

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ABNER LOUIMA and MICHELINE LOUIMA,

Plaintiffs,

-against-

THE CITY OF NEW YORK (CITY); THE
PATROLMEN'S BENEVOLENT ASSOCIATION OF
THE CITY OF NEW YORK (PBA); individually and in
their official capacity as New York City Police Officers -
JUSTIN VOLPE, CHARLES SCHWARZ, THOMAS
BRUDER, SERGEANT MICHAEL BELLOMO,
FRANCISCO ROSARIO, ROLANDO ALEMAN,
PETER BLAICH, JOSEPH O'BRIEN and JEREMIAH DALY;
individually, in their official capacities as New York City
Police Officers, and as PBA Delegates -THOMAS WIESE and
TIMOTHY LEE; in their official capacities as President of the PBA -
LOUIS MATARAZZO and PATRICK LYNCH; individually,
and in their official capacity as New York City Police
Officers, and in their official capacity as agents of the PBA -
MICHAEL IMMITT and ANTHONY ABBATE;
individually and in their official capacity as employees of
the Emergency Medical Service (EMS) for the City of New York -
WILLIAM PAGAN and FRANK BIRNBAUM; individually
and in their official capacity, JOHN DOES, police officers
and non-uniformed employees of the New York City Police
Department, the identity and number of whom is presently unknown;
individually and in their official capacity as New York
City Police Officers RICHARD ROES, supervisory police
officers of the City of New York, the identity and number
of whom is presently unknown; and individually and in
their official capacity as police officers and/or agents for
the PBA - WILLIAM WOES, agents for the PBA, the
identity and number of whom is presently unknown,

Defendants.
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**THIRD
SUPPLEMENTAL
SUMMONS IN A
CIVIL ACTION**

98 CIV 5083 (SJ)

Louima v. City of New York



PN-NY-001-001

✓ pb
5/13/01

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ABNER LOUIMA and MICHELINE LOUIMA,

Plaintiffs,

-against-

**THIRD AMENDED
COMPLAINT AND
JURY DEMAND**

98 CIV 5083 (SJ)

THE CITY OF NEW YORK (CITY); THE
PATROLMEN'S BENEVOLENT ASSOCIATION OF
THE CITY OF NEW YORK (PBA); individually and in
their official capacity as New York City Police Officers -
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BRUDER, SERGEANT MICHAEL BELLOMO,
FRANCISCO ROSARIO, ROLANDO ALEMAN,
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TIMOTHY LEE; in their official capacities as President of the PBA -
LOUIS MATARAZZO and PATRICK LYNCH; individually,
and in their official capacity as New York City Police
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the PBA - WILLIAM WOES, agents for the PBA, the
identity and number of whom is presently unknown,

Defendants.

-----X

Plaintiffs Abner Louima and Micheline Louima, by and through their attorneys,

denial of Mr. Louima's basic civil rights. Other culpable individuals and entities, however, have thus far been able to escape accountability for actions that were unconstitutional, tortious, and inhumane.

4. During the early morning hours of Saturday, August 9, 1997, Abner Louima was in the process of leaving the Rendez-Vous nightclub on Flatbush Avenue in Brooklyn when he was suddenly knocked to the ground outside the club by one or more police officers, assaulted, handcuffed, and put into a patrol car. En route to the 70th Precinct, the patrol car stopped twice: the first time Mr. Louima was beaten by defendants Thomas Wiese and Charles Schwarz, the second time, by defendants Justin Volpe, and Thomas Bruder. At that time, all of these defendants were uniformed, on-duty New York City police officers. Along with the beatings, Mr. Louima endured offensive insults directed at his race and his Haitian ethnicity.
5. By the time Mr. Louima arrived at the 70th Precinct his face had already been battered into a swollen, bloody pulp. Officers pulled down Mr. Louima's pants while he was standing before the desk officer. ~~Naked from the waist down and~~ his hands cuffed behind his back, Mr. Louima was then paraded through the precinct and taken into the bathroom.
6. In the bathroom, Schwarz helped restrain Mr. Louima while Volpe took a stick and shoved it into Mr. Louima's rectum so hard and deep that it ripped through

his colon, penetrated the barrier separating the colon from the bladder, and perforated the bladder. Defendant Volpe then removed the stick, which was covered with feces and blood, and shoved it into Mr. Louima's mouth, exhorting him to "eat your shit."

7. None of the several on-duty police officer defendants who were within earshot of Mr. Louima's cries of pain took any action to intercede and halt the torture, nor did any of them promptly report to their supervisors or other city or federal authorities what they had seen and heard.
8. Defendant Volpe was sufficiently confident that the officers present would not tell the truth that later in the morning he showed the feces-covered stick to them and bragged about the sexual assault.
9. Volpe told the one witness whom he could not count upon to remain silent about what had happened – Mr. Louima himself – that he and his family would be killed if any effort was made to tell authorities what had happened.
10. After the sexual assault, Mr. Louima was dragged from the bathroom, with his pants still down and his hands still cuffed behind his back, to a holding cell, where he was kept for several hours before being brought to Coney Island Hospital for medical attention. During that interim period, none of the other officers or supervisory personnel at the precinct who were aware of Mr. Louima's physical injuries took appropriate action to investigate and report the use of excessive force

or to ensure prompt medical attention.

11. When Emergency Medical Service (EMS) was finally summoned, Mr. Louima defied the death threat that had been communicated to him – in the midst of a crowded police precinct house by the uniformed New York Police officer who had just sexually assaulted him – and told the medical technicians what had happened. But this was to no avail. Instead, the technicians delayed treatment and filed a false report, with the specific intent of assisting the police in covering up the true cause, nature and extent of Mr. Louima's injuries.
12. Throughout his recovery from surgery and treatment in intensive care, from admission on August 9th until false criminal charges were dropped on August 13th, Mr. Louima was handcuffed to his hospital bed and guarded as a prisoner.
13. The conspiracy to cover up the savage attacks against Abner Louima began as he was being beaten in the patrol car on the way to the 70th precinct and spread quickly beyond the four officers to field sergeant Michael Bellomo and other officers back at the precinct.
14. The Patrolmen's Benevolent Association ("PBA") quickly became involved in the conspiracy to cover-up the officers' abominable conduct. Consistent with its regular practice in cases of serious and violent criminal conduct by police officers, the PBA and its agents – all police officers themselves – acted affirmatively to prevent guilty parties' being brought to justice, a role that included helping the

undetected and unpunished and honesty is actively discouraged. With the imposition of punitive damages against all defendants with the exception of the City and of appropriate equitable relief, plaintiffs hope to deter defendants and bring an end to this intolerable cycle of violence and silence.

JURISDICTION

21. This action is brought pursuant to 42 U.S.C. §§ 1983, 1985, 1986, and 1988; and the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and the laws of the State of New York. Jurisdiction is founded upon 28 U.S. C. §§ 1331, 1343(1-4), and 2202. Plaintiffs further invoke the supplemental jurisdiction of this Court to adjudicate pendant state law claims pursuant to 28 U.S.C. § 1367.
22. Venue is proper in this district under 28 U.S.C. § 1391(b).

PARTIES

23. Plaintiffs Abner Louima and his wife, Micheline Louima, are residents of the City of New York. Born in Haiti, Mr. Louima is a naturalized United States citizen and a citizen of the State of New York.
24. Defendant, City of New York (City), is a municipal corporation within the State of New York and the public employer of the police officers and Emergency Medical Services technicians named as defendants in this action.
25. Defendant, the Patrolmen's Benevolent Association of the City of New York

officer employed by the defendant City of New York:

- f. Defendant Francisco Rosario, at all relevant times, was a police officer employed by the defendant City of New York;
- g. Defendant Rolando Aleman, at all relevant times, was a police officer employed by the defendant City of New York;
- h. Defendant Peter Blaich, at all relevant times, was a police officer employed by the defendant City of New York;
- i. Defendant Joseph O'Brien, at all relevant times, was a police officer employed by the defendant City of New York;
- j. Defendant Jeremiah Daly, at all relevant times, was a police officer employed by the defendant City of New York;
- k. Defendant John Does, at all relevant times, were police officers and non-uniformed police employees of the defendant City of New York, the identity and number of whom is presently unknown;
- l. Defendant Richard Roes, at all relevant times, were supervisory police personnel of the defendant City of New York , the identity and number of whom is presently unknown;
- m. Defendant Michael Immitt, at all relevant times, was an agent of the PBA acting under its directives and a police officer employed by the defendant City of New York;

NOTICE OF CLAIM

30. Plaintiffs, in furtherance of their state causes of action, filed timely notice of claim against the City in compliance with General Municipal Law Section 50.
31. More than 30 days have elapsed since service of said notice, and the City has failed to pay or adjust the claim.
32. By stipulation, the City has agreed to dispense with the need to hold a 50-h examination of plaintiffs in advance of commencing this lawsuit.
33. This action has been commenced within one year and ninety days after the happening of the events upon which these claims arise.

FACTUAL AND GENERAL ALLEGATIONS

34. During the early morning hours of Saturday August 9, 1997, Abner Louima was in the process of leaving the Rendez-Vous nightclub on Flatbush Avenue in Brooklyn when he was suddenly, without legal cause, knocked to the ground outside the club by one or more police officers. Mr. Louima had not committed any criminal offense.
35. On the ground, one or more officers continued to assault him, his hands were cuffed behind his back, and he was placed in the rear of a radio motor patrol car.
36. While Mr. Louima lay on the ground, his cousin, Jay Nicolas, upset by the treatment Mr. Louima was receiving from police, struck defendant Volpe in the back of the head. Although Mr. Louima did not and could not have thrown that

were pulled down, leaving him naked from the waist down. It is believed that Blaich completely ignored the obvious injuries and stripping of Mr. Louima and that, later on, Blaich failed to take appropriate action to investigate and report the incident.

41. In this half-clothed state, Mr. Louima was then paraded through the precinct and taken into the bathroom.
42. In the bathroom, Schwarz and Volpe administered summary punishment. Schwarz held the handcuffed Mr. Louima while Volpe took a stick and shoved it into Mr. Louima's rectum with sufficient force to tear through his internal organs.
43. Volpe then removed the stick, which was covered with feces and blood, and shoved it into Mr. Louima's mouth, exhorting him to "eat your shit." The defendants called him "nigger" and peppered their commands with additional ethnic and racist slurs.
44. At some point in the midst of this torture, defendant Schwarz, attempting to silence Mr. Louima's cries of pain, placed his booted foot on Mr. Louima's face.
45. During the course of the torture in the station house bathroom, on information and belief, defendant Wiese planted himself outside the bathroom door as a lookout, a role that included his opening the closed bathroom door to see what his colleagues were doing to Mr. Louima.
46. Mr. Louima was told that if he told anyone what had been done to him, he and his

family would be killed.

47. After the torture, defendant Volpe displayed the stick to other police officers at the precinct and bragged to them about what he had done.
48. Mr. Louima was dragged from the bathroom, with his pants still down and his hands still cuffed behind his back, to a holding cell. He was placed in the cell with his hands still cuffed and his pants still down.
49. Defendants Rosario, Aleman, and, on information and belief, defendants Daly and O'Brien were in the 70th Precinct at the time these events were occurring, and observed and/or heard portions of what had happened but failed to intercede and/or report it to supervisory personnel and later, when questioned by Internal Affairs, gave false and misleading statements.
50. The force used in the street, in the patrol car, and inside the precinct bathroom was unnecessary, unreasonable, and excessive.
51. At no time during the events described above did the defendant officers have probable cause for the arrest of Mr. Louima and there was no legal cause or excuse for his seizure.
52. Defendant Volpe has pleaded guilty for his role in the beating of Mr. Louima when defendants Schwarz and Wiese stopped their police cruiser en route to the 70th Precinct.
53. Defendant Volpe has also pleaded guilty for his role in the torture of Mr. Louima

in the bathroom of the 70th Precinct, and defendant Schwarz has been convicted by a federal jury for his role in the conspiracy to deprive Mr. Louima of his civil rights – including the torture in the bathroom.

54. Defendants Volpe, Bruder, Schwarz, Wiese, Bellomo, Blaich, Daly and O'Brien and John Doe officers and non-uniformed personnel were aware of the beatings and/or torture but failed to report it promptly and failed to protect Mr. Louima while in custody.
55. Under the oath of office and the written rules and regulations promulgated by the NYPD, line officers and command personnel have an affirmative duty to intercede and prevent crimes and other misconduct committed by officers and to report such conduct whenever they become aware of it.
56. According to Patrol Guide Interim Order 3, "[a]ll members of the service have an absolute duty to report . . . serious misconduct of which they become aware." Specifically, upon observing or becoming aware of corruption or misconduct or an allegation thereof, all police officers must, among other things, promptly telephone Internal Affairs and, within 24 hours, must provide Internal Affairs with a detailed written report setting forth what they know concerning other officers' misconduct. The Order, which was originally issued in January 1995, further provides that "[c]onduct designed to cover up acts of corruption, prevent or discourage its report or intimidate those who would report it will be charged as an

obstruction of justice or other criminal act.”

57. Defendants Volpe, Schwarz, Wiese and Bruder made no effort to prevent the beating and torture of Mr. Louima and have made every effort – continuing up to the present – to conceal from authorities the truth about what actually occurred. Schwarz, Wiese, and Bruder have been convicted on federal obstruction of justice charges, based on their conduct and lies told to thwart a federal grand jury investigation, as part of their ongoing effort to protect themselves from being held accountable for their criminal conduct.
58. Defendant Aleman has pleaded guilty to charges of obstructing justice, arising, inter alia, from lies he told to law enforcement investigating Mr. Louima’s abuse. Defendant Rosario, who was Aleman’s partner, has been convicted on similar charges.
59. Defendant Rosario has admitted under oath that he lied to Internal Affairs and that he was pressured by the PBA and its representatives not to come forward with information that would incriminate Volpe, Schwarz, Wiese and others.
60. Mr. Louima asked John Doe police officers and/or non-uniformed personnel who appeared in the cell room for medical help, but received no assistance for a long time.
61. Defendants Volpe, Bruder, Schwarz, Wiese, Bellomo, Blaich and John Doe officers and non-uniformed employees knew, or with due diligence should have

indifference, declined to give immediate medical treatment for the acute trauma.

66. As a direct and proximate result of Birnbaum and Pagan's deliberate indifference,

Mr. Louima's physical and psychological pain and suffering were significantly exacerbated.

67. Mr. Louima was eventually taken by EMS ambulance to Coney Island Hospital. It

is believed that John Doe officers who accompanied the ambulance failed to communicate the true nature and extent of the injuries to hospital personnel, causing Mr. Louima further delay in treatment and additional pain and suffering.

68. Throughout his recovery from surgery and treatment in intensive care, from admission on August 9th until false criminal charges were dropped on August 13th, Mr. Louima was handcuffed to his bed and guarded as a prisoner.

69. The conspiracy to cover up the savage attacks against Abner Louima began as he was being beaten in the patrol car on the way to the 70th precinct and spread quickly beyond the four officers and sergeant Bellomo to the John Doe officers at the precinct who had some awareness of the brutality but failed either to intercede or report it.

70. In the days after the attack – before any effort was made to interview Volpe, Schwarz, Wiese, or Bruder – scores of telephone calls were exchanged, at all hours of the night, among these individuals and between them and Anthony Abbate, a former 70th Precinct officer and PBA delegate, who had recently been

thrown off the force for, among other things, lying at a departmental trial that had been conducted at a time when he was on probation for past acts of physical abuse of civilians.

71. It is believed that defendant PBA quickly became involved in the conspiracy and through its agents, played a significant role in advancing the cover-up. When defendant Wiese, himself a PBA representative, and defendants Volpe, Schwarz, and Bruder came under suspicion, they met with union representatives who are also police officers. On information and belief, the union's agents, including defendants Michael Immitt and Williams Woes, conferred with the offending officers and received incriminating admissions of criminal behavior. Instead of coming forward and promptly reporting this information as they are obligated to do as police officers, the PBA and its police officer agents suppressed it and instead, adopted and orchestrated an affirmative strategy of obstruction and falsification.

72. On Wednesday August 13, defendant Wiese, in his capacity as PBA delegate for the 70th Precinct, convened a meeting in the basement of the station house that was attended by the four defendants most directly implicated in the physical abuse of Mr. Louima, along with Michael Immitt, the highest-ranking PBA officer in South Brooklyn, and other PBA agents. On information and belief, the purpose of this meeting was to devise a common story, inconsistent with the truth, about what had

happened. On information and belief, the participants also discussed ways to defame and publicly humiliate Mr. Louima, in the hope that he would be deterred from pressing charges against them and that the credibility of any testimony he ultimately did give would be diminished.

73. It was these defendants' intention, on information and belief, to devise a version of what had happened that would not be disproved if the other officers who had been in the 70th precinct did not come forward and cooperate with investigating authorities.
74. On information and belief, among the subjects discussed at the August 13 meeting was a plan to claim that Mr. Louima had sustained his injuries, not as a result of defendants' vicious assault, but rather through consensual homosexual activity. Pursuant to this plan, defendants launched a sustained campaign to falsely inform other officers, the news media, and, ultimately, law enforcement authorities, that the Rendez-Vous nightclub catered to a homosexual clientele and that Mr. Louima's wallet had contained an advertisement for an "all-male" revue and to insinuate that his injuries were the result of consensual sexual activities.
75. In the ensuing days, defendant Immitt appeared at the morning, afternoon, and midnight roll calls for the 70th precinct, on information and belief, to personally urge all officers to maintain silence in the face of investigators' inquiries.
76. Immitt and PBA delegate Timothy Lee then undertook to deter individual officers

encourages the “blue wall” is the “48 hour rule” codified in the Patrol Guide, Section 118-9. The section requires that an officer subject to an official investigation be given two business days' notice before being interrogated. An officer who is merely a witness to another officer's criminal conduct must be given four hours before the commencement of questioning. Although the Patrol Guide language is limited to administrative investigations and should in theory have no adverse impact on criminal investigations, it is believed that the custom is to apply the rule to criminal investigations, as well. Hence, as a rule, no police officer suspected of criminal wrongdoing gets questioned by anyone in law enforcement for at least two days.

81. On information and belief, it is the practice of the City to grant the PBA a substantial role in deciding which officers are to be treated as “witnesses” and which are to be treated as “suspects,” a power that lends itself to serious abuse when, as here, the PBA is intent on thwarting a criminal investigation. It is believed that in this case the PBA denominated as “suspects” – not witnesses – many, if not all, of the officers who were merely present at the 70th precinct.
82. In this case, notwithstanding the fact that NYPD's Internal Affairs Bureau had been alerted about the torture by Sunday August 10 and initiated an official investigation on that date, no officer (witness or suspect) was questioned until Wednesday August 13. Consistent with the City's practice not to question police

officer suspects at all, no attempt was ever made to question Volpe, Wiese, and Schwarz, and the first effort to make contact with defendant Bruder was one week after the incident.

83. One consequence of the custom of deliberate delay and avoidance, implemented only for police targets of investigation, is the window of opportunity for the destruction of evidence, the creation of cover stories, and the pressuring of witnesses. For instance in this case:
- a. The stick used by defendant Volpe was removed from the crime scene;
 - b. It is believed that potentially inculpatory evidence was removed from the lockers of defendants; and
 - c. Informal meetings, including the PBA-initiated gathering in the 70th Precinct basement, were convened for the purpose of preventing the truth about the wrongdoing from coming to light.
 - d. Scores of phone calls were made between and among the officers involved and the PBA agents, in an effort to assure that if and when the officers ultimately were questioned by investigators, they would give the same exculpatory – and false – version of what had happened.
84. The actions of all individual defendants were performed within the scope of their employment and authority, for whose acts the defendants City and PBA are liable under the doctrine of *respondeat superior*.

85. The actions of the defendant officers and EMS technicians violated Mr. Louima's clearly established rights under the First, Fourth, Fifth, and Fourteenth Amendments of the Constitution and were the direct and proximate cause of the physical and psychological injuries he suffered.
86. The actions of all defendants were intentional, malicious, and in bad faith, thus giving rise to punitive damages as to all defendants with the exception of the municipality.

DAMAGES

87. As a direct and proximate result of the said acts of the defendants, Mr. Louima suffered the following injuries and damages:
- a. Violation of his rights under the First, Fourth, Fifth, and Fourteenth Amendments to the Constitution;
 - b. Loss of physical liberty;
 - c. Life threatening physical injuries, pain and suffering, extreme fear, emotional trauma, requiring the expenditure of money for treatment ~~expected to last the~~ rest of his life;
 - d. Economic damages including loss of income; and
 - e. Humiliation, embarrassment, and injury to reputation.

The physical, psychological, and economic consequences of the defendants' actions continue to date, and upon information and belief, will continue into the

future.

CAUSES OF ACTION

COUNT I

42 U.S.C. § 1983 CONSPIRACY

88. Paragraphs 1- 87 are incorporated by reference as though fully set forth.
89. Defendants Volpe, Schwarz, Wiese, and Bruder, under color of law, conspired with one another to deprive Mr. Louima of his constitutional rights, including the rights: to be free from the intentional use of unreasonable force; to be free from unreasonable searches and seizures; to associate and speak freely; to have access to and seek redress in the courts; and to be free from false arrest, false imprisonment, and the delay and denial of medical attention.
90. It was part of the conspiracy that the defendants Volpe, Schwarz, Wiese, and Bruder did, among other acts, physically assault Mr. Louima while his hands were cuffed behind his back and while he was in police custody
91. In furtherance of the conspiracy and in order to cover up the acts of brutality, defendants engaged in the following:
- a. Falsely arresting and imprisoning Mr. Louima;
 - b. Fabricating and contriving criminal charges lodged against Mr. Louima;
 - c. Although they were aware of the brutality, and were required to report it immediately, deliberately suppressing the truth; and

- d. Submitting false police reports, statements, and testimony to support and corroborate the fabricated charges lodged against Mr. Louima to insulate Volpe, Schwarz, Wiese, and Bruder from administrative and criminal sanctions;
- e. Lying to authorities concerning the patrol car stops on the way to the precinct;
- f. Meeting and telephoning one another regularly in the week following their actions, in an effort to share information concerning the state of the investigation and present a united front in the face of any questioning.

COUNT II

42 U.S.C. § 1983 CONSPIRACY

- 92. Paragraphs 1- 91 are incorporated by reference as though fully set forth.
- 93. The individual defendants did, under color of law, conspire with one another and with the PBA, to deprive Mr. Louima of his constitutional rights, including the rights to be free from unreasonable seizure; to associate and speak freely; and to have access to and seek redress from the courts.
- 94. In furtherance of this conspiracy to cover up the acts of brutality that occurred in the police car and at the precinct house, defendants engaged in the following:
 - a. Jointly devising a false, exculpatory version of the events of August 9th, which would be told to investigating authorities;

- b. Enlisting the aid of Abbate, a disgraced, former officer (and PBA delegate) in orchestrating a cover-up;
- c. Refusing to come forward with evidence and information that would incriminate the individuals involved, in violation of individual defendants' sworn duty as police officers;
- d. Discouraging individual witnesses from speaking truthfully to investigators and intimidating and defaming those individuals who did answer investigators' questions;
- e. Knowingly giving false statements to departmental investigators, federal investigators, federal grand juries, and federal courts;
- f. Circulating false and defamatory information concerning Mr. Louima, in an effort to discourage him from telling authorities and courts the truth about what was done to him and to diminish the credibility of any information and testimony he did give.

COUNT III

42 U.S.C. § 1983 - UNREASONABLE AND EXCESSIVE FORCE

- 95. Paragraphs 1- 94 are incorporated by reference as though fully set forth.
- 96. By their conduct, defendants Volpe, Schwarz, Wiese, and Bruder, under color of law, deprived Mr. Louima of his constitutional right to be free from excessive and unreasonable force.

97. Mr. Louima claims damages for the injuries set forth above.

COUNT IV

42 U.S.C. § 1983 - FALSE ARREST AND IMPRISONMENT

98. Paragraphs 1- 97 are incorporated by reference as though fully set forth.
99. By their conduct and under color of law, defendants Volpe, Schwarz, Wiese, Bruder, and Bellomo deprived Mr. Louima of his constitutional right to be free from false arrest and false imprisonment.
100. Mr. Louima claims damages for the injuries set forth above.

COUNT V

**42 U.S.C. § 1983 - DELAY AND DENIAL OF MEDICAL TREATMENT
AND FAILURE TO PROTECT WHILE IN CUSTODY**

101. Paragraphs 1- 100 are incorporated by reference as though fully set forth.
102. By their conduct and under color of law, defendants Volpe, Schwarz, Wiese, Bruder, Bellomo, Blaich, Daly, O'Brien, Pagan, Birnbaum, and John Doe officers acted with malicious or at least deliberate indifference in failing to protect Mr. Louima from violence while in police custody and in failing to secure the medical attention required for his serious injuries, in a manner that deprived him of his constitutional rights and perpetuated and exacerbated his physical and mental pain and suffering.

COUNT VI

42 U.S.C. § 1983 - FAILURE TO INTERCEDE

103. Paragraphs 1- 102 are incorporated by reference as though fully set forth.
104. By their conduct and under color of state law, it is believed defendants Volpe, Schwarz, Wiese, Bruder, Bellomo, Blaich, Rosario, Aleman, Daly, O'Brien, and John Doe officers each had opportunities to intercede on behalf of Mr. Louima to prevent the excessive use of force and unreasonable seizure but due to their intentional conduct or deliberate indifference declined or refused to do so.
105. As a direct and proximate result, Mr. Louima suffered the injuries and damages described above.

COUNT VII

42 U.S.C. §1983 - FIRST AND FOURTEENTH AMENDMENT VIOLATIONS

106. Paragraphs 1- 105 are incorporated by reference as though fully set forth.
107. By their conduct and under color of law all individual and John Doe officers, and the PBA, acting under color of law, deprived Mr. Louima of his First and Fourteenth Amendment rights to have access to and seek redress in the courts.
108. The defendants engaged in a cover up in order to conceal the wrongful and unlawful conduct taken against Mr. Louima.
109. The defendants' efforts to conceal the truth continue to the detriment of Mr. Louima.
110. As a direct and proximate result, Mr. Louima suffered the injuries and damages described above.

COUNT VIII

42 U.S.C. § 1985(3) CONSPIRACY WITH RACIAL ANIMUS

111. Paragraphs 1- 110 are incorporated by reference as though fully set forth.
112. The individual defendants, under color of law, conspired with each other and with the PBA, to undertake a course of conduct to injure, oppress, threaten, and intimidate Abner Louima in the free exercise and enjoyment of the rights and privileges and equal protection of the law secured to him by the Constitution..
113. The conduct of the defendants was motivated by racial animus and by their desire to injure, oppress, threaten, and intimidate Abner Louima because of his race, African-American, and because of his birthplace, Haiti.
114. Defendants' racial and ethnic animus was expressed in racially and ethnically insulting remarks directed at Mr. Louima.
115. It was part of the conspiracy that defendants Volpe, Schwarz, Wiese, and Bruder did, among other acts, physically assault Mr. Louima while his hands were cuffed behind his back and while he was in police custody.
116. In furtherance of the conspiracy, and to conceal the crimes and misconduct of Volpe, Schwarz, Wiese, Bruder and all the other defendants, with the exception of the municipality, engaged in a cover up.
117. The PBA, through its agents, was a willful participant in joint action with officers acting under color of law.

118. As a proximate and direct result of defendants' conduct, Mr. Louima suffered the injuries and damages described above.

COUNT IX

42 U.S.C. § 1985(3) CONSPIRACY TO HINDER PROVISION OF EQUAL PROTECTION

119. Paragraphs 1- 118 are incorporated by reference as though fully set forth.
120. The individual defendants conspired with each other and with the PBA for the purpose of hindering and preventing the constituted authorities of the State of New York from securing and providing Mr. Louima equal protection of the laws.
121. In furtherance of the conspiracy, and to conceal the crimes and misconduct of Volpe, Schwarz, Wiese, and Bruder, all the defendants, with the exception of the municipality, engaged in a cover up.
122. Among the actions taken in furtherance were false statements made to internal affairs investigators, a wholesale abdication of officers' legal duty to report incriminating evidence to proper authorities – a default encouraged by defendant PBA – attempting to intimidate and defame those who did report to Internal Affairs; and directly and indirectly discouraging Mr. Louima from testifying.
123. As a proximate and direct result of defendants' conduct, Mr. Louima suffered the injuries and damages described above.

COUNT X

42 U.S.C. § 1985(2) CONSPIRACY TO IMPEDE DUE COURSE OF JUSTICE

124. Paragraphs 1- 123 are incorporated by reference as though fully set forth.
125. Each of the individual defendants conspired, along with the PBA, to impede the due course of Justice in New York State, with the intent of denying Mr. Louima the equal protection of the laws.
126. As a proximate and direct result of defendants' conduct, Mr. Louima suffered the injuries and damages described above.

COUNT XI

42 U.S.C. § 1985(2) CONSPIRACY TO OBSTRUCT FEDERAL JUSTICE

127. Paragraphs 1- 126 are incorporated by reference as though fully set forth.
128. The individual defendants conspired with one another and with the PBA to obstruct the investigation of a federal grand jury and to deter witnesses from giving testimony in a federal proceeding.
129. Defendants Schwarz, Wiese, Bruder and Rosario stand convicted of having obstructed justice, and defendants Aleman and Volpe have pleaded guilty to that charge.
130. ~~On information and belief, defendant Immitt~~ encouraged all police officer witnesses to maintain silence if approached by State or federal investigators.
131. On information and belief, PBA agents, including defendants Michael Immit and Timothy Lee, sought to deter and intimidate witnesses who might give truthful testimony that would inculcate the individual police officer defendants and to tip

off targets and help them modify their false, exculpatory stories when these efforts to discourage truthful testimony did not completely succeed.

132. On information and belief, the PBA, through its agents, continues to deter and discourage police officer witnesses from testifying truthfully in federal court about, among other things, the substance of the discussion in the basement and about the role of defendant Schwarz – whose guilt beyond a reasonable doubt has been found by two federal criminal juries.
133. Defendants waged a sustained, extralegal campaign to cause Mr. Louima emotional distress so that he would be deterred from testifying truthfully in this and other federal proceedings.
134. As a proximate and direct result of defendants' conduct, Mr. Louima suffered the injuries and damages described above.

COUNT XII

42 U.S.C. § 1986 ACTION FOR NEGLIGENCE TO PREVENT

135. Paragraphs 1- 134 are incorporated by reference as though fully set forth.
136. On information and belief, the individual named defendants, John Doe defendants, William Woe defendants, and the PBA had knowledge that a 42 U.S.C. § 1985(3) conspiracy was in progress, had the power to prevent or aid in preventing the conspiracy from continuing, and neglected or refused to do so.
137. With reasonable diligence, defendants could have promptly reported the brutality

to superiors and to duly authorized investigators. Their failure contributed to Mr. Louima's suffering gratuitously before medical care was obtained for him and for his remaining under arrest, guarded, and handcuffed throughout the first four days of surgery, intensive care and hospitalization, thereby exacerbating his pain and suffering.

138. Had the individual defendants and PBA agents complied with the law and furnished truthful information to authorities investigating the brutality in the police car and the precinct house, the § 1985(3) conspiracy would not have succeeded to the extent that it did and continues to.
139. As a proximate and direct result of defendants' conduct, Mr. Louima suffered the injuries and damages described above.

COUNT XIII

42 U.S.C. § 1983 SUPERVISORY LIABILITY

140. Paragraphs 1- 139 are incorporated by reference as though fully set forth.
141. Defendants Bellomo and Richard Roes were, at the relevant times, supervisory personnel at the 70th-precinct or in the NYPD, with oversight responsibility for line officers Volpe, Schwarz, Wiese, Bruder, and Bellomo. They were responsible for the training, instruction, supervision, and discipline of the four officers who brutalized Mr. Louima and for Sergeant Bellomo, an accessory after the fact.

142. It is believed that these defendants received complaints about the conduct of Volpe, Schwarz, Wiese, Bruder, Bellomo, and other officers in the 70th precinct. knew about past complaints, aberrant behavior, and disciplinary infractions, or, in the exercise of due diligence, would have perceived that these officers had conduct and disciplinary problems that posed a pervasive and unreasonable risk of harm to Mr. Louima.
143. These defendants knew, or in the exercise of due diligence would have known, that the conduct of Volpe, Schwarz, Wiese, Bruder, and Bellomo against Mr. Louima was likely to occur.
144. It is believed that these defendants failed to take preventative and remedial measures to guard against the brutality and cover up committed by Volpe, Schwarz, Wiese, Bruder, and Bellomo. Had they taken appropriate action, Mr. Louima would not have been injured.
145. For example, the Police Department received a number of complaints concerning defendant Volpe's excessive use of force on civilians. Although the Police Department ~~investigators pronounced all of these unfounded~~, an independent review of the cases, conducted by the U.S. Attorney's Office in conjunction with its criminal proceeding against these defendants, found more than one of them to have merit.
146. The Police Department also failed to take any corrective or disciplinary action

against defendant Schwarz, who had testified untruthfully at a departmental hearing in an unsuccessful attempt to help defendant Abbate – himself the object of more than two dozen civilian complaints – remain on the force.

147. The failure of these individual defendants to supervise and discipline Volpe, Schwarz, Wiese, Bruder, Bellomo and the other officers of the 70th precinct amounted to gross negligence, deliberate indifference, or intentional misconduct which directly caused the deprivations suffered by Mr. Louima.

COUNT XIV

42 U.S.C. § 1983 - SYSTEMIC CLAIM AGAINST CITY AND PBA

148. Paragraphs 1- 147 are incorporated by reference as though fully set forth.
149. Prior to August 9, 1997, the City, acting at the behest of and in close conjunction with the PBA, has developed and maintained policies and customs exhibiting deliberate indifference to the constitutional rights of its citizens, which caused the violations of Mr. Louima's rights.
150. It was the policy and/or custom of the City to investigate inadequately and improperly ~~civilian complaints of police misconduct~~ and to punish inadequately those complaints which were substantiated. Instead, acts of brutality were tolerated by the City. The Internal Affairs Bureau (IAB) and the Civilian Complaint Review Board (CCRB) have substantially failed in their responsibilities to investigate misconduct and discipline transgressors. Since the

CCRB became independent in 1993, through December 1996 it received 18,336 complaints, yet the NYPD dismissed only one officer as a result of a CCRB investigation.

151. IAB investigations of brutality rarely lead to administrative trials and, in the rare instances that charges are sustained administratively, the punishment is minimal, lacking any deterrent effect. Since there is no disciplinary sanction available between thirty days' suspension and dismissal, and dismissal is almost always deemed too harsh, even the most brazen acts of brutality, short of murder, are resolved with a slap on the wrist.

152. The City has been on notice for more than a generation that brutality is widespread and that particular reforms need to be implemented. From reform-minded Commissioner Patrick Murphy to the Mollen Commission twenty-five years later, the City has been repeatedly cautioned that a systemic tolerance for brutality flourishes throughout the NYPD. Three years before Mr. Louima was brutalized, the Mollen Commission report noted, "This tolerance, or willful blindness, extends to supervisors as well. This is because many supervisors share the perception that nothing is really wrong with a bit of unnecessary force and because they believe that this is the only way to fight crime today." "Such practices," the Commission warned, "should sound an alarm throughout the [Police] Department."

investigations. it is the City's custom to follow the rule in criminal investigations. as well. Moreover, while the 48-hour delay is expressly limited to targets – with mere witnesses accorded a four-hour grace period – the custom, is to allow the PBA and its representatives considerable input in deciding who is a target and who is a witness.

157. As a matter of practice, the City often takes more than 48 hours to interview officers suspected of or believed to have witnessed excessive force or other serious criminal conduct. As was the case here, the first witness to be questioned pursuant to the Patrol Guide was on August 13, four days after the events had transpired and three days after the IAB was aware of the torture and after the conspiracy to obstruct justice had gathered full steam.
158. Moreover, even when police officers are interviewed under the Patrol Guide, they are not giving sworn testimony, and they are granted complete immunity – including for perjury.
159. With respect to those police officers who are suspects in – and not merely witnesses to – serious misconduct, ~~it is the City's~~ practice never to question them, an approach that differs drastically from that employed when the police investigate crimes where the suspects are civilians (or are City employees other than police officers). In cases where the police are trying to bring a civilian suspect to justice, it is common to make prompt contact with the individual and to

see what information about the crime he or she will volunteer. In this case, no such effort was ever made to question Volpe, Schwarz, or Wiese, and the first time Bruder was interviewed was a week after the beating and torture.

160. These policies operate to insulate police officers who engage in criminal or other serious official misconduct from detection, prosecution, and punishment, and are maintained with deliberate indifference to that obvious and widely known effect.

161. Police officers of the City of New York have for years engaged in a pattern and practice of actively and passively covering up the misconduct of fellow officers by failing to come forward or failing to accurately give evidence as to misconduct of which they are aware, thereby establishing and perpetuating a "code of silence."

162. This "code of silence" is a custom so deeply ingrained in the New York City Police Department so as to constitute the policy of the City of New York.

163. The City has been deliberately indifferent to the need for more or different training, rules and regulations relating to police officers who witness or have information regarding misconduct by fellow officers. The City has failed to properly sanction or discipline officers who are aware of and subsequently conceal and/or aid and abet violations of constitutional rights of citizens by other New York City police officers, thereby causing and encouraging New York City police officers, including the individual defendant officers in this case, to violate the rights of citizens such as Mr. Louima.

164. Once again, the City was on notice about this problem for decades, and it had been an important area of focus for the Mollen Commission, which specifically found that the tactics of the PBA and other unions “put[] immense pressure on the guiltless officer – who may want to answer questions – not to stray from the common practice of abiding by union advice and remaining silent”; that “PBA delegates and attorneys help reinforce the code of silence,” and that “the PBA often acts as a shelter and protector of the corrupt cop, rather than as a guardian of the interests of the vast majority of its membership, who are honest police officers.”)

165. It is believed the City has maintained no system or an inadequate system of review of officers who withhold knowledge or give false information regarding misconduct by fellow officers. This failure to identify and track such officers, including the defendant officers, or to discipline, more closely supervise, or retrain such officers who engage in the “code of silence,” causes New York City police officers to believe that they can engage in misconduct, secure in the knowledge that their fellow officers will ~~neither intervene nor give evidence~~ against them.

These systemic deficiencies include, but are not limited to:

- a. Preparation of investigative reports designed to vindicate the conduct of officers who gave false information about the misconduct of other officers, or who falsely denied knowledge about misconduct which they were in a

position to observe;

- b. Preparation of investigative reports which uncritically rely solely on the word of police officers and which systematically fail to credit testimony of non-police witnesses.
 - c. Preparation of investigative reports which omit or ignore factual information and physical evidence which contradict the accounts of police officers;
 - d. Issuance of public statements exonerating officers involved in such incidents prior to the completion of investigation;
 - e. Failure to have meaningful review of investigative reports by responsible superior officers for accuracy or completeness, including consideration of the conduct of officers who were not actively engaged in the misconduct which was the subject of the investigation, and acceptance of conclusions which are not supported by the evidence or which contradict such evidence; and
 - f. Failure to identify potential ~~“code of silence”~~ violations and maintain accurate records of allegations of such misconduct.
166. The City, prior to and at the time of this incident, was aware of the need for more or different training, rules, regulations, investigation and discipline relating to police officers who practice the “code of silence,” and was deliberately indifferent

to that need.

167. The foregoing acts, omissions, systemic deficiencies and deliberate indifference to the danger of harm to citizens such as plaintiff and the need for more or different training and discipline are policies, practices and customs of the City of New York and have caused police officers, including the officer defendants in this case, to believe that they can violate the rights of citizens with impunity, and that their fellow officers would conceal such conduct, including swearing falsely and committing perjury, all with the foreseeable result that officers will violate the constitutional rights of citizens.
168. The culture of silence and dishonesty concerning police misconduct exists because of, rather than despite, the efforts of the PBA.
169. As the Mollen Commission found, the PBA's policies put "immense pressure" on honest officers to maintain silence – to the detriment of law enforcement and police-community relations – and often contrary to these individuals' own interest and "fuel the insularity that characterizes police culture." The Commission accused PBA delegates of ~~trying to thwart law enforcement~~ efforts to eradicate widespread police corruption.
170. The role the PBA and its agents played in this case was not an aberration. Rather, it has been standard operating procedure to abet and orchestrate the obstruction of justice in even the most notorious instances of police misconduct.

171. For example, in the case of Anthony Baez, an unarmed civilian choked by a police officer, agents of the PBA played a prominent role in helping the officers involved to concoct false, albeit consistent, stories and in pressuring the police officer who ultimately exposed their lies not to come forward – and to expose her to severe retaliation.
172. In addition to their role in manipulating the 48-hour rule, PBA agents make improper use of the attorney-client privilege and the spurious delegate-member privilege to orchestrate cover-ups among co-conspirators and to identify and silence police witnesses who would otherwise give honest testimony.
173. It is the custom and practice of the PBA to treat those officers who want to come forward – and not those who violently abuse citizens – as wrongdoers.
174. As a direct and proximate result of the City's and the PBA's policies and their deliberate indifference, defendants violated Mr. Louima's constitutional rights for which he suffered substantial damages.

COUNT XV

~~42 U.S.C. § 1983 CONSPIRACY BETWEEN CITY AND PBA~~

175. Paragraphs 1- 174 are incorporated by reference as though fully set forth.
176. Acting jointly over a period of many years, the City and PBA together established policies and customs which allow even the most brazenly brutal officers to believe that they can use excessive force with impunity.

177. This conspiracy between the City and the PBA is ultimately responsible for, and the proximate and direct cause of the violation of Abner Louima's rights and the extraordinary injuries that ensued.

COUNT XVI

PENDENT CLAIM OF GROSS NEGLIGENCE AND NEGLIGENCE

178. Paragraphs 1 - 177 are incorporated by reference as fully set forth.
179. Defendants the PBA, Matarazzo, Lynch, Immit and unknown William Woe agents of the PBA have been grossly negligent and negligent in the supervision, training, and monitoring of their representatives who consult with and counsel police officers who are suspected of crimes and misconduct, and police officers who are witnesses to crimes and misconduct by their fellow officers.
180. By virtue of the unique public safety considerations implicated by police violence, its pivotal role in the official investigation of police misconduct, and its express undertakings in its collective bargaining agreement with the City, the PBA and the individual PBA defendants have a duty to make sure their members and their agents, who are also police officers, do not violate their duties as police officers to report crimes and misconduct by fellow officers.
181. The PBA and the individual PBA defendants have been grossly negligent and negligent in the instruction and training they provide to their members with respect to their responsibilities to report crimes or misconduct by other police

officers.

182. The PBA and the individual PBA defendants have been on notice for many years that their representatives have played a role in the improper obstruction of criminal investigations of New York City police officers.
183. The PBA and the individual PBA defendants knew or should have known that their policies and practices have contributed to improper concealment of admissions by police officers to PBA representatives, and a “code of silence” being followed by police officers, who are also PBA members, to cover up crimes and misconduct.
184. The PBA and the individual PBA defendants knew or should have known that their policies and practices, as well as their grossly negligent and negligent supervision and training of PBA representatives, created an atmosphere where the most violent police officers felt assured that their most brazen acts of misconduct would not be swiftly and effectively investigated and prosecuted.
185. The mistreatment and torture of Mr. Louima previously set forth, and the subsequent cover up of those events, were reasonably foreseeable results of the PBA’s and the individual PBA defendants’ negligent conduct.

COUNT XVII

PENDENT CLAIM OF ASSAULT AND BATTERY

186. Paragraphs 1- 185 are incorporated by reference as though fully set forth.

187. By their actions, as set forth above, defendants Volpe, Schwarz, Bruder, and Wiese committed atrocious acts of battery against Abner Louima which included beating and kicking him about the face and body without cause, threatening to kill him and his entire family, and sodomizing him with a stick at the 70th precinct. This use of physical force against Mr. Louima was unnecessary and excessive.
188. The City is responsible for the threats and the excessive and unnecessary physical force used by defendants Volpe, Schwarz, Bruder, and Wiese because the misconduct occurred while they were acting in the scope of their employment, specifically in the course of arresting Mr. Louima, and while they were executing their responsibility to hold him safely in police custody at the 70th precinct.
189. As a result of these death threats and the excessive and unnecessary physical force used against him, Mr. Louima suffered severe and serious physical and mental injuries.

COUNT XVIII

PENDANT CLAIMS OF FALSE ARREST AND FALSE IMPRISONMENT

190. Paragraphs 1- 189 are incorporated by reference as though fully set forth.
191. Abner Louima was wrongfully, unlawfully, and unjustifiably charged, arrested, detained and deprived of his liberty against his will, and was imprisoned by defendants Volpe, Bruder, Schwarz, Wiese, Bellomo, other unknown John Doe police officers and unknown Richard Roe supervisory personnel.

192. At all relevant times, these defendants acted forcibly in apprehending Mr. Louima.
193. The wrongful, unjustifiable, and unlawful apprehension, arrest, detention and imprisonment was carried out without a warrant.
194. After his arrest, Mr. Louima was wrongfully harassed, threatened, and subjected to the taking of mug shots in a particularly humiliating fashion and fingerprinting.
195. Throughout Mr. Louima's false arrest and imprisonment, defendants Volpe, Bruder, Schwarz, Wiese, Bellomo, other unknown John Doe police officers, and unknown Richard Roe supervisors did not permit him an opportunity to establish his innocence.
196. At all times mentioned, the unlawful, wrongful, and false arrest and imprisonment of Mr. Louima was without right or probable cause, and was forcible and against his will.
197. All of the foregoing occurred without any fault or provocation on the part of Mr. Louima.
198. At all relevant times defendants Volpe, Bruder, Schwarz, Wiese, Bellomo, other unknown John Doe police officers and unknown Richard Roe supervisors who were responsible for the false arrest and imprisonment of Mr. Louima were employees of the NYPD and the City, and were acting for, upon and in furtherance of the business of their employers and within the scope of their employment.

199. As a result of the false arrest and imprisonment, Mr. Louima was subjected to humiliation, ridicule, and disgrace. He was required to incur bills for legal services rendered, and was otherwise injured and damaged.

COUNT XIX

PENDENT CLAIMS OF INTENTIONAL AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

200. Paragraphs 1- 200 are incorporated by reference as though fully set forth.
201. In the course of battering Mr. Louima about the face and body, sodomizing him with a stick, and falsely arresting and imprisoning him, defendants Volpe, Bruder, Schwarz, Wiese, Bellomo, Blaich and John Doe Police Officers embarked on a malicious, willful, and grossly negligent course of conduct intended to cause Mr. Louima to suffer extreme mental and emotional distress, agony, and anxiety.
202. One objective of this extreme and outrageous course of conduct was to inflict severe mental and emotional distress upon Mr. Louima so as to intimidate, terrify, and dissuade him from exposing the vicious assault and torture inflicted upon him, the false arrest and imprisonment, and the unconscionable delay and denial of medical treatment Mr. Louima endured.
203. Volpe directly threatened to kill Mr. Louima and his entire family if Mr. Louima revealed the horrible punishment visited upon him during the course of his false arrest and incarceration at the 70th precinct; Bruder, Schwarz, Wiese, Bellomo, Blaich, and John Doe Police Officers either knew or should have known about

these outrageous acts of terror and duress and attempted to stop them or ameliorate their effects upon Mr. Louima.

204. Volpe, Bruder, Schwarz, Wiese, Bellomo, Daly, O'Brien, Blaich and other unknown John Doe police officers either knew or should have known that Mr. Louima had been severely injured, that failure to get him to a hospital for immediate treatment would create an unreasonable risk of bodily harm, and that failure to obtain such treatment promptly would cause Mr. Louima extreme mental pain and anguish; nonetheless, all of these defendants breached their duty to obtain medical treatment for Mr. Louima.
205. Defendants Rosario, Aleman, Blaich, Daly, O'Brien, and other John Doe unknown police officers, defendants PBA, Immitt, Lee, and other William Woe unknown agents for the PBA, intentionally, recklessly or negligently caused Mr. Louima to suffer mental and emotional distress by impeding and obstructing the exposure of the vicious battering and torture he suffered, the false arrest and imprisonment he endured, and the wanton delay and denial of medical treatment he experienced.
206. It is believed that Volpe, Bruder, Schwarz, Wiese, the PBA and unknown John Doe police officers and William Woe agents for the PBA pursued a malicious campaign to inflict mental and emotional distress upon Mr. Louima by spreading false suggestions in the community and press that Mr. Louima had suffered

injuries to his colon and rectum as a result of homosexual activity at the Club Rendez-Vous. These false suggestions, as these defendants knew or should have known, caused Mr. Louima humiliation and ridicule.

207. The aforesaid acts of intentional, reckless and negligent infliction of emotional and mental distress by defendants constitute misconduct of an egregious nature that exceeds all bounds usually tolerated by a civilized society.

COUNT XX

PENDENT CLAIMS OF NEGLIGENCE FOR FAILING TO CARE, PROTECT, AND OBTAIN MEDICAL TREATMENT

208. Paragraphs 1- 207 are incorporated by reference as though fully set forth.
209. As New York City police officers, Volpe, Bruder, Schwarz, Wiese, Bellomo, Blaich and other unknown John Doe police officers had a duty to care, protect, and obtain medical treatment for Mr. Louima while he was being held as a prisoner at the 70th Precinct.
210. These defendants knew or should have known about the severe injuries Mr. Louima had suffered and were negligent in their failure to protect him from further injury at the precinct and their failure to prevent an unconscionable and unnecessary denial and delay in medical treatment and transport to a hospital.

COUNT XXI

PENDENT CLAIM OF PRIMA FACIE TORT

211. Paragraphs 1- 210 are incorporated by reference as though fully set forth.

212. By their actions, as set forth above, defendants Volpe, Bruder, Schwarz, Wiese, Bellomo, Blaiich, Daly, O'Brien, and other unknown John Doe police officers inflicted harm upon Mr. Louima, without excuse or justification, out of disinterested malevolence.

COUNT XXII

PENDENT CLAIMS OF MAKING AN INJURIOUS FALSE OR FRAUDULENT STATEMENTS

213. Paragraphs 1- 212 are incorporated by reference as though fully set forth.
214. William Pagan and Frank Birnbaum, as employees of Emergency Medical Service who responded to the 70th Precinct on August 9, 1997 to treat Mr. Louima and transport him to a hospital, had an obligation to accurately and reliably report information that would be relevant to Mr. Louima's care and treatment.
215. Nevertheless, Pagan and Birnbaum intentionally omitted in their Ambulance Call Report Mr. Louima's statements to them that he had been beaten by police officers, and had a stick shoved into his rear end and instead falsely stated that Mr. Louima had told them he had been punched, kicked, and hit, without any reference to the police or to the acute trauma to his rectum and internal organs.
216. The false information provided by Pagan and Birnbaum in their Ambulance Call Report and at other times before, during, and after Mr. Louima was transported to Coney Island Hospital, damaged Mr. Louima by delaying and denying him medical treatment and by causing him fear, pain and anguish.

COUNT XXIII

PENDENT CLAIMS OF GROSS NEGLIGENCE AND NEGLIGENCE AND INTENTIONAL AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

217. Paragraphs 1- 216 are incorporated by reference as though fully set forth.
218. Pagan and Birnbaum, as EMS employees, were grossly negligent and negligent in that they had a duty to care for Mr. Louima which they violated by delaying and denying him prompt treatment and transport to the hospital, by providing false information about the source, nature, and extent of his injuries, and by failing to take steps that an ordinarily reasonable and prudent person would have pursued to care and protect Mr. Louima.
219. Pagan and Birnbaum knew or should have known that their denial and delay of treatment and transport of Mr. Louima created an unreasonable risk of bodily harm and did cause Mr. Louima mental distress and anguish.

COUNT XXIV

PENDENT CLAIM - RESPONDEAT SUPERIOR

220. Paragraphs 1- 219 are incorporated by reference as though fully set forth.
221. At all relevant times, all defendant employees of the City of New York were acting for, upon, and in furtherance of the business of their employer and within the scope of their employment.
222. Consequently, the City is liable under the doctrine of *respondeat superior* for their

tortious actions.

COUNT XXV

42 U.S.C. § 1983 AND PENDENT CLAIM BY MICHELINE LOUIMA

223. Paragraphs 1- 222 are incorporated by reference as though fully set forth.
224. At all times relevant to this action, Micheline Louima was and is the lawful spouse of Abner Louima and, as such, was and is entitled to the comfort, enjoyment, society and services of her spouse. By reason of the foregoing conduct by defendants, Micheline Louima was deprived of the comfort and enjoyment of the services and society of her spouse, which are guaranteed to plaintiff under the laws and constitution of the State of New York and can be adjudicated in this litigation under the Court's supplementary jurisdiction. Moreover, defendants' conduct undermined Micheline Louima's liberty interest in preserving the integrity and stability of the marital relationship from intervention by the state without due process of law.

WHEREFORE, plaintiffs request the following relief jointly and severally as against all of the defendants:

1. Award compensatory damages in an amount to be determined at trial;
2. Award punitive damages in an amount to be determined at trial;
3. Award equitable relief against the PBA;
4. Disbursements, costs, and attorneys' fees; and

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STATE OF

COUNTY OF

SS.:

I, the undersigned, an attorney admitted to practice law,

☐ Certification By Attorney certify that the within
has been compared by me with the original and found to be a true and complete copy.
☐ Attorney's Affirmation state that I am

Check Applicable Box

the attorney(s) of record for
in the within action; I have read the foregoing
and know the contents thereof; the same is
true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as
to those matters I believe it to be true. The reason this verification is made by me and not by

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated:

STATE OF

COUNTY OF

SS.:

The name signed must be printed beneath

I,
☐ Individual Verification the
the foregoing
my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those
matters I believe it to be true.
☐ Corporate Verification the of
a
corporation and a party in the within action; I have read the foregoing
and know the contents thereof; and the same is true to my own knowledge.
except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe
it to be true. This verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Sworn to before me on

The name signed must be printed beneath

STATE OF

COUNTY OF

SS.: (If both boxes are checked — indicate after names, type of service used.)

I,
of age and reside at
On

I served the within
☐ Service By Mail by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care
and custody of the U.S. Postal Service within this State, addressed to each of the following persons at the last
known address set forth after each name:
☐ Personal Service on Individual by delivering a true copy thereof personally to each person named below at the address indicated. I knew each person
served to be the person mentioned and described in said papers as a party therein:

Check Applicable Box

Sworn to before me on

The name signed must be printed beneath

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

ABNER LOUIMA and MICHELINE LOUIMA.

Plaintiffs,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

-----X

**THIRD SUPPLEMENTAL SUMMONS AND
THIRD AMENDED COMPLAINT**

COCHRAN NEUFELD & SCHECK, LLP

Attorney(s) for Plaintiffs

99 HUDSON STREET
NEW YORK, NEW YORK 10013
(917) 237-0338

To

Service of a copy of the within is hereby admitted.

Dated:

Attorney(s) for

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