

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OCCUPY WALL STREET, an unincorporated association
by and through Christine Crowther and Diego Ibanez, as its
de facto Treasurers, AMANDA ROSE HENK, MICHELE
LEE HARDESTY, FRANCES MERCANTI-ANTHONY,
JAIME TAYLOR, and ELIZABETH FAGIN,

Plaintiffs,

-against-

THE CITY OF NEW YORK, MICHAEL BLOOMBERG
In his official capacity as Mayor of the City of New York
RAYMOND KELLY, in his official capacity as Police
Commissioner, JOHN DOHERTY, in his official capacity
as Sanitation Commissioner, JOHN DOE and RICHARD
ROE and other presently unidentified officials, employees
and/or agents of the City of New York in their official and
individual capacities,

Defendants/Third-Party Plaintiffs,

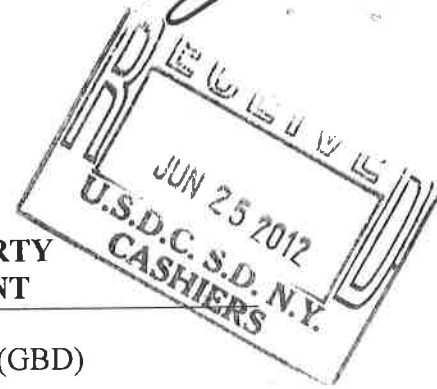
- against -

BROOKFIELD OFFICE PROPERTIES, INC.,

Third-Party Defendant.
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**THIRD PARTY
COMPLAINT**

12 CV 4129 (GBD)



Defendants, THE CITY OF NEW YORK ("City"), MICHAEL BLOOMBERG In
his official capacity as Mayor of the City of New York, RAYMOND KELLY, in his official
capacity as Police Commissioner and JOHN DOHERTY, in his official capacity as Sanitation
Commissioner (collectively "City defendants"), by their attorney, MICHAEL A. CARDOZO,
Corporation Counsel of the City of New York, as and for their complaint against the third-party
defendant, allege, upon information and belief as follows:

1. On or about May 24, 2012, plaintiffs, Occupy Wall Street, Amanda Rose
Henk, Michele Lee Hardesty, Frances Mercanti-Antonhy, Jaime Taylor and Elizabeth Fagin,

filed a complaint against City defendants, entitled Occupy Wall Street, et. al., v. The City of New York, et. al., 12 CV 4129 (GBD) (“OWS Action”).

2. This is a third-party action in which third-party plaintiffs, the City, Mayor Bloomberg, Commissioner Kelly and Commissioner Doherty (collectively “the City”), seek indemnification from third-party defendant, Brookfield Office Properties (“Brookfield”) for the claims asserted in the OWS Action.

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1367(a) in that the claims of the City are so related to the claims within the original jurisdiction of this Court in the OWS Action as to form part of the same case or controversy.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claim occurred within the district.

5. The City of New York is a municipal corporation duly organized under the laws of the State of New York.

6. Michael Bloomberg is the Mayor of the City of New York.

7. Raymond Kelly is the Commissioner of the New York City Police Department. The New York City Police Department is an agency of the City of New York.

8. John Doherty is the Commissioner of the New York City Department of Sanitation. The New York City Department of Sanitation is an agency of the City of New York.

9. Brookfield Office Properties, Inc. is a commercial real estate corporation that owns, manages and develops property in cities in North America and Australia, including in New York City. Brookfield maintains a principal place of business at Three World Financial Center, 200 Vesey Street, 11th Floor, New York, New York 10281. Brookfield Office Properties is the owner of the property known as Zuccotti Park, which encompasses the full-

block rectangular open space bounded by Broadway, Cedar Street, Church Street and Liberty Street. Zuccotti Park is a Privately Owned Public Space (“POPS”) which was created pursuant to a Special Permit issued by the New York City Planning Commission in 1968.

10. Protest activities associated with what has come to be known as the Occupy Wall Street movement first began in Zuccotti Park on or about September 17, 2011.

11. As a result of the Occupy Wall Street protest activities, during the time between September 17, 2011 and November 15, 2011, conditions in Zuccotti Park gradually deteriorated to the point where they constituted a fire safety hazard and prevented Brookfield from being able to operate the Park in the manner in which it is required to do under the Park’s special permit.

12. On November 14, 2011 Brookfield wrote to Mayor Bloomberg expressing its concern for the safety and health of those occupying Zuccotti Park, as well as its inability to be in compliance with the New York City zoning laws that govern the operation of Zuccotti Park. In its letter, Brookfield also requested that the City and the New York City Police Department enforce the law at the Park and support Brookfield in its efforts to enforce the rules established for the use of the Park.

13. As a result of the situation described in Brookfield’s letter and a finding by the New York City Fire Department that conditions in Zuccotti Park constituted a fire safety hazard, at approximately 1:00 a.m. in the morning on November 15, 2011, members of the New York City Police Department present at Zuccotti Park began instructing those occupying the Park, via bullhorn and written notices, that: (1) they must immediately remove all property, including tents, sleeping bags and tarps from the Park; (2) they must immediately leave the park on a temporary basis so that it can be restored to its intended use; (3) they will be allowed to

return to the Park when the work is complete; (4) if they fail to remove their property, it will be removed and transported to a Department of Sanitation garage at 57th Street where it can be recovered with proper identification; and (5) if they fail to leave the park, or if they interfere with efforts to remove property from the park, they will be subject to arrest.

14. Upon information and belief, at some time prior to 1:00 a.m. on November 15, 2011 Brookfield employees or agents hired or otherwise engaged a private carting company to provide trucks to assist with removal of belongings from Zuccotti Park.

15. Upon information and belief on November 15, 2011 Brookfield employees or agents assisted in loading property from Zuccotti Park into one or more trucks supplied by a private carting company.

16. Upon information and belief on November 15, 2011 the property placed in the truck(s) supplied by the private carting company was taken to, and disposed of in, a landfill.

17. City defendants played no role in, and did not authorize, the disposal of any property from Zuccotti Park. Rather, City defendants instructed that all property removed from Zuccotti Park be transported to a Department of Sanitation garage at 57th Street where it would be available to be recovered by persons with proper identification.

18. On or about May 24, 2012, the plaintiffs in the OWS Action filed a complaint alleging that the removal and destruction of property from Zuccotti Park on November 15, 2011 violated their rights under the First, Fourth and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, and the Constitution and laws of the State of New York.

19. Attached hereto as Exhibit A, and incorporated herein without admitting the truth of any of the allegations therein, and without prejudice to the interests of the third-party plaintiffs, is a true copy of the complaint in the OWS Action.

20. Attached hereto as Exhibit B is the Answer to the complaint filed by the City defendants.

21. City defendants/third-party plaintiffs deny that they have violated the rights of, or are in any way liable to, the plaintiffs in the OWS Action.

AS AND FOR A FIRST CAUSE OF ACTION

22. If the plaintiffs in the OWS Action were caused any injury or had their rights violated in any way, due to any conduct other than their own negligent or culpable conduct, then such damages were due, in whole or in part, to Brookfield's actions or the actions of Brookfield's agents, servants and/or employees.

23. That by reason of the foregoing, in that event Brookfield will be liable to the third-party plaintiffs for the full amount of recovery herein by the plaintiffs in the OWS Action, or for that proportion thereof caused by the relative responsibility of Brookfield, and for all costs and expenses, no part of which has been paid to the City.

AS AND FOR A SECOND CAUSE OF ACTION

24. If the plaintiffs in the OWS Action were caused to sustain the damages alleged in the OWS Action through any negligence or want of due care other than the negligence or want of due care on the part of themselves, then said damages were sustained by reason of the negligence and want of due care by acts of commission or omission on the part of Brookfield, its agents, servants and/or employees; and if any judgment is recovered herein by the OWS plaintiffs against the third-party plaintiffs, then the third-party plaintiffs will be damaged thereby and Brookfield is or will be responsible therefore in whole or in part.

WHEREFORE, third-part plaintiffs, The City of New York and Mayor Bloomberg, Commissioner Kelly and Commissioner Doherty, request judgment against Brookfield:

- (a) For the full amount, or such other amount as the Court deems just and proper, of any judgment obtained against third-party plaintiffs;
- (b) For the expenses of this action, costs and any other relief which this Court deems just and proper.

Dated: New York, New York
June 25, 2012

MICHAEL A. CARDOZO
Corporation Counsel of
the City of New York
Attorney for Third-Party Plaintiffs
100 Church Street, Room 5-175
New York, New York 10007
Email: sneufeld@law.nyc.gov
Tel: (212) 788-1035
Fax: (212) 791-9714

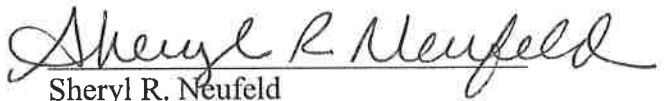
By: 
Sheryl R. Neufeld
Assistant Corporation Counsel

EXHIBIT A

2012-022400
JUDGE DANIELS

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York



Please see attached

Plaintiff

v.

Please see attached

Defendant

Civil Action No. **12 CV 4129**

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Please see attached

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney; whose name and address are:

Norman Siegel
Herbert Teitelbaum
Siegel Teitelbaum & Evans, LLP
260 Madison Avenue, 22nd Floor
New York, NY 10016

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

RUBY J. KRAJICK

CLERK OF COURT



Signature of Clerk or Deputy Clerk

Date: MAY 24 2012

Plaintiffs

OCCUPY WALL STREET, an unincorporated association by and through Christine Crowther and Diego Ibañez, as its *de facto* Treasurers, AMANDA ROSE HENK, MICHELE LEE HARDESTY, FRANCES MERCANTI-ANTHONY, JAIME TAYLOR, and ELIZABETH FAGIN

Defendants

THE CITY OF NEW YORK, MICHAEL BLOOMBERG, in his official capacity as Mayor of the City of New York, RAYMOND KELLY, in his official capacity as Police Commissioner, JOHN DOHERTY, in his official capacity as Sanitation Commissioner, JOHN DOE and RICHARD ROE and other presently unidentified officials, employees and/or agents of the City of New York in their official and individual capacities

Defendant Addresses

The City of New York
c/o
The City of New York Law Department
100 Church Street
New York, NY 10007

Mayor Michael R. Bloomberg
The City of New York
Office of the Mayor
New York, NY 10007

Police Commissioner Raymond Kelly
New York Police Department
One Police Plaza
New York, NY 10038-1403

Sanitation Commissioner John Doherty
NYC Department of Sanitation
Central Correspondence Unit
346 Broadway, 10th Floor
New York, NY 10013

JS 44C/SDNY
REV. 4/2011**JUDGE DANIELS**

CIVIL COVER SHEET

12 CV**4129**

This case cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other documents required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

MAY 24 2012PLAINTIFFS
Occupy Wall Street et al.DEFENDANTS
The City of New York et al.ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Siegel Teitelbaum & Evans, LLP, 260 Madison Avenue, 22nd Floor
New York, NY 10016
212-455-0300ATTORNEYS (IF KNOWN)
Norman Siegel, Herbert Teitelbaum, Sharon SprayregenCAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Violation of the 4th, 14th and 1st Amendments to the US Constitution, 42 U.S.C. 1983, and the constitution and laws of NY State

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes ☐ Judge Previously AssignedIf yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____Is THIS AN INTERNATIONAL ARBITRATION CASE? No ☒ Yes ☐

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

TORTS		ACTIONS UNDER STATUTES	
CONTRACT	PERSONAL INJURY	PERSONAL INJURY	FORFEITURE/PENALTY
[] 110 INSURANCE	[] 310 AIRPLANE	[] 362 PERSONAL INJURY -	[] 610 AGRICULTURE
[] 120 MARINE	[] 315 AIRPLANE PRODUCT	MED MALPRACTICE	[] 620 OTHER FOOD &
[] 130 MILLER ACT	LIABILITY	[] 365 PERSONAL INJURY	DRUG
[] 140 NEGOTIABLE	[] 320 ASSAULT, LIBEL &	PRODUCT LIABILITY	[] 625 DRUG RELATED
INSTRUMENT	SLANDER	[] 368 ASBESTOS PERSONAL	SEIZURE OF
[] 150 RECOVERY OF	[] 330 FEDERAL	INJURY PRODUCT	PROPERTY
OVERPAYMENT &	EMPLOYERS'	LIABILITY	21 USC 881
ENFORCEMENT	LIABILITY	PERSONAL PROPERTY	[] 630 LIQUOR LAWS
OF JUDGMENT	[] 340 MARINE	[] 630 LIQUOR LAWS	[] 640 RR & TRUCK
MEDICARE ACT	[] 345 MARINE PRODUCT	[] 640 RR & TRUCK	[] 650 AIRLINE REGS
[] 151 RECOVERY OF	LIABILITY	[] 650 AIRLINE REGS	[] 660 OCCUPATIONAL
DEFAULTED	[] 350 MOTOR VEHICLE	[] 660 OCCUPATIONAL	SAFETY/HEALTH
STUDENT LOANS	[] 355 MOTOR VEHICLE	[] 660 OCCUPATIONAL	OTHER
(EXCL VETERANS)	PRODUCT LIABILITY	[] 660 OCCUPATIONAL	
RECOVERY OF	[] 360 OTHER PERSONAL	[] 660 OCCUPATIONAL	
OVERPAYMENT	INJURY	[] 365 PROPERTY DAMAGE	
OF VETERAN'S		PRODUCT LIABILITY	
BENEFITS		LABOR	
[] 160 STOCKHOLDERS		[] 710 FAIR LABOR	
SUITS		STANDARDS ACT	
[] 190 OTHER		[] 720 LABOR/MGMT	
CONTRACT		RELATIONS	
[] 195 CONTRACT		[] 730 LABOR/MGMT	
PRODUCT		REPORTING &	
LIABILITY		DISCLOSURE ACT	
[] 198 FRANCHISE		[] 740 RAILWAY LABOR ACT	
		[] 750 OTHER LABOR	
		LITIGATION	
		[] 761 EMPL RET INC	
		SECURITY ACT	
		IMMIGRATION	
		[] 482 NATURALIZATION	
		APPLICATION	
		[] 483 HABEAS CORPUS-	
		ALIEN DETAINEE	
		[] 465 OTHER IMMIGRATION	
		ACTIONS	
REAL PROPERTY	ACTIONS UNDER STATUTES		
[] 210 LAND	CIVIL RIGHTS		
[] 220 CONDEMNATION	[] 441 VOTING		
[] 230 FORECLOSURE	[] 442 EMPLOYMENT		
EJECTMENT	[] 443 HOUSING/		
[] 240 TORTS TO LAND	ACCOMMODATIONS		
[] 245 TORT PRODUCT	[] 444 WELFARE		
LIABILITY	[] 445 AMERICANS WITH		
[] 290 ALL OTHER	DISABILITIES -		
REAL PROPERTY	EMPLOYMENT		
	[] 446 AMERICANS WITH		
	DISABILITIES - OTHER		
	(K) 446 OTHER CIVIL RIGHTS		
	(Non-Prisoner)		

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.?
IF SO, STATE:

DEMAND \$ _____ OTHER _____

JUDGE _____

DOCKET NUMBER _____

Check YES only if demanded in complaint
JURY DEMAND: ☒ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- ☒ 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from (Specify District)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ a. all parties represented
 ☐ b. At least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
☐ 4 DIVERSITY

IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1322, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

	PTF	DEF		PTF	DEF		PTF	DEF
CITIZEN OF THIS STATE	1	1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	3	3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	5	5
CITIZEN OF ANOTHER STATE	2	2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	4	4	FOREIGN NATION	6	6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Please see attached

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Please see attached

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

John Doe, Richard Roe and others presently unknown to Plaintiffs

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN
(DO NOT check either box if this a PRISONER PETITION/PRISONER CIVIL RIGHTS COMPLAINT.)

DATE

SIGNATURE OF ATTORNEY OF RECORD

Norman Siegel

ADMITTED TO PRACTICE IN THIS DISTRICT

NO

YES (DATE ADMITTED Mo. 3 Yr. 1981)

Attorney Bar Code # NS 6850

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court

MAAS

Magistrate Judge _____ is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

Plaintiff Addresses

Occupy Wall Street, by and through Christine Crowther and Diego Ibañez, as its *de facto*
Treasurers
118A Fulton St, Suite 205
New York, NY 10038

Amanda Rose Henk
DePauw University (IDU)
Roy O. West
11 East Larabee Street
Greencastle, IN

Michele Lee Hardesty
207 Starr St. #2-1,
Brooklyn, NY 11237

Frances Mercanti-Anthony
224 21st St Apt 2
Brooklyn, NY 11232

Jaime Taylor
777 Eastern Parkway, Apt 2
Brooklyn 11213

Elizabeth Fagin
574 44th Street #4D
Brooklyn, NY 11220

Defendant Addresses

The City of New York
c/o
The City of New York Law Department
100 Church Street
New York, NY 10007

Mayor Michael R. Bloomberg
The City of New York
Office of the Mayor
New York, NY 10007

Police Commissioner Raymond Kelly
New York Police Department
One Police Plaza

New York, NY 10038-1403

Sanitation Commissioner John Doherty
NYC Department of Sanitation
Central Correspondence Unit
346 Broadway, 10th Floor
New York, NY 10013

2012-022400

JUDGE DANIELS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

12 CV 4129
X

OCCUPY WALL STREET, an unincorporated association by and through Christine Crowther and Diego Ibañez, as its *de facto* Treasurers, AMANDA ROSE HENK, MICHELE LEE HARDESTY, FRANCES MERCANTI-ANTHONY, JAIME TAYLOR, and ELIZABETH FAGIN

COMPLAINT

12 Civ. No.

JURY TRIAL DEMANDED

Plaintiffs,

-against-

ECF CASE

THE CITY OF NEW YORK, MICHAEL BLOOMBERG, in his official capacity as Mayor of the City of New York, RAYMOND KELLY, in his official capacity as Police Commissioner, JOHN DOHERTY, in his official capacity as Sanitation Commissioner, JOHN DOE and RICHARD ROE and other presently unidentified officials, employees and/or agents of the City of New York in their official and individual capacities



Defendants.

X

Plaintiffs OCCUPY WALL STREET ("OWS") by and through Christine Crowther and Diego Ibañez, as its *de facto* treasurers, AMANDA ROSE HENK, MICHELE LEE HARDESTY, FRANCES MERCANTI-ANTHONY, JAIME TAYLOR and ELIZABETH FAGIN, by their attorneys, SIEGEL TEITELBAUM & EVANS, LLP, as and for their COMPLAINT against Defendants, allege the following:

PRELIMINARY STATEMENT

1. This is a declaratory judgment and civil rights action to vindicate Plaintiffs' rights under the First, Fourth and Fourteenth Amendments to the Constitution of the

United States, 42 U.S.C. § 1983, and the Constitution and laws of the State of New York.

Plaintiffs were deprived of their federal and state constitutional and New York State common law rights when police officers of the New York Police Department ("NYPD") and employees of the New York City Department of Sanitation ("DSNY") (together "City Departments"), acting pursuant to a policy and on the authority of New York City Mayor Michael Bloomberg and under the direction of Commissioners Raymond Kelly and John Doherty, conducted a surprise night time raid of Zuccotti Park, a.k.a. "Liberty Park" (the "Park").

2. As part of the raid, the City Departments seized and retained possession of personal property belonging to OWS, including at least approximately 3,600 books from OWS's People's Library ("People's Library" or the "Library"), as well as various Library furnishings, computers, and other electronic equipment ("Library furnishings and equipment"). Only 1,003 of the at least approximately 3,600 books that were seized were recovered; moreover, of the recovered books, 201 were so damaged while in the possession of the City of New York that they were made unusable. Thus, at least approximately 2,798 books were never returned or were damaged and made unusable. Almost all of the Library furnishings and equipment that were seized by Defendants were not returned or returned in an unusable condition. To this day, OWS has not been told by the City of New York what happened to the missing books and Library furnishings and equipment. Upon information and belief, the missing books were destroyed as part of the raid. Upon information and belief, the raid was authorized by Mayor Bloomberg and executed by John Doe and Richard Roe and others presently unknown to Plaintiffs ("John Doe and Richard Roe *et al.*") in their capacity as officials, employees and /or agents of the City Departments, except for the conduct related to Plaintiffs' request for punitive damages as more particularly set forth below.

JURISDICTION AND VENUE

3. This action is brought pursuant to 42 U.S.C §§ 1983 and 1988, and the First, Fourth and Fourteenth Amendments to the Constitution of the United States. This Court has jurisdiction of the action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4) as this is a civil action arising under the Constitution of the United States and the laws of the United States. This Court has jurisdiction to declare the rights of the parties and to grant all further relief deemed necessary and proper pursuant to 28 U.S.C. §§ 2201 and 2202. This Court has jurisdiction over the supplemental claims arising under New York State law pursuant to 28 U.S.C. § 1367(a).

4. Venue is proper for the United States District Court for the Southern District of New York pursuant to 28 U.S.C § 1391 (a), (b), and (c) because the claims arose in this district.

PARTIES

5. Plaintiff OCCUPY WALL STREET is an unincorporated association. It brings this action by and through Christine Crowther and Diego Ibañez, as its *de facto* treasurers. Persons associated with OWS come from different backgrounds, including elderly and young people, those with college and graduate degrees and those without formal schooling, and those with jobs and those who were laid off and are otherwise unemployed. These people come from all racial and ethnic groups and many religions, including Christianity, Judaism and Islam.

6. A central tenet of OWS is that the growing income inequality in the United States is unjust, unacceptable, and must be rectified. OWS has petitioned the government to redress this grievance through demonstrations in New York City and throughout the country.

7. Plaintiffs MICHELE LEE HARDESTY, FRANCES MERCANTI-ANTHONY, JAIME TAYLOR, and ELIZABETH FAGIN are and were at all times relevant residents of the City of New York. Each is associated with OWS and the Library Working Group, and volunteered at the People's Library.

8. Plaintiff AMANDA ROSE HENK is a resident of Indiana. Plaintiff Henk travelled to New York City and participated in the OWS demonstration at the Park. She is associated with OWS and the Library Working Group, and volunteered at the People's Library.

9. Defendant CITY OF NEW YORK is a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to maintain police and sanitation departments, which act as its agents in the areas of law enforcement and sanitation, respectively.

10. Defendant MICHAEL BLOOMBERG is the Mayor of the City of New York. The Mayor is the chief executive officer of New York City. As such, he is responsible for the actions and policies of the NYPD and SDNY, and the effectiveness and integrity of the City's government operation. Pursuant to the New York City Charter, he must establish and maintain such policies and procedures as are necessary and appropriate to accomplish this responsibility. He is sued in his official capacity.

11. Defendant RAYMOND KELLY is the NYPD's Commissioner. He is appointed by the Mayor and is the chief executive officer of the NYPD. Among other duties, Commissioner Kelly is responsible for the actions and policies of the NYPD, and for the execution of all the laws and the rules and regulations of the State, the City and the NYPD. He is sued in his official capacity.

12. Defendant JOHN DOHERTY is the New York City Sanitation Commissioner. He is appointed by the Mayor and is the head of the DSNY. Among other duties, Commissioner Doherty is responsible for the functions and operations of the City relating to the cleanliness of the streets and the disposal of waste, and for the execution of all laws, rules, and regulations pertaining to the DSNY. He is sued in his official capacity.

13. Defendants JOHN DOE and RICHARD ROE *et al.*, whose identities are presently unknown to Plaintiffs, are and were at all times officials, employees and/or agents of the City Departments. They are sued in their official capacities and, with respect to the claim for punitive damages, in their individual capacities.

14. Except as to the actions that form the basis for the claim for punitive damages as to JOHN DOE and RICHARD ROE *et al.*, at all times relevant, the individual defendants JOHN DOE and RICHARD ROE *et al.* were acting under color of state law in the course and scope of their duties and functions as officials, employees and/or agents of the City Departments, and otherwise performed and engaged in conduct incidental to the performance of their lawful functions in the course of their duties.

STATEMENT OF FACTS

Background

15. On September 17, 2011, as part of their effort to call attention to their cause, associates of OWS established an encampment in the Park, a privately owned public space in Manhattan's Financial District that is bounded by Trinity Place, Liberty Street, Broadway, and Cedar Street. Soon afterwards, OWS began receiving donations of books. On or about September 27 or 28, the General Assembly, OWS's governing body, established the Library Working Group to oversee the organization, development, and promotion of what has come to be called the People's Library.

16. Prior to the protesters' eviction from the Park on November 15, 2011, which is described below, the People's Library was located in the northeast corner of the Park. The books were maintained on metal shelves and in plastic bins, and the Library's operation was overseen by trained librarians.

17. By November 15, over 5,500 books had been donated to the People's Library, and on the night of the raid at least approximately 3,600 books were in the Library. The books were donated by individuals, publishers, and authors, some of whom autographed their books. The librarians catalogued all incoming donations. To indicate that a book belonged to OWS, the librarians wrote or stamped "Occupy Wall Street Library" or "OWSL" somewhere on each of the donated books. The Library contained books on a wide range of subjects, including economics, politics, and histories of resistance. It also contained classics such as works by William Shakespeare and Fyodor Dostoevsky, and autobiographies of notable individuals, such as the autobiography of Andrew Carnegie and the Mayor's own autobiography, Bloomberg on Bloomberg.

18. The Library accepted both new and used books. Upon information and belief, all books were in sufficiently good condition that they were readable, with the binding undisturbed and pages intact.

19. The Library offered its books to both persons associated with OWS and the general public. Prior to the events of November 15, which are described below, the Library served as a forum for learning, the communication and exchange of ideas, and expressive activity more generally.

The November 15th Raid and Retrieval of Property Taken on November 15th

20. On November 15, 2011, at approximately 1 a.m., the NYPD arrived at the Park and began enforcing the City's policy by announcing with a bullhorn and written fliers that OWS protesters occupying the Park must immediately remove all property from the Park and leave the Park on a temporary basis so that it could be cleaned. OWS protesters were told they would be allowed to return when this work was complete. The NYPD further announced that property OWS protesters failed to remove would be removed by the City Departments and transported to a DSNY garage on 57th Street, where, with proper identification, it could be recovered.

21. OWS protesters were warned that those who failed to leave the Park or interfered with efforts to remove property from the Park would be subject to arrest.

22. Approximately forty five minutes later, at approximately 1:45 a.m., NYPD officers moved through the Park clearing protesters. DSNY workers followed, taking possession of all belongings that were left behind. Upon information and belief, DSNY workers filled 26 DSNY trucks with property they removed from the Park.

23. When the NYPD announced that all property must be removed from the Park, an OWS protester and Library volunteer attempted to remove books from the People's Library. After he carried an arm full of books out of the Park, he attempted to return to the Park to remove additional books. However, police officers were barricading the Park and would not permit him to return to continue removing books.

24. Upon information and belief, Mayor Bloomberg authorized and assumed ultimate responsibility for the raid.

25. Prior to the raid on November 15, no notice was given to OWS or its associates that all the Library books and Library furnishings and equipment would have to be removed from the Park.

26. Prior to seizing the books and Library furnishings and equipment, Defendants did not provide a hearing or any other pre-deprivation procedure.

27. Upon information and belief, no emergency situation existed at the Park at or about 1 a.m. on November 15.

28. The presence of the books in the Park on November 15 did not create an emergency condition that required the immediate removal of the books.

29. Prior to November 15, NYPD officers were continually monitoring the condition of the Park, and had the opportunity to observe the People's Library. Upon information and belief, members of the NYPD were aware that the Library contained many shelves and boxes of books. The NYPD knew or should have known that, under the circumstances on the night of the raid, it would not be possible to remove such a large quantity of books and Library furnishings and equipment within the time allotted by the Defendants.

30. On November 16, 2011, the day after the raid, Plaintiffs Elizabeth Fagin and Michele Lee Hardesty, both associated with OWS and volunteers at the People's Library, and three others went to the West 57th Street DSNY Garage to retrieve the books that were seized. They gave DSNY representatives a computer printout listing the Library's books. They retrieved some of the items that were OWS's property and marked as such. Representatives from the DSNY and the Mayor's Office told them to return on Friday, November 18, to retrieve the additional books and Library furnishings and equipment. On Friday November 18, Plaintiffs

Elizabeth Fagin and Michele Lee Hardesty and one other individual returned to the West 57th DSNY Garage to retrieve the additional books and Library furnishings and equipment.

31. Of the at least approximately 3,600 books that were seized on November 15, only 1,003 were recovered. Moreover, 201 of the recovered books were so damaged that they were unusable. Thus, at least approximately 2,798 books were never returned or were damaged and made unusable. Plaintiffs estimate the value of the approximately 2,798 missing books to be at least approximately \$43,000.

32. Upon information and belief, in the course of conducting the November 15 raid, officials, employees and/or agents of the City Departments destroyed many of the books that were seized in the raid. John Doe and Richard Roe *et al.*'s actions in destroying, facilitating the destruction, or otherwise allowing the destruction of OWS's books constituted outrageous conduct, was reckless and showed a callous indifference to and willful disregard of Plaintiffs' federal and state protected rights.

33. In addition to the books, on November 15, Defendants seized the Library furnishings and equipment, which consisted of 6 computers, archival material, a "wifi" device, 24 metal shelves and numerous plastic bins that had contained Library books, 3 sets of wooden drawers, approximately 8 chairs and a large tent that housed the Library. Most of these furnishings and equipment were not returned or returned in a usable condition. Plaintiffs estimate the value of the Library furnishings and equipment to be at least approximately \$4,000.

34. As a result of Defendants' conduct, the Library lost a substantial part of its collection and was rendered non-functional.

35. Defendants failed to train and supervise their officials, employees and agents, including John Doe and Richard Roe *et al.*, so as to prevent the seizure and destruction of

Plaintiffs' property, which resulted in the violation of the First, Fourth and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983, and the Constitution and laws of New York State.

36. Defendants' failure to train and supervise amounts to deliberate indifference to the rights of persons with whom Defendants came into contact, including Plaintiffs.

37. The deficiency in the training and supervision of Defendants John Doe and Richard Roe *et al.* was an actual cause of the deprivation of Plaintiffs' rights and injuries.

38. On February 9, 2012, a notice of claim was served on the Comptroller of the City of New York. At least 30 days have elapsed since service of such notice, and adjustment and/or payment has been neglected and/or refused.

39. In taking the actions described above, the Defendants were acting under color of state law as aforesaid.

FIRST CLAIM FOR RELIEF

(VIOLATION OF THE FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES)

40. Plaintiffs repeat and reallege each and every allegation set forth above.

41. Defendants' seizure of OWS's Library books and Library furnishings and equipment constitutes an unreasonable seizure in violation of the Fourth Amendment to the Constitution of the United States and 42 U.S.C. § 1983. These actions were taken pursuant to a policy, and the decision to take such actions was made by high ranking officials of the City of New York.

42. Defendants' destruction and failure to return or return in a usable condition OWS's seized Library books and Library furnishings and equipment constitutes an

unreasonable seizure in violation of the Fourth Amendment to the Constitution of the United States and 42 U.S.C. § 1983. These actions were taken pursuant to a policy, and the decision to take such actions was made by high ranking officials of the City of New York.

SECOND CLAIM FOR RELIEF

(VIOLATION OF FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES)

43. Plaintiffs repeat and reallege each and every allegation set forth above.

44. Plaintiffs have a property right in the Library books and Library furnishings and equipment.

45. Defendants' actions in (i) failing to provide a hearing or any other pre-deprivation procedure prior to seizing the Library books and Library furnishings and equipment and/or (ii) permitting OWS's associates an unreasonably short deadline to vacate the Park with all OWS's possessions deprived OWS of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. § 1983. These actions were taken pursuant to a policy, and the decision to take such actions was made by high ranking officials of the City of New York.

46. Additionally, Defendants' actions in failing to return all of OWS's Library books and Library furnishings and equipment, or in failing to return the books and Library furnishings and equipment in a usable condition deprived Plaintiffs of their property without due process of law in violation of Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983.

THIRD CLAIM FOR RELIEF

(VIOLATION OF THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES)

47. Plaintiffs repeat and reallege each and every allegation set forth above.

48. In seizing, destroying and/or not returning the Library's books, or not returning the books in a usable condition, Defendants destroyed OWS's forum for learning and the exchange of ideas, and otherwise interfered with the OWS's associates' ability to obtain the books.

49. The Library presented no danger to the Defendants or to the public that necessitated the removal and then destruction and/or failure to return the books, or failure to return the books in a usable condition. Defendants did not use the requisite care in dismantling the Library, taking possession of the Library's books, or in ensuring their return. Accordingly, Defendants acted with reckless and callous indifference to Plaintiffs' rights under the First Amendment to the Constitution of the United States and 42 U.S.C. § 1983.

FOURTH CLAIM FOR RELIEF

(INADEQUATE SUPERVISION AND TRAINING)

50. Plaintiffs repeat and reallege each and every allegation set forth above.

51. Defendants failed to train and supervise their officials, employees and agents, including John Doe and Richard Roe *et al.*, so as to prevent the seizure and destruction of Plaintiffs' property, which resulted in the violation of the First, Fourth and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983.

52. Defendants' failure to train and supervise amounts to deliberate indifference to the rights of persons with whom Defendants came into contact, including Plaintiffs.

53. The deficiency in the training and supervision of Defendants John Doe and Richard Roe *et al.* was an actual cause of the constitutional deprivations and injuries suffered by Plaintiffs.

FIFTH CLAIM FOR RELIEF

(VIOLATION OF ARTICLE 1, SECTION 8 OF THE NEW YORK CONSTITUTION)

54. Plaintiffs repeat and reallege each and every allegation set forth above.

55. Defendants violated Plaintiffs' rights under Article 1, Section 8 of the New York State Constitution.

SIXTH CLAIM FOR RELIEF

(VIOLATION OF ARTICLE 1, SECTION 12 OF THE NEW YORK CONSTITUTION)

56. Plaintiffs repeat and reallege each and every allegation set forth above.

57. Defendants violated Plaintiffs' rights under Article 1, Section 12 of the New York State Constitution.

SEVENTH CLAIM FOR RELIEF

(VIOLATION OF ARTICLE 1, SECTION 6 OF THE NEW YORK CONSTITUTION)

58. Plaintiffs repeat and reallege each and every allegation set forth above.

59. Defendants violated Plaintiffs' rights under Article 1, Section 6 of the New York State Constitution.

EIGHTH CLAIM FOR RELIEF

(CONVERSION)

60. Plaintiffs repeat and reallege each and every allegation set forth above.

61. The Plaintiffs have title and/or the right to possess OWS's Library books and Library furnishings and equipment. Defendants' actions in seizing the books and Library furnishings and equipment, and/or failing to return the books and Library furnishings and

equipment or failing to return them in a usable condition when Plaintiffs requested their return on November 16 and 18, 2011 constitutes conversion. Plaintiffs are damaged as a result of Defendants' actions.

62. Pursuant to 28 U.S.C. §1367, this Court has pendant or supplemental jurisdiction to hear and adjudicate such claims.

NINTH CLAIM FOR RELIEF

(REPLEVIN)

63. Plaintiffs repeat and reallege each and every allegation set forth above.

64. The Plaintiffs have title and/or the right to possess OWS's Library books and Library furnishings and equipment. Defendants' actions in seizing the books and Library furnishings and equipment , and/or failing to return them or failing to return them in a usable condition when Plaintiffs requested their return on November 16 and 18, 2011 is the basis for replevin relief.

65. Pursuant to 28 U.S.C. §1367, this Court has pendant or supplemental jurisdiction to hear and adjudicate such claims.

TENTH CLAIM FOR RELIEF

(NEGLIGENCE)

66. Plaintiffs repeat and reallege each and every allegation set forth above.

67. The damage, destruction and/or failure to return Plaintiffs' Library books and Library furnishings and equipment was foreseeable and proximately caused by the negligence, gross negligence, carelessness and/or negligent omissions of Defendants or their officials, employees and/or agents.

68. As a result of the negligence, gross negligence, carelessness and/or negligent omissions of Defendants, their officials, employees and/or agents, Plaintiffs have sustained monetary damages.

69. Pursuant to 28 U.S.C. §1367, this Court has pendant or supplemental jurisdiction to hear and adjudicate such claims.

ELEVENTH CLAIM FOR RELIEF

(NEGLIGENT SUPERVISION AND TRAINING)

70. Plaintiffs repeat and reallege each and every allegation set forth above.

71. The City of New York and its officials, employees and/or agents acting within the scope of their employment negligently supervised and trained the individual Defendants, who were unfit for the performance of their duties at the Park on November 15, 2011, thereby causing OWS to suffer injury, including monetary damages. Such injuries and damages were foreseeable.

72. Pursuant to 28 U.S.C. §1367, this Court has pendant or supplemental jurisdiction to hear and adjudicate such claims.

DEMAND FOR JURY TRIAL

73. Plaintiffs demand trial by jury.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request the following relief:

1. A declaratory judgment that Defendants violated Plaintiffs' rights under the First, Fourth and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983, and Article I, Sections 6, 8, and 12 of the New York State Constitution.

2. Damages in the amount of at least approximately \$47,000 against the City of New York and the individual defendants, jointly and severally, together with interest and costs.

3. Punitive damages in an amount of at least \$1,000 against the individual defendants John Doe and Richard Roe *et al.* whose actions constituted outrageous conduct, were reckless, and showed a callous indifference to and willful disregard of Plaintiffs' rights as set forth above.

4. The cost of this action, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988.

5. Any further and different relief that this Court deems appropriate.

Dated: New York, New York
May 23, 2012

Yours, *etc.*

SIEGEL TEITELBAUM & EVANS, LLP

by: Norman Siegel
Norman Siegel (NS 6850)

by: Herbert Teitelbaum
Herbert Teitelbaum (HT 7762) *by NS*

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*Not admitted in the Southern District of New York

Attorneys for Plaintiffs

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
OCCUPY WALL STREET, an unincorporated association
by and through Christine Crowther and Diego Ibanez, as its
de facto Treasurers, AMANDA ROSE HENK, MICHELE
LEE HARDESTY, FRANCES MERCANTI-ANTHONY,
JAIME TAYLOR, and ELIZABETH FAGIN,

Plaintiffs,

-against-

THE CITY OF NEW YORK, MICHAEL BLOOMBERG
In his official capacity as Mayor of the City of New York
RAYMOND KELLY, in his official capacity as Police
Commissioner, JOHN DOHERTY, in his official capacity
as Sanitation Commissioner, JOHN DOE and RICHARD
ROE and other presently unidentified officials, employees
and/or agents of the City of New York in their official and
individual capacities,

Defendants.

----- x
Defendants, the City of New York, Mayor Michael Bloomberg, Raymond Kelly
and John Doherty (collectively "City defendants") by their attorney, MICHAEL A. CARDOZO,
Corporation Counsel of the City of New York, for their answer to the complaint, respectfully
allege:

1. Deny the allegations set forth in paragraph 1 of the complaint, except
admit that plaintiffs purport to proceed as set forth therein.
2. Deny the allegations set forth in paragraph 2 of the complaint, except
admit that City employees removed some property from Zuccotti Park on November 15, 2011
and then made it available for inspection and pick-up by properly identified members of the
public.
3. Deny the allegations set forth in paragraph 3 of the complaint, except
admit that plaintiffs purport to proceed as set forth therein.

ANSWER

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4. Deny the allegations set forth in paragraph 4 of the complaint, except admit that venue is proper.

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the complaint, except admit that plaintiffs purport to proceed as set forth therein.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 of the complaint, except admit that demonstrations purporting to be associated with "Occupy Wall Street" have taken place in New York City.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the complaint.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8 of the complaint.

9. Admit 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 Michael Bloomberg is the Mayor of the City of New York and that, as such, he has the powers and duties set forth in Chapter 1, Section 3, et. seq. of the New York City Charter ("City Charter").

11. Deny the allegations set forth in paragraph 11 of the complaint, except admit that Raymond Kelly is the Commissioner of the New York City Police Department ("NYPD") and that, as such, he has the powers and duties set forth in City Charter Chapter 18, Section 431, et. seq.

12. Deny the allegations set forth in paragraph 12 of the complaint, except admit that John Doherty is the Commissioner of the New York City Department of Sanitation

("DSNY") and that, as such, he has the powers and duties set forth in City Charter Chapter 31, Section 731, et.seq.

13. Deny the allegations set forth in paragraph 13 of the complaint, except admit that plaintiffs purport to proceed as set forth therein.

14. Deny the allegations set forth in paragraph 14 of the complaint, except admit that defendants acted lawfully and under color of state law and that plaintiffs purport to proceed as set forth therein.

15. Deny the allegations set forth in the first sentence of paragraph 15 of the complaint, except admit that on or about September 17, 2011, a group purporting to be associated with "Occupy Wall Street" began demonstrating in lower Manhattan in a Privately Owned Public Space ("POPS") know as Zuccotti Park. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the second and third sentences of 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, except deny the allegations to the extent they allege or purport to allege that it was lawful to maintain a library in Zuccotti Park, and insofar as they characterize the actions taken on November 15, 2011 as an eviction.

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, except deny the allegations to the extent they allege or purport to allege that it was lawful to maintain a library in Zuccotti Park, and insofar as they characterize the actions taken on November 15, 2011 as a raid.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 18 of the complaint.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence of paragraph 19 of the complaint. Deny the allegations set forth in the second sentence of paragraph 19 of the complaint to the extent they allege or purport to allege that defendants acted improperly or contrary to law.

20. Deny the allegation set forth in the first sentence of paragraph 20 of the complaint only insofar as they describe the NYPD's actions on November 15, 2011 as "enforcing the City's policy." Admit the allegations set forth in the second and third sentences in paragraph 20 of the complaint.

21. Admit the allegation set forth in paragraph 21 of the complaint.

22. Deny the allegations set forth in paragraph 22 of the complaint, except admit that City employees removed some property from Zuccotti Park on November 15, 2011, loaded it into DSNY trucks, and removed it to a DSNY facility where it was made available for inspection and pick-up by properly identified members of the public.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 23 of the complaint, except deny the allegations to the extent they allege or purport to allege that defendants acted improperly or contrary to law and to the extent they allege or purport to allege that it was lawful to maintain a library in Zuccotti Park.

24. Deny the allegations set forth in the paragraph 24 of the complaint, except admit that Mayor Bloomberg authorized and assumed responsibility for the action taken to temporarily clear Zuccotti Park on November 15, 2011.

25. Deny the allegations set forth in paragraph 25 of the complaint.

26. Deny the allegation set forth in paragraph 26 of the complaint to the extent they allege or purport to allege that defendants acted improperly or contrary to law and to the extent they allege or purport to allege that it was lawful to maintain a library in Zuccotti Park.

27. Deny the allegations set forth in paragraph 27 of the complaint.

28. Deny the allegations set forth in paragraph 28 of the complaint.

29. Deny the allegations set forth in paragraph 29 of the complaint.

30. Deny the allegations set forth in paragraph 30 of the complaint, except admit that DSNY records indicate that both Michele Hardesty and Elizabeth Fagin were present at, and retrieved property from, the DSNY West 57th Street garage on November 16 and November 18, 2011.

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 deny the allegations insofar as they allege or purport to allege that defendants acted improperly or contrary to law and to the extent they allege or purport to allege that it was lawful to maintain a library in Zuccotti Park.

32. Deny the allegations set forth in paragraph 32 of the complaint.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 33 of the complaint, except deny the allegations insofar as they characterize the defendants actions as "seizing" property and insofar as they allege or purport to allege that defendants acted improperly or contrary to law and to the extent they allege or purport to allege that it was lawful to maintain a library in Zuccotti Park.

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 the allegations set forth in paragraph 36 of the complaint.

37. Deny the allegations set forth in paragraph 37 of the complaint.

38. Deny the allegations set forth in the first sentence of paragraph 38 of the complaint, except admit that on or about February 9, 2012, "Occupy Wall Street, an unincorporated association, by and through Peter J. Dutro, as *de facto* Treasurer" filed a Notice of Claim regarding various property with the New York City Comptroller. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the second sentence in paragraph 38 of the complaint.

39. Deny the allegations set forth in paragraph 39 of the complaint, except admit that in temporarily clearing Zuccotti Park on November 15, 2011, defendants were acting under color of state law.

40. In response to paragraph 40 of the complaint, defendants repeat the responses to the paragraphs of the complaint incorporated by reference therein.

41. Deny the allegations set forth in paragraph 41 of the complaint.

42. Deny the allegations set forth in paragraph 42 of the complaint.

43. In response to paragraph 43 of the complaint, defendants repeat the responses to the paragraphs of the complaint incorporated by reference therein.

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, except deny the allegations to the extent they allege or purport to allege that defendants acted improperly or contrary to law.

45. Deny the allegations set forth in paragraph 45 of the complaint.

46. Deny the allegations set forth in paragraph 46 of the complaint.

47. In response to paragraph 47 of the complaint, defendants repeat the responses to the paragraphs of the complaint incorporated by reference therein.

48. Deny the allegations set forth in paragraph 48 of the complaint.
49. Deny the allegations set forth in paragraph 49 of the complaint.
50. In response to paragraph 50 of the complaint, defendants repeat the responses to the paragraphs of the complaint incorporated by reference therein.
51. Deny the allegations set forth in paragraph 51 of the complaint.
52. Deny the allegations set forth in paragraph 52 of the complaint.
53. Deny the allegations set forth in paragraph 53 of the complaint.
54. In response to paragraph 54 of the complaint, defendants repeat the responses to the paragraphs of the complaint incorporated by reference therein.
55. Deny the allegations set forth in paragraph 55 of the complaint.
56. In response to paragraph 56 of the complaint, defendants repeat the responses to the paragraphs of the complaint incorporated by reference therein.
57. Deny the allegations set forth in paragraph 57 of the complaint.
58. In response to paragraph 58 of the complaint, defendants repeat the responses to the paragraphs of the complaint incorporated by reference therein.
59. Deny the allegations set forth in paragraph 59 of the complaint.
60. In response to paragraph 60 of the complaint, defendants repeat the responses to the paragraphs of the complaint incorporated by reference therein.
61. Deny the allegations set forth in paragraph 61 of the complaint.
62. Admit the allegations set forth in paragraph 62 of the complaint, except deny that the Court should exercise its jurisdiction to hear such claims.
63. In response to paragraph 63 of the complaint, defendants repeat the responses to the paragraphs of the complaint incorporated by reference therein.

64. Deny the allegations set forth in paragraph 64 of the complaint.

65. Admit the allegations set forth in paragraph 65 of the complaint, except deny that the Court should exercise its jurisdiction to hear such claims.

66. In response to paragraph 66 of the complaint, defendants repeat the responses to the paragraphs of the complaint incorporated by reference therein.

67. Deny the allegations set forth in paragraph 67 of the complaint.

68. Deny the allegations set forth in paragraph 68 of the complaint.

69. Admit the allegations set forth in paragraph 69 of the complaint, except deny that the Court should exercise its jurisdiction to hear such claims.

70. In response to paragraph 70 of the complaint, defendants repeat the responses to the paragraphs of the complaint incorporated by reference therein.

71. Deny the allegations set forth in paragraph 71 of the complaint.

72. Admit the allegations set forth in paragraph 72 of the complaint, except deny that the Court should exercise its jurisdiction to hear such claims.

73. Deny the allegations set forth in paragraph 73 of the complaint, except admit that plaintiffs purport to proceed as set forth therein.

FIRST AFFIRMATIVE DEFENSE

74. The complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

75. Defendants have not violated any rights, privileges or immunities secured to the plaintiffs by the constitution or laws of the United States nor have defendants violated any act of Congress providing for the protection of civil rights.

THIRD AFFIRMATIVE DEFENSE

76. Defendants have not violated any rights, privileges or immunities secured to the plaintiffs by the constitution or laws of the State of New York.

FOURTH AFFIRMATIVE DEFENSE

77. Plaintiffs are not entitled to the declaratory relief they seek.

FIFTH AFFIRMATIVE DEFENSE

78. Plaintiffs are not the lawful owners of all or some of the property that is alleged to be missing or damaged and, thus, they do not have standing to maintain all or some of their claims.

SIXTH AFFIRMATIVE DEFENSE

79. At all times relevant to the acts alleged in the complaint, the duties and functions of the City's officials entailed the reasonable exercise of their proper and lawful discretion. Therefore, defendant City has governmental immunity from liability.

SEVENTH AFFIRMATIVE DEFENSE

80. Any injury alleged to have been sustained resulted from plaintiffs' own culpable or negligent conduct and/or the intervening conduct of third parties and was not the proximate result of any act of the defendants.

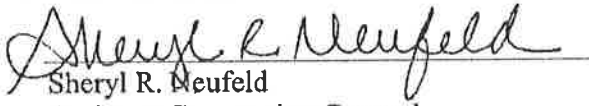
EIGHTH AFFIRMATIVE DEFENSE

81. Plaintiffs comes to this court without clean hands and are, thus, barred from obtaining the injunctive relief it seeks under the doctrine of unclean hands.

WHEREFORE City defendants respectfully request a judgment dismissing the complaint, awarding defendant its costs and disbursements herein, including reasonable attorney's fees, and granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
June 14, 2012

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for City Defendants
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By: 
Sheryl R. Neufeld
Assistant Corporation Counsel

Index No. 12 CV 4129 (GBD)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OCCUPY WALL STREET, an unincorporated association by and through Christine Crowther and Diego Ibanez, as its *de facto* Treasurers, AMANDA ROSE HENK, MICHELE LEE HARDESTY, FRANCES MERCANTI-ANTHONY, JAIME TAYLOR, and ELIZABETH FAGIN,
Plaintiffs,

-against-

THE CITY OF NEW YORK, MICHAEL BLOOMBERG In his official capacity as Mayor of the City of New York RAYMOND KELLY, in his official capacity as Police Commissioner, JOHN DOHERTY, in his official capacity as Sanitation Commissioner, JOHN DOE and RICHARD ROE and other presently unidentified officials, employees and/or agents of the City of New York in their official and individual capacities,
Defendants/Third-Party Plaintiffs.

-against-

BROOKFIELD OFFICE PROPERTIES, INC.,
Third-Party Defendant

THIRD PARTY COMPLAINT

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Defendants
100 Church Street
New York, N.Y. 10007
Of Counsel: Sheryl R. Neufeld
Tel: (212) 788-1035
2012-022400AL

Due and timely service is hereby admitted.

Esq.

Attorney for