

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RUBEN AN,

Plaintiff,

v .

THE CITY OF NEW YORK,

Defendant.

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**COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiff Ruben An ("An"), by the undersigned attorneys, brings this action against the City of New York (the "City"), alleging as follows:

PRELIMINARY STATEMENT

1. This is a civil rights action challenging the constitutionality of the New York City Police Department's ("NYPD") widespread practice and custom of interfering with and deterring the exercise of the First Amendment right of individuals to film, photograph, videotape, or otherwise record (collectively, "record") NYPD officers performing their official duties in public places. This lawsuit challenges the retaliatory measures taken by NYPD officers against the Plaintiff, Ruben An, for attempting to record police officers on July 28, 2014, while the officers were interacting with another man on a sidewalk on Lafayette Street and East Eighth Street in Manhattan, New York.

2. Individuals have a right under the First Amendment of the Constitution to record police officers in public spaces acting in their official capacities. The NYPD maintains a

widespread practice and custom of arresting, threatening to arrest, or otherwise interfering with the exercise of the right to record police officers in public places. This widespread practice infringes the First Amendment rights of individuals recording or attempting to record police officers performing their official duties.

3. This action is brought by Plaintiff Ruhen An pursuant to the First Amendment of the United States Constitution and 42 U.S.C. § 1983. The practices of the NYPD violate Mr. An's First Amendment rights.

4. The City's infringement of Plaintiff's rights was not an anomaly. Regardless of formal policy, the NYPD maintains a widespread practice of arresting or otherwise interfering with individuals who record or attempt to record NYPD officers performing their official duties in public places. Given this pattern of NYPD conduct, Mr. An faces a risk of suffering future unconstitutional infringement of his First Amendment rights whenever he attempts to record police officers.

5. Plaintiff seeks declaratory and injunctive relief to ensure that the NYPD's widespread practice of interfering with individuals who record or attempt to record NYPD officers performing their official duties in public places does not violate the First Amendment to the United States Constitution, and such other and further relief as this Court deems equitable and just.

JURISDICTION AND VENUE

6. This action is brought pursuant to 42 U.S.C. § 1983 and the First Amendment to the Constitution of the United States. Jurisdiction is conferred upon this Court under 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4), as this is a civil action arising under the Constitution and

laws of the United States. This court has jurisdiction to grant declaratory relief under 28 U.S.C. §§ 2201 and 2202.

7. Venue is proper here pursuant to 28 U.S.C. § 1391(a), (b), and (c) because all of the events giving rise to Plaintiff's claims occurred in the Southern District of New York.

8. Plaintiff brings this action to vindicate the public interest, and the resolution of this case will directly affect the rights of all New Yorkers. Therefore, to the extent that the notice of claim requirement of N.Y. Gen. Mun. Law §§ 50-c and 50-i would otherwise apply to any of the claims below, Plaintiff is not obligated to provide notice to Defendant because this case falls within the public interest exception to the notice of claim requirement.

PARTIES

9. Plaintiff Ruben An is a 24-year-old man who at all times relevant herein has been a citizen of the United States residing in Queens County, State of New York.

10. Defendant City of New York is a municipal entity created and organized under the laws of the State of New York. The City is authorized by law to maintain a police department, which acts as its agent for purposes of law enforcement and for which the City is responsible. The City is responsible for the policy, practice, supervision, implementation, and conduct of all New York Police Department matters and is responsible for the appointment, training, supervision, discipline and retention, and conduct of all NYPD personnel. The City is responsible for enforcing the rules of the NYPD, and for ensuring that NYPD personnel obey the laws of the United States and the State of New York.

STATEMENT OF FACTS

The Arrest and Detention of Ruben An

11. On July 28, 2014, between approximately 6:00 p.m. and 6:30 p.m., NYPD officers Bekim Becaj, Joseph Novellino, and Michael Digiacommo observed a man lying on the ground next to a phone booth on the sidewalk on East 8th Street and Lafayette Street in Manhattan, New York. The officers stopped their vehicle, got out of the car, obtained the man's information, and called an ambulance. The officers waited with the man for the ambulance to arrive. (Ex. A at 25:00 – 27:50).

12. Plaintiff Ruben An was walking in the vicinity of Lafayette Street and East 9th Street in Manhattan, New York when he observed the three police officers standing next to the phone booth, interacting with the man. In particular, Mr. An observed the officers appearing to question the man about an object he was holding. Mr. An approached the area and, standing on the curb, began to film the interaction using his cellphone. (Ex. A at 30:40 – 31:50).

13. The entire incident described above and below was captured in two separate recordings. The management company of the building where the incident occurred, Vornado Realty, maintains a surveillance camera that records the sidewalk on Lafayette Street and East 9th Street. That camera captured the entire interaction between Mr. An and the police officers on July 28, 2014. The surveillance video of the incident is attached to this Complaint as **Exhibit A**. Mr. An also recorded a portion of his interaction with the officers on his cellular phone. The video of the incident taken by Mr. An using his cellphone is attached as **Exhibit B**. Officer Becaj's actions were intended to deter and hamper Mr. An's attempt to record the events, in an exercise of his First Amendment rights.

14. Upon noticing that Mr. An had begun to film the interaction, Officer Becaj approached Mr. An and informed Mr. An that he was "in the proximity of a police investigation" and ordered him to step back. (Ex. A at 31:04; Ex. B at 00:17).

15. Mr. An moved away from the officers, and Officer Becaj advised him to step even further away, saying that he was blocking the sidewalk. (Ex. B at 00:17 – 00:21). Mr. An again complied with the request and moved further away, toward the side of the building. (Ex. A at 31:10; Ex. B at 00:21 – 00:26).

16. Officer Becaj attempted to make Mr. An stop recording the officers by informing Mr. An that he was going to "wait until people come by and then you'll get issued a summons for disorderly conduct if anyone has to go around." (Ex. A at 31:10 – 31:25; Ex. B at 00:28 – 00:50). In response to Officer Becaj's threat, Mr. An moved away from the officers again, this time backing away until he was standing almost up against the side of the building, out of the way of pedestrian traffic. (Ex. A at 31:25; Ex. B at 00:38).

17. As this exchange took place and Mr. An continued to record the interaction, several pedestrians walked by without needing to adjust their path to divert around Mr. An. (Ex. A at 31:25 – 31:44). One woman walking by can be seen apparently ducking her head under the path of Mr. An's cellphone camera. (Ex. A at 31:45; Ex. B at 1:01).

18. Officer Becaj walked toward Mr. An, informed Mr. An that he "just watched three people divert around you," and asked to see Mr. An's identification. When Mr. An did not immediately produce identification, Officer Becaj ordered Mr. An to put his phone down and stop filming and produce identification. (Ex. B at 1:06 – 1:14). As Officer Becaj approached Mr. An, Officer Becaj walked into the middle of the sidewalk, causing several pedestrians to divert around him, though none had to divert around Mr. An. (Ex. A at 31:50 – 32:00).

19. When Mr. An did not put his cellphone down and stop recording, Officer Becaj grabbed Mr. An, twisted Mr. An's arm behind his back, and forcefully pushed him against the building wall. (Ex. A at 32:30 – 33:00; Ex. B. at 1:31 – 1:41). After Officer Becaj had forced Mr.

An against the building, Officers Novellino and Digiacoimo stopped the conversation they were having with the man by the phone booth in order to participate in Mr. An's arrest.

20. Officer Becaj grabbed Mr. An's arm, causing Mr. An to drop his cellphone, which stopped recording. (Ex. B at 1:58). Officer Becaj confiscated the cellphone. (Ex. A at 33:30).

21. The officers handcuffed Mr. An and placed him in their vehicle. (Ex. A at 32:30 – 33:40).

22. Throughout Mr. An's interaction with Officer Becaj, several other individuals were standing near Mr. An. None of the other individuals were filming the police officers, and Officer Becaj did not approach the other individuals, and did not accuse anyone standing near Mr. An of obstructing pedestrians on the sidewalk. At one point, another individual stopped to observe the interaction and stood along the same wall as Mr. An. (Ex. A at 32:20). Officer Becaj did not approach this individual, ask him to move, or accuse him of obstructing the sidewalk. Although several individuals were watching this interaction, no crowd formed.¹

23. Mr. An was charged on July 28, 2014, with obstruction of governmental administration, two counts of disorderly conduct in violation of New York Penal Law 240.20 and resisting arrest in violation of New York Penal Law 205.30. Mr. An was held in police custody for approximately 15 hours.²

24. A jury trial occurred July 7-9, 2015, before Justice Gilbert Hong. The jury returned a not-guilty verdict on all counts.

¹ Officer Becaj later claimed that a crowd had fanned and that he had been required to perform crowd control, but both the videos refute that claim.

² After viewing the surveillance video, the assistant district attorney dismissed obstruction of governmental administration and one count of disorderly conduct.

25. Officers Becaj, Novellino, and Digiacomio, employed by and acting on behalf of the Defendant, harmed Mr. An by interfering with his exercise of his First Amendment rights. The complained of conduct therefore chilled the exercise of Mr. An's constitutional rights.

26. Absent declaratory and injunctive relief, Mr. An faces a high risk of future harm. For over two years, Mr. An has regularly recorded police officers conducting their official duties in public. He would like to continue doing so in the exercise of his First Amendment Rights.

27. Mr. An has at least once contacted an individual whose interaction with police officers he filmed to offer to provide the individual with his recording. Mr. An maintains involvement with civic groups that organize their members to observe and film police officers in public. He has participated in and taught community trainings on filming police officers. His ongoing filming of public police activity will therefore frequently bring him into contact with police officers in scenarios similar to the interaction he observed and attempted to record on July 28, 2014, which led the NYPD to violate his First Amendment rights.

28. Chastened, worried, and deterred by the City's response, Mr. An did not record any police interactions for several months after his arrest and recorded only rarely until the conclusion of his trial, which has resulted in acquittal on all charges.

29. Since the conclusion of the trial, Mr. An has gradually resumed filming public police activity, usually at least two times per month, but less frequently than previously because he fears future pretextual arrests and prosecution as a result of his recording of police officers. In spite of these concerns, and the anxiety he experiences while filming, Mr. An does continue to record police activity and will continue to do so going forward, as he believes that recording police officers and distributing his videos personally or via social media platforms to other

members of the community is essential to ensuring that NYPD officers are held accountable for their conduct, and useful in educating the public about police misconduct.

The NYPD's Practice and Custom of Violating the First Amendment Rights of Individuals Recording or Attempting to Record Police Officers

30. Cellphones have become nearly ubiquitous among American adults. According to the Pew Internet & American Life Project, as of summer 2015, 92% of adults in the United States own a cellphone, and 68% own a smartphone. Smartphones contain integrated cameras capable of photography, audio, and video recording, thus over two-third of the adult population in the United States carries a video recording device with them wherever they go.

31. Some members of the public, including Plaintiff, use their smartphones to take photographs, audio, and/or video recordings of police officers in order to document and hold the officers responsible for their conduct. Consequently, in recent years, in conjunction with the rise of cellphone and smartphone usage, there have been a number of incidents of police misconduct that have been recorded by individuals using their cellphones. There have additionally been several incidents in which cities and police departments have faced lawsuits challenging the conduct of police officers who have interfered with individuals who, exercising their First Amendment rights, recorded or attempted to record police activity.

32. The City and the NYPD maintain a widespread practice and custom of permitting NYPD officers to interfere with the First Amendment rights of individuals who, without interfering with police activity, record or attempt to record such activity in public places. This interference includes arresting individuals recording or attempting to record police activity, threatening to arrest such individuals, prosecuting such individuals on pretextual charges as punishment for recording police activity, and otherwise preventing or hindering individuals from recording police activity. Recent examples of this include:

a. According to a lawsuit filed in the Southern District of New York,³ NYPD officers arrested Debra Goodman for filming their interaction with a citizen requiring medical attention. Goodman took a cellphone video in 2013 on the Upper West Side of Manhattan as emergency medical technician provided aid to a woman in a wheelchair and police officers stood nearby. As Goodman filmed, an officer began recording her with his cellphone. The officer then confronted Goodman and demanded that she produce identification. When she refused to do so, she was placed under arrest. The New York County District Attorney's Office ultimately dismissed all the charges against Ms. Goodman.

b. According to a lawsuit filed in the Eastern District of New York, on December 17, 2012, Hadiya Charles was arrested for using her smartphone to record two NYPD officers as they questioned and frisked three men.⁴ On that day, in the Bedford Stuyvesant neighborhood in Brooklyn, when Charles saw the officers questioning and frisking the men, she approached them and asked what was happening. One of the officers replied that it was "police business." Subsequently, one of the officers asked Charles to step away from the scene. Charles complied with the request and stepped back and began recording the incident with her smartphone. Even though Charles was already a reasonable distance away, one of the officers tried to stop her from recording by repeatedly asking her to step further away. At no time was Charles interfering with the police officers' actions. After she had been recording for a short time, one of the officers shoved Charles when Charles told the supervising officer that she wished to file a formal complaint; she was handcuffed and placed in a police van. Charles

³*Goodman v. City of New York*, No. 14 CV 5261, (S.D.N.Y. filed July 15, 2014).

⁴ *Charles v. City of New York*, No. CV 12 6180 (E.D.N.Y. filed Dec. 17, 2012).

filed a lawsuit on December 17, 2012 that includes a claim for violation of her first Amendment rights that is ongoing in the United States District Court for the Eastern District of New York.

c. According to the New York Times,⁵ a NYPD officer, Jonathan Munoz, arrested Jason Disisto on charges of disorderly conduct, resisting arrest, and interfering with a police investigation. Officer Munoz was charged with official misconduct and lying on a criminal complaint when video from a surveillance camera showed Officer Munoz arrest Disisto when he borrowed a phone from friend and raised it to film the police as they searched Disisto's friend. The video later shows the phone thrown from a police car.

33. Upon information and belief, these examples represent only a small fraction of the actual number of recent instances of NYPD officers interfering with the First Amendment rights of individuals regarding or attempting to record police activity, who have not interfered with the officers.

34. Upon information and belief in recent years, the City and the NYPD have received numerous letters and complaints detailing attempts by police officers to chill the exercise of individuals' First Amendment rights by interfering with attempts to record or preventing the recording of police activity.

35. As a result of this ongoing, widespread practice of NYPD officers interfering with and chilling individuals' First Amendment rights, the City entered into a consent decree in which it stipulated that "it is the policy of the New York City Police Department. . . that when a person (or persons) is detained, stopped or arrested in public areas, a person or persons not involved in

⁵ James C. McKinley, Jr., *New York Officer Is Charged in Arrest of Man Who Tried to Film Him*,

N. Y. Times, Dec. 22, 2015, at A21.

the conduct for which the first person is stopped or arrested may remain in the vicinity of the stop of arrest as an onlooker or onlookers, subject to the safety of the person stopped . . . the general public, and officers None of the following constitutes probable cause for arrest or detention of an onlooker . . . (c) Taking photographs; (d) Remaining in the vicinity of the stop or arrest." Stipulation and Order, *Black v. Codd*, No. 73 Civ. 5283, 1 2 (S.D.N.Y. June 1, 1977). The NYPD's practice and custom of interfering with the rights of individuals who seek to record police activity misconstrues, or in the alternative, violates this consent decree.

36. In 2014, the NYPD put out a FINEST Message (the "FINEST Message") addressing "Recording of Police Action by the Public." The FINEST Message states, "Members of the service are reminded that members of the public are Legally allowed to record (by video, audio, or photography) police interactions. These interactions include arrest and other situations." It further prohibits NYPD officers from "interfer[ing] with a person's use of recording devices to record police interactions." Finally, it acknowledges, "intentional interference such as blocking or obstructing cameras or ordering the person to cease...violates the First Amendment." FINEST Message from Chief of Department, NYPD to All Commands, SER#: 9881632 (August 6, 2014) (on file with plaintiff attorneys). Upon information and belief, the NYPD's practice and custom of interfering with the rights of individuals who seeks to record police activity violates this FINEST Message.

37. Upon information and belief, the NYPD has not instituted any training, monitoring, or supervision to ensure that officers comply with the consent decree and FINEST Message, and refrain from violating First Amendment rights through suppression of videotaping. Upon information and belief, the current training NYPD officers receive does not sufficiently train, monitor, supervise or discipline officers to identify circumstances under which officers are

required to allow individuals to record police activity. The violation of Mr. An's rights was a direct result of deficiencies in training, monitoring, and supervising police officers, for which the City is responsible. The longstanding pattern of constitutional violations by NYPD officers should have provided notice to the City and its policymakers.

38. As a result of this failure to adequately train, monitor, supervise, and discipline NYPD officers to ensure compliance with the policy of the FINEST Message, the NYPD has continued to have a widespread practice and custom of interfering with the rights of individuals who record or attempt to record police officers performing their official duties in public places. This continued interference includes arresting or threatening to arrest individuals recording police activity, and otherwise preventing or hindering such individuals from recording the police. Examples of such action by the NYPD after the FINEST Message include:

a. According to a lawsuit filed in the Southern District of New York, Clemente Beckford, Ruth Beckford, and Benjamin Beckford were standing in front of their home on August 10, 2015 when NYPD officers approached, handcuffed, and searched Clemente. Officers turned next to Ruth, despite the fact that they did not find contraband on Clemente. Benjamin started recording the incident and, as a result, was arrested by the officers. Benjamin was released without charges and without explanation, while Ruth was charged with obstructing governmental administration and Clemente was charged with sale of a controlled substance in the third degree. All charges were eventually dismissed.⁶

b. According to a lawsuit filed in the Eastern District of New York, plaintiffs were having a barbecue in their front yard on July 3, 2015 when NYPD officers arrived

⁶ *Beckford v. City of New York*, No. 16 cv 00261 (S.D.N.Y., file Mar. 28, 2016).

and began detaining and searching people at the barbecue. When Plaintiff Luis Gomez began recording the incident, the officers grabbed and handcuffed him. An NYPD officer told Gomez to put the phone away just before detaining him. Plaintiff Williams was charged with obstructing governmental administration, Plaintiff John was charged with obstructing governmental administration, resisting arrest, and harassment, and Plaintiff Gomez was charged with disorderly conduct. Williams' case was dismissed and the other two were adjourned in contemplation of dismissal.⁷

c. According to a lawsuit filed in the Southern District of New York, plaintiff Joel Delorbe-Bell was a passenger in a car that was pulled over by the N YPD for having tinted windows on January 20, 2015. The plaintiff began recording the incident, and the officers ordered him to get out of the car, grabbed him by the hand in which he was holding his phone, searched him, and handcuffed him. Plaintiff was taken to the 44th Precinct and released with a summons for disorderly conduct, which was dismissed at the first court appearance.⁸

d. According to a lawsuit filed in the Southern District of New York, plaintiff Deyan Fang was working as a street vendor selling his drawings on September 5, 2014 when NYPD officers approached him and asked for identification. The plaintiff complied and started recording the incident. The NYPD officers arrested him and charged him with resisting arrest and a statutory violation for vending within ten feet of a crosswalk. The charges were adjourned in contemplation of dismissal. The plaintiff's

⁷ *John v. Demaio*, No. 15 cv 06094 (E.D.N.Y., filed Oct. 22, 2015).
& *Delorbe-Bell v. City of New York*, No. 15 cv 02344 (S.D.N.Y., filed Feb. 4, 2016).

phone was held by the District Attorney's Office for two months, and when it was returned, the video of the incident had been deleted.⁹

39. Upon information and belief, these examples represent only a small fraction of the actual number of instances after the FINEST Message of NYPD officers interfering with the First Amendment rights of individuals recording or attempting to record police activity, without interfering with the officers.

40. The City's failure to train, monitor, supervise, and discipline NYPD officers to respect individuals' First Amendment rights amounts to deliberate indifference to the constitutional violations committed by the NYPD against individuals including Mr. An. Given the ubiquity of cameras and smartphones, the City should have anticipated that individuals would attempt to record police performing their official duties in public places. The City knows, or should have known, that NYPD officers have a history of mishandling situations and committing constitutional violations where a member of the public attempts to record police activity.

41. The NYPD's practice and custom of interfering with individuals who, without interfering with police activity, record or attempt to record police officers is so persistent, widespread, and pervasive as to constitute a custom or usage and imply the constructive knowledge or acquiescence of the City and its policymakers. The numerous instances of abuse, a small number of which are described above, particularly given that a number of lawsuits have been filed against the City, the NYPD, and NYPD officers demonstrates that the City is, or should have been, aware of the constitutional violations committed by the NYPD. The constitutional violations are so numerous, persistent, and pervasive that the need for corrective action is obvious, and the City's failure to take any such action constitutes deliberate indifference

⁹ *Fang v. City of New York*, No. 15 cv 04886 (S.D.N.Y., filed Nov. 9, 2015).

to the violations. This deliberate indifference to the NYPD's widespread deprivation of constitutional rights can be considered a policy, practice, or custom of the City.

FIRST CLAIM

Violation of Plaintiff's First Amendment Rights

42. Plaintiff repeats and realleges each and every allegation set forth above as if set forth herein.

43. Plaintiff has an interest protected by the First Amendment. Plaintiff was exercising his First Amendment interest when he recorded police officers on July 28, 2014. Mr. An's arrest and prosecution were motivated or substantially caused by his exercise of his First Amendment right to record police performing their official duties in a public place.

44. At all relevant times the arresting officer, Officer Becaj, was an agent, servant, and employee acting within the scope of his employment as a police officer by the City of New York and the NYPD. The City of New York is responsible for Officer Becaj's conduct and for the arrest and prosecution of the Plaintiff.

45. All acts complained of herein were carried out by NYPD officers in their capacities as police officers and pursuant to the customs and practices of the City, including the NYPD.

46. The NYPD maintains a widespread practice and custom of failing to respect the First Amendment rights of individuals who, without interfering with police activity, record or attempt to record police officers performing official duties in a public place. The actions of Officer Becaj and the other arresting officers reflect the customs and practices of the NYPD and the City. These customs and practices resulted in a violation of Plaintiff's First Amendment rights. They include, but are not limited to: 1) threatening to arrest and otherwise punish Plaintiff

for recording NYPD officers performing their official duties in a public place; 2) arresting Plaintiff on pretextual charges because he was recording police officers; and 3) seizing and depriving Plaintiff of the use of the cellular phone he was using to record the NYPD officers.

47. The City, through its policymakers and agents, condoned, permitted, encouraged, and/or ratified the NYPD practices and customs challenged herein, which allowed NYPD officers to disregard and violate Mr. An's exercise of his First Amendment rights when he attempted to record NYPD officers performing their official duties on July 28, 2014.

48. Furthermore, the City, through its policymakers and agents, has been deliberately indifferent to the rights of individuals, such as Mr. An, who come into contact with NYPD officers as they record or attempt to record the officers. The City failed to adequately train, monitor, supervise, and discipline its officials, employees, and agents, including the NYPD and Officer Becaj specifically, to respect and not violate the First Amendment rights of individuals such as Mr. An. As a result of the City's failure, Mr. An's First Amendment rights were violated when he was arrested due to his attempt to record police activity.

49. The practices and customs of the NYPD condone or tacitly authorize NYPD officers – acting as employees and agents of the City – to engage in unconstitutional seizures of cameras being used for First Amendment activity. These practices and customs caused Mr. An to suffer a violation of his constitutional rights and were the moving force behind the deprivation of Mr. An's constitutional rights.

50. Plaintiff's arrest and prosecution effectively chilled and infringed upon his exercise of his First Amendment rights. Thus, Plaintiff suffered injury as a result of the Defendant's conduct.

JURY DEMAND

51. Plaintiff demands a trial by jury of all issues so triable.

PRAYER FOR RELIEF

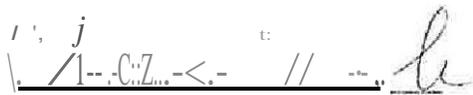
WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

A. A declaratory judgment that the City violated the Plaintiff's rights under the First Amendment to the Constitution of the United States and 42 U.S.C. § 1983, and that Mr. An's attempted recording of NYPD officers on July 28, 2014 was an act protected by the First Amendment to the Constitution.

B. A permanent injunction restraining the City of New York and its employees from punishing or otherwise retaliating against the Plaintiff or any other individual who, without interfering with police activity, records or attempts to record police officers who are performing official duties in a public place.

C. Such other and further relief as the Court deems just and proper.

Dated: July 6, 2016
New York, New York



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