EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL BROWN, XAVIER J. GRANT, MICHAEL LOUIS BROWN, BOBBY WELLS, EDGAR TURNER, and KEITH ANDERSON, on Behalf of Themselves and Others Similarly Situated,

Plaintiffs,

– against –

RAYMOND W. KELLY, Commissioner of the New York City Police Department (NYPD); BARRY M. BUZZETTI, Captain and Commanding Officer, NYPD 48th Precinct; JAMES ESSIG, Inspector and Commanding Officer, NYPD 44th Precinct; RONALD MERCANDETTI, Captain and Commanding Officer, NYPD 40th Precinct; DWAYNE MONTGOMERY, Deputy Inspector and Commanding Officer, NYPD 28th Precinct, JOHN/JANE DOES 1-50 (NYPD Supervisory, Training and Policy Personnel); CITY OF NEW YORK; Police Officers SHAWN RICKER, THOMAS J. ACITO, JOHN PICONE, CHRISTOPHER LAGRASTA, DENNIS PALINKAS, GERALD McCOY, KARL HARRIS, JOHN/JANE DOES 51-100 (police officers); ROBERT JOHNSON, District Attorney of Bronx County; JOHN/JANE DOES 101-125 (Supervisory, Training and Policy Personnel within the district attorneys offices); JOHN/JANE DOES 126-165,

Defendants.

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05-CV-5442 (SAS)

SECOND AMENDED CLASS ACTION COMPLAINT AND JURY DEMAND

Plaintiffs Michael Brown, Xavier J. Grant, Michael Louis Brown, Bobby Wells, Edgar Turner, and Keith Anderson ("the Named Plaintiffs"), on behalf of themselves and others similarly situated, for their Second Amended Complaint, allege as follows:

INTRODUCTION

1. In 1993, the United States Court of Appeals for the Second Circuit declared unconstitutional, on First Amendment grounds, New York Penal Law § 240.35(1), which provided that a person is guilty of "loitering" when he "loiters, remains or wanders about in a public place for the purpose of begging." See Loper v. New York City Police Department, 999 F.2d 699, 701 (2d Cir. 1993).

2. The Second Circuit also affirmed U.S.D.J. Robert W. Sweet's 1992 injunction permanently barring the NYPD's, and then Police Commissioner Lee Brown's, future enforcement of P.L. § 240.35(1). See Loper v. New York City Police Department, 999 F.2d 699 (2d Cir. 1993).

3. Notwithstanding the clear command of Loper, the New York City Police Department ("NYPD"), the District Attorneys in New York City, and indeed law enforcement officers and prosecutors throughout the entire State of New York, have willfully continued to arrest, summons, and prosecute thousands of individuals such as plaintiffs Michael Brown, Xavier J. Grant, Michael Louis Brown, Bobby Wells, Edgar Turner, and Keith Anderson for violations of P.L. § 240.35(1). This is inexcusable. It is stunningly inept. It must be stopped.

4. This bi-lateral class action seeks to end – finally, for all time – this pattern and practice of unconstitutional conduct by law enforcement officers and prosecutors throughout New York State (the "Arrest & Prosecution Policy"). It defies belief that defendants – the very institutions and individuals with responsibility for enforcing the law – have continued to routinely violate it by arresting, charging and prosecuting citizens for peaceful expressive conduct under a void criminal statute.

5. Plaintiffs Michael Brown, Xavier J. Grant, Michael Louis Brown, Bobby Wells, Edgar Turner, and Keith Anderson bring this action for injunctive and declaratory relief, and for money damages, on behalf of themselves and other individuals similarly situated who have been wrongfully arrested, charged and/or prosecuted for violations of a nullified criminal statute, P.L. § 240.35(1), and to redress defendants' violations of their rights under the First, Fourth, Fifth, and Fourteenth Amendments of the United States Constitution. Plaintiffs seeks an appropriate remedial order to ensure an end to the utterly lawless enforcement of a criminal statute that was adjudicated unconstitutional in 1992.

JURISDICTION AND VENUE

6. This action arises under the First, Fourth, and Fourteenth Amendments to the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

7. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331, and 1343(a).

8. Many of the acts complained of occurred in the Southern District of New York and venue is lodged in this Court pursuant to 28 U.S.C. § 1391(b).

JURY DEMAND

9. Plaintiffs demand trial by jury in this action.

THE PARTIES

10. Plaintiff MICHAEL BROWN is a citizen of the United States and was a resident of Bronx County at the time of the incidents alleged in this action.

11. Plaintiff XAVIER J. GRANT is a citizen of the United States and was a resident of Bronx County at the time of the incidents alleged in this action.

12. Plaintiff MICHAEL LOUIS BROWN is a citizen of the United States and was a resident of Bronx County at the time of the incidents alleged in this action.

13. Plaintiff BOBBY WELLS is a citizen of the United States and was a resident of Bronx County at the time of the incidents alleged in this action.

14. Plaintiff EDGAR TURNER is a citizen of the United States and was a resident of Queens County at the time of the incidents alleged in this action.

15. Plaintiff KEITH ANDERSON is a citizen of the United States and was a resident of Bronx County at the time of the incidents alleged in this action.

16. Defendant CITY OF NEW YORK ("City") is a municipality organized and existing under the laws of the State of New York. At all times relevant hereto, defendant City, acting through the New York City Police Department ("NYPD"), was responsible for the policy, practice, supervision, implementation, and conduct of all NYPD matters and was responsible for the appointment, training, supervision, and conduct of all NYPD personnel, including the defendants referenced herein. In addition, at all relevant times, defendant City was responsible for enforcing the rules of the NYPD, and for ensuring that NYPD personnel obey the laws of the United States and of the State of New York.

17. At all times relevant hereto, defendant City, acting through the Bronx District Attorney's Office ("Bronx DAO"), was responsible for the administration, policy, practice, supervision, implementation, and conduct of all Bronx DAO matters and was responsible for the appointment, training, supervision, and conduct of all Bronx DAO personnel. In addition, at all relevant times, defendant City was responsible for enforcing the rules of the

Bronx DAO Office, and for ensuring that Bronx DAO personnel obey the laws of the United States and of the State of New York.

18. In addition to the facts alleged in the following subparagraphs, the following defendants all acted within the scope of their employment and under color of law, including the statutes, ordinances, regulations, policies, customs and usages of the City of New York, State of New York, and/or Bronx County. The following defendants are all sued in their individual and official capacities.

19. At all relevant times defendant RAYMOND W. KELLY was the Police Commissioner of the City of New York and, as such, made and enforced policy of the NYPD, including without limitation the 48th, 44th, 47th, 28th and 40th Precincts in the City of New York, and acted in his capacity as agent, servant, and employee of defendant City, within the scope of his employment as such, and under color of state law.

20. At all relevant times defendant BARRY M. BUZZETTI was a Captain and Commanding Officer of the 48th Precinct in the County of Bronx, New York, acting in the capacity of agent, servant, and employee of defendant City, within the scope of his employment as such, and acting under color of state law. As Captain and Commanding Officer, he is the highest ranking uniformed member of the 48th Precinct, and is responsible for setting policy, and for the supervision, oversight, and discipline of the uniformed police officers in his precinct. As Captain and Commanding Officer, Buzzetti is provided on a daily basis with reports of arrests and summonses in his Precinct.

21. At all relevant times defendant JAMES ESSIG was an Inspector and Commanding Officer of the 44th Precinct in the County of Bronx, New York, acting in the

capacity of agent, servant, and employee of defendant City, within the scope of his employment as such, and acting under color of state law. As Inspect and Commanding Officer, he is the highest ranking uniformed member of the 44th Precinct, and is responsible for setting policy, and for the supervision, oversight, and discipline of the uniformed police officers in his precinct. As Inspector and Commanding Officer, JAMES ESSIG is provided on a daily basis with reports of arrests and summonses in his Precinct.

22. At all relevant times defendant RONALD MERCANDETTI was a Captain and Commanding Officer of the 40th Precinct in the County of Bronx, New York, acting in the capacity of agent, servant, and employee of defendant City, within the scope of his employment as such, and acting under color of state law. As Captain and Commanding Officer, he is the highest ranking uniformed member of the 40th Precinct, and is responsible for setting policy, and for the supervision, oversight, and discipline of the uniformed police officers in his precinct. As Captain and Commanding Officer, RONALD MERCANDETTI is provided on a daily basis with reports of arrests and summonses in his Precinct.

23. At all relevant times defendant DWAYNE MONTGOMERY was a Deputy Inspector and Commanding Officer of the 28th Precinct in the County of New York, New York, acting in the capacity of agent, servant, and employee of defendant City, within the scope of his employment as such, and acting under color of state law. As Deputy Inspector and Commanding Officer, he is the highest ranking uniformed member of the 28th Precinct, and is responsible for setting policy, and for the supervision, oversight, and discipline of the uniformed police officers in his precinct. As Deputy Inspector and Commanding Officer, DWAYNE

MONTGOMERY is provided on a daily basis with reports of arrests and summonses in his Precinct.

24. At all relevant times, defendants "Jane/John Does 1-50" were training, supervisory and policy making personnel within the NYPD who implemented, enforced, perpetuated and/or allowed the unconscionable Arrest & Prosecution Policy that is the subject of this action, acting in the capacity of agents, servants and employees of defendant City and within the scope of their employment as such. Plaintiffs are unable to determine the names of these NYPD Supervisory defendants at this time and thus sues them under a fictitious designation.

25. At all relevant times, defendant NYPD Police Officers SHAWN RICKER, No. 2615, THOMAS J. ACITO, No. 31053, JOHN PICONE, No. 9836, CHRISTOPHER LAGRASTA, No. 12176, DENNIS PALINKAS, No. 9924, GERALD McCOY, No. 922739, and KARL HARRIS, No. 937821, were police officers acting in the capacity of agents, servants, and employees of defendant City, and within the scope of their employment as such. On information or belief, these officers are or were assigned to the 48th, 44th, 40th, 47th, and 28th Precincts in the County of Bronx, New York.

26. At all relevant times, defendants "Jane/John Does 51-100" were NYPD police officers who arrested and/or charged members of the plaintiff class pursuant to the Arrest & Prosecution Policy and/or failed to prevent others from doing so, acting in the capacity of agents, servants and employees of defendant City and within the scope of their employment as such. Plaintiffs are unable to determine the names of these NYPD police officers at this time and thus sues them under a fictitious designation.

27. Defendant ROBERT JOHNSON was at all relevant times District Attorney of Bronx County, and, as such, made and enforced policy with respect to the Bronx DAO. Defendant Johnson is sued in his individual capacity, and with respect to plaintiff's claims for prospective injunctive relief, in his official capacity.

28. At all relevant times, defendants "Jane/John Does 101-25" were training, supervisory and policy making personnel within the offices of the district attorneys for the five counties in the City of New York, including the Bronx DAO, who implemented, enforced, perpetuated and/or allowed the unconscionable Arrest & Prosecution Policy that is the subject of this action, acting in the capacity of agents, servants and employees of defendant City and within the scope of their employment as such. Plaintiffs are unable to determine the names of these DAO Supervisory defendants at this time and thus sues them under a fictitious designation. The DAO supervisory defendants are sued in their individual capacities, and with respect to plaintiff's claims for prospective injunctive relief, in their official capacities.

29. At all relevant times, defendants "Jane/John Does 126-165" were police officers acting in the capacity of agents, servants, and employees of defendant City, and within the scope of their employment as such. On information or belief, these officers are or were assigned to the same command as the individual officer defendants and assisted them in arresting, charging and/or prosecuting the Named Plaintiffs.

30. During all times mentioned in this complaint, the defendants together and each of them, separately and in concert, engaged in acts and/or omissions which constituted deprivations of plaintiffs' constitutional rights, and the privileges and immunities of the plaintiffs, and while these acts were carried out under color of law, they had no justification or

excuse, and were instead gratuitous, illegal, improper and unrelated to any activity in which law enforcement officers may appropriately and legally engage in the course of protecting persons and property and/or ensuring civil order.

PLAINTIFF CLASS ACTION ALLEGATIONS

31. Plaintiffs Michael Brown, Xavier J. Grant, Michael Louis Brown, Bobby Wells, Edgar Turner, and Keith Anderson (the "Named Plaintiffs") bring this case as a class action under Fed. R. Civ. P. 23(b)(2) for violations of their constitutional and rights. The Rule (b)(2) Class consists of all persons who have been or will be arrested, charged or prosecuted for a violation of P.L. § 240.35(1) in the State of New York from 1992 onward.

32. Defendants have acted, or failed to act, on grounds generally applicable to the Rule (b)(2) Class, thereby making appropriate final injunctive relief with respect to the Rule (b)(2) Class as a whole.

33. The proposed Rule (b)(2) class includes thousands of members. They are so numerous that joinder of all Class members is impracticable.

34. The Named Plaintiffs also bring this case as a class action under Fed. R. Civ. P. 23(b)(3), on behalf of themselves and other individuals similarly situated who have been subjected to enforcement of P.L. § 240.35(1), for violations of their constitutional law rights.

35. The Named Plaintiffs seek to represent a plaintiff subclass pursuant to Fed. R. Civ. P. 23(b)(3) consisting of all persons arrested, charged or prosecuted for a violation of P.L. § 240.35(1), by employees, agents or representatives of the City of New York, from 1992 onward.

36. All of the members of the Rule (b)(3) subclass were injured as a result of defendants' conduct.

37. The Rule (b)(3) subclass includes thousands of individuals, many of whom are homeless and accordingly, difficult to locate. They are so numerous that joinder of all Class members is impracticable.

38. The questions of law and fact presented by plaintiffs Michael Brown, Xavier J. Grant, Michael Louis Brown, Bobby Wells, Edgar Turner, and Keith Anderson are common to other members of the class. Among others, the questions of law and fact common to the Class are: (I) whether defendants enforced or failed to prevent the enforcement of P.L. § 240.35(1), including without limitation wrongfully arresting, detaining, charging, summonsing, imprisoning and/or prosecuting class members for violations of P.L. § 240.35(1), after the statute had already been declared unconstitutional and its enforcement enjoined; (ii) the existence of a pattern and practice of enforcement of P.L. § 240.35(1) or failure to prevent its enforcement, including but not limited to wrongful arrests, charges and prosecutions of violations of P.L. § 240.35(1); (iii) the acquiescence of supervisory personnel in the NYPD and Bronx DAO in the known unlawful acts of subordinates; and the failure of supervisory defendants to train, supervise, and discipline police officers and assistant district attorneys in their respective institutions; and (iv) the appropriate injunctive remedies that will be needed to ensure (a) that the Arrest & Prosecution Policy is terminated in every respect and (b) that its harmful effects are nullified.

39. Common issues of law and fact such as those set forth above (and many others) predominate over any individual issues.

40. The Arrest & Prosecution Policy has resulted in the wrongful detention, charging, arrest, confinement and prosecution of citizens engaged in lawful First Amendment activity, and the infliction of physical and psychological injuries on those individuals. The claims and practices alleged in this complaint are common to all members of the class.

41. The violations suffered by the Named Plaintiffs are typical of those suffered by the class. The entire class will benefit from the remedial and monetary relief sought.

42. The Named Plaintiffs have no conflict of interest with any Class members, and will fairly and adequately protect the interests of the class. Counsel competent and experienced in federal class action and federal civil rights litigation has been retained to represent the class. Emery Celli Brinckerhoff & Abady LLP is a law firm with offices in New York City with extensive experience in civil rights litigation and class action lawsuits against state and local governments and the NYPD. The Bronx Defenders is a not-for-profit law firm specializing in criminal defense practice with extensive experience in police and prosecutorial practices, and experience in civil rights litigation.

43. This action is superior to any other method for the fair and efficient adjudication of this legal dispute, as joinder of all members is not only impracticable, but impossible given the nature of the members of the proposed subclass. The damages suffered by members of the subclass, although substantial, are small in relation to the extraordinary expense and burden of individual litigation and therefore it is highly impractical for such subclass members to attempt redress for damages incurred due to their wrongful arrest and confinement.

44. There will be no extraordinary difficulty in the management of this case as a class action.

45. The Named Plaintiffs continue to engage in the activity of peaceful begging on the streets of New York City and/or peacefully associating with others on the sidewalks and public byways of New York City and will continue to do so for the foreseeable future.

DEFENDANT CLASS ACTION ALLEGATIONS

46. Plaintiffs also bring this action as a defendant class action under Fed. R. Civ. P. 23(b)(2) to redress violations of their constitutional rights. Plaintiffs seek to certify a defendant class, to be represented by defendants City of New York, Raymond Kelly and Robert Johnson, and consisting of all political sub-divisions and all law enforcement/prosecutorial policy-making officials in the State of New York with authority to arrest, charge or prosecute a person with a violation under the New York Penal Law.

47. The proposed defendant class includes hundreds, and perhaps thousands, of members. They are so numerous that joinder of all Class members is impracticable.

48. There are questions of law and fact common proposed defendant class representatives, Kelly, Johnson and the City of New York, and the proposed class members that they would represent. These include: (1) whether defendants enforced or failed to prevent the enforcement of P.L. § 240.35(1), after the statute was declared unconstitutional; (2) whether defendants' enforcement of P.L. § 240.35(1), after the statute was declared unconstitutional, violated and continues to violate the First, Fourth, and Fourteenth Amendments; and (3) whether, and in what manner, defendants should be enjoined to ensure that the Statute will no longer be enforced.

49. The defenses, insofar as there are any, of putative class representative Kelly, Johnson and the City of New York are typical of those of the absent class members. The entire class will benefit from the remedial and monetary relief sought.

50. Defendants Kelly, Johnson and the City of New York have no conflict of interest with any putative absent class members, and will fairly and adequately protect the interests of the class. Competent counsel represent the defendant class. The New York City Law Department is the largest municipal law firm in the State and its attorneys have extensive experience in actions similar to this.

51. This action is superior to any other method for the fair and efficient adjudication of this legal dispute, as joinder of all defendant class members is impracticable.

52. There will be no extraordinary difficulty in the management of the Class action.

FACTS

53. Before its nullification, P.L. § 240.35(1) provided, in relevant part, that a person is guilty of "loitering" when he "loiters, remains or wanders about in a public place for the purpose of begging."

54. On October 7, 1992, United States District Judge Robert W. Sweet entered a declaratory judgment in the United States District Court for the Southern District of New York, and an injunction that permanently barred the New York City Police Department, and the Commissioner of the New York City Police Department, from enforcing P.L. § 240.35(1).

55. In 1993, the United States Court of Appeals for the Second Circuit affirmed Judge Sweet's ruling and declared, on First Amendment grounds, that subdivision one

of P.L. § 240.35, loitering in a public place for the purpose of begging, was unconstitutional. *See* Loper v. New York City Police Department, 999 F.2d 699 (2d Cir. 1993).

56. Peaceful begging is an activity entitled to the full protection of the First Amendment.

57. Since at least 1992, loitering for the purpose of begging has not been a crime, offense, or violation in New York State.

Michael Brown

58. Plaintiff Michael Brown is a 46 year-old African-American man. In order to obtain money for transportation and other necessities of life, Mr. Brown peacefully begs for money on the streets of New York City. Mr. Brown often conducts this peaceful begging activity in the County of the Bronx.

59. On at least one occasion in 2003, while plaintiff Michael Brown was peacefully standing on the streets of the Bronx, and engaged in activities fully protected by the First Amendment, he was wrongfully arrested by uniformed officers employed by the NYPD, charged with loitering in violation of P.L. § 240.35(1), and subjected to prosecution by the Bronx District Attorney's Office for this charge.

60. On June 14, 2003, Mr. Brown was peacefully begging at or about 149th Street and Courtlandt Avenue, Bronx, New York, when defendants police officers SHAWN RICKER and John/Jane Does 126 through 130 arrested and charged Mr. Brown with loitering in violation of P.L. § 240.35(1). Mr. Brown was taken to the 40th Precinct and held there pending arraignment. The Bronx DAO charged Mr. Brown with a violation of P.L. § 240.35(1). At

arraignment on June 14, 2003, Mr. Brown pleaded guilty to the charge and he was sentenced to a term of conditional discharge of one year, a $60 surcharge and civil judgment for the surcharge.

61. As a result of the aforesaid wrongful arrest and prosecution for loitering in violation of P.L. § 240.35(1), Mr. Brown was incarcerated for at least one day. Mr. Brown was required to make court appearances in order to defend himself against prosecution for constitutionally defective charges. Mr. Brown felt compelled to plead guilty to violations of P.L. § 240.35(1), and this now appears on his criminal history and is in the public record.

62. Court files and computer databases – including for arrests, charges, convictions, sentences, fines, bail and surcharge – concerning Michael Brown are available to the public and report the unconstitutional conviction for P.L. § 240.35(1).

Xavier J. Grant

63. Plaintiff Xavier J. Grant is a 23 year-old African-American man. Mr. Grant grew up in the Bronx.

64. On at least one occasion in 2003, while Mr. Grant was peacefully standing on the street in the Bronx, and engaged in activities fully protected by the First Amendment, he was wrongfully arrested by uniformed officers employed by the NYPD, and charged via a summons with loitering in violation of P.L. § 240.35(1).

65. On or about July 17, 2003, Mr. Grant was standing on the corner of an intersection in the Bronx, peacefully conversing with friends.

66. Defendant police officers John/Jane Does 131 through 135 stopped their car in front of Mr. Grant's location, go out, stopped Mr. Grant, searched him, and demanded identification. Defendants police officers GERALD McCOY of the 47th Precinct and John/Jane

Does 131-135 then charged Mr. Grant, via a summons, with loitering in violation of P.L. § 240.35(1). Defendants John/Jane Does 131-135 also told Mr. Grant to "move along," and stated "you can't be here."

67. Mr. Grant was summoned to appear in court on August 25, 2003. When Mr. Grant failed to appear to answer the unconstitutional invalid charge, a warrant was issued for his arrest.

68. In or around November 2006, Mr. Grant applied for a job at TOYS R US. As a result of a background check conducted by the store, Mr. Grant learned that he had an active warrant for the invalid loitering summons issued in 2003.

69. On or around November 22, 2006, Mr. Grant went to the Bronx Criminal Court in an effort to resolve the open warrant for the invalid loitering charge. At that time, Mr. Grant appeared before a Bronx criminal court judge, Judge Hecht, at which time he received an Adjournment in Contemplation of Dismissal. This case will not be dismissed until May 21, 2007.

70. As a result of the aforesaid wrongful arrest and charge for loitering in violation of P.L. § 240.35(1), Mr. Grant was required to make court appearances in order to defend himself against prosecution for constitutionally defective charges. A warrant was issued for his arrest in conjunction with this invalid charge. Mr. Grant also was required to pay court fines and surcharges. In addition, Mr. Grant felt compelled to accept an "ACD" for a violation of P.L. § 240.35(1), and this currently appears on his criminal history and is in the public record.

71. Court files and computer databases – including for arrests, charges, convictions, sentences, fines, bail and surcharge – concerning Xavier J. Grant are currently

available to the public – such as his potential employer TOYS R US – and report the unconstitutional charge of P.L. § 240.35(1).

Michael Louis Brown

72. Plaintiff Michael Louis Brown is a 48 year-old African-American man. In order to obtain money for transportation and other necessities of life, Mr. Brown peacefully begs for money on the streets of New York City. Mr. Brown often conducts this peaceful begging activity in the County of the Bronx.

73. On at least one occasion in 2004, while Mr. Brown was peacefully standing on the streets of the Bronx, and engaged in activities fully protected by the First Amendment, he was wrongfully arrested by uniformed officers employed by the NYPD, charged with loitering in violation of P.L. § 240.35(1), and subjected to prosecution by the Bronx District Attorney's Office for this charge.

74. On or about March 1, 2004, Mr. Brown was peacefully begging at or about 189th Street and Park Avenue, Bronx, New York, when defendants police officers THOMAS ACITO, Shield No. 31053, and John/Jane Does 136-40 arrested and charged Mr. Brown with loitering in violation of P.L. § 240.35(1) and with disorderly conduct in violation of P.L. § 240.20(5). Mr. Brown was taken to the 48th Precinct and held there pending arraignment. The Bronx DAO charged Mr. Brown with a violation of P.L. § 240.35(1) and with disorderly conduct. At arraignment on March 1, 2004, Mr. Brown pleaded guilty to both charges and was sentenced to a term of imprisonment of time served. He was also sentenced to a $95 surcharge and civil judgment for the surcharge.

75. As a result of the aforesaid wrongful arrest and prosecution for loitering in violation of P.L. § 240.35(1), Mr. Brown was incarcerated for at least one day. Mr. Brown felt compelled to plead guilty to violations of P.L. § 240.35(1), and this now appears on his criminal history and is in the public record.

76. Court files and computer databases – including for arrests, charges, convictions, sentences, fines, bail and surcharge – concerning Michael Louis Brown are available to the public and report the unconstitutional conviction for P.L. § 240.35(1).

Bobby Wells

77. Plaintiff Bobby Wells is a 49 year-old African-American man.

78. On at least one occasion in 2004, and on another occasion in 2005, while Mr. Wells was peacefully standing on the streets of the Bronx, and engaged in activities fully protected by the First Amendment, he was wrongfully arrested by uniformed officers employed by the NYPD, charged with loitering in violation of P.L. § 240.35(1), and subjected to prosecution by the Bronx District Attorney's Office for this charge.

79. On or about April 21, 2004, Mr. Wells was peacefully walking around his neighborhood, at 1201 Webster Avenue in the Bronx, New York, when defendants police officers JOHN PICONE and John/Jane Does 141 through 145 arrested and charged Mr. Wells with loitering in violation of P.L. § 240.35(1) and with disorderly conduct in violation of P.L. § 240.20(5). Mr. Wells was taken to the 44th Precinct and held there pending arraignment. The Bronx DAO charged Mr. Wells with a violation of P.L. § 240.35(1) and with disorderly conduct in violation of P.L. § 240.20(5). At arraignment, Mr. Wells pleaded guilty to both charges and

was sentenced to a term of conditional discharge of one year for each charge. He was also sentenced to a $60 surcharge, and civil judgment for the surcharge.

80. On or about March 30, 2005, Mr. Wells was again, as is his wont, peacefully walking around his neighborhood, at 1201 Webster Avenue in the Bronx, New York, when defendants police officers JOHN PICONE and John/Jane Does 146 through 150 arrested and charged Mr. Wells with loitering in violation of P.L. § 240.35(1) and with disorderly conduct in violation of P.L. § 240.20(5). Mr. Wells was taken to the 44th Precinct and held there pending arraignment. The Bronx DAO charged Mr. Wells with a violation of P.L. § 240.35(1). At arraignment, Mr. Wells pleaded guilty to P.L. § 240.35(1) and was sentenced to a term of conditional discharge of one year. He was also sentenced to $95 in fees and surcharges, and civil judgment for these amounts.

81. As a result of the aforesaid wrongful arrests and prosecutions for loitering in violation of P.L. § 240.35(1), Mr. Wells was incarcerated for long periods. Mr. Wells felt compelled to plead guilty to violations of P.L. § 240.35(1), and this now appears on his criminal history and is in the public record.

82. Court files and computer databases – including for arrests, charges, convictions, sentences, fines, bail and surcharge – concerning Mr. Wells are available to the public and report the unconstitutional conviction for P.L. § 240.35(1).

Edgar Turner

83. Plaintiff Edgar Turner is a 48 year-old African-American man.

84. On at least one occasion in 2006, while Mr. Turner was peacefully standing on the street in Manhattan, and engaged in activities fully protected by the First Amend-

ment, he was wrongfully arrested by uniformed officers employed by the NYPD, and charged, via a summons, with loitering in violation of P.L. § 240.35(1).

85. In or about October 2006, Mr. Turner was peacefully standing at 114th Street and 8th Avenue in New York County, waiting for an office in the building at 241 West 114th Street to open.

86. Defendants police officers KARL HARRIS, Shield No. 937821 and John/Jane Does 151 through 155, who were assigned to the 28th Precinct, stopped their car in front of Mr. Turner, got out, stopped him, searched him, and demanded identification. Defendants John/Jane Does 151-155 then charged Mr. Turner, via a summons, with loitering in violation of P.L. § 240.35(1).

87. Mr. Turner was summoned to appear in court on December 8, 2006.

88. When Mr. Turner dutifully appeared to answer the summons for violating an unconstitutional, long void, statute, in Manhattan Criminal Court after former plaintiff Eddie Wise had asked a federal court to find defendants in contempt, the ticket was dismissed.

89. As a result of the aforesaid wrongful arrest and charge for loitering in violation of P.L. § 240.35(1), Mr. Turner was required to appear in court in order to defend himself against prosecution for constitutionally defective charges.

KeithAnderson

90. Plaintiff Keith Anderson is a 42 year-old African-American man. In order to obtain money for food, transportation and other necessities of life, Mr. Anderson peacefully begs for money on the streets of New York City. Mr. Anderson occasionally conducted this peaceful begging activity in the County of the Bronx.

91. From time to time from 2002 to date, Mr. Anderson has also been casually employed by some business owners on Fordham Road in the Bronx to perform odd jobs, cleaning and errands.

92. On at least one occasion in 2002, and on another occasion in 2004, while Mr. Anderson was peacefully standing on the street in the Bronx, and engaged in activities fully protected by the First Amendment, he was wrongfully arrested by uniformed officers employed by the NYPD, charged with loitering in violation of P.L. § 240.35(1), and subjected to prosecution by the Bronx District Attorney's Office for this charge.

93. On August 20, 2002, Mr. Anderson was peacefully standing at or about 544 Fordham Road, Bronx, New York, when defendants police officers CHRISTOPHER LAGRASTA and John/Jane Does 156 through 160 arrested and charged Mr. Anderson with loitering in violation of P.L. § 240.35(1). Mr. Anderson was taken to the 48th Precinct and held there pending arraignment. The Bronx DAO charged Mr. Anderson with a violation of P.L. § 240.35(1) and with A.C. § 10-136. At arraignment, Mr. Anderson pleaded guilty to the violation of P.L. § 240.35(1), and he was sentenced to a term of conditional discharge of one year. He was also sentenced to a $120 surcharge and civil judgment for that amount.

94. On or about September 8, 2004, Mr. Anderson was working at a check-cashing establishment, where he was casually employed to clean the store, at or about 544 Fordham Road, Bronx, New York. Mr. Anderson was carrying cleaning equipment including a broom, when defendants police officers DENNIS PALINKAS and John/Jane Does 161 through 165 arrested and charged Mr. Anderson with loitering in violation of P.L. § 240.35(1) and with disorderly conduct in violation of P.L. § 240.20(5). Mr. Anderson informed the police officers

that he was actually working for the store as a cleaner. Upon information and belief, the store manager also told the police that Mr. Anderson was working there. Nonetheless, Mr. Anderson was arrested, taken to the 48th Precinct and held there pending arraignment. The Bronx DAO charged Mr. Anderson with a violation of P.L. § 240.35(1) and with P.L. § 240.20(5). At arraignment, Mr. Anderson pleaded guilty to the violation of P.L. § 240.35(1), and he was sentenced to a term of imprisonment. He was sentenced to one day in jail, $95 in fees and surcharges, and civil judgments for these amounts.

95. As a result of the aforesaid wrongful arrests and prosecutions for loitering in violation of P.L. § 240.35(1), Mr. Anderson was incarcerated for many days. Mr. Anderson was required to make court appearances in order to defend himself against prosecution for constitutionally defective charges. Mr. Anderson felt compelled to plead guilty to violations of P.L. § 240.35(1), and this now appears on his criminal history and is in the public record.

96. Court files and computer databases – including for arrests, charges, convictions, sentences, fines, bail and surcharge – concerning Keith Anderson are available to the public and report the unconstitutional conviction for P.L. § 240.35(1).

* * *

97. As a result of defendants' repeated unlawful and unconstitutional conduct described above, the Named Plaintiffs and members of the plaintiff class have suffered physical injuries, emotional distress, mental anguish, and psychological trauma.

98. The above-described wrongful, unjustifiable, and unlawful arrests, imprisonments, charges and prosecutions of the Named Plaintiffs were carried out without valid warrants, without plaintiffs' consent, and without probable cause.

99. In arresting, confining, charging and prosecuting the Named Plaintiffs for loitering in violation of P.L. § 240.35(1), or failing to prevent these occurrences, all defendants acted with malice, in that they knew or should have known that P.L. § 240.35(1) was long ago declared unconstitutional.

Unconstitutional Policy and Practice in the NYPD

100. At all relevant times, the City, acting through the NYPD, maintained a de facto policy, custom and practice of enforcement of P.L. § 240.35(1), and of failing to train, supervise, or discipline police officers regarding their obligation to cease any enforcement of P.L. § 240.35(1).

101. According to records maintained by the New York State Office of Court Administration, from October 7, 1992 to December 6, 2005, the New York City Police Department made 3,473 arrests and arraignments charging the Statute.

102. These same arrests resulted in 2,609 criminal prosecutions by District Attorneys' Offices in all five New York City Counties ("DAOs") charging the Statute that were filed in New York City courts.

103. As recently as December 2006, the Kings County DAO prosecuted someone for violation of the Statute, arising from an arrest on October 23, 2006.

104. These arrest and prosecution numbers do not include anyone who was arrested for, and charged, via summons or otherwise, with violating the Statute, but whose records have since been sealed pursuant to N.Y. Criminal Procedure Law Section 160.55.

105. New York City police officers have arrested and charged, via summons, thousands of people for violating the Statute since 1992.

106. According to records maintained by the New York State Office of Court Administration, from 1999 to 2005, defendants issued 3,602 summonses charging violations of the Statute.

107. On information and belief, countless more unlawful arrests and charges for violating P.L. § 240.35(1) have occurred but no longer appear in the record due to the decisions of the NYPD to void the arrest, the decisions of the District Attorney's Offices not to prosecute, or due to various other dispositions.

108. On information and belief, officers in the NYPD rely upon P.L. § 240.35(1) as a basis for issuing "move-on" orders to individuals who are peacefully standing or peacefully begging on the streets of New York City.

109. Since 1992, multiple arrests and charges for violating P.L. § 240.35(1) were made in police precincts all over New York City, including without limitation the following precincts: the 1st, 5th, 6th, 7th, 9th, 10th, 13th, 14th, 17th, 18th, 19th, 20th, 22nd, 23rd, 24th, 25th, th, 28th, 30th, 32nd, 33rd, 34th, 40th, 41st, 42nd, 43d, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 52nd, 60th, 61st, 62nd, 63rd, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 73rd, 75th, 76th, 77th, 78th, 79th, 81st, 83rd, 84th, 88th, 90th, 94th, 100th, 101st, 102nd, 103rd, 104th, 106th, 107th, 108th, 109th, 110th, 111th, 112th, 113th, 114th, 115th, 120th, and 122nd.

110. In light of the many thousands of arrests and charges throughout New York City for violations of P.L. § 240.35(1), defendants knew, or should have known, that many police officers were engaging in the lawless and unconstitutional practice of arresting people for violations of a void and unenforceable statute; yet defendants have repeatedly failed to take any action to end this conduct.

111. The arrests of the Named Plaintiffs were made by police officers assigned to the 28th, 40th, 44th, 47th, and 48th Precincts, including Defendants Ricker, Acito, Titone, Lagrasta, Palinkas, McCoy, and Harris. The pattern of unconstitutional arrests by police officers assigned to the 28th, 40th, 44th and 48th Precinct and other NYPD Police Precincts has been condoned by supervisors in those precincts and supervisors in other NYPD Police Precincts, and by defendants City of New York, Buzzetti, Essig, Mercandetti, Montgomery, and Kelly.

112. On information and belief, supervisors in the 28th, 40th, 44th, and 48th Precinct and all NYPD police precincts receive or received daily a compilation of reports documenting the bases for arrests and summonses effected in the previous day. These reports have for years documented, and continue to document, the arrests and summonses complained of here. Accordingly, defendants City, Buzzetti, Essig, Mercandetti, Montgomery, Kelly, and other Jane/John Doe supervisory members of the NYPD (the "NYPD Supervisory Defendants") have been aware of the arrests and summons for violations of P.L. § 240.35(1) and the continuing violation of rights attendant to these acts; yet, have failed to take any action to end this conduct.

113. In light of the history of arrests and summonses throughout New York City for violations of P.L. § 240.35(1), the NYPD Supervisory Defendants knew to a moral certainty that police officers under their supervision, including Defendants Ricker, Acito, Titone, Lagrasta, Palinkas, McCoy, and Harris would confront the situation wherein they would need to exercise discretion regarding whether or not to arrest individuals or issue summonses for violation of P.L. § 240.35(1), and that there was a history of police officers mishandling this situation. Yet, on information and belief, the NYPD Supervisory Defendants did not take any action to require or

provide proper training or re-training on how police officers should exercise their discretion in the above-described situation.

114. Even after this case was commenced on June 10, 2005, and the Court directed defendants to "cease enforcement" of P.L. § 240.35(1), defendants continued to arrest and charge individuals for violating P.L. § 240.35(1).

115. Since June 23, 2005, for example, defendants arrested 56 people in New York City for violations of P.L. § 240.35(1).

116. Since June 23, 2005, defendants have arrested and charged, via a summons, approximately 641 people for violating P.L. § 240.35(1). These charges have resulted in the issuance of approximately 50 warrants of arrest.

117. The NYPD Supervisory Defendants' failure to train, discipline or supervise police officers regarding their obligation not to arrest individuals or issue summonses for violations of P.L. § 240.35(1), and their obligation not to enforce this statute, exhibited gross and wanton deliberate indifference to the constitutional rights of the Named Plaintiffs and members of the Class.

118. On information and belief, the arrest of citizens and issuance of summonses for violations of a void statute was and is well known throughout the NYPD. Nevertheless, the NYPD Supervisory Defendants continue to allow police officers to continue the practice, and tolerated these unconstitutional practices. The failure to take measures to curb this unconstitutional conduct constitutes an acquiescence in the known unlawful behavior of their subordinates. The prevalence of these arrests and summonses and general knowledge of their

existence, and the failure of the supervisory defendants to take remedial action, constitute deliberate indifference to the rights of the Named Plaintiffs and the Class.

119. The NYPD Supervisory Defendants conduct has, moreover, been a substantial factor in the continuance of such arrests and charges and is a proximate cause of the constitutional violations alleged in this complaint.

120. Because the pattern or practice of arresting and charging individuals for violating P.L. § 240.35(1) has existed for many years, the NYPD Supervisory Defendants knew, or should have known, that police officers were engaging in the lawless and unconstitutional practice of arresting people and issuing summonses for violations of a void statute, yet defendants repeatedly failed to take any action to end this conduct by the police officers.

121. Because, upon information and belief, a pattern or practice existed of arresting and charging individuals for violating P.L. § 240.35(1), the NYPD Supervisory Defendants knew or should have known that police officers assigned to these precincts required training, supervision, and discipline regarding their obligations not to enforce this void statute.

Defendants' Race-Based and Discriminatory Enforcement of the Statute

122. Defendants have used race and/or national origin as determinative factors in deciding to enforce the Statute.

123. Defendants have enforced the Statute in a discriminatory and race-based manner by singling out African-American and Latino New Yorkers for arrest under the Statute.

124. Defendants have disproportionately targeted people of color for arrest under the Statute: out of the 3,417 arrests and arraignments that are thus far documented from

1992 to 2005 for the Statute, approximately 70% of those arrested were African-American, and about 17% were Latino.

Unconstitutional Enforcement Out of the Statute Outside of New York City

125. According to limited OCA data, there have been no fewer than 673 criminal prosecutions by District Attorneys' Offices charging the Statute that have been filed in counties outside of New York City. The OCA data does not include sealed cases. Sealed cases are basically any cases that did not result in a conviction. OCA only maintains date for 13 counties in New York State (New York, Kings, Queens, Richmond, Bronx, Nassau, Suffolk, Erie, Rockland, Dutchess, Orange, Putnam and Westchester). OCA has no date for the remaining 49 counties around the State.

126. Accordingly, on information and belief, there are many hundreds and likely thousands of other arrests, charges and/or prosecutions that have occurred outside the City of New York. This is also confirmed by news reports based on the unsealed OCA database, for a shorter period, which indicate that there were at least 512 cases in Erie County alone. *See Hundreds Busted Under Bogus Law*, N.Y. DAILY NEWS, July 3, 2005.

127. Moreover, when asked by a reporter whether anything would be done to overturn these wrongful convictions, Erie County Deputy District Attorney Yvonne Vertlieb's response was: "I would say we're pretty much going to do nothing." *Id.*

128. Enforcement of the Statute is thus a widespread problem across New York State.

Unconstitutional Policy and Practice in the District Attorney's Offices

129. At all relevant times, defendant City, acting through the DAOs in all five counties, and the DA Supervisory Defendants, who include defendant Robert Johnson and supervisors employed by the DAOs who are sued as Jane/John Does 101-125 (the "DA Supervisory Defendants"), maintained a policy, custom and practice whereby they prosecuted individuals for violations of the Statute and failed to train, supervise or discipline assistant district attorneys regarding their obligation not to prosecute individuals for violations of New York Penal Code 240.35(1).

130. At all relevant times, the DA Supervisory Defendants maintained a policy, custom and practice whereby they prosecuted individuals for violations of the Statute, and failed to train, supervise or discipline assistant district attorneys regarding their obligation not to prosecute individuals for violations of New York Penal Code 240.35(1).

131. At all relevant times, defendant Johnson was responsible for the management and administration of the Bronx DAO, including decisions regarding supervision, training, and discipline of assistant district attorneys employed therein. As the Bronx District Attorney, defendant Johnson knew or should have known that an arrest, summons, or prosecution of a citizen for violation of P.L. § 240.35(1) would cause the deprivation of that citizen's constitutional rights.

132. The DA Supervisory Defendants and Defendant Johnson's failure to train or supervise assistant district attorneys in the Bronx DAO regarding their obligation not to prosecute individuals for violations of P.L. § 240.35(1) exhibited gross and wanton deliberate

indifference to the constitutional and common law rights of the Named Plaintiffs and members of the Class.

133. The pattern or practice of prosecuting individuals for violations of P.L. § 240.35(1) commenced as early as 1992, and since 1992, there have been multiple prosecutions for violations of P.L. § 240.35(1), defendant Johnson and the DA Supervisory Defendants knew, or should have known, that assistant district attorneys were engaging in the unlawful practice of prosecuting people for violations of a void and unconstitutional statute, yet defendant Johnson and the DA Supervisory Defendants failed to take any action to end it.

134. Defendant Johnson and the DA Supervisory Defendants knew or should have known that assistant district attorneys assigned to their offices required training, supervision, and discipline regarding their obligations to refuse to prosecute individuals for violations of a void statute.

135. In light of the history of unjustified prosecutions, defendant Johnson and the DA Supervisory Defendants knew to a moral certainty that assistant district attorneys would confront the situation wherein they would need to exercise discretion regarding whether or not to prosecute individuals for violation of P.L. § 240.35(1).

136. Defendant Johnson and the DA Supervisory Defendants' failure to train and supervise assistant district attorneys in the DAOs concerning their obligation not to prosecute individuals for violations of P.L. § 240.35(1) exhibited gross and wanton deliberate indifference to the Named Plaintiffs' constitutional and common law rights. The failure of the DA Supervisory Defendants to train and supervise assistant district attorneys has, moreover, been a

substantial factor in the continuance of such prosecutions and a proximate cause of the constitutional violations alleged in this complaint.

137. On information and belief, the failure of defendant Johnson and the DA Supervisory Defendants to take measures to curb this unconstitutional conduct constitutes an acquiescence in the known unlawful behavior of their subordinates. The prevalence of these arrests and summonses and general knowledge of their existence, and the failure of these supervisory defendants to take remedial action, constitutes deliberate indifference to the rights of these citizens. These defendants' conduct has been a substantial factor in the continuance of such arrests and a proximate cause of the constitutional violations alleged in this complaint.

Liability of the City of New York

138. Currently, as well as prior to and at the time of the arrests of the Named Plaintiffs, there exists and existed in the NYPD and the DAOs throughout the City of New York, a pattern and practice of arrest, issuance of summonses, confinement, and prosecution for violations of P.L. § 240.35(1) by police officers, and assistant district attorneys.

139. The pattern of unconstitutional arrests, summons, and prosecutions for violations of a void statute; the failure to train staff regarding the nullity of the statute; and the failure to supervise and/or discipline staff responsible for the unconstitutional arrests, summonses, and prosecutions, are so institutionalized as to represent a policy or custom of unconstitutional arrests and summonses for violations of P.L.§ 240.35(1), that caused the deprivation of the Named Plaintiffs' rights and those of the Class.

140. The NYPD and DAOs, through their supervisory staff, police officers and prosecuting attorneys, have failed or refused to hold accountable high-ranking supervisors -

commanding officers, supervising attorneys - in the face of frequent misconduct, over a period of years, by these supervisors and by the staff they supervise. This failure is a proximate cause of the injuries sustained by the Named Plaintiffs and by other individuals arrested or charged for violations of P.L.§ 240.35(1). The continuing inaction of the NYPD Supervisory Defendants and the DA Supervisory Defendants (collectively the "Supervisory Defendants") exposes current and future citizens, including the Named Plaintiffs and members of the class to a pervasive risk of being arrested, charged and prosecuted for a void crime.

141. The pattern of unconstitutional arrests and charges pursued by police officers, and resulting prosecutions by assistant district attorneys; the extent to which these unlawful practices have been adopted by significant numbers of staff; and the persistent failure of the NYPD and the DAOs to supervise these employees properly and to take action to curb the misconduct, demonstrate a policy of deliberate indifference which tacitly authorizes the unconstitutional arrests of citizens like the Named Plaintiffs who are engaged in constitutionally protected First Amendment activity.

FIRST CAUSE OF ACTION
42 U.S.C. § 1983; First, Fourth, Fifth,
and Fourteenth Amendments
(Against the Individual NYPD Defendants)

142. Plaintiffs repeat, reiterate and reallege each and every allegation contained in the foregoing paragraphs of this complaint with the same force and effect as though set forth herein.

143. By repeatedly falsely arresting, falsely imprisoning, and maliciously prosecuting the Named Plaintiffs and members of the class without probable cause or allowing

such arrests to occur, defendants Ricker, Acito, Picone, Lagrasta, Palinkas, McCoy, Harris, Jane/John Does 51-100, and Jane/John Does 126-155 (the "Individual NYPD Defendants") deprived plaintiffs and the putative class of their rights, remedies, privileges, and immunities guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

144. By repeatedly harassing, stalking, falsely arresting, falsely imprisoning, and/or maliciously prosecuting the Named Plaintiffs and members of the plaintiff class and thus inhibiting their free speech activities, the Individual NYPD Defendants deprived plaintiffs and the putative plaintiff class of their rights, remedies, privileges, and immunities guaranteed by the First and Fourteenth Amendments to the United States Constitution.

145. By arresting, summonsing, arraigning, and prosecuting the Named Plaintiffs and members of the plaintiff class under an unconstitutional and void Statute, defendants acted in an arbitrary, conscience-shocking and oppressive manner in violation of plaintiffs' rights to due process of law under the Fourteenth Amendment to the United States Constitution.

146. By singling out the Named Plaintiffs and members of the plaintiff class for enforcement of the Statute because of their race and/or national origin, the Individual NYPD Defendants deprived plaintiffs and the putative plaintiff class of their rights, remedies, privileges, and immunities guaranteed by the Equal Protection Clause of the United States Constitution.

147. The Individual NYPD Defendants acted under pretense and color of state law and in their individual and official capacities and within the scope of their employment.

148. The Individual NYPD Defendants acted beyond the scope of their jurisdiction, without authority of law, and abused their powers.

149. The Individual NYPD Defendants acted willfully, knowingly, and with the specific intent to deprive plaintiffs and members of the Class of their constitutional rights.

150. As a direct and proximate result of the misconduct and abuse of authority detailed above, plaintiffs and members of the Class sustained the damages hereinbefore and hereinafter alleged.

SECOND CAUSE OF ACTION
42 U.S.C. § 1983 Supervisory Liability;
First, Fourth and Fourteenth Amendments
(against the NYPD Supervisory Defendants)

151. Plaintiffs repeat, reiterate and reallege each and every allegation contained in the foregoing paragraphs of this complaint with the same force and effect as though fully set forth herein.

152. The NYPD Supervisory Defendants were, at the relevant times, supervisory personnel of the New York City Police Department, with oversight responsibility over the Individual NYPD Defendants. They were responsible for the training, instruction, supervision and discipline of the Individual NYPD Defendants, who falsely arrested, charged and imprisoned plaintiffs and members of the Class, and violated their constitutional rights.

153. On information and belief, the NYPD Supervisory Defendants were aware and well-informed of the Individual NYPD Defendants' conduct of false arrest, false imprisonment and malicious prosecution perpetrated against plaintiffs and others.

154. The NYPD Supervisory Defendants had actual or constructive knowledge that the Individual NYPD Defendants were engaged in conduct that posed a pervasive and unreasonable threat to the constitutional rights of the Named Plaintiffs and others.

155. The NYPD Supervisory Defendants failed to protect the Named Plaintiffs and members of the Class despite their knowledge that the Individual NYPD Defendants violated their constitutional rights and posed a serious threat to their being allowed to freely exercise their constitutionally protected rights.

156. The response of the NYPD Supervisory Defendants to their knowledge of this threat was so inadequate as to show deliberate indifference or tacit approval of the conduct of the Individual NYPD Defendants.

157. The failure of the NYPD Supervisory Defendants to supervise and discipline the Individual NYPD Defendants amounted to gross negligence, deliberate indifference, and/or intentional misconduct.

158. As a direct and proximate result of the misconduct and abuse of authority detailed above, plaintiffs and members of the class sustained the damages herein before alleged.

THIRD CAUSE OF ACTION
42 U.S.C. § 1983 Supervisory Liability;
First, Fourth and Fourteenth Amendments
(against the DA Supervisory Defendants including Defendant Johnson)

159. Plaintiffs repeat, reiterate and reallege each and every allegation contained in the foregoing paragraphs of this complaint with the same force and effect as though fully set forth herein.

160. The DA Supervisory Defendants at all relevant times had oversight responsibility over the assistant district attorneys employed in their office and were responsible for their training, instruction, supervision and discipline, including for the assistant district attorneys who wrongfully prosecuted the Named Plaintiffs and members of the Class.

161. The DA Supervisory Defendants had actual or constructive knowledge that assistant district attorneys had repeatedly violated the constitutional rights of the Named Plaintiffs and members of the Class and were engaged in conduct that posed a pervasive and unreasonable threat to those rights.

162. The response of the DA Supervisory Defendants was so inadequate as to show deliberate indifference or tacit approval of the conduct of the assistant district attorneys who were wrongfully prosecuting plaintiffs and/or members of the Class based on a constitutionally invalid statute.

163. The failure of the DA Supervisory Defendants to supervise and discipline the assistant district attorneys who prosecuted the Named Plaintiffs and members of the Class for loitering under a constitutionally invalid statute amounted to gross negligence, deliberate indifference, and/or intentional misconduct.

164. As a direct and proximate result of the misconduct and abuse of authority detailed above, plaintiffs and members of the Class sustained the damages herein before alleged.

FOURTH CAUSE OF ACTION
42 U.S.C. § 1983 - Municipal Liability/NYPD
(Against defendant City)

165. Plaintiffs repeat, reiterate and reallege each and every allegation contained in the foregoing paragraphs of this complaint with the same force and effect as though fully set forth herein.

166. Since at least 1992, defendant City has permitted, tolerated and been deliberately indifferent to a pattern and practice of illegal behavior by members of the NYPD.

167. Defendant City had knowledge to a moral certainty that members of the NYPD named as defendants in this case had falsely arrested, charged and imprisoned plaintiffs for the constitutionally invalid charge of loitering in violation of P.L. § 240.35(1), in violation of plaintiffs' First, Fourth, Fifth, and Fourteenth Amendment rights, and in retaliation for plaintiffs' free speech activities. Although the behavior of police officers towards plaintiffs and members of the Class was improper, outrageous, and shocking to the conscience, on information and belief, none of the police officers involved has been prosecuted, disciplined or subjected to retraining.

168. Permitting such outrageous behavior has resulted in frequent violations of federal constitutional rights. The violations of these rights have been known to defendants, who have failed to maintain a proper system for investigation of all incidents of illegal actions by defendants.

169. Defendant City has failed to train police officers that arrests and summonses made under P.L. § 240.35(1) are invalid because the statute had been declared unconstitutional.

170. Defendant City's failure to train police officers that arrests and summonses made under P.L. § 240.35(1) were invalid constituted deliberate indifference to the federally protected rights of plaintiffs and the Class.

171. Defendant City failed to supervise, investigate and discipline the individual police officer defendants. As a result, plaintiffs and members of the Class were exposed to their illegal acts, which led to serious injury.

172. Defendant City maintained a de facto policy, custom and practice of enforcement of P.L. § 240.35(1) that constituted deliberate indifference to the federally protected rights of plaintiffs and the Class. As a result, plaintiffs and members of the Class were exposed to their illegal acts, which led to serious injury.

173. The foregoing acts, omissions, systematic flaws, policies and customs of defendant City caused the members of the NYPD to believe that their illegal and improper actions would not be properly investigated and corrected, with the foreseeable result that officers are most likely to act improperly and to arrest people for constitutionally invalidated offenses.

174. As a direct and proximate result of the aforesaid acts, omissions, systematic flaws, policies, and customs of defendant City, the Named Plaintiffs and members of the Class suffered and continue to suffer serious actual injuries, including without limitation, emotional and mental distress, degradation and humiliation.

FIFTH CAUSE OF ACTION
42 U.S.C. § 1983 - Municipal Liability/DA
(Against defendant City)

175. Plaintiffs repeat, reiterate and reallege each and every allegation contained in the foregoing paragraphs of this complaint with the same force and effect as though fully set forth herein.

176. Since at least 2002, the City, acting through the DAOs for all five counties, has permitted, tolerated and been deliberately indifferent to a pattern and practice of illegal behavior by assistant district attorneys employed in the DAOs.

177. The City, through the DAOs, had knowledge to a moral certainty that assistant district attorneys were prosecuting the Named Plaintiffs and other individuals for the

constitutionally invalid charge of loitering in violation of P.L. § 240.35(1), in violation of plaintiffs' First, Fourth, and Fourteenth Amendment rights.

178. Permitting such outrageous behavior has resulted in violations of the federal and state constitutional rights of plaintiffs and members of the Class.

179. The City, through the DAOs, failed to train assistant district attorneys that prosecutions under P.L. § 240.35(1) were invalid because the statute was unconstitutional.

180. The City's and its DAOs' failure to train assistant district attorneys that prosecutions under P.L. § 240.35(1) were unconstitutional constituted deliberate indifference to plaintiffs' federally protected rights.

181. The City, through the DAOs, failed to supervise, investigate, and discipline the assistant district attorneys who engaged in the behavior of unconstitutionally prosecuting citizens. As a result, plaintiffs and members of the Class were exposed to illegal acts that led to serious injury.

182. As a direct and proximate result of the aforesaid acts, omissions, systematic flaws, policies, and customs of the DAOs, the Named Plaintiffs and members of the Class suffered and continue to suffer serious actual injuries, including without limitation, emotional and mental distress, degradation, humiliation, and other damages as hereinbefore alleged.

WHEREFORE, the Named Plaintiffs and members of the Class requests the following relief jointly and severally as against all of defendants:

1. A judgment declaring that defendants have committed the violations of law alleged in this action;

2. An order certifying this case as a bilateral class action pursuant to Fed. R. Civ. P. 23; including certifying a Rule 23(b)(2) plaintiff class consisting of all persons who have been or will be arrested, charged or prosecuted for a violation of P.L. § 240.35(1) in the State of New York from 1992 onward; and a Rule 23(b) plaintiff subclass consisting of all persons arrested, charged or prosecuted for a violation of P.L. § 240.35(1), by employees, agents or representatives of the City of New York, from 1992 onward; and a Rule 23(b)(2) defendant class, to be represented by defendants City of New York, Raymond Kelly and Robert Johnson, and consisting of all political sub-divisions and all law enforcement/prosecutorial policy-making officials in the State of New York with authority to arrest, charge or prosecute a person with a violation under the New York Penal Law.

3. An order permanently enjoining and directing defendants and all members of the defendant class to cease enforcement of New York Penal Law § 240.35(1); and to take all appropriate ameliorative measures to ensure that no one is arrested, charged or prosecuted for violations of New York Penal Law § 240.35(1), including without limitation:

   A. Directing defendants City, Johnson and Kelly to routinely communicate to all members of the NYPD and the assistant district attorneys within the City of New York that P.L. § 240.35(1) is void and unenforceable;

B. Directing defendants City, Johnson and Kelly to routinely communicate to all court personnel within the City of New York, including judges and clerks, that P.L. § 240.35(1) is void and unenforceable;

C. Directing that ongoing remedial training concerning P.L. § 240.35(1) be provided to all members of the defendant class, including current members of the NYPD, all future members of the NYPD (via training at the police academy), and all supervisory members of the NYPD through a dedicated mandatory training;

D Directing that ongoing remedial training concerning P.L. § 240.35(1) be provided to all current assistant district attorneys and all future assistant district attorneys throughout the State (via new hire training), including any specific training for supervisors deemed necessary;

E. Directing all members of the defendant class to put in place a system for tracking all arrests or charges for P.L. § 240.35(1) in a contemporaneous manner so that any arrest or charge can be immediately terminated;

F. Directing all members of the defendant class to program any and all databases including but not limited to the NYPD computerized arrest and complaint system, the OCA Criminal Records Information Management System ("CRIMS") and summonses

databases, and the DCJS fingerprint inquiry and criminal history databases, to reject P.L. § 240.35(1) as a valid charge and generate an error report;

G. Directing all members of the defendant class to issue policies and procedures to ensure that P.L. § 240.35(1) is not enforced, including without limitation, NYPD Patrol Guide procedures and training manuals; and

H. Directing all defendant class members to disgorge all fees, surcharges and fines paid by plaintiffs and members of the plaintiff class in connection with enforcement of the Statute.

3. An order preliminarily and permanently enjoining all defendant class members to take any and all remedial measures necessary to completely remove all records of any arrest, charge, prosecution or conviction of P.L. § 240.35(1) that occurred after October 7, 1992, including without limitation:

A. directing defendants to destroy all mug shots (or other photographs), fingerprints, and all paper and electronic data or files making any reference to a P.L. § 240.35(1) arrest, charge, prosecution or conviction;

B. directing that any convictions and/or warrants contained in any criminal records concerning violations of P.L. § 240.35(1) be immediately expunged;

C. directing that all outstanding warrants concerning violations of P.L. § 240.35(1) be immediately vacated and expunged;

4. Compensatory damages against all named defendants in an amount to be proven at trial;

5. Punitive damages against all named defendants, except the City, in an amount to be proven at trial;

6. An order awarding disbursements, costs, and attorneys' fees pursuant to 42 U.S.C. § 1988; and

7. Such other and further relief that may be just and proper.

Dated: February 1, 2007
New York, New York

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