arises under the New York State Constitution, and New York State Law for the intentional torts of Assault, Battery, Excessive Force, False Arrest, False Imprisonment, Malicious Prosecution, and Intentional Infliction of Emotional Distress, and Trespass.

4. This Court has jurisdiction of this cause of action under Title 28 of the United States Code §§ 1331 and 1343 (28 U.S.C.A. §§ 1331 and 1343).

5. This Court also has supplemental jurisdiction over the New York State causes of action under Title 28 of the United States Code § 1367 (28 U.S.C.A. § 1367).

6. The City of New York conducted an examination of the Plaintiff pursuant to N.Y. GEN. MUN. LAW § 50-h.

7. Venue is placed in this District because the Defendants are located in this District.

DEMAND FOR A TRIAL BY JURY

8. The Plaintiff demands trial by Jury on all counts in this complaint pursuant to Seventh Amendment to the United States Constitution, and pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PARTIES

9. Plaintiff Daghrib Shaheed is a citizen of the United States who resides in New York City. Plaintiff does not have, and has never had, and children.

10. Defendant New York City Police Officer Stephen Kroski is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 6 June 2012.

11. Defendant New York City Police Officer Paul Bliss is being sued individually, and in an

official capacity, in relation to the events alleged in this complaint on 6 June 2012

12. Defendant New York City Police Officer Jonathan Rodriguez is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 6 June 2012.

13. Defendant New York City Police Lieutenant Kishon Hickman is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 6 June 2012.

14. Defendant New York City Police Officer Christopher Mitchell is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 6 June 2012.

15. Defendant New York City Police Officer Alex Perez is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 6 June 2012, 29 June 2012 and 30 June 2012.

16. Defendant New York City Police Chief William Morris is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

17. Defendant New York City Police Commissioner James P. O'Neil is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

18. Defendant New York City Police John Essig is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

19. Defendant New York City Police Assistant Chief Rodney Harrison is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

20. Defendant New York City Police Deputy Chief Andrew Capul is being sued individually, and

in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

21. Defendant New York City Police Inspector Robert Lukach is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

22. Defendant New York City Police Deputy Inspector Wilson Aramboles is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

23. Defendant New York City Police Inspector Fausto Pichardo is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

24. Defendant New York City Police Captain Timothy Wilson is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

25. Defendant New York City Police Deputy Inspector Marlon Larin is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

26. Defendant New York City Police Captain Brian Franklin is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

27. Defendant New York City Police Inspector Eric Pagan is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June

2012.

28. Defendant New York City Police Lieutenant Hugh MacKenzie is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

29. Defendant New York City Police Lieutenant Kishon Hickman is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

30. Defendant New York City Police Officer Charles Ewing is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

31. Defendant New York City Police Sergeant Medina is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

32. Defendant New York City Police Officer Alex Perez is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

33. Defendant New York City Police Officer Daniel Troyer is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

34. Defendant New York City Police Detective Darren McNamara is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

35. Defendant New York City Police Detective Anthony Selvaggi is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

36. Defendant New York City Police Detective Ethan Erlich is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

37. Defendant New York City Police Detective Henry Medina is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

38. Defendant New York City Police Detective Edward Birmingham is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

39. Defendant New York City Police Detective Clifford Parks is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

40. Defendant New York City Police Detective Antonio Rivera is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 29 June 2012, and 30 June 2012.

41. Defendant New York City Police Officer John Doe (fictitious name) is being sued individually, and in an official capacity, in relation to the events alleged in this complaint on 6 June 2012, 29 June 2012, and 30 June 2012.

42. The true names and identities of the "DOE" defendants are presently unknown to Plaintiff.

Plaintiff uses the fictitious name "DOE" to designate these Defendants. Plaintiffs allege that the "DOE" Defendants, along with the other Defendants, are legally responsible for the incidents, injuries, and damages set forth herein, and that each of the Defendants proximately caused the incident, injuries, and damages by reason of their negligence, breach of duty, negligent supervision, management or control, violation of constitutional rights, or by reason of other personal, vicarious, or imputed negligence, fault, or breach of duty, whether based on agency, employment, control, whether severally or jointly, or whether based on any other act or omission. Plaintiff will seek to amend this Complaint as soon as the true names and identities of each of the "DOE" defendants has been ascertained.

43. Each of the Defendants, including the "DOE" defendants, caused, and is legally responsible for, the incidents, unlawful conduct, injuries, and damages alleged by personally participating in the unlawful conduct, or acting jointly or conspiring with others to act, by authorizing or allowing, explicitly or implicitly, policies, plans, customs, practices, actions, or omissions that led to the unlawful conduct, by failing to take action to prevent the unlawful conduct, by failing or refusing to initiate and maintain adequate training or supervision, and thus constituting deliberate indifference to Plaintiff's rights, and by ratifying the unlawful conduct that occurred that occurred by agents and officers under their direction and control, including failing to take remedial or disciplinary action.

44. Plaintiffs is informed and believes and therefore alleges that at all times mentioned in this Complaint, Defendant, and each of them, were the agents, employees, servants, joint ventures, partners, and/or coconspirators of the other Defendants named in the Complaint as indicated, and that at all times, each of the Defendants was acting within the course and scope of that

relationship with the other Defendants.

45. In doing the acts and/omissions alleged, Defendant, and each of them, acted under color of authority and/or color of state law at all relevant times.

46. Plaintiff is informed and believes, and therefore alleges, that the violations of the Plaintiff's constitutional rights complained of were caused by customs, policies, and/or practices of authorized policymakers of Defendant City of New York, and other supervisory officials of Defendant City of New York's Police Department, which encouraged, authorized, directed, condoned, and/or ratified the unconstitutional and unlawful conduct complained of in this Complaint. These customs, policies, and/or practices were the moving force behind the violations alleged, and include, but are not limited to failing to maintain adequate policies, failing to adequately train, supervise, and control police officers concerning entries into the homes of individuals, failing to investigate and impose discipline on police officers who employ improper investigation methods, and failing to adopt other remedial measures and policies to ensure that such violations do not recur.

47. Each of the Defendants, including the "DOE" defendants caused, and are legally responsible for, the incidents, unlawful conduct, injuries, and damages alleged by personally participating in the unlawful conduct, or acting jointly or conspiring with others to act, by authorizibng or allowing, explicitly or implicitly, policies, plans, customs, practices, actions, or omissions that led to the unlawful conduct, by failing to take action to prevent the unlawful conduct, by failing or refusing to initiate and maintain adequate training or supervision, and exercising deliberate indifference to Plaintiff's rights, and by ratifying the unlawful conduct that occurred by the City of New York or by agents and officers under the direction and control of the City of New York,

and by failing to take remedial or disciplinary action against said agents or officers.

48. The City of New York is a municipal corporation and governmental subdivision of the State of New York.

FACTS

49. Plaintiff Shaheed was 25 years old, 5 feet 7 inches tall, and weighed approximately 118 pounds on 6 June 2012. Plaintiff does not have any children. On 6 June 2012, Plaintiff resided with her mother and siblings. Plaintiff was a legal tenant on the lease at the location where the incidents alleged at this complaint happened. On 6 June 2012, at about 6:30 in the evening, Defendant Police Officer Stephan Kroski began banging on the door of the Plaintiff demanding entry into the Plaintiff's apartment. Defendant Police Officer Stephan Kroski was accompanied by the following Defendant New York City Police Officers: (1) Police Lieutenant Kishon Hickman, (2) Police Officer Paul Bliss, (3) Police Officer Jonathan Rodriguez, (4) New York City Police Officer Christopher Mitchell, and (5) several John Does (fictitious name).

50. Plaintiff's brother – Mr. Noah Shaheed – opened the door; and, while standing inside of the apartment, asked Defendant Police Officer Kroski if he had a warrant. The Plaintiff states that Defendant Stephan Kroski stated that he did not need a warrant.

51. At this point the Defendant Police Officers forced their way into the apartment. Including the named Defendants, there were approximately ten (10) New York City Police Officers who entered Plaintiff's apartment.

52. Plaintiff asked the Defendant Police Officers to leave her apartment if they did not have a warrant. The Defendant Police Officers refused to leave the apartment. Defendant Police Officer Kroski told the Plaintiff that "he did not need a warrant;" and that the Police were at the location

to see the Plaintiff's "babies." The Plaintiff told the Defendant Kroski that the Plaintiff did not have any babies.

53. Defendant New York City Police Officer John Doe (fictitious name) grabbed Plaintiff – while Plaintiff was inside of Plaintiff's apartment – and dragged Plaintiff into the kitchen of her apartment.

54. Plaintiff asked Defendant New York City Police Officer John Doe (fictitious name) if Plaintiff was under arrest. Defendant Police Officer John Doe (fictitious name) told Plaintiff that she was not under arrest.

55. Defendant Police Officer John Doe (fictitious name) told Plaintiff that he had to handcuff Plaintiff, and Defendant John Doe (fictitious name) handcuffed Plaintiff while Plaintiff was in her kitchen.

56. Plaintiff's bedroom was searched without permission or authority. Plaintiff's closet and dresser were searched without permission or authority. Plaintiff's bed was damaged during the search of Plaintiff's bedroom.

57. Defendant New York City Police Officer Paul Bliss entered Plaintiff's kitchen and demanded to know where Plaintiff's babies were located. Plaintiff stated that she did not have any babies. Defendant Police Officer Bliss grabbed the Plaintiff by the arm, and forcefully removed the Plaintiff from Plaintiff's apartment. Plaintiff asked where she was being taken and why (Plaintiff Shaheed was still in handcuffs). Defendant Police Officer Bliss told the Plaintiff that she was going to the Precinct, and forcefully pulled Plaintiff by the arm. Plaintiff asked Defendant Police Officer Bliss if she could put on her shoes. Defendant Police Officer Bliss told the Plaintiff: "You don't need shoes savage." Plaintiff was forcibly removed from her apartment in handcuffs and

taken to the 25th Precinct.

58. Defendant New York City Police Officer Bliss told his partner "Let's take this savage in." Plaintiff asked Defendant Bliss what this was all about. Defendant Police Officer Bliss told his partner "This monkey needs to shut up." While being transported to the Precinct Defendant Police Officer Bliss told the Plaintiff "You know what you savage bitch, you can't even take care of the babies that you have."

59. After the police vehicle stopped at the 25th Precinct, Defendant Police Officer Bliss yanked Plaintiff Shaheed out of the car causing Plaintiff to hit her head against the car while being pulled out of the vehicle.

60. Defendant New York City Police Officer John Doe searched Plaintiff Shaheed. Defendant Police Officer John Doe took Plaintiff's cell phone. Plaintiff Shaheed's cell phone was never returned to the Plaintiff, and said cell phone contained video footage of the incident on 6 June 2012.

61. Plaintiff asked to be taken to the hospital. Plaintiff was taken to Mount Sinai Hospital. Defendant New York City Police Officer Jonathan Rodriguez escorted Plaintiff to the Hospital. Plaintiff was handcuffed to a bed while in the hospital. Plaintiff complained about pain in the left arm. Plaintiff suffered a bone bruise, a shoulder joint tear, substantial pain and suffering and mental distress.

62. Plaintiff was taken back to the 25th Precinct, with no shoes, and placed in a cell with urine on the floor.

63. After approximately two days, Plaintiff appeared in Court, was arraigned, and was charged with the following two counts: 1) one count of Resisting Arrest (N.Y. PENAL LAW § 205.30),

and 2) one count of Obstruction of Governmental Administration in the Second Degree (N.Y. PENAL LAW § 195.05). Plaintiff was required to appear in Court approximately 11 times.

64. Plaintiff denies the allegations in the complaint sworn to by Defendant New York City Police Officer Stephan Kroski on 7 June 2012. Plaintiff states that she never jumped on Defendant Kroski's back, and that she never resisted arrest by twisting her body and refusing to place her hands behind her back.

65. Plaintiff states that the criminal accusatory instrument that wrongly charged Plaintiff Shaheed with Resisting Arrest, and Obstruction of Governmental Administration in the Second Degree, was defective under New York State Law because said criminal accusatory instrument did not allege that the arrest was lawful or authorized.

66. After 6 June 2012, from time to time, Defendant New York City Police Officer Kroski would follow Plaintiff in his police car when he would see Plaintiff in public.

67. On 18 September 2013 the criminal case was dismissed on the merits and sealed.

68. On 29 June 2012, at approximately 6:30 in the evening, New York City Police Detective McNamara knocked on the Plaintiff's door, and the occupants to open the door. Plaintiff's brother, Mr. Noah Shaheed, asked the Defendant Detective if the Detective had a warrant or some other authorization. Defendant Detective McNamara said that he had a warrant. Plaintiff's mother, Ms. Waheedah Shaheed, asked Detective McNamara to produce the warrant. Plaintiff states that Defendant McNamara failed to produce any warrant, or other documentation, authorizing entry to the subject location.

69. Defendant McNamara asked the Plaintiff to open the door to talk. When the Plaintiff did not assent to Defendant McNamara demands the Plaintiff was told (in sum and substance) by

Defendant McNamara that Plaintiff "open the door and we can do this the easy way, or we can do this the hard way, and it'll be worst than June 6th."

70. The Defendants continued banging on the door demanding entry. About two hours after the Defendants initially arrived, the lights went out, the air conditioning went out, and all electrical power to the apartment was terminated.

71. On 30 June 2012, a specialized police unit (the emergency services unit or ESU), the Defendants forced their way into the apartment. The police officers were armed with assault rifles, and they were dressed and equipped like military soldiers. They pointed their rifles at every one and every one was told to get down on the floor. Defendant Police Officer John Doe (fictitious name) stated that they "were going to tear the walls down to find your brother."

72. Plaintiff states that her property was damaged, the family pet hamster was killed, and Plaintiff was searched and handcuffed inside of her apartment. While being physically removed from her apartment building, Plaintiff noticed that the building was surrounded by police officers.

73. Plaintiff was taken from her apartment in handcuffs – with neighbors and a large number of people on the street – placed in an ambulance, and taken to Harlem Hospital.

74. Plaintiff Shaheed was uncuffed at Harlem Hospital and released from custody. She never appeared before a Judge, or in a courtroom, and she was never taken to a police precinct.

FEDERAL CLAIMS

COUNT ONE: FALSE ARREST

75. Plaintiff re-alleges paragraphs 1 through 74 as though set forth in full herein.

76. The Plaintiff states that she was illegally seized, searched, and arrested in violation of the Fourth, and Fourteenth, Amendments to the United States Constitution when she was arrested by

Defendant Police Officer Stephan Kroski on or about 6 June 2012.

77. The Plaintiff states that the Defendants did not have probable cause, or arguable probable cause, to seize/arrest the Plaintiff on 6 June 2012.

78. The Plaintiff denies resisting a lawful arrest on or about 6 June 2012, and the Plaintiff denies engaging in any conduct to obstruct governmental administration that would be construed as resisting a lawful arrest on or about 6 June 2012.

79. Defendant Police Officer Stephan Kroski (or any other police officer or peace officer) did not have an arrest warrant for the Plaintiff on 6 June 2012.

80. Defendant Police Officer Stephan Kroski (or any other police officer or peace officer) did not have a search warrant to enter the Plaintiff's residence on 6 June 2012.

81. Plaintiff states that she was intentionally confined without her consent by the Defendants, and that the arrest and imprisonment of the Plaintiff was not privileged or justified.

82. Plaintiff states that Plaintiff was seized, falsely arrested, and falsely imprisoned in violation of the Fourth Amendment to the United States Constitution.

83. Upon information and belief, that being the Plaintiff in this case, the Plaintiff was had not committing any crime or offense when she was arrested on 6 June 2012, and Plaintiff was not in possession of - or in close proximity to - any contraband, instrumentalities of a crime, fruits of a crime, or any other evidence of criminal wrongdoing.

84. Plaintiff states that the Defendant intentionally seized the Plaintiff and that the conduct of the Defendant shocks the conscience.

85. As a direct and proximate result of the wrongful conduct of Defendants as alleged above, Plaintiff suffered mental anguish, loss of earnings, loss of capacity for the enjoyment of life, loss

of liberty, physical injury, pain and suffering, and injury to the Plaintiff's reputation and good name.

WHEREFORE, Plaintiff respectfully requests judgment against Defendants as follows:

A. That Plaintiff be awarded compensatory damages in the amount of five (5,000,000.00) million dollars, together with interest at the legal rate from the date of judgment paid;

B. That Plaintiff be awarded punitive damages in the amount of ten (10,000,000.00) million dollars as that amount will sufficiently punish Defendant Police Officers, and Defendant Police Detectives, for willful and malicious conduct. Said award of punitive damages will serve as an example to prevent a repetition of such conduct in the future;

C. That Plaintiff be awarded costs of this litigation to be paid by the Defendants; and

D. That Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this action to be paid by the Defendants.

COUNT TWO: FALSE IMPRISONMENT

Plaintiff re-alleges paragraphs 1 through 85 as though set forth in full herein.

86. The Plaintiff states that she was falsely imprisoned in violation of the Fourth, and Fourteenth, Amendments to the United States Constitution when she was arrested by Defendant Police Officer Stephan Kroski on or about 6 June 2012.

87. The Plaintiff states that the Defendants did not have probable cause, or arguable probable cause, to seize/arrest the Plaintiff because on 6 June 2012.

88. administration on or about 6 June 2012.

89. The Plaintiff denies resisting a lawful arrest on or about 6 June 2012, and the Plaintiff states that Plaintiff never obstructed governmental administration when the Police entered Plaintiff's

residence on 6 June 2012. The Plaintiff denies engaging in any conduct that could be construed as resisting a lawful arrest on or about 6 June 2012.

90. Defendant Police Officer Stephan Kroski (or any other police officer or peace officer) did not have an arrest warrant for the Plaintiff on 6 June 2012.

91. Defendant Police Officer Stephan Kroski (or any other police officer or peace officer) did not have a search warrant to enter the Plaintiff's residence on 6 June 2012.

92. Plaintiff states that she was intentionally confined without her consent, and that the arrest and imprisonment of the Plaintiff was not privileged or justified.

93. Plaintiff states that Plaintiff was seized, falsely arrested, and falsely imprisoned in violation of the Fourth Amendment to the United States Constitution.

94. Upon information and belief, that being the Plaintiff in this case, the Plaintiff was had not committing any crime or offense when she was arrested on 6 June 2012, and Plaintiff was not in possession of - or in close proximity to - any contraband, instrumentalities of a crime, fruits of a crime, or any other evidence of criminal wrongdoing.

95. Plaintiff states that the Defendant intentionally seized the Plaintiff and that the conduct of the Defendant shocks the conscience.

96. As a direct and proximate result of the wrongful conduct of Defendant Police Officers as alleged above, Plaintiff suffered mental anguish, loss of earnings, loss of capacity for the enjoyment of life, loss of liberty, physical injury, pain and suffering, and injury to the Plaintiff's reputation and good name.

WHEREFORE, Plaintiff respectfully requests judgment against the Defendants as follows:

A. That Plaintiff be awarded compensatory damages in the amount of five (5,000,000.00) million

dollars, together with interest at the legal rate from the date of judgment paid;

B. That Plaintiff be awarded punitive damages in the amount of ten (10,000,000.00) million dollars as that amount will sufficiently punish Defendant Police Officers' willful and malicious conduct and that said award of punitive damages will serve as an example to prevent a repetition of such conduct in the future;

C. That Plaintiff be awarded costs of this litigation to be paid by the Defendants; and

D. That Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this action to be paid by the Defendants.

COUNT THREE: FALSE IMPRISONMENT

Plaintiff re-alleges paragraphs 1 through 96 as though set forth in full herein.

97. The Plaintiff states that she was falsely imprisoned in violation of the Fourth, and Fourteenth, Amendments to the United States Constitution when she was seized and arrested by Defendant Police Officer Lydia Figueroa, and other Defendants, on or about 30 June 2012.

98. The Plaintiff states that the Defendants did not have probable cause, or arguable probable cause, to seize/arrest the Plaintiff because on 29 June 2012 or 30 June 2012.

99. The Defendants (or any other police officer or peace officer) did not have an arrest warrant for the Plaintiff on 29 June 2012, or on 30 June 2012.

100. The Defendants (or any other police officer or peace officer) did not have a search warrant to enter the Plaintiff's residence on 29 June 2012 or 30 June 2012.

101. Plaintiff states that she was intentionally confined without her consent, and that the arrest and imprisonment of the Plaintiff was not privileged or justified.

102. Plaintiff states that Plaintiff was seized, falsely arrested, and falsely imprisoned in violation

of the Fourth Amendment and Fourteenth Amendment to the United States Constitution.

103. Upon information and belief, that being the Plaintiff in this case, the Plaintiff had not, and was not, committing any crime or offense when she was seized/arrested 29 June 2012, or on 30 June 2012, and Plaintiff was not in possession of - or in close proximity to - any contraband, instrumentalities of a crime, fruits of a crime, or any other evidence of criminal wrongdoing.

104. Plaintiff states that the Defendants intentionally seized the Plaintiff and that the conduct of the Defendants shocks the conscience.

105. As a direct and proximate result of the wrongful conduct of the Defendants as alleged above, Plaintiff suffered mental anguish, loss of earnings, loss of capacity for the enjoyment of life, loss of liberty, physical injury, pain and suffering, and injury to the Plaintiff's reputation and good name.

WHEREFORE, Plaintiff respectfully requests judgment against Defendants as follows:

A. That Plaintiff be awarded compensatory damages in the amount of five (5,000,000.00) million dollars, together with interest at the legal rate from the date of judgment paid;

B. That Plaintiff be awarded punitive damages in the amount of ten (10,000,000.00) million dollars as that amount will sufficiently punish Defendant Police Officers for Defendant's willful and malicious conduct and that said award of punitive damages will serve as an example to prevent a repetition of such conduct in the future;

C. That Plaintiff be awarded costs of this litigation to be paid by the Defendants; and

D. That Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this action to be paid by the Defendants.

COUNT FOUR: SUBSTANTIVE DUE PROCESS VIOLATION FOR RECKLESS INVESTIGATION

106. Plaintiff re-alleges paragraphs 1 through 105 as though set forth in full herein.

107. Plaintiff states that, on 6 June 2012, the Defendant New York City Police Officers denied the Plaintiff substantive due process, and that the intentional conduct of the New York City Police Officers "shocks the conscience".

108. The Plaintiff states the Defendants, and Defendant New York City Police Officers conducted a reckless investigation in that the Defendants arrested the Plaintiff without probable cause, or arguable probable cause, to believe that the Plaintiff had committed a crime.

109. Plaintiff states that she was at her apartment when the Defendants entered the Plaintiff's apartment without permission or authority.

110. Plaintiff states that she was beaten, seized/arrested, and Plaintiff never gave the Defendant Police Officers permission to enter here apartment.

WHEREFORE, Plaintiff respectfully requests judgment against the Defendants as follows:

A. That Plaintiff be awarded compensatory damages in the amount of five (5,000,000.00) million dollars, together with interest at the legal rate from the date of judgment paid;

B. That Plaintiff be awarded punitive damages in the amount of ten (10,000,000.00) million dollars as will sufficiently punish Defendant Police Officers for Defendant's willful and malicious conduct and that said award of punitive damages will serve as an example to prevent a repetition of such conduct in the future;

C. That Plaintiff be awarded costs of this litigation to be paid by the Defendants; and

D. That Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this action to be paid by the Defendants.

COUNT FIVE: SUBSTANTIVE DUE PROCESS VIOLATION FOR RECKLESS INVESTIGATION

111. Plaintiff re-alleges paragraphs 1 through 110 as though set forth in full herein.

112. Plaintiff states that, on 29 June 2012 and 30 June 2012, the Defendant New York City Police Officers denied the Plaintiff substantive due process, and that the intentional conduct of the New York City Police Officers shocks the conscience".

113. The Plaintiff states the Defendant New York City Police Officers conducted a reckless investigation in that the Defendants seized/arrested the Plaintiff without probable cause, or arguable probable cause, to believe that the Plaintiff had committed a crime.

114. Plaintiff states that she was at her apartment when the Defendants entered the Plaintiff's apartment without permission or authority.

115. Plaintiff states that she was beaten seized/arrested for not consenting to open her door when the Defendants demanded entry to Plaintiff's residence.

WHEREFORE, Plaintiff respectfully requests judgment against the Defendants as follows:

A. That Plaintiff be awarded compensatory damages in the amount of five (5,000,000.00) million dollars, together with interest at the legal rate from the date of judgment paid;

B. That Plaintiff be awarded punitive damages in the amount of ten (10,000,000.00) million dollars as will sufficiently punish Defendant Police Officers for Defendants' willful and malicious conduct and that said award of punitive damages will serve as an example to prevent a repetition of such conduct in the future;

C. That Plaintiff be awarded costs of this litigation to be paid by the Defendants; and

D. That Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this action to be paid by the Defendants.

COUNT SIX: THE CITY OF NEW YORK PROVIDED INADEQUATE TRAINING AND INADEQUATE SUPERVISION TO DEFENDANT POLICE OFFICER STEPHEN KROSKI AND OTHER DEFENDANT POLICE OFFICERS

116. Plaintiff re-alleges paragraphs 1 through 115 as though set forth in full herein.

117. Plaintiff states that the City of New York was deliberately indifferent, and failed to properly train or supervise the Defendant New York City Polices.

118. On 6 June 2012 the Defendants came to the Plaintiff's residence and demanded entry without an arrest warrant and without a search warrant.

119. The Plaintiff had not committed any crime or violated any law.

120. The Defendants forced their way into the Plaintiff's apartment without consent. Plaintiff was seized/arrested and physically beaten by Defendant Police Officers.

121. Plaintiff states that proper training or supervision would have enabled Defendant New York City Police Officers to understand that a police officer cannot enter an individual's home if they do not have an arrest warrant, a search warrant, or some compelling reason.

122. Plaintiff states that proper training or supervision would have enabled Defendant New York City Police Officers to understand that a police officer cannot use excessive physical force against an individual when they enter an individual's home without an arrest warrant, a search warrant, or some compelling reason, and that individual has not committed any criminal offense.

123. Plaintiff states that the conduct of the Defendants' – as outlined in this complaint – will frequently result in the deprivation of the constitutional rights of individuals.

WHEREFORE, Plaintiff respectfully requests judgment against Defendant as follows:

A. That Plaintiff be awarded compensatory damages in the amount of five (5,000,000.00) million dollars, together with interest at the legal rate from the date of judgment paid;

B. That Plaintiff be awarded costs of this litigation to be paid by the Defendants; and

C. That Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this action to be paid by the Defendants.

COUNT SEVEN: THE CITY OF NEW YORK PROVIDED INADEQUATE TRAINING AND INADEQUATE SUPERVISION TO DEFENDANT POLICE OFFICER LYDIA FIGUEROA AND OTHER DEFENDANT POLICE OFFICERS

124. Plaintiff re-alleges paragraphs 1 through 123 as though set forth in full herein.

125. Plaintiff states that the City of New York was deliberately indifferent, and failed to properly train or supervise the Defendant New York City Police Officers.

126. On 29 June 2012, and 30 June 2012, the Defendants came to the Plaintiff's residence and demanded entry without an arrest warrant and without a search warrant.

127. The Plaintiff had not committed any crime or violated any law.

128. The Defendants forced their way into the Plaintiff's apartment without consent. Plaintiff was seized/arrested and physically beaten by Defendant Police Officers.

129. Plaintiff states that proper training or supervision would have enabled Defendant New York City Police Officers to understand that a police officer cannot enter an individual's home if they do not have an arrest warrant, a search warrant, or some compelling reason.

130. Plaintiff states that proper training or supervision would have enabled Defendant New York City Police Officers to understand that a police officer cannot use excessive physical force against an individual when they enter an individual's home without an arrest warrant, a search warrant, or some compelling reason, and that individual has not committed any criminal offense.

131. Plaintiff states that the conduct of the Defendants' – as outlined in this complaint – will frequently result in the deprivation of the constitutional rights of individuals.

WHEREFORE, Plaintiff respectfully requests judgment against Defendant as follows:

A. That Plaintiff be awarded compensatory damages in the amount of five (5,000,000.00) million dollars, together with interest at the legal rate from the date of judgment paid;

B. That Plaintiff be awarded costs of this litigation to be paid by the Defendants; and

C. That Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this action to be paid by the Defendants.

COUNT EIGHT: FOURTH AMENDMENT MALICIOUS PROSECUTION CLAIM

132. Plaintiff re-alleges paragraphs 1 through 131 as though set forth in full herein.

133. The Plaintiff states that she was malicious prosecuted within the purview of the Fourth Amendment and Fourteenth Amendment of the United States Constitution.

134. The Plaintiff states that she was deprived of her liberty on 6 June 2012 when she was arrested and seized without probable cause, and that said arrest and seizure was unreasonable because the Plaintiff had not committed any crime or violated any law.

135. The Plaintiff states that she was arraigned and forced to come to Court on every court date regarding the afore-mentioned arrest prior to the case being dismissed on the merits and sealed.

136. The Plaintiff states that the Plaintiff had committed any crime when she was arrested by Defendant Police Officers on 6 June 2012.

WHEREFORE, Plaintiff respectfully requests judgment against Defendants as follows:

A. That Plaintiff be awarded compensatory damages in the amount of five (5,000,000.00) million dollars, together with interest at the legal rate from the date of judgment paid;

B. That Plaintiff be awarded punitive damages in the amount of ten (10,000,000.00) million dollars as will sufficiently punish Defendant Police Officer for Defendant's willful and malicious

conduct and that said award of punitive damages will serve as an example to prevent a repetition of such conduct in the future;

C. That Plaintiff be awarded costs of this litigation to be paid by the Defendants; and

D. That Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this action to be paid by the Defendants.

COUNT NINE: EXCESSIVE FORCE

137. Plaintiff re-alleges paragraphs 1 through 136 as though set forth in full herein.

138. Plaintiff states that on or about 6 June 2012 the misconduct of Defendant Police Officers violated Plaintiff's right to be free from the unreasonable and excessive use of force as guaranteed by the Fourth Amendment and the Fourteenth Amendment to the United States Constitution.

139. Defendants' misconduct directly and proximately caused Plaintiff to suffer injury including bodily injury, pain and suffering, shock, extreme emotional distress, and humiliation.

WHEREFORE, Plaintiff respectfully requests judgment against Defendants as follows:

A. That Plaintiff be awarded compensatory damages in the amount of five (5,000,000.00) million dollars, together with interest at the legal rate from the date of judgment paid;

B. That Plaintiff be awarded punitive damages in the amount of ten (10,000,000.00) million dollars as will sufficiently punish Defendant Police Officer for Defendant's willful and malicious conduct and that said award of punitive damages will serve as an example to prevent a repetition of such conduct in the future;

C. That Plaintiff be awarded costs of this litigation to be paid by the Defendants; and

D. That Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this action to be paid by the Defendants.

COUNT TEN: EXCESSIVE FORCE

140. Plaintiff re-alleges paragraphs 1 through 139 as though set forth in full herein.

141. Plaintiff states that on, about, or between 29 June 2014 and 30 June 2014, the misconduct of the Defendants, and several John Doe Defendants – as alleged above – violated Plaintiff's right to be free from the unreasonable and excessive use of force as guaranteed by the Fourth Amendment and the Fourteenth Amendment to the United States Constitution.

142. Defendants' misconduct directly and proximately caused Plaintiff to suffer injury including bodily injury, pain and suffering, shock, extreme emotional distress, and humiliation.

WHEREFORE, Plaintiff respectfully requests judgment against Defendants as follows:

A. That Plaintiff be awarded compensatory damages in the amount of five (5,000,000.00) million dollars, together with interest at the legal rate from the date of judgment paid;

B. That Plaintiff be awarded punitive damages in the amount of ten (10,000,000.00) million dollars as will sufficiently punish Defendant Police Officer for Defendant's willful and malicious conduct and that said award of punitive damages will serve as an example to prevent a repetition of such conduct in the future;

C. That Plaintiff be awarded costs of this litigation to be paid by the Defendants; and

D. That Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this action to be paid by the Defendants.

NEW YORK STATE CLAIMS

143. The Plaintiff states that the City of New York is vicariously liable for the New York State intentional torts - as alleged in this complaint - committed by Defendants under the doctrine of *respondeat superior.*

144. Plaintiff states that there is a master-servant relationship between the Defendants and the City of New York.

145. The Plaintiff states that the Defendants were operating within the scope of their employment - in their official capacity - when they committed the acts as alleged in this Complaint, and that the Defendants were acting in furtherance of the City of New York's business or purpose.

COUNT ELEVEN: FALSE ARREST AND IMPRISONMENT

146. Plaintiff re-alleges paragraphs 1 through 145 as though set forth in full herein.

147. Plaintiff states that she was falsely arrested, falsely imprisoned, and intentionally confined without her consent when Defendant New York City Police Officers intentionally seized and arrested the Plaintiff – on 6 June 2012 – without probable cause.

148. Plaintiff states that the arrest - and confinement - of the Plaintiff was not otherwise privileged or justified; and Plaintiff was conscious of the confinement.

149. Plaintiff states that the false arrest/false imprisonment - and intentional confinement without consent - was done with malice.

150. Plaintiff states that the false arrest/false imprisonment was not otherwise privileged.

WHEREFORE, Plaintiff respectfully requests judgment against Defendants as follows:

A. That Plaintiff be awarded compensatory damages in the amount of five (5,000,000.00) million dollars, together with interest at the legal rate from the date of judgment paid;

B. That Plaintiff be awarded punitive damages in the amount of ten (10,000,000.00) million dollars as will sufficiently punish Defendant Police Officer for Defendant's willful and malicious conduct and that said award of punitive damages will serve as an example to prevent a repetition of such conduct in the future;

C. That Plaintiff be awarded costs of this litigation to be paid by the Defendants; and

D. That Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this action to be paid by the Defendants.

COUNT TWELVE: FALSE IMPRISONMENT

151. Plaintiff re-alleges paragraphs 1 through 150 as though set forth in full herein.

152. Plaintiff states that she was seized, falsely imprisoned, and intentionally confined without her consent when Defendant New York City Police Officers intentionally seized and falsely imprisoned the Plaintiff – on, about, or between 29 June 2012 and 30 June 2012 – without probable cause.

153. Plaintiff states that the seizure and imprisonment of the Plaintiff was not otherwise privileged or justified; and Plaintiff was conscious of the confinement.

154. Plaintiff states that the seizure/false imprisonment - and intentional confinement without consent - was done with malice.

155. Plaintiff states that the false imprisonment was not otherwise privileged.

WHEREFORE, Plaintiff respectfully requests judgment against Defendants as follows:

A. That Plaintiff be awarded compensatory damages in the amount of five (5,000,000.00) million dollars, together with interest at the legal rate from the date of judgment paid;

B. That Plaintiff be awarded punitive damages in the amount of ten (10,000,000.00) million dollars as will sufficiently punish Defendant Police Officer for Defendant's willful and malicious conduct and that said award of punitive damages will serve as an example to prevent a repetition of such conduct in the future;

C. That Plaintiff be awarded costs of this litigation to be paid by the Defendants; and

D. That Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this action to be paid by the Defendants.

COUNT THIRTEEN: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

156. Plaintiff re-alleges paragraphs 1 through 155 as though set forth in full here.

157. The Plaintiff states that, on 6 June 2012, the Defendants engaged, were deliberately indifferent, or condoned conduct that was extreme and outrageous.

158. That said conduct of the Defendants was performed with the intent to cause, or in disregard of a substantial probability of causing, severe emotional distress.

159. The Plaintiff states that the actions of the Defendants caused severe emotional distress.

WHEREFORE, Plaintiff respectfully requests judgment against Defendants as follows:

A. That Plaintiff be awarded compensatory damages in the amount of five (5,000,000.00) million dollars, together with interest at the legal rate from the date of judgment paid;

B. That Plaintiff be awarded punitive damages in the amount of ten (10,000,000.00) million dollars as will sufficiently punish Defendant Police Officer for Defendant's willful and malicious conduct and that said award of punitive damages will serve as an example to prevent a repetition of such conduct in the future;

C. That Plaintiff be awarded costs of this litigation to be paid by the Defendants; and

D. That Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this action to be paid by the Defendants.

COUNT FOURTEENTH: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

160. Plaintiff re-alleges paragraphs 1 through 159 as though set forth in full here.

161. The Plaintiff states that on, about, or between 29 June 2012 and 30 June 2012, the

Defendants engaged, were deliberately indifferent, or condoned conduct that was extreme and outrageous.

162. That said conduct of the Defendants was performed with the intent to cause, or in disregard of a substantial probability of causing, severe emotional distress.

163. The Plaintiff states that the actions of the Defendants caused severe emotional distress.

WHEREFORE, Plaintiff respectfully requests judgment against Defendants as follows:

A. That Plaintiff be awarded compensatory damages in the amount of five (5,000,000.00) million dollars, together with interest at the legal rate from the date of judgment paid;

B. That Plaintiff be awarded punitive damages in the amount of ten (10,000,000.00) million dollars as will sufficiently punish Defendant Police Officer for Defendant's willful and malicious conduct and that said award of punitive damages will serve as an example to prevent a repetition of such conduct in the future;

C. That Plaintiff be awarded costs of this litigation to be paid by the Defendants; and

D. That Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this action to be paid by the Defendants.

COUNT FIFTEEN: MALICIOUS PROSECUTION

164. Plaintiff re-alleges paragraphs 1 through 163 as though set forth in full herein.

165. The Plaintiff states that the criminal judicial proceedings that is the subject of this complaint was terminated in favor of the Plaintiff because all charges were dismissed on the merits.

166. The Plaintiff states that the Defendant Police Officers did not have probable cause to arrest the Plaintiff on 6 June 2012.

167. Plaintiff states that the Defendants arrested the Plaintiff for the wrong, or an improper

motive and that the judicial proceeding was not commenced so that justice could be served.

168. Plaintiff states that the Defendants arrested the Plaintiff because – according to one of the Defendant's own statements – the Defendants wanted to teach the Plaintiff a lesson.

169. Plaintiff states that the Defendants acted with malice when they seized/arrested the Plaintiff.

WHEREFORE, Plaintiff respectfully requests judgment against Defendants as follows:

A. That Plaintiff be awarded compensatory damages in the amount of five (5,000,000.00) million dollars, together with interest at the legal rate from the date of judgment paid;

B. That Plaintiff be awarded punitive damages in the amount of ten (10,000,000.00) million dollars as will sufficiently punish Defendant Police Officer for Defendant's willful and malicious conduct and that said award of punitive damages will serve as an example to prevent a repetition of such conduct in the future;

C. That Plaintiff be awarded costs of this litigation to be paid by the Defendants; and

D. That Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this action to be paid by the Defendants.

COUNT SIXTEEN: ASSAULT

170. Plaintiff re-alleges paragraphs 1 through 169 as though set forth in full herein.

171. Plaintiff states that on 6 June 2012, Defendant Police Officers intentionally placed the Plaintiff in fear of imminent harmful or offensive conduct.

172. Plaintiff states that the Defendants made an unjustified threat of force against the Plaintiff that created a reasonable apprehension of immediate physical harm, and that the Defendants acted on the afore-mentioned threat and caused the Plaintiff physical injury.

WHEREFORE, Plaintiff respectfully requests judgment against Defendants as follows:

A. That Plaintiff be awarded compensatory damages in the amount of five (5,000,000.00) million dollars, together with interest at the legal rate from the date of judgment paid;

B. That Plaintiff be awarded punitive damages in the amount of ten (10,000,000.00) million dollars as will sufficiently punish Defendant Police Officer for Defendant's willful and malicious conduct and that said award of punitive damages will serve as an example to prevent a repetition of such conduct in the future;

C. That Plaintiff be awarded costs of this litigation to be paid by the Defendants; and

D. That Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this action to be paid by the Defendants.

COUNT SEVENTEEN: ASSAULT

173. Plaintiff re-alleges paragraphs 1 through 172 as though set forth in full herein.

174. Plaintiff states that on, about, or between 29 June 2012 and 30 June 2012, the Defendants intentionally placed the Plaintiff in fear of imminent harmful or offensive conduct.

175. Plaintiff states that the Defendants made an unjustified threat of force against the Plaintiff that created a reasonable apprehension of immediate physical harm, and that the Defendants acted on the afore-mentioned threat and caused the Plaintiff physical injury.

WHEREFORE, Plaintiff respectfully requests judgment against Defendants as follows:

A. That Plaintiff be awarded compensatory damages in the amount of five (5,000,000.00) million dollars, together with interest at the legal rate from the date of judgment paid;

B. That Plaintiff be awarded punitive damages in the amount of ten (10,000,000.00) million dollars as will sufficiently punish Defendant Police Officer for Defendant's willful and malicious conduct and that said award of punitive damages will serve as an example to prevent a repetition

of such conduct in the future;

C. That Plaintiff be awarded costs of this litigation to be paid by the Defendants; and

D. That Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this action to be paid by the Defendants.

COUNT EIGHTEEN: BATTERY

176. Plaintiff re-alleges paragraphs 1 through 175 as though set forth in full herein.

177. Plaintiff states that on 6 June 2012 Defendant Police Officers intentionally make bodily contact with the Plaintiff – without Plaintiff's consent – and caused the Plaintiff to suffer physical injury.

WHEREFORE, Plaintiff respectfully requests judgment against Defendants as follows:

A. That Plaintiff be awarded compensatory damages in the amount of five (5,000,000.00) million dollars, together with interest at the legal rate from the date of judgment paid;

B. That Plaintiff be awarded punitive damages in the amount of ten (10,000,000.00) million dollars as will sufficiently punish Defendant Police Officer for Defendant's willful and malicious conduct and that said award of punitive damages will serve as an example to prevent a repetition of such conduct in the future;

C. That Plaintiff be awarded costs of this litigation to be paid by the Defendants; and

D. That Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this action to be paid by the Defendants.

COUNT NINETEEN: BATTERY

178. Plaintiff re-alleges paragraphs 1 through 177 as though set forth in full herein.

179. Plaintiff states that on, about, or between 29 June 2012 and 30 June 2012, the Defendants

intentionally make bodily contact with the Plaintiff – without Plaintiff's consent – and caused the Plaintiff to suffer physical injury.

WHEREFORE, Plaintiff respectfully requests judgment against Defendants as follows:

A. That Plaintiff be awarded compensatory damages in the amount of five (5,000,000.00) million dollars, together with interest at the legal rate from the date of judgment paid;

B. That Plaintiff be awarded punitive damages in the amount of ten (10,000,000.00) million dollars as will sufficiently punish Defendant Police Officer for Defendant's willful and malicious conduct and that said award of punitive damages will serve as an example to prevent a repetition of such conduct in the future;

C. That Plaintiff be awarded costs of this litigation to be paid by the Defendants; and

D. That Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this action to be paid by the Defendants.

Lawrence P. LaBrew, Esq. (LL4455)
Law Office of Lawrence LaBrew
Attorney for Plaintiff Daghrib Shaheed
160 Broadway Suite 600 6th Floor
New York, New York 10038
Tel : (212) 385-7500
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---------- x

DAGHRIB SHAHEED,

Plaintiff,

-against-

THE CITY OF NEW YORK; NEW YORK CITY POLICE OFFICER STEPHAN KROSKI (In an Individual Capacity and In an Official Capacity); NEW YORK CITY POLICE OFFICER PAUL BLISS (In an Individual Capacity and In an Official Capacity); NEW YORK CITY POLICE OFFICER JONATHAN RODRIGUEZ (In an Individual Capacity and In an Official Capacity); NEW YORK CITY POLICE OFFICER LYDIA FIGUEROA (In an Individual Capacity and In an Official Capacity); NEW YORK CITY POLICE DETECTIVE JOHN DOE (fictitious name) (In an Individual Capacity and In an Official Capacity); NEW YORK CITY POLICE DETECTIVE JAMES DOE (fictitious name) (In an Individual Capacity and In an Official Capacity); NEW YORK CITY POLICE OFFICER JANE DOE (fictitious name) (In an Individual Capacity and In an Official Capacity); NEW YORK CITY POLICE OFFICER JOHN DOE (fictitious name) (In an Individual Capacity and In an Official Capacity); NEW YORK CITY POLICE OFFICER JAMES DOE (fictitious name) (In an Individual Capacity and In an Official Capacity),

Defendants.

---------- x

ANSWER TO THE COMPLAINT ON BEHALF OF THE CITY OF NEW YORK, STEPHAN KROSKI, PAUL BLISS, JONATHAN RODRIGUEZ AND LYDIA FIGUEROA

14 CV 7424 (PAE)

Jury Trial Demanded

Defendants City of New York, Stephan Kroski, Paul Bliss, Jonathan Rodriguez and Lydia Figueroa by their attorney, Zachary W. Carter, Corporation Counsel of the City of New York, for their answer to the complaint, respectfully allege, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph "1" of the complaint, except admit that plaintiff purports to bring this action and name parties stated therein.

2. Deny the allegations set forth in paragraph "2" of the complaint, except admit that plaintiff purports to bring this action and invoke the jurisdiction of the Court as stated therein.

3. Deny the allegations set forth in paragraph "3" of the complaint, except admit that plaintiff purports to bring this action as stated therein.

4. Deny the allegations set forth in paragraph "4" of the complaint, except admit that plaintiff purports to invoke the jurisdiction of the Court as stated therein.

5. Deny the allegations set forth in paragraph "5" of the complaint, except admit that plaintiff purports to invoke the supplemental jurisdiction of the Court as stated therein.

6. Admit the allegations set forth in paragraph "6" of the complaint.

7. Deny the allegations set forth in paragraph "7" of the complaint, except admit that plaintiff purports to base venue as stated therein.

8. Paragraph "8" of the complaint sets forth a demand for a jury trial and therefore, no response is required.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "9" of the complaint.

10. Deny the allegations set forth in paragraph "10" of the complaint, except admit that the City of New York employed Stephen Kroski as a police officer at the 25th Precinct on June 6, 2012, and admit that plaintiff purports to sue defendant Kroski in his individual and official capacities.

11. Deny the allegations set forth in paragraph "11" of the complaint, except admit that the City of New York employed Paul Bliss as a police officer at the 25th Precinct on June 6, 2012, and admit that plaintiff purports to sue defendant Bliss in his individual and official capacities.

12. Deny the allegations set forth in paragraph "12" of the complaint, except admit that the City of New York employed Jonathan Rodriguez as a police officer at the 25th Precinct on June 6, 2012, and admit that plaintiff purports to sue defendant Rodriguez in his individual and official capacities.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "13" of the complaint.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "14" of the complaint.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "15" of the complaint.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "16" of the complaint.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "17" of the complaint.

18. Deny the allegations set forth in paragraph "18" of the complaint.

19. Deny the allegations set forth in paragraph "19" of the complaint.

20. Deny the allegations set forth in paragraph "20" of the complaint insofar as it purports to set forth averments of fact; insofar as it sets forth conclusions of law, no response is required.

21. Deny the allegations set forth in paragraph "21" of the complaint.

22. Deny the allegations set forth in paragraph "22" of the complaint.

23. Deny the allegations set forth in paragraph "23" (which is an incomplete sentence) of the complaint.

24. Deny the allegations set forth in paragraph "24 of the complaint, except admit that the City of New York is a municipal corporation organized under the laws of the State of New York.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "25" of the complaint, except admit that on June 6, 2012, at approximately 6:47 p.m., plaintiff was at or near 26 East 129th Street, Apartment 3A in Manhattan, and except admit that, at some point, defendant officers Stephan Kroski, Jonathan Rodriguez and Paul Bliss were at or near 26 East 129th Street, Apartment 3A in Manhattan.

26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "26" of the complaint.

27. Deny the allegations set forth in paragraph "27" of the complaint.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "28" of the complaint.

29. Deny the allegations set forth in paragraph "29" of the complaint.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "30" of the complaint.

31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "31" of the complaint, except admit that plaintiff was arrested and handcuffed.

32. Deny the allegations set forth in paragraph "32" of the complaint.

33. Deny the allegations set forth in paragraph "33" of the complaint, except admit that plaintiff was arrested, handcuffed and transported to the 25th Precinct.

34. Deny the allegations set forth in paragraph "34" of the complaint.

35. Deny the allegations set forth in paragraph "35" of the complaint.

36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "36" of the complaint.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "37" of the complaint, except admit plaintiff was escorted to the hospital by defendant Officer Rodriguez and that plaintiff was handcuffed at the hospital.

38. Deny allegations set forth in paragraph "38" of the complaint, except admit that plaintiff was at some point taken to the 25th Precinct.

39. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "39" of the complaint, except admit that plaintiff was arraigned and charged with resisting arrest and obstruction of governmental administration.

40. Deny the allegations set for in paragraph "40" of the complaint.

41. Deny the allegations set for in paragraph "41" of the complaint.

42. Deny the allegations set forth in paragraph "42" of the complaint.

43. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "43" of the complaint.

44. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "44" of the complaint.

45. Deny the allegations set forth in paragraph "45" of the complaint.

46. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "46" of the complaint.

47. Deny the allegations set forth in paragraph "47" of the complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning the purported forced entry and arrest.

48. Deny the allegations set forth in paragraph "48" of the complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning the purported forced entry and arrest.

49. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "49" of the complaint.

50. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "50" of the complaint.

51. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "51" of the complaint.

52. In response to the allegations set forth in paragraph "52" of the complaint, defendants repeat and reallege their responses set forth in the preceding paragraphs "1" through "51", inclusive of this answer, as if fully set forth herein.

53. Deny the allegations set forth in paragraph "53"of the complaint, except admit that plaintiff was arrested on June 6, 2012.

54. Deny the allegations set forth in paragraph "54" of the complaint.

55. Deny the allegations set forth in paragraph "55" of the complaint.

56. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "56" of the complaint, except admit that Police Officer Kroski did not have an arrest warrant for plaintiff on June 6, 2012.

57. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "57" of the complaint, except admit that Police Officer Kroski did not have a search warrant for plaintiff on June 6, 2012.

58. Deny the allegations set forth in paragraph "58" of the complaint insofar as it sets forth averments of fact; insofar as it sets forth conclusions of law, no response is required.

59. Deny the allegations set forth in paragraph "59" of the complaint.

60. Deny the allegations set forth in paragraph "60" of the complaint.

61. Deny the allegations set forth in paragraph "61" of the complaint.

62. Deny the allegations set forth in paragraph "62" of the complaint and its wherefore clause and subparts.

In response to the allegations set forth in the second paragraph "62" of the complaint, at the top of page 13 of the complaint, defendants repeat and reallege their responses set forth in the preceding paragraphs "1" through "61", inclusive of this answer, as if fully set forth herein.

63. Deny the allegations set forth in paragraph "63" of the complaint.

64. Deny the allegations set forth in paragraph "64" of the complaint.

65. Deny the allegations set forth in paragraph "65" (which is an incomplete sentence) of the complaint.

66. Deny the allegations set forth in paragraph "66" of the complaint.

67. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "67" of the complaint, except admit that Stephan Kroski did not have an arrest warrant for plaintiff on June 6, 2012.

68. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "68" of the complaint, except admit that Stephan Kroski did not have a search warrant for plaintiff on June 6, 2012.

69. Deny the allegations set forth in paragraph "69" of the complaint, insofar as it sets forth averments of fact; insofar as it sets forth conclusions of law, no response is required.

70. Deny the allegations set forth in paragraph "70" of the complaint.

71. Deny the allegations set forth in paragraph "71" of the complaint.

72. Deny the allegations set forth in paragraph "72" of the complaint.

73. Deny the allegations set forth in paragraph "73" of the complaint and its wherefore clause and subparts.

In response to the allegations set forth in the second paragraph "73" of the complaint, at the bottom of page 14 of the complaint, defendants repeat and reallege their responses set forth in the preceding paragraphs "1" through "72", inclusive of this answer, as if fully set forth herein.

74. Deny the allegations set forth in paragraph "74" of the complaint.

75. Deny the allegations set forth in paragraph "75" of the complaint.

76. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "76" of the complaint, except admit that defendants did not have an arrest warrant for plaintiff on June 29, 2012.

77. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "77" of the complaint, except admit that defendants did not have a search warrant for plaintiff on June 30, 2012.

78. Deny the allegations set forth in paragraph "78" of the complaint insofar as it sets forth averments of fact; insofar as it sets forth conclusions of law, no response is required.

79. Deny the allegations set forth in paragraph "79" of the complaint.

80. Deny the allegations set forth in paragraph "80" of the complaint.

81. Deny the allegations set forth in paragraph "81" of the complaint.

82. Deny the allegations set forth in paragraph "82" of the complaint and its wherefore clause and subparts.

83. In response to the allegations set forth in paragraph "83" of the complaint, defendants repeat and reallege their responses set forth in the preceding paragraphs "1" through "82", inclusive of this answer, as if fully set forth herein.

84. Deny the allegations set forth in paragraph "84" of the complaint.

85. Deny the allegations set forth in paragraph "85" of the complaint.

86. Deny the allegations set forth in paragraph "86" of the complaint.

87. Deny the allegations set forth in paragraph "87" of the complaint and its wherefore clause and subparts.

88. In response to the allegations set forth in paragraph "88" of the complaint, defendants repeat and reallege their responses set forth in the preceding paragraphs "1" through "87", inclusive of this answer, as if fully set forth herein.

89. Deny the allegations set forth in paragraph "89" of the complaint.

90. Deny the allegations set forth in paragraph "90" of the complaint.

91. Deny the allegations set forth in paragraph "91" of the complaint.

92. Deny the allegations set forth in paragraph "92" of complaint and its wherefore clause and subparts.

93. In response to the allegations set forth in paragraph "93" of the complaint, defendants repeat and reallege their responses set forth in the preceding paragraphs "1" through "92", inclusive of this answer, as if fully set forth herein.

94. Deny the allegations set forth in paragraph "94" of the complaint.

95. Deny the allegations set forth in paragraph "95" of the complaint.

96. Deny the allegations set forth in paragraph "96" of the complaint.

97. Deny the allegations set forth in paragraph "97" of the complaint.

98. Deny the allegations set forth in paragraph "98" of the complaint.

99. Deny the allegations set forth in paragraph "99" of the complaint.

100. Deny the allegations set forth in paragraph "100" of the complaint and its wherefore clause and subparts.

101. In response to the allegations set forth in paragraph "101" of the complaint, defendants repeat and reallege their responses set forth in the preceding paragraphs "1" through "100", inclusive of this answer, as if fully set forth herein.

102. Deny the allegations set forth in paragraph "102" of the complaint.

103. Deny the allegations set forth in paragraph "103" of the complaint.

104. Deny the allegations set forth in paragraph "104" of the complaint.

105. Deny the allegations set forth in paragraph "105" of the complaint.

106. Deny the allegations set forth in paragraph "106" of the complaint.

107. Deny the allegations set forth in paragraph "107" of the complaint.

108. Deny the allegations set forth in paragraph "108" of the complaint and its wherefore clause and subparts.

109. In response to the allegations set forth in paragraph "109" of the complaint, defendants repeat and reallege their responses set forth in the preceding paragraphs "1" through "108", inclusive of this answer, as if fully set forth herein.

110. Deny the allegations set forth in paragraph "110" of the complaint.

111. Deny the allegations set forth in paragraph "111" of the complaint.

112. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "112" of the complaint.

113. Deny the allegations set forth in paragraph "113" of the complaint and its wherefore clause and subparts.

114. In response to the allegations set forth in paragraph "114" of the complaint, defendants repeat and reallege their responses set forth in the preceding paragraphs "1" through "113", inclusive of this answer, as if fully set forth herein.

115. Deny the allegations set forth in paragraph "115" of the complaint.

116. Deny the allegations set forth in paragraph "116" of the complaint and its wherefore clause and subparts.

117. In response to the allegations set forth in paragraph "117" of the complaint, defendants repeat and reallege their responses set forth in the preceding paragraphs "1" through "116", inclusive of this answer, as if fully set forth herein.

118. Deny the allegations set forth in paragraph "118" of the complaint.

119. Deny the allegations set forth in paragraph "119" of the complaint and its wherefore clause and subparts.

120. Deny the allegations set forth in paragraph "120" of the complaint.

121. Paragraph "121" of the complaint sets forth conclusions of law, not averments of fact, and accordingly, no response is required.

122. Deny the allegations set forth in paragraph "122" of the complaint.

123. In response to the allegations set forth in paragraph "123" of the complaint, defendants repeat and reallege their responses set forth in the preceding paragraphs "1" through "122", inclusive of this answer, as if fully set forth herein.

124. Deny the allegations set forth in paragraph "124" of the complaint.

125. Deny the allegations set forth in paragraph "125" of the complaint insofar as it purports to set forth averments of fact; insofar as it sets forth conclusions of law, no response is required.

126. Deny the allegations set forth in paragraph "126" of the complaint.

127. Deny the allegations set forth in paragraph "127" of the complaint and its wherefore clause and subparts.

128. In response to the allegations set forth in paragraph "128" of the complaint, defendants repeat and reallege their responses set forth in the preceding paragraphs "1" through "127", inclusive of this answer, as if fully set forth herein.

129. Deny the allegations set forth in paragraph "129" of the complaint.

130. Deny the allegations set forth in paragraph "130" of the complaint insofar as it purports to set forth averments of fact; insofar as it sets forth conclusions of law, no response is required.

131. Deny the allegations set forth in paragraph "131" of the complaint..

132. Deny the allegations set forth in paragraph "132" of the complaint and its wherefore clause and subparts.

133. In response to the allegations set forth in paragraph "133" of the complaint, defendants repeat and reallege their responses set forth in the preceding paragraphs "1" through "132", inclusive of this answer, as if fully set forth herein.

134. Deny the allegations set forth in paragraph "134" of the complaint.

135. Deny the allegations set forth in paragraph "135" of the complaint.

136. Deny the allegations set forth in paragraph "136" of the complaint and its wherefore clause and subparts.

137. In response to the allegations set forth in paragraph "137" of the complaint, defendants repeats and reallege their responses set forth in the preceding paragraphs "1" through "136", inclusive of this answer, as if fully set forth herein.

138. Deny the allegations set forth in paragraph "138" of the complaint.

139. Deny the allegations set forth in paragraph "139" of the complaint.

140. Deny the allegations set forth in paragraph "140" of the complaint and its wherefore clause and subparts.

141. In response to the allegations set forth in paragraph "141" of the complaint, defendants repeat and reallege their responses set forth in the preceding paragraphs "1" through "140", inclusive of this answer, as if fully set forth herein.

142. Deny knowledge or information as to the truth of the allegations set forth in paragraph "142" of the complaint.

143. Deny the allegations set forth in paragraph "143" of the complaint.

144. Deny the allegations set forth in paragraph "144" of the complaint.

145. Deny the allegations set forth in paragraph "145" of the complaint.

146. Deny the allegations set forth in paragraph "146" of the complaint and its wherefore clause and subparts.

147. In response to the allegations set forth in paragraph "147" of the complaint, defendants repeat and reallege their responses set forth in the preceding paragraphs "1" through "146", inclusive of this answer, as if fully set forth herein.

148. Deny the allegations set forth in paragraph "148" of the complaint.

149. Deny the allegations set forth in paragraph "149" of the complaint and its wherefore clause and subparts.

150. In response to the allegations set forth in paragraph "150" of the complaint, defendants repeat and reallege their responses set forth in the preceding paragraphs "1" through "149", inclusive of this answer, as if fully set forth herein.

151. Deny the allegations set forth in paragraph "151" of the complaint.

152. Deny the allegations set forth in paragraph "152" of the complaint and its wherefore clause and subparts.

153. In response to the allegations set forth in paragraph "153" of the complaint, defendants repeat and reallege their responses set forth in the preceding paragraphs "1" through "152", inclusive of this answer, as if fully set forth herein.

154. Deny the allegations set forth in paragraph "154" of the complaint and its wherefore clause and subparts.

155. In response to the allegations set forth in paragraph "155" of the complaint, defendants repeat and reallege their responses set forth in the preceding paragraphs "1" through "154", inclusive of this answer, as if fully set forth herein.

156. Deny the allegations set forth in paragraph "156" of the complaint and its wherefore clause and subparts.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

157. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

158. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and/or the intervening conduct of third parties, and was not the proximate result of any act by the defendants.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

159. There was probable cause for plaintiff's arrest, detention and prosecution.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

160. Defendants acted within the lawful and proper exercise of their discretion.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

161. Plaintiff provoked any incident.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

162. No punitive damages can be assessed against the City of New York.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

163. To the extent any force was used, it was reasonable, necessary, and justified.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

164. Defendant City has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, or any act of Congress providing for the protection of civil rights.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

165. To the extent the complaint alleges any claims against the City of New York arising under state law, such claims are barred by the doctrine of immunity for judgmental errors in the exercise of governmental functions.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE:

166. The individual defendants have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and, therefore, are protected by qualified immunity.

WHEREFORE, Defendants City of New York, Stephan Kroski, Paul Bliss, Jonathan Rodriguez and Lydia Figueroa request judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 4, 2015

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Defendants City of New York, Stephan Kroski, Paul Bliss, Jonathan Rodriguez and Lydia Figueroa
100 Church Street
New York, New York 10007
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By: /s/
Deborah L. Mbabazi
Assistant Corporation Counsel

To: VIA ECF
Lawrence P. LaBrew, Esq.
Attorney for Plaintiff
160 Broadway, Suite 600
New York, NY 10038

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Docket No. 14 CV 7424 (PAE)

DAGHRIB SHAHEED,

Plaintiff,

-against-

CITY OF NEW YORK; NEW YORK CITY POLICE OFFICER STEPHAN KROSKI (In an Individual Capacity and In an Official Capacity); NEW YORK CITY POLICE OFFICER PAUL BLISS (In an Individual Capacity and In an Official Capacity); NEW YORK CITY POLICE OFFICER JONATHAN RODRIGUEZ (In an Individual Capacity and In an Official Capacity); NEW YORK CITY POLICE OFFICER LYDIA FIGUEROA (In an Individual Capacity and In an Official Capacity); NEW YORK CITY POLICE DETECTIVE JOHN DOE (fictitious name) (In an Individual Capacity and In an Official Capacity); NEW YORK CITY POLICE DETECTIVE JAMES DOE (fictitious name) (In an Individual Capacity and In an Official Capacity); NEW YORK CITY POLICE OFFICER JANE DOE (fictitious name) (In an Individual Capacity and In an Official Capacity); NEW YORK CITY POLICE OFFICER JOHN DOE (fictitious name) (In an Individual Capacity and In an Official Capacity); NEW YORK CITY POLICE OFFICER JAMES DOE (fictitious name) (In an Individual Capacity and In an Official Capacity)

Defendants.

ANSWER TO COMPLAINT ON BEHALF OF DEFENDANTS STEPHAN KROSKI, PAUL BLISS, JONATHAN RODRIGUEZ AND LYDIA FIGUEROA

ZACHARY W. CARTER
Corporation Counsel of the City of New York
Attorney for Defendants City of New York, Stephan Kroski, Paul Bliss, Jonathan Rodriguez and Lydia Figueroa
100 Church Street
New York, N.Y. 10007

by: Deborah L. Mbabazi
Assistant Corporation Counsel
Tel: (212) 356-2404

Due and timely service is hereby admitted.

New York, N.Y. ....., 2015

..... Esq.

Attorney for.....