

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

ANTHONY HALL, CRAIG PURITT and
SHAMELL KILLINGS,

Plaintiff,

-against-

THE CITY OF ROCHESTER, a municipal
entity, MICHAEL STEPHENS, BRYANT
JOHNSON, MICHAEL MUNIOR, VICTOR
MARTINEZ, CARLOS OQUENDO, ROBERT
TROSINSKI, JOHN DOES NOS. 1-10,

Defendants.

COMPLAINT

CASE NO.:

PRELIMINARY STATEMENT

Plaintiffs ANTHONY HALL, CRAIG PURITT and SHAMELL KILLINGS, by their attorneys, ROTH & ROTH, LLP, complaining of the defendants, respectfully allege, upon information and belief, as follows:

1. Plaintiffs bring this civil rights lawsuit against the CITY of Rochester (“CITY”) to challenge the unlawful municipal policies, practices and customs of the Rochester Police Department (“Police Department” and “RPD”), as carried out against them through the wrongful acts and omissions of certain of the employees and agents of the Police Department. Plaintiffs seek relief for the violation of their rights secured by the Civil Rights Acts of 1866 and 1871, 42 U.S.C. Sections 1983 and 1985, of their rights secured by the First, Fourth, and Fourteenth Amendments to the United States Constitution.

2. On May 27, 2018, at approximately 1:30 a.m., Plaintiffs Craig Puritt, Anthony Hall, and Shamell Killings were walking east on the sidewalk of Monroe Avenue in the vicinity of Meigs Street. Mr. Puritt was walking approximately half a block behind Mr. Hall and Mr. Killings, when he attempted to walk around Defendant RPD Officer Michael Stephens (“STEPHENS”)¹, who was arresting a man named James Pacheco.

3. As Mr. Puritt walked past STEPHENS, he did not interfere with the arrest of Pacheco in any way. Nevertheless, without cause or justification, STEPHENS pushed Mr. Puritt in the chest, seized him, attempted to throw him on the ground and punched him in the face. When Mr. Puritt put his hands above his head and stated, “I’m not resisting,” Sergeant BRYANT JOHNSON and Officer MICHAEL MUNIER seized Mr. Puritt, placed him in a headlock and choked him, then pulled his arms behind his back and placed handcuffs on his wrists. After JOHNSON and MUNIER seized him, STEPHENS punched Mr. Puritt multiple times in the body and pepper sprayed Mr. Puritt directly in the eyes from within one foot.

4. When Mr. Hall and Mr. Killings saw that STEPHENS was assaulting Mr. Puritt, they approached the vicinity with their cell phones in their hands to photograph and/or video record the incident. In retaliation, STEPHENS struck Mr. Killings in the hand, knocking his phone to the ground, kicked his phone, and then struck him multiple times in his right knee—on which he was wearing a large, visible knee brace due to a preexisting injury.

¹ Also known as “Michael Feldman”.

5. In retaliation against Mr. Hall, STEPHENS struck Mr. Hall in the hand and seized his phone from his hand and attempted to place it in a trash bin. He then punched him in the face, struck him in the head with his baton, and physically seized him. Officers MUNIOR, MARTINEZ, OQUENDO and TROSINSKI then physically seized Mr. Hall, pulled his arms behind his back and applied handcuffs to his wrists. As Mr. Hall was being handcuffed, STEPHENS pepper sprayed him in the face from just inches away for no reason.

6. Defendants arrested and falsely charged Mr. Puritt, Mr. Killings and Mr. Hall with Obstruction of Governmental Administration, based upon the fabricated account of their interactions with Plaintiffs in official police paperwork. Eventually, after approximately two appearances in criminal court, the court granted the District Attorney's motion to dismiss all charges against Plaintiffs.

7. The entire incident was recorded on the officers' body worn cameras and the CITY's blue light cameras.

8. Following the incident, the RPD's Professional Standards Section reviewed the video recordings and investigated the incident, and "substantiated" charges against STEPHENS for falsely arresting and using excessive force against Plaintiffs; and also substantiated charges against JOHNSON for his failure to supervise STEPHENS at the scene.

9. Former RPD Chief Michael Ciminelli concurred with the conclusions of the Professional Standards Section and substantiated the charges against STEPHENS for falsely arresting and using excessive force against Plaintiffs; and

substantiated charges against JOHNSON for his failure to supervise STEPHENS at the scene.

10. But STEPHENS should not have been on the street as a patrol officer on May 27, 2018—as the CITY and the RPD knew he had a long history of using excessive force and seriously injuring people but had never disciplined him.

11. Specifically, on August 21, 2014, STEPHENS brutally attacked a young man named Dudley Scott after he was handcuffed and posed no threat to officers or anyone else. For approximately five minutes, STEPHENS repeatedly punched Mr. Scott in the face, fracturing his right orbital socket and leaving him permanently blind in his right eye. In total, STEPHENS struck Mr. Scott more than 11 times and shot him with a TASER stun three times—all while Mr. Scott was handcuffed and defenseless.

12. Eventually, on or about February 10, 2018, the CITY paid Dudley Scott \$750,000 to settle his excessive force case against the CITY , STEPHENS and other RPD officers involved in the incident.

13. However, between August 21, 2014—when STEPHENS’ brutally attacked and blinded Dudley Scott—and the May 27, 2018 incident in this case, Stephens was never disciplined by the CITY or the RPD and was permitted to remain on active police duty, making arrests and using force against citizens of Rochester.

14. When Stephens brutally attacked Dudley Scott, he was a Defensive Tactics Instructor for the RPD, a role in which he trained other RPD officers in the “appropriate” amount of force that could be employed in various situations. Upon

information and belief, after the brutal August 21, 2014 attack of Mr. Scott, Stephens remained a Defensive Tactics Instructor.

15. If the CITY and RPD had properly disciplined Stephens after the August 21, 2014 incident where he blinded Dudley Scott, either by terminating his employment or taking him off the street and placing him on desk duty, then he never would have been able to violently attack Plaintiffs on May 27, 2018.

16. This lawsuit seeks to hold the CITY liable for the above misconduct, as further detailed below, under the federal civil rights statute, 42 U.S.C. § 1983, and *Monell v. Dept. Of Social Services*, 436 U.S. 658 (1978). The unlawful actions of Stephens and the other Defendant RPD officers documented in this lawsuit resulted from affirmative or *de facto* municipal policies, practices and customs to violate the constitutional rights of arrestees, and from deliberate indifference by policy-making officials, acting on behalf of the CITY of Rochester, to such violations.

17. As Plaintiffs will demonstrate, the RPD, as a matter of policy, deliberately fails to discipline officers like Stephens who use excessive force, and instead permits officers to fabricate evidence against arrestees to falsely charge them with crimes they did not commit, to suppress and destroy evidence favorable to arrestees and criminal defendants, and to testify falsely in court to cover up their unlawful behavior. In the rare case where such misconduct has been exposed through video recordings, court proceedings, or internal investigations, the CITY and RPD have not imposed adequate discipline against the offending employees, but instead

have praised and promoted them, thereby encouraging future constitutional violations to occur, including those directed against Plaintiffs.

18. The grounds for this action arise out of these wrongful, unlawful, and improper acts of these defendants, including, without limitation, false arrest and excessive force.

II. PARTIES

19. Plaintiffs ANTHONY HALL, CRAIG PURITT and SHAMELL KILLINGS are citizens of the United States and residents of the County of Monroe, State of New York.

20. Defendant CITY OF ROCHESTER (“CITY”) is a municipal entity created and authorized under the laws of the State of New York and is a resident of the Western District of New York.

21. Defendant CITY is authorized by law to maintain a police department, which acts as its agent in the area of law enforcement and for which it is ultimately responsible. Defendant CITY assumes the risks incidental to the maintenance of a police force and the employment of police officers as said risks attach to the public consumers of the services provided by the Rochester Police Department.

22. Defendants Rochester Police Department (“RPD”) POLICE OFFICER (“P.O.”) MICHAEL STEPHENS (“STEPHENS”)², SERGEANT (“SGT.”) BRYANT JOHNSON (“JOHNSON”) P.O. MICHAEL MUNIOR (“MUNIOR”), P.O. VICTOR MARTINEZ (“MARTINEZ”), CARLOS OQUENDO (“OQUENDO”), P.O. ROBERT

² Formerly known as Michael Feldman.

TROSINSKI (“TROSINSKI”) JOHN DOES NOS. 1-10 (“John Does”, the names and number of whom are currently unknown) and (“Defendant RPD Officer(s),” or Defendant Police Officer(s)), are and were at all times relevant herein, officers, employees and agents of the Defendant CITY and the RPD. The Defendant RPD Officers are being sued in their individual and official capacities.

23. Upon information and belief, at all times relevant herein, STEPHENS was a Defensive Tactic Instructor for the RPD, which involves training recruits and other officers in everything from handcuffing up through the escalation of force chart. Upon information and belief, at all times relevant herein, STEPHENS was also a Field Training Officer for the RPD, which involves hands-on training of new officers in the field after they graduate from the police academy. As both the Defensive Tactics Instructor and a Field Training Officer for the RPD, STEPHENS is a municipal policymaker with respect to the RPD’s use of force policies and training.

24. At all times relevant herein, the individual Defendant RPD Officers were acting under color of state law in the course and scope of their duties and functions as agents, servants, employees and officers of the Defendant CITY, and otherwise performed and engaged in conduct incidental to the performance of their lawful functions in the course of their duties. They were acting for and on behalf of the RPD at all times relevant herein, with the power and authority vested in them as officers, agents and employees of the RPD and incidental to the lawful pursuit of their duties as officers, employees and agents of the RPD.

25. The individual Defendant Police Officers' acts hereafter complained of were carried out intentionally, recklessly, with malice, and in gross disregard of plaintiff's rights.

26. At all relevant times, the individual defendants were engaged in joint ventures, assisting each other in performing the various actions described herein and lending their physical presence in support and the authority of their offices to one another.

III. STATEMENT OF FACTS

A. Craig Puritt

27. On May 27, 2018, at approximately 1:30 a.m., Mr. Puritt was walking east on Monroe Avenue in the vicinity of Meigs Street.

28. As Mr. Puritt was walking east on the sidewalk on Monroe Avenue, STEPHENS and JOHNSON were arresting nonparty James Pacheco.

29. Mr. Puritt attempted to walk past STEPHENS and JOHNSON.

30. Mr. Puritt did not interfere with the arrest of Pacheco.

31. Suddenly, without cause or legal justification, STEPHENS pushed Mr. Puritt in the chest.

32. Mr. Puritt protested that STEPHENS had pushed him for no reason.

33. Mr. Puritt then continued walking east down the sidewalk.

34. STEPHENS retaliated against Mr. Puritt by chasing him, physically seizing him and attempting to throw him on the ground.

35. STEPHENS also punched Mr. Puritt in the face.

36. Mr. Puritt put his hands up above his head and stated, "I'm not resisting."

37. JOHNSON and MUNIER then physically seized Mr. Puritt.

38. STEPHENS, JOHNSON and MUNIER then slammed Mr. Puritt's body against the side of a police vehicle.

39. STEPHENS, JOHNSON and/or MUNIER punched Mr. Puritt in the body numerous times.

40. STEPHENS, JOHNSON and/or MUNIER struck Mr. Puritt in the body with a baton.

41. STEPHENS, JOHNSON and/or MUNIER placed their arm and/or hands around Mr. Puritt's neck and choked him.

42. STEPHENS, JOHNSON and MUNIER pulled Mr. Puritt's hands behind his back and placed handcuffs upon his wrists, without cause or legal justification.

43. The objective facts known to STEPHENS, JOHNSON and MUNIER did not provide them with reasonable or probable cause to believe Mr. Puritt had committed any criminal act or violation.

44. Nevertheless, STEPHENS, JOHNSON and MUNIER arrested Mr. Puritt, without cause or legal justification.

45. Pursuant to the policies, practices and customs of the CITY and the RPD, STEPHENS fabricated his account of his interaction with Mr. Puritt in official police paperwork to initiate the malicious prosecution of Mr. Puritt for Obstruction of Governmental Administration, to justify his unlawful actions.

46. Pursuant to the policies, practices and customs of the CITY and the RPD, STEPHENS fabricated his account of his interaction with Mr. Puritt in official police paperwork to justify his unlawful use of force against Mr. Puritt.

47. Lieutenant Laszlo Tordai, Commanding Officer of the RPD's Professional Standard's Section concluded that, "the arrest of Puritt should have never occurred and the actions of Officer Stephens were not a reasonable response to the situation encountered because there was insufficient cause to initiate an arrest of Puritt" and that "the arrest of Puritt was unlawful."

48. Tordi's conclusion detailed in the above paragraph was true at the time he made it.

49. Former RPD Chief Michael Cimenelli concurred with this finding and substantiated Mr. Puritt's claim that STEPHENS' falsely arrested him.

50. The Professional Standards Section and Chief Cimenelli also substantiated Mr. Puritt's allegations that STEPHENS used excessive force against him.

51. The conclusions detailed in the above paragraph were true at the time they were made.

52. The Professional Standards Section concluded that STEPHENS' account of his interaction with Mr. Puritt "to assist in the justification of the force he utilized appears inaccurate and/or exaggerated."

53. The conclusion in the above paragraph was true at the time it was made.

54. The Professional Standards Section found that STEPHENS' claim that Mr. Puritt "looked at his waist, indicating that Puritt had a possible interest in his duty belt," was "pure speculation, and only serves as further justification to support the pushing of Puritt."

55. The conclusion in the above paragraph was true at the time it was made.

56. The Professional Standards Section concluded that STEPHENS falsely claimed that his OC container malfunctioned, and he did not pepper spray Mr. Puritt.

57. The conclusion in the above paragraph was true at the time it was made.

58. The Professional Standards Section found that, "at the time he was sprayed with OC, Puritt's body was bent forward with Sergeant Johnson and Officer Munier maintaining control of his arms, as they attempted to handcuff him. The fact that Puritt had ceased his resistance supports that officer Stephens' use of OC Spray on Puritt was unnecessary and/or excessive."

59. The conclusion in the above paragraph was true at the time it was made.

60. JOHNSON and MUNIER failed to intervene to prevent STEPHENS' unlawful use of force against Mr. Puritt, despite having had the time and opportunity to do so.

61. JOHNSON and MUNIER also used force against Mr. Puritt without cause or legal justification.

62. JOHNSON and MUNIER knew that they lacked reasonable or probable cause to arrest Mr. Puritt for any crime or violation.

63. JOHNSON was STEPHENS' supervisor and the highest ranking officer on the scene, and he failed to supervise and control STEPHENS and prevent him from unlawfully arresting and using excessive force against Mr. Puritt.

64. The Professional Standards Section and Chief Cimenelli also concluded that JOHNSON failed to supervise STEPHENS at the scene.

65. The conclusion in the above paragraph was true at the time it was made.

66. JOHNSON's failure to supervise caused STEPHENS to falsely arrest and use excessive force against Mr. Puritt.

67. Mr. Puritt was forced to return to criminal court on approximately two occasions before all the false charges were dismissed in their entirety.

68. As a result of getting pepper sprayed and punched in the face, Mr. Puritt had severe pain and swelling in his face and eyes.

69. Because of the foregoing, Mr. Puritt sustained, *inter alia*, physical pain, permanent physical injuries, mental injuries, emotional distress, embarrassment, humiliation, loss of standing in the community, adverse employment consequences, loss of liberty, and deprivation of their common law and constitutional rights, and seek compensation in an amount to be determined at trial.

B. Shamell Killings

70. On May 27, 2018, at approximately 1:30 a.m., Mr. Killings was walking with Mr. Hall, ahead of their friend Mr. Puritt, eastbound on Monroe Avenue in the vicinity of Meigs Street.

71. On the night of the incident, May 27, 2018, Mr. Killings was wearing a knee brace on his right knee because he had preexisting knee injuries—including a torn meniscus and two sprains.

72. As he was walking, Mr. Killings turned around to see where Mr. Puritt was, and saw he was being assaulted by STEPHENS.

73. Mr. Killings approached the vicinity where STEPHENS was assaulting Mr. Puritt to inquire about what was going on.

74. When Mr. Killings approached the vicinity where STEPHENS was assaulting Mr. Puritt, he had his cell phone in his right hand.

75. Mr. Killings remained at least five feet away from STEPHENS and did not interfere with his arrest of Mr. Puritt in any way.

76. STEPHENS immediately approached Mr. Killings and struck him in the right hand (the hand in which he was holding his phone) with a baton, without cause or legal justification.

77. As a result of STEPHENS hitting him in the hand, Mr. Killings' phone fell to the ground.

78. STEPHENS then kicked Mr. Killings' phone.

79. When Mr. Killings bent down to pick up his phone, STEPHENS struck him in the right knee three times with a baton.

80. Mr. Killings was wearing a large brace on his right knee that would have been obvious to STEPHENS before he struck him three times in the knee with the baton.

81. As a result of STEPHENS striking him three times in the knee with a baton, Mr. Killings' preexisting knee injuries—including a torn meniscus and two sprains—were exacerbated, and he suffered extreme pain, bruising and swelling.

82. Mr. Killings was detained by officers and was not free to leave the scene.

83. Mr. Killings was arrested without reasonable or probable cause to believe that he had committed any crime or violation.

84. Upon information and belief, STEPHENS struck Mr. Killings in the hand, kicked his phone, struck him with the baton multiple times and pepper sprayed him, and falsely arrested him in retaliation for Mr. Killings taking photos and/or video recordings of his unlawful actions.

85. JOHNSON ordered STEPHENS to issue Mr. Killings a ticket for Obstruction of Governmental Administration, despite knowing Mr. Killings had not interfered with the arrest of Mr. Puritt or committed any other crime or violation.

86. Pursuant to the policies, practices and customs of the CITY and the RPD, STEPHENS fabricated his account of his interaction with Mr. Killings in official police paperwork to initiate the malicious prosecution of Mr. Killings for Obstruction of Governmental Administration.

87. After approximately two appearances in criminal court, all charges were dismissed at the request of the Monroe County District Attorney's Office.

88. Pursuant to the policies, practices and customs of the CITY and the RPD, STEPHENS fabricated his account of his interaction with Mr. Killings and falsely claimed that he took a "fighting stance" in official police paperwork in an attempt to justify his unlawful use of force against Mr. Killings.

89. Lieutenant Laszlo Tordai, Commanding Officer of the RPD's Professional Standard's Section concluded that, "[t]he evidence relative to this allegation refutes the testimony and reports completed by Officer Stephens," and that Mr. Killings "maintained a respectful distance throughout the incident and in no fashion attempted to interfere with the actions of the officers," and thus that "the arrest of Killings was improper."

90. The conclusions in the above paragraph were true at the time it was made.

91. Lieutenant Tordai went on to conclude that, "that the arrest of Killings should have never occurred, and the actions of Officer Stephens were not a reasonable response to the situation encountered because there was insufficient cause to initiate an arrest of Killings."

92. The conclusion in the above paragraph was true at the time it was made.

93. The Professional Standards Section found that STEPHENS fabricated and/or exaggerated his account of his interaction with Mr. Killings to justify his unlawful use of force.

94. The Professional Standards Section concluded that STEPHENS' account of his interaction with Mr. Killings was fabricated "to assist in the justification of the force he utilized [and] appears inaccurate and/or exaggerated."

95. The conclusion in the above paragraph was true at the time it was made.

96. The Professional Standards Section found that when STEPHENS hit Mr. Killings in the right knee with the baton, he "approached Killings from several feet away to perform the forward strikes on Killings, who appears to be doing nothing more than attempting to locate his phone," and that STEPHENS multiple strikes to Mr. Killings' body and right knee were "unnecessary and/or excessive."

97. The conclusions in the above paragraph were true at the time it was made.

98. Former RPD Chief Michael Cimenelli concurred with this finding and substantiated Mr. Killings' claim that STEPHENS' falsely arrested him.

99. The Professional Standards Section and Chief Cimenelli also substantiated Mr. Killings' allegations that STEPHENS used excessive force when he struck Mr. Killings with a baton in the hand and knee.

100. The Professional Standards Section and Chief Cimenelli also concluded that JOHNSON failed to supervise STEPHENS at the scene.

101. The conclusion in the above paragraph was true at the time it was made.

102. The Professional Standards Section and Chief Cimenelli substantiated Mr. Killings' allegations that JOHNSON failed to supervise STEPHENS at the scene.

103. JOHNSON's failure to supervise caused STEPHENS to violate Mr. Killings' rights by falsely arresting him and using excessive force against him.

104. Mr. Killings was forced to return to criminal court on approximately two occasions before all the false charges were dismissed in their entirety.

105. As a result of getting pepper sprayed and struck with a baton multiple times, Mr. Killings had severe pain to his eyes, and swelling in right knee and exacerbation of his preexisting right knee injuries.

106. As a result of this incident, Mr. Killings faced adverse employment consequences and was subjected to a formal investigation at his job.

107. Because of the foregoing, Mr. Killings sustained, *inter alia*, physical pain, permanent physical injuries, mental injuries, emotional distress, embarrassment, humiliation, loss of standing in the community, adverse employment consequences, loss of liberty, and deprivation of their common law and constitutional rights, and seek compensation in an amount to be determined at trial.

C. Anthony Hall

108. On May 27, 2018, at approximately 1:30 a.m., Mr. Hall was walking east on Monroe Avenue in the vicinity of Meigs Street.

109. Mr. Hall was walking with Mr. Killings, in front of Mr. Puritt, eastbound on Monroe Avenue.

110. Mr. Hall turned around to see where Mr. Puritt was, and saw he was being assaulted by STEPHENS.

111. When Mr. Hall approached the vicinity of where STEPHENS was assaulting Mr. Puritt, he had his cell phone in his hand to take pictures and/or video record the interaction.

112. When Mr. Hall approached the vicinity of where STEPHENS was assaulting Mr. Puritt, he maintained a respectful distance and never interfered with STEPHENS in any way.

113. Suddenly, without cause or legal justification, STEPHENS struck Mr. Hall in the hand, removed his cell phone, and attempted to put the phone in a trash can.

114. Upon information and belief, STEPHENS attempted to place Mr. Hall's cell phone in the trash can in retaliation for Mr. Hall taking photos and/or video recordings of his unlawful actions.

115. STEPHENS immediately punched Mr. Hall in the face, without cause or legal justification.

116. Mr. Hall then protested to JOHNSON that STEPHENS had punched him in the face for no reason and requested that he intervene and protect him.

117. JOHNSON failed to intervene to protect Mr. Hall from STEPHENS.

118. STEPHENS then approached Mr. Hall and struck him in the head with his baton, without cause or legal justification.

119. STEPHENS then physically seized Mr. Hall without cause or legal justification, ripping his jacket off his body.

120. Thereafter, MUNIOR, MARTINEZ, OQUENDO and TROSINSKI physically seized Mr. Hall, pulled his arms behind his back, and applied handcuffs to his wrists in an unreasonably tight manner.

121. As Mr. Hall was being handcuffed, STEPHENS pepper sprayed him in the face from close range, without cause or legal justification.

122. MUNIOR, MARTINEZ, OQUENDO, TROSINSKI and JOHNSON failed to intervene to prevent STEPHENS from pepper spraying Mr. Hall in the face from close range, despite having the time and opportunity to do so.

123. STEPHENS arrested Mr. Hall and charged him with Obstruction of Governmental Administration.

124. Mr. Hall did not physically interfere with STEPHENS in any way, did not commit Obstruction of Governmental Administration, and did not commit any other crime or violation.

125. Pursuant to the policies, practices and customs of the CITY and the RPD, STEPHENS fabricated his account of his interaction with Mr. Hall in official police paperwork to initiate the malicious prosecution of Mr. Hall for Obstruction of Governmental Administration.

126. Pursuant to the policies, practices and customs of the CITY and the RPD, STEPHENS fabricated his account of his interaction with Mr. Hall in official police paperwork to justify his unlawful use of force against Mr. Hall.

127. After approximately two appearances in criminal court, all charges were dismissed at the request of the Monroe County District Attorney's Office.

128. Lieutenant Laszlo Tordai, Commanding Officer of the RPD's Professional Standard's Section concluded that, "The investigation revealed that the evidence does not support any justification for the arrest of Hall, especially for the charge of Obstructing Government Administration, which requires some form of physical interference to the investigation. The evidence supports that Hall's actions did not constitute any interference of the officers, nor did Hall's actions warrant an arrest for any offense. Though Hall was initially in close proximity to the arrest of his friend, Puritt, it is clear that Hall's presence was not one of interference but as an onlooker who was concerned for a friend."

129. The conclusions in the above paragraph were true at the time they were made.

130. The Professional Standards Section also concluded that STEPHENS falsely claimed that his OC container malfunctioned, and he did not pepper spray Mr. Hall.

131. The conclusions in the above paragraph were true at the time they were made.

132. The Professional Standards Section concluded that, "As Hall is just standing on the sidewalk, a respectful distance from any arrest or police action, and appearing to do nothing more than attempting to video the incident on his phone, Officer Stephens snatches Hall's phone out of his hands, and puts [it in] a garbage receptacle without providing an explanation." Then when Mr. Hall objects, "Stephens then order Hall to put his hands behind his back."

133. The conclusions in the above paragraph were true at the time they were made.

134. The Professional Standards Section concluded that STEPHENS unnecessarily struck Mr. Hall in the head with his baton.

135. The conclusions in the above paragraph were true at the time they were made.

136. The Professional Standards Section and Chief Cimenelli also concluded that JOHNSON failed to supervise STEPHENS at the scene.

137. The conclusions in the above paragraph were true at the time they were made.

138. The Professional Standards Section and Chief Cimenelli also substantiated Mr. Hall's allegations that JOHNSON failed to supervise STEPHENS at the scene.

139. JOHNSON's failure to supervise caused STEPHENS to falsely arrest Mr. Hall and use excessive force against him.

140. At the time of the incident, Mr. Hall worked as a Gang Specialist for the CITY's Department of Recreation.

141. As a result of this incident, Mr. Hall was placed on desk duty and subjected to a formal investigation at his job.

142. Because of the foregoing, Mr. Hall sustained, *inter alia*, physical pain, permanent physical injuries, mental injuries, emotional distress, embarrassment, humiliation, loss of standing in the community, adverse employment consequences,

loss of liberty, and deprivation of their common law and constitutional rights, and seek compensation in an amount to be determined at trial.

D. The CITY and RPD's failure to discipline STEPHENS after he brutally beat Dudley Scott on August 21, 2014, as he was handcuffed—fracturing his orbital socket and blinding him in his right eye—caused Plaintiffs' injuries herein.

143. The CITY's policy and custom of failing to discipline officers who make false arrests, use excessive force and lie about the reasons for making arrests and using force caused Plaintiffs' constitutional rights to be violated as alleged herein.

144. On August 21, 2014, STEPHENS brutally beat a young man named Dudley Scott for approximately five minutes—after he was handcuffed and helpless and physically detained by two police officers, with a third police officer in close proximity.

145. STEPHENS struck Mr. Scott at least 11 times and deployed three drive stuns with his Taser—after he was handcuffed and helpless and physically detained by two police officers, with a third police officer in close proximity.

146. STEPHENS punched Mr. Scott in the face three times after he was handcuffed and helpless and physically detained by two police officers, with a third police officer in close proximity.

147. STEPHENS fractured Mr. Scott's right orbital socket and blinded him in his right eye when he punched him three times in the face after he was handcuffed and helpless.

148. STEPHENS utilized at least three knees strikes against Mr. Scott after he was handcuffed and helpless and physically detained by two police officers, with a third police officer in close proximity.

149. When STEPHENS used force against Mr. Scott, he lacked a reasonable or objective basis to believe that Mr. Scott possessed a weapon or posed a threat to the safety an officer or any other person, since he was handcuffed and there were two other officers at the scene with STEPHENS.

150. Mr. Scott also did not resist arrest or attempt to flee when STEPHENS brutally beat him for approximately five minutes after he was handcuffed and detained by three officers.

151. These actions of STEPHENS resulted in a fractured right eye socket of Mr. Scott which required surgery and caused him to be permanently blind in the right eye.

152. STEPHENS' repeated strikes to Mr. Scott's head, as he was handcuffed and detained by three police officers, constituted a deadly use of force.

153. After the August 21, 2014 incident, STEPHENS concocted an implausible story of his interaction with Mr. Scott in official police paperwork to justify the excessive use of strikes to Mr. Scott's head that were otherwise unnecessary.

154. At the time of the August 21, 2014 incident, STEPHENS was a Defensive Tactic Instructor for the RPD, which involves training recruits and other officers in everything from handcuffing up through the escalation of force chart.

155. STEPHENS was also a Field Training Officer for the RPD, which involves hands-on training of new officers in the field after they graduate from the police academy.

156. As both a Defensive Tactics Instructor and a Field Training Officer for the RPD, STEPHENS was a municipal policymaker with respect to the RPD's use of force policies and training.

157. STEPHENS' use of force against Mr. Scott while he was handcuffed and helpless was both grossly excessive under clearly established law and criminal. Nevertheless, the CITY and the RPD failed to adequately discipline STEPHENS following the August 21, 2014 incident.

158. After the August 21, 2014 incident, Sergeant Randy Potuck reviewed several drafts of STEPHENS' Subject Resistance Reports, and repeatedly returned the drafts to STEPHENS because he allegedly failed to clearly articulate the force used against Mr. Scott.

159. After STEPHENS submitted an unknown number of drafts, Sergeant Potuck finally signed off on STEPHENS' Subject Resistance Report on October 6, 2014—more than six weeks after the August 21, 2014 incident.

160. On October 26, 2014, Sergeant Potuck and Lieutenant Ron Malley conducted a “debriefing” with STEPHENS and “directed” him to familiarize himself with the RPD's use of force policies, General Order 335.

161. PSS did not begin its investigation until June 2015 and did not issue disciplinary charges until December 28, 2015.

162. Between August 21, 2014—when Stephens brutally attacked and blinded Dudley Scott—and the May 27, 2018 incident in this case, upon information and belief, STEPHENS was never disciplined by the CITY or the RPD.

163. Between August 21, 2014—when Stephens brutally attacked and blinded Dudley Scott—and the May 27, 2018 incident in this case, upon information and belief, STEPHENS was permitted to remain on active duty as a patrol officer, making arrests and using force against citizens of Rochester.

164. The CITY and the RPD's failure to discipline STEPHENS between August 21, 2014 and May 27, 2018 caused STEPHENS to falsely arrest and use excessive force against Plaintiffs.

165. Pursuant to policy, the CITY and the RPD deliberately failed to change STEPHENS' assignment to remove him from patrol duty between August 21, 2014 and the May 27, 2018, and instead permitted him to continue working on the streets as a patrol officer and make arrests and use force against citizens in Rochester.

E. The CITY has admitted that it has been deliberately indifferent to the RPD's longstanding, widespread problem of officers using excessive force.

166. On March 23, 2020, several RPD officers brutally killed Daniel Prude.

167. The CITY and the RPD covered up the death of Daniel Prude by their officers.

168. The CITY and the RPD failed to discipline the officers who killed Daniel Prude.

169. The medical examiner's report, issued on April 22, 2020, concluded that Mr. Prude's death was a homicide, caused by "complications of asphyxia in the setting of physical restraint."

170. Nevertheless, in an official report issued five days later, on April 27, 2020, the RPD's Major Crimes Unit—which investigates homicides—concluded that the involved officers acted appropriately and in accordance with their training. Specifically, on April 27, 2020, Sergeant Flamur Zenelovic issued a final report on behalf of the Major Crimes Unit, which concluded:

"Investigator's Houlihan, Benjamin and I conducted a complete review of body worn camera footage, surveillance video footage, as well as the reports and interviews of the involved officers and paramedics. *Based upon the investigation, the officers' actions and conduct displayed when dealing with Prude appear to be appropriate and consistent with their training.*"

171. However, Training Bulletin L-58-15, "Non-Traditional Deadly Physical Force" explains,

"Members of the Rochester Police Department (RPD) may use deadly physical force, as defined by Article 10 of the New York State Penal Law, only when the use of deadly physical force is necessary to defend the member or another person from what the member reasonably believes to be the use or imminent use of deadly physical force.

"Officers must consider that many techniques or responses can result in unintentional death or serious physical injury in the circumstances under which they are used. For instance:

"1. **Body positions-** Positional asphyxia may occur when the position of a person's body interferes with respiration, resulting in serious injury or death. Prolonged restraint and struggling, particularly when the lungs are being squeezed while empty, can result in exhaustion. This can occur without the subject being aware of it and can lead to sudden death. The risk of positional asphyxia can increase when a person is restrained in the prone position. Current training dictates that once a member believes the scene is

safe, the member would remove a subject from the prone position by placing them on their side, in a seated position on their buttocks, or in a standing position. Bending a subject forward or placing weight on the subject can also have a negative effect on the subject's ability to breathe. Other risk factors that could increase the risk of positional asphyxia include, but are not limited to: obesity, prior cardiac or respiratory problems, and the use of drugs."

172. Thus, the RPD's conclusion that, "*the officers' actions and conduct displayed when dealing with Prude appear to be appropriate and consistent with their training,*" is contradicted by its own written policies.

173. The RPD's conclusion that "*the officers' actions and conduct displayed when dealing with Prude appear to be appropriate and consistent with their training,*" was a result of the internal cover up that began immediately after the incident.

174. The RPD's conclusion that "*the officers' actions and conduct displayed when dealing with Prude appear to be appropriate and consistent with their training,*" was a result of the longstanding and widespread problem of its officers using excessive force.

175. The RPD's conclusion that "*the officers' actions and conduct displayed when dealing with Prude appear to be appropriate and consistent with their training,*" was a result of the CITY and the RPD's deliberate indifference to longstanding and widespread problem of its officers using excessive force.

176. In the wake of RPD officers killing Daniel Prude, and the CITY's cover up of his death, Mayor Lovely Warren and the CITY have admitted that the *Monell* claims pleaded herein have merit.

177. For example, in the September 14, 2020 memorandum by Deputy Mayor James P. Smith, he states that the CITY must, "[a]dopt and embrace a robust process driven by an engaged public to bring systemic reform to the Rochester Police

Department, CITY Hall and beyond to remove the pervasive culture of insularity and acceptance from law enforcement.” Inter-Departmental Correspondence from James P. Smith, Deputy Mayor, to Lovely A. Warren, Mayor, dated September 14, 2020 re: Managerial Review of the Death of Daniel Prude, incorporated by reference herein, and available at <https://www.CITYofrochester.gov/WorkArea/DownloadAsset.aspx?id=21474845191>.

178. Mayor Warren admitted that the RPD has a “pervasive problem” of officers using excessive force.

179. Mayor Warren has admitted that the RPD’s “pervasive problem” of officers using excessive force has existed for many years.

180. Mayor warren has admitted that “there are a number of things police officers are doing that they shouldn’t be doing, that they’re not trained to do, and we need to look at that.”

181. Mayor warren has admitted that “[T]here are a number of systemic changes that we need to make.”

182. Mayor Warren has admitted that the CITY and the RPD, “have significant work to do throughout our department and at CITY Hall. To rebuild the trust within our community, the culture of policing in Rochester must change.”

183. Mayor Warren has admitted that the CITY and the RPD have been deliberately indifferent to the longstanding and widespread use of excessive force by RPD officers for many years.

184. The CITY and the RPD's failure to discipline STEPHENS between August 21, 2014 and May 27, 2018, after he brutally beat and blinded Dudley Scott, was caused by the CITY and RPD's deliberate indifference to the longstanding and widespread use of excessive force by RPD officers.

185. Plaintiffs injuries were caused by the CITY and the RPD's deliberate indifference to the longstanding and widespread use of excessive force by RPD officers.

186. Further facts demonstrating the CITY and the RPD's longstanding and widespread policy, pattern and practice of deliberate indifference to RPD officers' unconstitutional conduct are pleaded below in the Sixth Claim for Relief.

187. Because of the foregoing, Plaintiffs sustained, *inter alia*, physical pain, permanent physical injuries, mental injuries, emotional distress, embarrassment, humiliation, loss of standing in the community, adverse employment consequences, loss of liberty, and deprivation of their common law and constitutional rights.

188. Because of the foregoing, Plaintiffs demand judgment against Defendants in an amount of money to be determined at trial, and injunctive and declaratory relief as further detailed below.

FIRST CLAIM FOR RELIEF
VIOLATION OF FOURTH AMENDMENT RIGHTS UNDER 42 U.S.C. § 1983
ARISING FROM WARRANTLESS ARREST WITHOUT PROBABLE CAUSE
(Against all Defendants)

189. Plaintiffs re-allege each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

190. The incident that occurred herein was recorded by the officers' body worn camera videos and CITY 's blue light cameras.

191. The videos that caught this incident along with various reports were reviewed by supervisors in the RPD and the Professional Standards Section of the Rochester Police Department.

192. The Professional Standards Section of the Rochester Police Department found that STEPHENS falsely arrested Plaintiffs.

193. Former Rochester Police Department Chief Michael Ciminelli found that that STEPHENS falsely arrested Plaintiffs.

194. Thus, Defendant CITY admits that STEPHENS falsely arrested Plaintiffs.

195. JOHNSON, MUNIOR, MARTINEZ, OQUENDO and TROSINSKI also participated in the arrests of Plaintiffs.

196. JOHNSON, MUNIOR, MARTINEZ, OQUENDO and TROSINSKI detained, handcuffed and arrested one or more of the Plaintiffs.

197. These arrests were made in the absence of a warrant.

198. These arrests were made in the absence of probable cause.

199. The Defendant Police Officers arrested Plaintiffs without having exigent circumstances for doing so.

200. There was no other authority for the arrest of Plaintiffs.

201. The Plaintiffs were conscious of their arrests.

202. The Plaintiffs did not consent to their arrests.

203. Because of the foregoing, Plaintiffs sustained, *inter alia*, physical pain, permanent physical injuries, mental injuries, emotional distress, embarrassment, humiliation, loss of standing in the community, adverse employment consequences, loss of liberty, and deprivation of their common law and constitutional rights, and seek compensation in an amount to be determined at trial.

204. Defendants committed the foregoing violations of Plaintiffs' rights knowingly, intentionally, willfully, recklessly, and/or with deliberate indifference to Plaintiffs' constitutional rights or to the effect of such misconduct upon Plaintiffs constitutional rights.

205. By reason of the foregoing, the Defendants are liable to Plaintiffs, pursuant to 42 U.S.C. § 1983, for compensatory and for punitive damages.

SECOND CLAIM FOR RELIEF
MALICIOUS PROSECUTION UNDER 42 U.S.C. § 1983
(Against STEPHENS and JOHNSON)

206. Plaintiffs re-allege each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

207. The incident that occurred herein was recorded by the officers' body worn camera videos and CITY 's blue light cameras.

208. The videos that caught this incident along with various reports were reviewed by supervisors in the RPD and the Professional Standards Section of the Rochester Police Department.

209. The Professional Standards Section of the Rochester Police Department found that STEPHENS had no basis to arrest Plaintiffs and charge them with Obstruction of Governmental Administration.

210. Former Rochester Police Department Chief Michael Ciminelli found that that STEPHENS had no basis to arrest Plaintiffs and charge them with Obstruction of Governmental Administration.

211. After the videos, reports and investigation of this incident were reviewed by Goodman Section Command Staff and the Office of the Chief of Police, the Monroe County District Attorney's Office dismissed all charges against Plaintiffs.

212. Thus, Defendant CITY admits that STEPHENS maliciously prosecuted Plaintiffs.

213. The Defendant Police Officers, despite knowing that probable cause did not exist to arrest and prosecute Plaintiffs for Obstruction of Governmental Administration or any other crime or violation, acting individually and in concert, fabricated and falsified evidence, which they then forwarded to prosecutors, to cause Plaintiffs to be wrongfully charged with and prosecuted for those crimes.

214. The Defendant Police Officers lacked probable cause to initiate the prosecution of Plaintiffs and the prosecution of Plaintiffs was procured by fraud, perjury, and the fabrication and suppression of evidence.

215. False and fabricated evidence was given by Defendant Police Officers to the District Attorney's Office.

216. The Defendant CITY and the RPD knew or were deliberately and recklessly indifferent to the truth that probable cause did not exist to arrest and prosecute Plaintiffs for Obstruction of Governmental Administration or any other crime or violation.

217. The Defendant Police Officers' conduct was critical to the continued prosecution of Plaintiffs and they knew, or in the absence of their deliberate and reckless indifference, should have known, that their conduct would cause Plaintiffs' prosecution to continue.

218. After approximately two court appearances, in or about June 2018, the prosecutions terminated in Plaintiffs' favor when the Monroe County District Attorney's Office requested that the Court dismiss all charges against Plaintiffs.

219. After approximately two court appearances, in or about June 2018, the prosecutions terminated in Plaintiffs' favor.

220. Defendant Police Officers' actions to deprive Plaintiffs of their liberty without probable cause was in violation of clearly established constitutional law.

221. Defendant Police Officers' actions to deprive Plaintiffs of their liberty without probable cause was in violation of clearly established constitutional law, and no reasonable police officer in 2018 would have believed that the defendants' actions were lawful.

222. As a direct and proximate result of the Defendant Police Officers' actions, Plaintiffs were wrongly prosecuted for approximately one month, suffered various collateral consequences at their places of employment and in the community,

and suffered the other grievous and continuing injuries and damages as set forth herein.

223. Because of the foregoing, Plaintiffs sustained, *inter alia*, physical pain, permanent physical injuries, mental injuries, emotional distress, embarrassment, humiliation, loss of standing in the community, adverse employment consequences, loss of liberty, and deprivation of their common law and constitutional rights, and seek compensation in an amount to be determined at trial.

224. Accordingly, Plaintiffs demand judgment against the Defendants in a sum of money to be determined at trial.

225. Defendants committed the foregoing violations of Plaintiffs' rights knowingly, intentionally, willfully, recklessly, and/or with deliberate indifference to Plaintiffs' constitutional rights or to the effect of such misconduct upon Plaintiffs' constitutional rights.

226. By reason of the foregoing, the Defendants are liable to Plaintiffs, pursuant to 42 U.S.C. § 1983, for compensatory and for punitive damages.

THIRD CLAIM FOR RELIEF
VIOLATION OF PLAINTIFF'S FOURTH AMENDMENT RIGHTS UNDER
42 U.S.C. § 1983 ARISING FROM USE OF EXCESSIVE FORCE
(Against STEPHENS)

227. Plaintiffs re-allege each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

228. The incident that occurred herein was recorded by the officers' body worn camera videos and CITY's blue light cameras.

229. The videos that caught this incident along with various reports were reviewed by supervisors in the RPD and the Professional Standards Section of the Rochester Police Department.

230. The Professional Standards Section of the Rochester Police Department found that STEPHENS used excessive and unnecessary force against Plaintiffs.

231. Former Rochester Police Department Chief Michael Ciminelli found that that STEPHENS used excessive and unnecessary force against Plaintiffs.

232. Thus, Defendant CITY admits that STEPHENS used excessive and unnecessary force against Plaintiffs.

233. At no point during the incidents described herein did the circumstances necessitate or support the above applications of force utilized by the STEPHENS against Plaintiffs.

234. Because of the foregoing, Plaintiffs sustained, *inter alia*, physical pain, permanent physical injuries, mental injuries, emotional distress, embarrassment, humiliation, loss of standing in the community, adverse employment consequences, loss of liberty, and deprivation of their common law and constitutional rights, and seek compensation in an amount to be determined at trial.

235. Defendants committed the foregoing violations of Plaintiffs' rights knowingly, intentionally, willfully, recklessly, and/or with deliberate indifference to Plaintiffs' constitutional rights or to the effect of such misconduct upon Plaintiffs' constitutional rights.

236. By reason of the foregoing, the Defendants are liable to Plaintiffs, pursuant to 42 U.S.C. § 1983, for compensatory and for punitive damages.

FOURTH CLAIM FOR RELIEF
VIOLATION OF PLAINTIFF'S CONSTITUTIONAL RIGHTS UNDER
42 U.S.C. §1983 ARISING FROM DEFENDANTS' FAILURE TO INTERVENE
(Against JOHNSON, MUNIOR, MARTINEZ, OQUENDO, TROSINSKI)

237. Plaintiffs re-allege each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

238. JOHNSON, MUNIOR, MARTINEZ, OQUENDO, TROSINSKI had an affirmative duty to intercede on Plaintiffs' behalf to prevent and stop the violation of their constitutional rights by STEPHENS.

239. JOHNSON, MUNIOR, MARTINEZ, OQUENDO, TROSINSKI failed to intervene on Plaintiffs' behalf despite having had a realistic opportunity to do so, and despite having substantially contributed to the circumstances within which Plaintiffs' rights were violated by their affirmative conduct.

240. As a result of the aforementioned conduct of the Defendant RPD OFFICERS, Plaintiffs' constitutional rights were violated.

241. Because of the foregoing, Plaintiffs sustained, *inter alia*, physical pain, permanent physical injuries, mental injuries, emotional distress, embarrassment, humiliation, loss of standing in the community, adverse employment consequences, loss of liberty, and deprivation of their common law and constitutional rights, and seek compensation in an amount to be determined at trial.

242. Defendants committed the foregoing violations of Plaintiffs' rights knowingly, intentionally, willfully, recklessly, and/or with deliberate indifference to

Plaintiffs' constitutional rights or to the effect of such misconduct upon Plaintiffs' constitutional rights.

243. By reason of the foregoing, the Defendants are liable to Plaintiffs, pursuant to 42 U.S.C. § 1983, for compensatory and for punitive damages.

FIFTH CLAIM FOR RELIEF
SUPERVISORY LIABILITY under 42 U.S.C. § 1983
(Against JOHNSON)

244. Plaintiffs re-allege each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

245. The incident that occurred herein was recorded by the officers' body worn camera videos and CITY's blue light cameras.

246. The videos that caught this incident along with various reports were reviewed by supervisors in the RPD and the Professional Standards Section of the Rochester Police Department.

247. The Professional Standards Section of the Rochester Police Department found that JOHNSON failed to supervise STEPHENS at the scene of the incident.

248. Former Rochester Police Department Chief Michael Ciminelli found that JOHNSON failed to supervise STEPHENS at the scene of the incident.

249. Thus, Defendant CITY admits that JOHNSON failed to supervise STEPHENS at the scene of the incident.

250. JOHNSON personally caused Plaintiffs' constitutional injuries by being deliberately or consciously indifferent to the rights of Plaintiffs in failing to properly supervise STEPHENS at the scene of the incident.

251. Because of the foregoing, Plaintiffs sustained, *inter alia*, physical pain, permanent physical injuries, mental injuries, emotional distress, embarrassment, humiliation, loss of standing in the community, adverse employment consequences, loss of liberty, and deprivation of their common law and constitutional rights, and seek compensation in an amount to be determined at trial.

252. As a result of the foregoing, Plaintiffs demand judgment against Defendants in a sum of money to be determined at trial.

253. Defendants committed the foregoing violations of Plaintiffs' rights knowingly, intentionally, willfully, recklessly, and/or with deliberate indifference to Plaintiffs' constitutional rights or to the effect of such misconduct upon Plaintiffs' constitutional rights.

254. By reason of the foregoing, the Defendants are liable to Plaintiffs, pursuant to 42 U.S.C. § 1983, for compensatory and for punitive damages.

SIXTH CLAIM FOR RELIEF
MUNICIPAL LIABILITY UNDER *MONELL* ARISING FROM THE DEFENDANT
CITY 'S DELIBERATE INDIFFERENCE AND FAILURE TO DISCIPLINE RPD
OFFICERS WHO USE EXCESSIVE FORCE
(Against the CITY)

255. Plaintiffs re-allege each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

256. The Defendant CITY and the RPD have deliberately and systemically failed to discipline RPD Officers who use force without justification, even when said unlawful use of force is captured on video.

257. The need for said discipline is presently and patently obvious, as numerous RPD Officers, including the Defendant RPD OFFICERS, have repeatedly used force without justification.

258. The CITY and RPD, caused Plaintiffs to be subjected to excessive force, falsely arrested and maliciously prosecuted by failing to discipline STEPHENS following his use of excessive force against Dudley Scott on August 21, 2014, as described above. This caused STEPHENS to repeat his unlawful use of force against Plaintiffs, because he knew to a moral certainty that there would be no consequences for his use of excessive force.

259. The failure of the Defendant CITY and the RPD to maintain standards governing the imposition of discipline when RPD OFFICERS use force without justification, even when the force is captured on video, constitutes an unconstitutional municipal policy, practice and custom.

260. By failing to discipline officers who use force without justification—even when the unlawfulness of the force used is demonstrated by clear video evidence—the Defendant CITY and the RPD have demonstrated their deliberate indifference to the constitutional deprivations caused by RPD Officers' repeated use of force without justification and their failure to accurately document use-of-force incidents.

261. The Defendant CITY and the RPD have had actual and/or constructive knowledge of the pervasive and widespread practice of RPD officers' use of force without justification for many years, but have failed to take any affirmative steps to end the practice—like disciplining officers who use excessive force.

262. Instead, the Defendant CITY and the RPD have demonstrated their deliberate indifference to the pervasive and widespread practice of RPD officers' use of excessive force by encouraging RPD Officers to use force without justification through granting awards and promotions to the Defendant RPD OFFICERS and their fellow officers who have repeatedly used force without justification.³

263. The CITY and/or the RPD in the last 20 years have never undertaken any internal studies of the use of force by its officers.

264. The CITY and/or the RPD in the last 20 years have never retained an outside contractor to conduct studies of the use of force by its officers.

265. While the RPD has never undertaken any internal study of the use of excessive force by its officers, and statistics on these practices are not available, there is extensive evidence of a permanent, longstanding, and widespread practice of the Defendant CITY and RPD failing to discipline RPD Officers who have used force without justification.

266. While the RPD has never undertaken any internal study of the use of excessive force by its officers and so no accurate statistics on RPD Officers use of force, statistics from other jurisdictions that do collect data shows that where an officer who uses excessive force is not disciplined following their unlawful use of force,

³ See, Carlet Cleare, *Suspended RPD officer named "Officer of the Year"*, 13 WHAM (May 5, 2017), <http://13wham.com/news/top-stories/rpd-officer-honored-in-midst-of-controversy>; Todd Clausen, *City man hit by patrol car sues RPD, others for \$7M*, DEMOCRAT & CHRONICLE (July 21, 2016), <http://www.democratandchronicle.com/story/news/2016/07/21/rochester-ny-man-brian-a-norford-files-7-million-civil-suit-against-rochester-police/87382790/>. Articles incorporated by reference herein.

they are more likely to use excessive force again in the future. That is exactly what happened here with STEPHENS as a result of not being disciplined following the August 21, 2014 incident where he brutally beat Dudley Scott for five minutes as he was handcuffed and helpless.

267. The fact that the Defendant CITY and RPD deliberately fail to discipline RPD Officers who use excessive force in the course of effectuating arrests constitutes an unlawful municipal policy, which has created a culture within the RPD where officers are permitted and encouraged to use excessive force during routine interactions with individuals in the CITY of Rochester, in violation of the Fourth Amendment to the United States Constitution.

268. Instead of implementing reforms to ensure that officers are disciplined for using excessive force to prevent the use of force *ex ante*, the CITY and RPD have demonstrated their deliberate indifference to RPD Officers use of force by permitting RPD Officers to be trained in various *ex post* justifications for their unlawful use of force by Bill Lewinski, a self-proclaimed “police psychologist.”⁴

⁴ See David Andreatta, *Rochester Police Department backpedals on controversial training*, DEMOCRAT & CHRONICLE (Sept. 6, 2017), <http://www.democratandchronicle.com/story/news/local/columnists/andreatta/2017/09/06/rochester-backpedals-controversial-police-training/639216001/>; Transcript of Cross Examination of Bill Lewinski at 63-66, *Davidson v. Chicago*, No. 06-L-1577 (Sept. 24, 2009).

269. Mr. Lewinski has been precluded from testifying on behalf of defendant police officers by numerous federal courts because they found that his testimony lacked any scientific foundation.⁵

270. For example, Mr. Lewinski is an advocate for the junk science known as anthropometry, and has trained police officers to note the length of an arrestees' fingers in their official police paperwork as evidence of the individual's genetic predisposition for aggressiveness when attempting to justify the officers' use of force *ex post*.⁶

271. Mr. Lewinski's opinions are so thoroughly lacking in any scientific foundation and offensive to common sense that when he has testified in court on

⁵ See, e.g., *Miller v. City of Los Angeles*, Case No. Case 5:07-cv-00806-VAP-CT (C.D. Calif.), (the Court granted a motion *in limine* to exclude Lewinski's testimony "because his testimony lacks the requisite scientific foundation."); In *Tubar v. Clift*, CASE NO. C05-1154-JCC (W.D. Wash. 2009)(the Court limited Lewinski's testimony, recognizing that many of his proposed opinions were outside of his purported area of expertise); *White vs. Gerardot*, 2008 U.S. Dist. LEXIS 87761 (N.D. Ind. October 24, 2008) (limiting Lewinski's testimony because his proposed opinions lacked scientific foundation); *ADT Sec. Servs. v. Swenson*, 2011 U.S. Dist. LEXIS 28947 (D. Minn. 03/21/2011) (Court limited Lewinski's testimony and expressed concern about his proposed reenactment, reserving ruling until an evidentiary hearing outside the presence of the jury); *Lopez v. Chula Vista Police Department*, Case No. 07cv1272-WQH-BLM (S.D. Calif. February 18, 2010) (the Court likewise severely limited Lewinski's testimony and stated that he was not qualified to give the majority of the opinions (all but one) that he planned to give); *State of New Mexico v. Perez*, D-202-cr-2015-000105 (Aug. 24, 2015) (the Court precluded Mr. Lewinski from testifying regarding an officer's attention or memory in lethal force encounters, and from testifying regarding any officer's perception of what was occurring during the encounter at issue in that case, as such testimony "would be speculative rather than scientific").

⁶ See David Andreatta, *Rochester Police Department backpedals on controversial training*, DEMOCRAT & CHRONICLE (Sept. 6, 2017), <http://www.democratandchronicle.com/story/news/local/columnists/andreatta/2017/09/06/rochester-backpedals-controversial-police-training/639216001/>; Transcript of Cross Examination of Bill Lewinski at 63-66, *Davidson v. Chicago*, No. 06-L-1577 (Sept. 24, 2009).

behalf of defendant police officers in excessive force cases, the trial court judge and the jury have audibly laughed at him.⁷

272. RPD Officers' use of force without justification is no laughing matter—yet the Defendant CITY and RPD have demonstrated their deliberate indifference to the pervasive and widespread use of force without justification by permitting RPD Officers to attend a use-of-force training by Bill Lewinski and his so-called Force Science Institute, where the Defendant RPD OFFICERS and their fellow officers learned various pseudoscientific techniques to avoid being held accountable for their unlawful actions, such as justifying their use of force against an individual based on anthropometry.

THE CITY AND RPD HAVE AN OFFICIAL POLICY, PRACTICE AND CUSTOM OF FAILING TO DISCIPLINE OFFICERS WHO USE EXCESSIVE FORCE—EVEN WHEN SAID INCIDENTS ARE CAPTURED ON VIDEO

A. The May 5, 2018 incident where Officers Spenser McAvoy and Michael Sippel brutally beat Christopher Pate demonstrates the CITY and RPD have failed to address systemic problems of racism and use of excessive force.

273. The May 5, 2018 incident involving Christopher Pate demonstrates that the RPD is permeated by a culture of racism that infects all aspects of its operations.

274. On that day, RPD officers Michael Sippel and Spenser McAvoy unlawfully seized and falsely arrested Mr. Pate; punched pate in the head, causing a fractured orbital socket, and TASED him for no reason.

⁷ See, e.g., Cross Examination of Bill Lewinski at 63-66, *Davidson v. Chicago*, No. 06-L-1577 (Sept. 24, 2009) [transcript on file with Plaintiff's attorney].

275. The actions of the officers who used force against Mr. Pate was motivated by racial animosity, just like the actions of the defendant RPD officers in this case was motivated by racial animosity.

276. The body camera footage of the incident showed that RPD officers Spenser McAvoy and Michael Sippel wrestled Pate to the ground and TASED him.

277. Another piece of video shows McAvoy say: “That's why I was asking for your ID but then when you want to be a smart ass then we're going to ding you for crossing the road illegally. That's it.” He then goes on to say, “He's freaking so stupid. Everybody wants to think that the white cops are always after the black guy. Well, you [Pate] look like a guy on a wanted board.”

278. In fact, Pate looks nothing like the man on the wanted board, James Barrett, other than that they were both black men.

279. On August 28, 2018, Mayor Lovely Warren and RPD Chief Michael Ciminelli held a press conference to announce that they had suspended officers Spenser McAvoy and Michael Sippel, for their unlawful stop, false arrest, and use of excessive force against Pate during the May 5, 2018 incident.

280. Notably, Mayor Warren and the RPD Chief did not hold their press conference until after Pate's attorney filed the Notice of Claim, informing the CITY that they intended to file a lawsuit, and after community activists held a press conference regarding the incident and demanding justice for Mr. Pate.

281. Mayor Warren and Chief Ciminelli further announced that they would be seeking to terminate McAvoy and Sippel's employment with the CITY and RPD,

and that the incident had been referred to the Monroe County District Attorney's Office ("District Attorney's office") for criminal prosecution.

282. Mayor Warren and Chief Ciminelli stated that video of the incident recorded by McAvoy and/or Sippel's Body-Worn Camera(s) was the key evidence underlying their decision to seek termination of their employment and to refer the incident to the District Attorney for possible criminal prosecution of the officers.

283. Mayor Warren stated that she had viewed the Body Worn Camera recording of the incident, and that "what [she] saw not only angered [her] and troubled [her] but hurt [her] in [her] heart."

284. Chief Ciminelli stated that the recordings from McAvoy and/or Sippel's Body-Worn Camera(s) demonstrated that, "[t]his arrest should not have been made in the first place, and that triggered a sequence of events that is frankly outrageous."

285. The "outrageous" events include the officers falsely arresting Mr. Pate after when the objective facts known to the officers unequivocally demonstrated they lacked reasonable or probable cause to believe he had committed any criminal act or violation; TASERing him, placing handcuffs upon his wrists, and then repeatedly striking him in the face after he was handcuffed, causing occipital bone and jaw fractures, as well as other injuries to his mouth; and making racist remarks and comments to and about Mr. Pate.

286. After Mr. Pate was arrested, McAvoy and Sippel were recorded on their body worn cameras making racist comments about him.

287. Mayor Warren stated that since police officers hold positions of authority and wield a lot of power over citizens in the CITY of Rochester, there is a heightened obligation to ensure that Police Officers are held accountable when they commit misconduct and/or violate the constitutional rights of the CITY's citizens.

288. Mayor Warren's words ring hollow to Plaintiffs and the Rochester community. Plaintiffs were subjected to excessive force by STEPHENS just weeks after Mr. Pate was brutally beaten, as a result of the failure of the CITY and the RPD to discipline STEPHENS following his brutal beating of Dudley Scott on August 21, 2014.

289. McAvoy and Sippel's excessive use of force, other unlawful actions, and racist comments towards Mr. Pate was a direct and proximate result of the longstanding, entrenched policies and customs of the CITY and the RPD of failing to discipline officers for using excessive force, even when said gross use of excessive force was captured on video.

290. In a July 2019 press conference, Chief Singletary stated that the conduct of the officers on the video "is not reflective of the rest of the men and women who work for the Rochester Police Department."

291. Chief Singletary's statements also ring hollow for Plaintiffs, as the conduct of Sippel and McAvoy was certainly reflective of the actions of STEPHENS, who beat them just weeks after Mr. Pate was brutally beaten.

292. Chief Singletary's comments at the July 2019 press conference demonstrate that after the Pate incident, the CITY and RPD determined not to

address the systemic, department-wide policies, practices and customs that led to Mr. Pate being subjected to excessive force by racist police officers in May 2018.

293. The failure of the CITY and the RPD to address these underlying problems following the Pate incident, and instead using McAvoy and Sippel as scapegoats and claiming that they were simply “bad apples”, demonstrates the CITY and the RPD’s deliberate indifference to the widespread use of excessive force by their police officers.

294. It was this same deliberate indifference after the August 21, 2014 incident where STEPHENS beat Dudley Scott that caused Plaintiff’s injuries herein.

B. September 4, 2015 incident where Officers Jeffrey Kester, Matthew Drake and Steven Mitchell brutally beat David Vann while he was handcuffed and defenseless further shows that the CITY and the RPD have failed to address systemic problems of racism and excessive force.

295. On September 4, 2015, RPD Officers Jeffrey Kester, Matthew Drake and Steven Mitchell falsely arrested and used excessive force against David Vann, which was caught on video.

296. The video shows that on September 4, 2015, RPD Officers Jeffrey Kester, Matthew Drake and Steven Mitchell brutally beat David Vann for over two minutes while he was handcuffed and not resisting or fighting with officers. Jeffrey Kester attempted to throw Mr. Vann onto the ground after he was handcuffed, as Mitchell and Drake pushed him from behind, causing Mitchell, Drake and Vann to fall on top of Kester. As a result of the actions of Kester, Mitchell and Drake, Kester broke his leg—when Mitchell and Drake realized Kester was injured, they retaliated

against Mr. Vann by brutally beating him for over two minutes, while he was handcuffed and defenseless.

297. The incident took place outside of a convenience store known as A & Z Market, located at 439 South Avenue, Rochester, New York. The store had four properly working security cameras, which recorded the incident. The videos of the incident are hereby incorporated as if more fully pleaded herein, and can be viewed at the following URL: <http://rochester.indymedia.org/node/147955>.⁸

298. Like STEPHENS, at the time of the incident, Mitchell was a Defensive Tactic Instructor and a Field Training Officer for the RPD.

299. Mitchell's use of force against Mr. Vann while he was handcuffed, helpless, and not fighting, resisting or struggling with the officers in any way, was both grossly excessive under clearly established law and criminal.

300. Mitchell's use of force against Mr. Vann was strikingly similar to STEPHENS' use of force against Dudley Scott—as both men were handcuffed and defenseless.

301. Following this incident, Mitchell was not disciplined in any way, just as STEPHENS was not disciplined following the incident where he brutally beat and blinded Dudley Scott.

⁸ The videos can be viewed by scrolling to the bottom of the page and clicking on the “play” buttons. Plaintiff fully incorporates the surveillance videos posted at <http://rochester.indymedia.org/node/147955> by reference as if each fact depicted in said video was fully pled at length herein. Plaintiff does not incorporate by reference any information on the article posted at <http://rochester.indymedia.org/node/147955> or any other information posted at that specific URL, or on the “rochester.indymedia” website.

302. As a Defensive Tactic Instructor and Field Training Officer for the RPD, Mitchell and STEPHENS taught recruits and new officers how to make arrests, secure handcuffs onto an arrestee's wrists, and when it is appropriate to use force against arrestees and how much force may be used in different situations.

303. Mitchell and STEPHENS also taught recruits and new officers how to complete their paperwork to document the reasons for making an arrest and using force against an arrestee.

304. By failing to discipline Mitchell and STEPHENS, the CITY and the RPD ratified their unlawful use of force against Mr. Vann and Mr. Scott as a municipal policy, practice or custom.

305. Specifically, by failing to discipline Mitchell and instead continuing to employ him as Defensive Tactic Instructor and Field Training Officer, the CITY and the RPD ratified the following conduct as permissible by RPD officers:

- a. Body-slammng a handcuffed, compliant, non-resisting arrestee onto the ground;
- b. Repeatedly punching a handcuffed, compliant, non-resisting arrestee when said arrestee is subdued on the ground, and does not pose a threat of physical harm to the officer or others;
- c. Pepper spraying a handcuffed, compliant, non-resisting arrestee when said arrestee is subdued on the ground;
- d. Pepper spraying a handcuffed, compliant, non-resisting arrestee directly in the face from less than six inches;

- e. Fabricating the officers' accounts of their interaction with said arrestee in official RPD paperwork such as investigatory reports;
- f. Falsely swearing to the veracity of charging documents that falsely accuse arrestees of committing criminal acts, and forwarding said documents to prosecutors to initiate the malicious prosecution of said arrestees;
- g. Testifying falsely at grand jury proceedings;
- h. Testifying falsely at petit jury proceedings; and
- i. Signing false statements and testifying falsely despite knowing that objective video evidence contradicts said false statements and testimony

306. The CITY and the RPD also failed to discipline Kester or Drake for their false arrest or use of excessive force against Mr. Vann; for signing false felony complaints; or for testifying falsely in front of the grand jury and petit jury.

307. By failing to discipline Drake and Kester, the CITY and the RPD ratified their conduct as a municipal policy, practice or custom.

308. The Defendant CITY and the RPD failed to conduct any internal investigation into Michell, Drake and Kester's use of force and/or failure to intervene to stop and or prevent the unlawful use of force against Mr. Vann, to determine if their conduct was unlawful, excessive or in violation of RPD policies.

309. The defendant CITY and the RPD knew or should have known that they needed to investigate the Michell, Drake and Kester's use of force and/or failure to intervene to stop and or prevent the unlawful use of force against Mr. Vann on

September 4, 2015, because Michell, Drake and Kester's all admit to using force against Mr. Vann in their subject resistance reports; because Mr. Vann was acquitted by the jury; and because the security camera video recovered from the store on the night of the incident clearly demonstrates that the officers fabricated their account of their interaction with Mr. Vann in their arrest and charging paperwork, and testified falsely at the grand jury and petit jury.

C. May 1, 2013 incident where Officers Joseph M Ferrigno II and Anthony R. Liberatore brutally beat Benny Warr, a disabled man in a wheelchair, further shows the department-wide problems of racism and deliberate indifference to officers' use of excessive force.

310. On May 1, 2013, RPD Officers Joseph M Ferrigno II and Anthony R. Liberatore were recorded by RPD Blue Light Cameras⁹ and witnesses cell phone cameras¹⁰ brutally beating Benny Warr, a 52-year-old African American man and wheelchair-bound amputee, while he was waiting for a RTS bus at the intersection of Jefferson and Bartlett Streets.¹¹

311. As reported by the Democrat & Chronicle, Mr. Warr testified to the RPD's Professional Standards Section "that he was maced, thrown to the ground and struck after he responded to an order to move by telling officers that he was just

⁹ See RPD Blue Light Camera video posted to YouTube, *edited footage from cop cam on May 1st of Benny Warr attack*, <https://www.youtube.com/watch?v=47vo2WVcWY0> (last visited Apr. 10, 2016). Video incorporated by reference herein.

¹⁰ See Cell phone video taken by Ms. Tashay Young, a/k/a Shakur Mohammed, originally posted to YouTube on May 4, 2013, and later edited and reposted on June 24, 2013, *Corrected Higher Resolution Video of Benny Warr Being Attacked*, <https://www.youtube.com/watch?v=7xifmR0C3Mk&nohtml5=False> (last visited Apr. 10, 2016). Video incorporated by reference herein.

¹¹ See Complaint, *Warr, et al. v. City of Rochester, et al.*, 13-cv-6508-DLG-MWP (W.D.N.Y. Sept. 19, 2013). Complaint incorporated by reference herein.

waiting for a bus.”¹² Mr. Warr’s PSS testimony was corroborated by witness’ cell phone¹³ videos and RPD Blue Light Camera video.¹⁴

312. The PSS investigation found that Officer Libertore utilized an elbow strike to Benny Warr’s head while Mr. Warr was lying face down on the ground and determined that the elbow strike was an untrained technique under RPD standards.

313. The PSS investigation also found that before Officer Libertore utilized the untrained elbow strike to Mr. Warr’s head, he stated to Mr. Warr, “are you ready to get your ass kicked.”

314. Officer Libertore testified to PSS that: “He knew that he was under arrest. The only way he was going to leave was in an ambulance, meaning that we were definitely going to have to get physical and that either he was going to have to be hurt, or one of us were going to be hurt.”

315. Any reasonable person reviewing the PSS findings, Officer Ferrigno’s PSS testimony, and the videos of Officers Ferrigno and Libertore pepper-spraying Benny Warr, pushing his wheel chair over, and repeatedly striking Mr. Warr in the head and body while Mr. Warr was lying face down on the ground could only describe

¹² Erica Bryant, *Whatever happened to Benny Warr*, DEMOCRAT & CHRONICLE (Dec. 7, 2013), <http://www.democratandchronicle.com/story/news/local/2013/12/06/erica-bryant-what-ever-happened-to-benny-warr-3895715/> (last visited Apr. 10, 2016). Article incorporated by reference herein.

¹³ See Cell phone video taken by Ms. Tashay Young, a/k/a Shakur Mohammed, originally posted to YouTube on May 4, 2013, and later edited and reposted on June 24, 2013, *Corrected Higher Resolution Video of Benny Warr Being Attacked*, <https://www.youtube.com/watch?v=7xifmR0C3Mk&nohtml5=False> (last visited Apr. 10, 2016). Video incorporated by reference herein.

¹⁴ See RPD Blue Light Camera video posted to YouTube, *edited footage from cop cam on May 1st of Benny Warr attack*, <https://www.youtube.com/watch?v=47vo2WVcWY0> (last visited Apr. 10, 2016). Video incorporated by reference herein.

the force used by Officers Ferrigno and Libertore as objectively unreasonable and excessive.

316. Nevertheless, the PSS and CRB each recommended to the RPD Chief of Police James Sheppard that Officers Ferrigno and Libertore be exonerated on Benny Warr's allegation that the officers used excessive force while effectuating his arrest.

317. According to the CRB, its focus "is to determine the fairness, thoroughness and timeliness of the police complaint investigation as well as any possible deficiencies."¹⁵ Moreover, the CRB prides itself in "providing independent, neutral fair representation for all involved parties."¹⁶

318. However, in the CRB review of Benny Warr's excessive force complaint, the CRB panelists accused the RPD of attempting to inappropriately influence their investigation. Specifically, the CRB panelists objected to the fact that Sergeant Andrew McPherson, one of the RPD's Defensive Tactics Coordinators, made a presentation to the CRB explaining the purported reasons the PSS exonerated Officers Ferrigno and Libertore, despite the overwhelming video and testimonial evidence showing they used excessive force in effectuating the arrest of Benny Warr.

319. Former RPD Chief of Police James Sheppard reviewed the PSS and CRB investigative findings, and the witness cell phone and RPD Blue Light Camera videos of the incident, and decided to exonerate both officers on Mr. Warr's excessive force

¹⁵ *Police Community Relations Program: Civilian Review Board 2015 Annual Report* at 15, available at <http://www.cityofrochester.gov/WorkArea/DownloadAsset.aspx?id=8589964676> (last visited Apr. 17, 2016) (Hereinafter "2015 CRB Report"). 2015 CRB Report incorporated by reference herein.

¹⁶ *Id.* at 3.

allegations, because he believed their use of force was reasonable under the circumstances.

320. Former Chief Sheppard was a municipal policymaker for the defendant CITY, and his decision not to discipline Ferrigno and Libertore constituted a ratification of their unlawful use of force.

321. Sheppard's decision not to discipline Ferrigno and Libertore constituted an official policy of the CITY and the RPD that RPD officers will not be disciplined for using excessive force, even if their grossly excessive use of force is captured on video.

322. The Defendant CITY has admitted that the CRB and its use-of-force review procedures are constitutionally deficient, as the CITY has begun the process to overhaul its civilian review process.¹⁷

323. The proliferation of video evidence capturing police misconduct has led to an increase in the number and percentage of substantiated complaints of police misconduct in municipalities across the county. For example, in New York CITY, the number of complaints substantiated by the NYPD's Civilian Complaint Review Board ("CCRB") increased approximately seventy-percent (70%) from 2014 to 2015.¹⁸ In fact,

¹⁷ Sharpe, Brian, *City Council seeks outside study of police civilian review process*, DEMOCRAT & CHRONICLE (June 3, 2017), <http://www.democratandchronicle.com/story/news/2017/06/03/council-begins-review-bryant-case-seeks-outside-study-civilian-review-board/365336001/>. Article incorporated by reference herein.

¹⁸ John Annese and Graham Rayman, *Review Board substantiates 30% of civilian complaints against NYPD officers in December with video evidence*, N.Y. Daily News (Jan. 15, 2016), <http://www.nydailynews.com/new-york/30-civilian-complaints-nypd-substantiated-article-1.2497121> (last visited Apr. 10, 2016). Article incorporated herein by reference.

forty-three percent (43%) of cases where video evidence was available were substantiated by the CCRB in 2015, as opposed to thirty-percent (30%) of cases substantiated overall.¹⁹

324. Nevertheless, Defendant CITY and the RPD persist in their failure to discipline RPD Officers who use force without justification, even when presented with irrefutable video evidence that said use of force was unjustified and excessive.²⁰

THE DEFENDANT CITY AND RPD'S DELIBERATE INDIFFERENCE IS EVIDENCED BY THE FAILURE DISCIPLINE OFFICERS WHO HAVE REPEATEDLY USED EXCESSIVE FORCE—EVEN WHEN SAID FORCE IS CAPTURED ON VIDEO

325. The Defendant CITY and the RPD have been on notice of the widespread practice of officers' use excessive force since at least 1992, when former RPD Chief Gordon F. Urlacher pleaded guilty to a felony conspiracy charge that he knew about civil rights abuses of five RPD officers, including the repeated use of excessive force, but deliberately failed to discipline the officers for their unlawful actions.²¹

326. In recent years, with the proliferation of cell phone cameras, numerous excessive force incidents have been captured on video; nevertheless, even when clear

¹⁹ *Id.*

²⁰ See generally, Barbara Lacker-Ware and Theodore Forsyth, *The Case for an Independent Police Accountability System: Transforming the Civilian Review Process in Rochester, New York* (2017). Available online at: <http://enoughisenough.rocus.org/wp-content/uploads/2017/02/The-Case-for-an-Independent-Police-Accountability-System-2.1.17-FINAL.pdf>. Report incorporated by reference herein.

²¹ *Civil Rights Trial Is Likely to Leave a Long-Term Mark on Rochester Police*, N.Y. Times (Apr. 6, 1993), <http://www.nytimes.com/1993/04/06/nyregion/civil-rights-trial-is-likely-to-leave-a-long-term-mark-on-rochester-police.html> (last visited June 7, 2016). Article incorporated by reference herein.

video evidence demonstrates that an officer's use of force was unlawful and excessive, the CITY and the RPD refuse to discipline said officers.

327. By failing to discipline officers in the first instance, said officers are encouraged to repeat their use of excessive force against subsequent individuals. The below examples constitute just a small fraction of the officers who have repeatedly used excessive force but have not been disciplined, even when the force incident was captured on video.

RPD OFFICER PATRICK GIANCORSO and his partner WILLIAM WAGNER

328. Patrick Giancursio has used excessive force against numerous individuals in the CITY of Rochester both before and after the incident complained of herein but has never been disciplined by the Defendant CITY or the RPD.

329. Instead, Giancursio has been rewarded by the Defendant CITY and the RPD for his repeated unlawful use of force against various arrestees.

330. For example, the RPD awarded Giancursio its "Officer of the Year Award" in May 2017, even though he was suspended at the time of the award while the department allegedly investigated his use of force against Alexander Grassies in an April 2017 incident that was caught on surveillance video.²²

331. Giancursio was also caught on surveillance video using excessive force against Brian Norford in the area of 475 Lyell Avenue, Rochester, New York, on February 3, 2016, when Giancursio drove his RPD vehicle onto a sidewalk to

²² Carlet Cleare, *Suspended RPD officer named "Officer of the Year"*, 13 WHAM (May 5, 2017), <http://13wham.com/news/top-stories/rpd-officer-honored-in-midst-of-controversy>. Article incorporated by reference herein.

purposefully strike Mr. Norford, who was knocked to the ground. After knocking Mr. Norford to the ground with his police cruiser, Giancursio exited the vehicle and struck him several times along with his partner, William Wagner.²³

332. Despite Giancursio being captured on video using grossly excessive amount of force at least two times between February 2016 and April 2017, and the fact that he was suspended pending the department's investigation into his use of force against Mr. Grassies in the April 2017 incident, the RPD still chose to honor Giancursio by awarding him its "Officer of the Year Award."

333. Despite Giancursio's unlawful actions against Mr. Norford being captured on video, costing the CITY tens of thousands of dollars to settle Ms. Norford's civil claims, and garnering widespread media attention, the Defendant CITY and the RPD never conducted an independent investigation into Giancursio's use of force against Mr. Norford to determine if it was unlawful, excessive or in violation of RPD policies.

334. In fact, Giancursio's use of force against Mr. Norford was unlawful, excessive and violated the RPD's policies.

335. Nevertheless, the Defendant CITY and RPD never disciplined Giancursio following the February 3, 2016 where he, *inter alia*, falsely arrested and used excessive force against Mr. Norford.

²³ Todd Clausen, *City man hit by patrol car sues RPD, others for \$7M*, DEMOCRAT & CHRONICLE (July 21, 2016), <http://www.democratandchronicle.com/story/news/2016/07/21/rochester-ny-man-brian-a-norford-files-7-million-civil-suit-against-rochester-police/87382790/>. Article incorporated by reference herein.

336. Moreover, despite Giancursio's unlawful actions against Mr. Grassies being captured on video and garnering widespread media attention, the Defendant CITY and the RPD failed to conduct an independent, full, and fair investigation into Defendant Giancursio's use of force against Mr. Grassies to determine if it was unlawful, excessive or in violation of RPD policies.

337. In fact, Giancursio's use of force against Mr. Norford and Mr. Grassies was unlawful, excessive and violated the RPD's policies.

338. Nevertheless, the Defendant CITY and RPD eventually exonerated Giancursio and failed to impose any meaningful discipline against him following the April 2017 incident where he was captured on video using excessive force against Mr. Grassies .

339. Notably, Giancorso's partner, Wagner, was present with Giancorso throughout the February 3, 2016 incident with Mr. Norford and the April 2017 incident with Mr. Grassies , and he both used excessive force against Mr. Norford and Mr. Grassies , and he failed to intervene to prevent Giancorso's use of excessive force against Mr. Norford and Mr. Grassies , despite having had the opportunity to do so.

340. Moreover, Despite Giancursio's unlawful actions against Mr. Grassies being captured on video and garnering widespread media attention, the Defendant CITY and the RPD failed to conduct an independent, full, and fair investigation into Defendant Giancursio's use of force against Mr. Grassies to determine if it was unlawful, excessive or in violation of RPD policies.

341. Instead, Defendant CITY and the RPD accepted Giancursio and Wagner's justification for the use of force at face value.²⁴

342. In fact, in speaking about the suspensions of GIANCURSIO and WAGNER as a result of the incident involving Mr. Grassies, former RPD Chief Michael Ciminelli stated, "[w]e need to understand the justification for the use of force. Whenever an officer uses force, that officer has an obligation to articulate the justification for the force ... why it was done, how it was done, did it follow our training, our policies."²⁵

343. Chief Ciminelli admits that an officers' subjective justification for the use-of-force is more important than objective evidence demonstrating whether said use of force was actually excessive and unlawful.

344. The Defendant CITY and RPD eventually exonerated Giancursio and failed to impose any meaningful discipline against Giancursio following the April 2017 incident where he was captured on video using excessive force against Mr. Grassies .

345. Chief Ciminelli is a municipal policymaker for the defendant CITY , and his decision not to discipline Giancursio constituted a ratification of his unlawful use of force.

346. Chief Ciminelli's decision not to discipline Giancursio, and instead allowing him to be awarded the "Officer of the Year Award" in May 2017, constituted

²⁴ 2 Rochester police officers suspended over incident on video, Democrat & Chronicle (Apr. 20, 2017) <https://www.usatoday.com/story/news/2017/04/20/2-rochester-police-officers-suspended/100703474/>. Article incorporated by reference herein.

²⁵ *Id.*

a continuation of the official policy of the CITY and the RPD that RPD officers will not be disciplined for using excessive force, even if their grossly excessive use of force is captured on video, which was previously established by former Chief Sheppard by his decision not to discipline Officers Ferrigno and Libertore.

RPD OFFICER THOMAS RODRIGUEZ

347. RPD Officer Thomas Rodriguez has used excessive force against numerous individuals in the CITY of Rochester but has never been reprimanded, suspended, retrained on the use of force, or otherwise disciplined by the CITY or the RPD.

348. On August 31, 2002, RPD officer Thomas Rodriguez and other RPD Officers attacked Lawrence Rogers at 375 Driving Park Avenue, Rochester, New York, by tacking him to the ground, TASERing him, punching, kicking, and beating him with night sticks. Upon information and belief, the excessive force used against Mr. Rogers by RPD officer Thomas Rodriguez and other RPD Officers, caused his death.

349. RPD Officer Thomas Rodriguez was never disciplined by the Defendant CITY or the RPD following the incident on August 31, 2002 that caused Mr. Rogers' death.

350. Thereafter, on May 10, 2007, RPD officer Thomas Rodriguez used excessive force against Ann Marie Sanders, a 100-pound woman, during an incident, where he grabbed her by the arms, body slammed her into the ground, put his knee

in her back, handcuffed her, threw her into the back of a police vehicle, and threatened to mace her.

351. RPD Officer Thomas Rodriguez was never disciplined by the Defendant CITY or the RPD following the May 10, 2007 incident with Ann Marie Sanders.

352. On August 7, 2016, RPD Officer Thomas Rodriguez, was involved in the brutal beating of 17-year-old Ricky Bryant, wherein Mr. Bryant was shot with “pepper balls,” punched in the face, thrown to the ground, sprayed him in the face with mace, and shot with a TASER.

353. As a result of the brutal beating at the hands of P.O. Rodriguez and other RPD Officers, Mr. Bryant suffered serious physical injuries, including a fractured orbital socket.

354. Mr. Bryant filed a complaint of excessive force against P.O. Rodriguez and other RPD Officers who brutally beat him with the Civilian Review Board.

355. The Civilian Review Board and the RPD exonerated P.O. Rodriguez and the other officers involved in the brutal beating of Mr. Bryant.

356. After the Civilian Review Board and the RPD exonerated P.O. Rodriguez and the other RPD Officers involved in the brutal beating of Mr. Bryant, the Rochester CITY Counsel, for the first time ever, issued subpoenas for records related to the incident.

357. The direct and proximate cause of P.O. Rodriguez’s utilization of the illegal and excessive amount of force used against Mr. Bryant, resulting in a fractured orbital socket, was the Defendant CITY and the RPD’s failure to discipline P.O.

Rodriguez after he previously used force without justification against Ms. Sanders, Mr. Rogers, and other individuals in the CITY of Rochester.

358. Despite P.O. Rodriguez's unlawful actions garnering national media attention, the Defendant CITY and the RPD have not conducted a full, thorough, fair and independent investigation into P.O. Rodriguez's use of force against Mr. Bryant, to determine if it was unlawful, excessive or in violation of RPD policies.

359. Defendant CITY and RPD never disciplined P.O. Rodriguez following the August 7, 2016 incident where he, *inter alia*, brutally beat 17-year-old Ricky Bryant and fractured his orbital socket.

360. In April 2017, RPD Officer Thomas Rodriguez placed DKuan Webb in an illegal chokehold in an incident that was recorded on P.O. Rodriguez's body camera.

361. P.O. Rodriguez's illegal chokehold of Mr. Webb was investigated by the Federal Bureau of Investigation, according to the Democrat & Chronicle.²⁶

362. In mid-July 2017, the Defendant CITY agreed to pay Mr. Webb \$125,000 to settle any potential civil claims arising from the violation of Mr. Webb's rights under the United States Constitution and the common laws of the State of New York.

363. The direct and proximate cause of P.O. Rodriguez's utilization of the illegal chokehold against Mr. Webb was the Defendant CITY and the RPD's failure to discipline P.O. Rodriguez after he previously used force without justification

²⁶ Gary Craig, *City pays \$125,000 to man allegedly choked by RPD police officer*, DEMOCRAT & CHRONICLE (Sept. 5, 2017), <http://www.democratandchronicle.com/story/news/2017/09/05/city-rochester-police-choking-fbi-settlement-dkuan-webb-thomas-rodriguez-john-parrinello/632147001/>. Article incorporated by reference herein.

against Ms. Sanders, Mr. Rogers, Mr. Bryant and other individuals in the CITY of Rochester.

364. Despite P.O. Rodriguez's unlawful actions being captured on video, costing the CITY \$125,000 to settle Mr. Webb's civil claims, drawing an FBI investigation into P.O. Rodriguez for possible federal criminal and or civil rights violations, and garnering national media attention, the Defendant CITY and the RPD have not conducted an independent investigation into P.O. Rodriguez's use of force against Mr. Webb to determine if it was unlawful, excessive or in violation of RPD policies.

365. Defendant CITY and RPD never disciplined P.O. Rodriguez following the April 2017 incident where he, *inter alia*, utilized an illegal chokehold against DKuan Webb.

RPD Officer ALEXANDER BALDAUF (and his partner Ricky Harris Jr.)

366. RPD Officer Alexander Baldauf has used excessive force against numerous individuals in the CITY of Rochester but has never been reprimanded, suspended, retrained on the use of force, or otherwise disciplined by the Defendant CITY or the RPD.

367. On August 17, 2013, RPD Officer Alexander Baldauf attacked Dwayne Ivery in Rochester, New York, punching Mr. Ivery in the head numerous times, slamming his body onto the ground, again punching Mr. Ivery in the head and body, and stomping on Mr. Ivery's head with his foot. This incident was captured on video.

368. Throughout the incident, upon information and belief, Officer Baldauf's partner, Ricky Harris Jr., stood idly nearby and failed to intervene to prevent or stop Officer Baldauf's violation of Mr. Ivery's rights, despite having the time and realistic opportunity to do so.

369. Despite this interaction being caught on video, the Defendant CITY and the RPD never conducted an independent investigation of the use of force by RPD Officers Alexander Baldauf and Ricky Harris Jr. against Mr. Ivery to determine if it was unlawful, excessive or in violation of RPD policies.

370. RPD Officers Alexander Baldauf and Ricky Harris Jr. were never disciplined by the CITY or the RPD following the incident on with Mr. Ivery on or about August 17, 2013.

371. Thereafter, on April 20, 2015, RPD Officer Alexander Baldauf used excessive force against Delmar Lipford during an incident at or near the intersection of Culver Road and East Main Street, Rochester, New York. Officer Baldauf shoved Mr. Lipford in the back several times, punched him in the face, and pointed his TASER at Mr. Lipford.

372. Throughout the incident on April 20, 2015, Officer Baldauf's partner, Ricky Harris Jr., stood idly nearby and failed to intervene to prevent or stop Officer Baldauf's violation of Mr. Lipford's rights, despite having the time and realistic opportunity to do so.

373. RPD Officers Alexander Baldauf and Ricky Harris Jr. were never disciplined by the Defendant CITY or the RPD following the incident with Mr. Lipford on April 20, 2015.

RPD OFFICER JOSEPH FERRIGNO II

374. RPD Officer Joseph Ferrigno II has used excessive force against numerous individuals in the CITY of Rochester but has never been reprimanded, suspended, retrained on the use of force, or otherwise disciplined by the Defendant CITY or the RPD.

375. Officer Ferrigno has been the subject of at least 23 civilian complaints of misconduct reviewed by the RPD's Professional Standards Section ("PSS"), many of which involved allegations of excessive force; however, Officer Ferrigno has never been reprimanded, suspended, retrained on the use of force, or otherwise disciplined by the Defendant CITY or the RPD.

376. On or about September 12, 2010, RPD Officer Joseph Ferrigno II used excessive force against the Robin Turner during an incident where she called 911 to report that she'd been assaulted by a teenager in her neighborhood; Officer Ferrigno responded and refused to file a police report, and when Ms. Turner complained about Officer Ferrigno's actions, he retaliated against Ms. Turner by body slamming her onto the ground, dragging her across the ground approximately 10 feet, and arresting her; as a result of the excessive force used by Officer Ferrigno, Ms. Turner suffered a broken rib.

377. Despite Ms. Turner filing a complaint about the excessive amount of force used against her during her arrest, upon information and belief, the Defendant CITY and the RPD never conducted an independent investigation of the use of force by RPD Officer Ferrigno to determine if it was unlawful, excessive or in violation of RPD policies.

378. Officer Ferrigno was never reprimanded, suspended, retrained on the use of force, or otherwise disciplined by the Defendant CITY or the RPD following the September 12, 2010 incident where he used excessive force against Ms. Turner.

379. On or about May 11, 2012, RPD Officer Joseph Ferrigno II used excessive force against Darren Williams during an incident where Officer Ferrigno hit Mr. Williams in the face while he was sitting down, threw him on the ground, punched and kicked him in his body and head, and stating to the plaintiff, “nigger, I’m going to teach you to respect authority.”

380. Despite Mr. Williams filing a complaint about the excessive amount of force used against him during his arrest, the Defendant CITY and the RPD never conducted an independent investigation of the use of force by RPD Officer Ferrigno to determine if it was unlawful, excessive or in violation of RPD policies.

381. Officer Ferrigno was never reprimanded, suspended, retrained on the use of force, or otherwise disciplined by the Defendant CITY or the RPD following the May 11, 2012 incident where he used excessive force and racial slurs against Mr. Williams.

382. On May 1, 2013, RPD Officer Joseph M Ferrigno II and his partner, Anthony R. Liberatore, brutally beat and falsely arrested Benny Warr, a 52-year-old African American wheelchair-bound amputee, while he was waiting for a RTS bus at the intersection of Jefferson and Bartlett Streets. As reported by the Democrat & Chronicle, Mr. Warr testified to the RPD's Professional Standards Section "that he was maced, thrown to the ground and struck after he responded to an order to move by telling officers that he was just waiting for a bus."²⁷ The incident between Mr. Warr and RPD Officers Ferrigno and Liberatore was caught on video by several bystanders²⁸ and the RPD's Blue Light Cameras.²⁹

383. RPD Officers Ferrigno and Libertore were never reprimanded, suspended, retrained on the use of force, or otherwise disciplined by the Defendant CITY or the RPD following the May 1, 2013 incident where they brutally beat Benny Warr.

RPD OFFICER MARIO MASIC

384. RPD Officer Mario Masic has used excessive force against numerous individuals in the CITY of Rochester both before and after the incident complained of

²⁷ Erica Bryant, *Whatever happened to Benny Warr*, DEMOCRAT & CHRONICLE (Dec. 7, 2013), <http://www.democratandchronicle.com/story/news/local/2013/12/06/erica-bryant-what-ever-happened-to-benny-warr-3895715/> (last visited Apr. 10, 2016). Article incorporated by reference herein.

²⁸ See Cell phone video taken by Ms. Tashay Young, a/k/a Shakur Mohammed, originally posted to YouTube on May 4, 2013, and later edited and reposted on June 24, 2013, *Corrected Higher Resolution Video of Benny Warr Being Attacked*, <https://www.youtube.com/watch?v=7xifmR0C3Mk&nohtml5=False> (last visited Apr. 10, 2016). Video incorporated by reference herein.

²⁹ See RPD Blue Light Camera video posted to YouTube, *edited footage from cop cam on May 1st of Benny Warr attack*, <https://www.youtube.com/watch?v=47vo2WVcWY0> (last visited Apr. 10, 2016). Video incorporated by reference herein.

herein, but has never been reprimanded, suspended, retrained on the use of force, or otherwise disciplined by the Defendant CITY or the RPD.

385. Citizens of Rochester who were repeatedly harassed, assaulted and subjected to excessive force by Masic sarcastically nicknamed him the “Cowboy” because of his wild and lawless tactics. However, upon information and belief, Masic has embraced the nickname, and is notorious for referring to himself as “The Cowboy” during interactions with citizens in Rochester.

386. MASIC has used excessive force against other arrestees after the date of the incident complained of herein, including the use of force without justification against arrestees while they were handcuffed.

387. MASIC has never been reprimanded, suspended, retrained on the use of force, retrained on the duty to intervene to prevent and/or stop unlawful actions of his fellow police officers, or been otherwise disciplined by the Defendant CITY or the RPD following the incident(s) that occurred either before or after the incident complained of herein.

388. On August 7, 2009, MASIC unlawfully stopped, searched, arrested and used excessive force against a young man named Deshawn Keon Fields. MASIC thereafter falsified his police paperwork to justify the reasons that he stopped and arrested Mr. Fields, and then forwarded that falsified paperwork to the Monroe County District Attorney’s Office. Thereafter, MASIC perjured himself in front of the grand jury by tailoring his testimony to nullify constitutional deficiencies in his arrest paperwork.

389. Thereafter, in *People v. Fields*, Indictment No. 2009-0864 (Feb. 17, 2010), the Honorable Joseph D. Valentino granted the criminal defendant's motion to suppress because forensic evidence showed that MASIC had testified untruthfully before the grand jury to nullify constitutional deficiencies in his arrest paperwork and justify the initial unlawful stop and search of Mr. Fields. Judge Valentino also found Masic's testimony at the suppression hearing to be incredible and unbelievable.

390. Masic violated NY CPL § 140.05 and RPD internal rules and regulations when he fabricated his arrest and charging paperwork in *Fields*.

391. Masic violated RPD internal rules and regulations when he lied under oath to the Grand Jury and at the suppression hearing in *Fields*.

392. After Judge Valentino granted the criminal defendant's motion to suppress in *Fields* based on his finding that Masic had lied in his arrest and charging paperwork and perjured himself on the stand, the Defendant CITY and the RPD failed to discipline Masic.

393. By failing to discipline MASIC after his unlawful actions in *Fields*, the Defendant CITY and the RPD condoned his unlawful conduct, causing him to violate the rights of subsequent individuals.

394. On May 12, 2011, Masic unlawfully entered the property of a woman named Emily Good, and assaulted, battered and falsely arrested Ms. Good in retaliation for her lawfully filming Masic while he conducted vehicle search of an African American motorist who Masic had stopped directly in front of Ms. Good's home. Ms. Good filmed the encounter from her front yard, and when Ms. Good refused

Officer Masic's request to stop filming, Officer Masic entered her front yard, grabbed her phone from her hand, threw her to the ground, arrested her and charged her with Disorderly Conduct, Obstruction of Governmental Administration and Resisting Arrest.

395. Masic falsified his official arrest paperwork to justify his unlawful arrest and use of force against Ms. Good, which he then forwarded to prosecutors to initiate her prosecution.

396. All the false criminal charges Masic initiated against Ms. Good were dismissed less than a week after Masic falsely arrested her.

397. Ms. Good filed a Notice of Claim against the Defendant CITY following the May 12, 2011 incident where Masic, *inter alia*, falsely arrested and used excessive force against Ms. Good.

398. Defendant CITY offered settled Ms. Good's claim in exchange for her agreeing to forgo filing a civil rights lawsuit against the Defendant CITY and Masic related to the incident on May 12, 2011.

399. Despite this interaction being caught on video and garnering national media attention, the Defendant CITY and the RPD never conducted an independent investigation of the use of force Masic against Mr. Good to determine if it was unlawful, excessive or in violation of RPD policies.

400. The Defendant CITY and RPD never reprimanded, suspended, retrained, or otherwise disciplined Masic following the May 12, 2011 incident where he, *inter alia*, falsely arrested and used excessive force against Emily Good.

401. Thereafter, on September 18, 2015, Officer Masic arrested Quintin Keene in a laundromat on Genesee Street, Rochester, New York, and fabricated his arrest paperwork to falsely charge him with disorderly conduct, obstruction of governmental administration and resisting arrest. All the criminal charges were eventually dismissed. While arresting Mr. Keene, Officer Masic pepper sprayed Mr. Keene, body-slammed him onto the ground, and told Mr. Keene if he did not stop moving, he was going to be shot.

402. More details about Masic's misconduct in Mr. Keene's case are detailed in the Seventh Claim for Relief, *supra*.

403. Despite Masic admitting that he used force against Mr. Keene and all the false criminal charges brought against Mr. Keene eventually being dismissed, Masic was never disciplined or reprimanded for his unlawful use of force against Mr. Keene.

OTHER RECENT EXCESSIVE FORCE INCIDENTS CAPTURED ON VIDEO

404. On June 28, 2020, RPD Officers Nicholas Vandemar, Badge No. 2846, Jeremy Lindauer, Badge No. 2363, and Brandon Contreras, Badge No. 2512, trespassed inside of the home of a young man named Tobias Massey, where they assaulted, battered and falsely arrested him in response to him lawfully recording the officers forcibly arrest and sit on the neck of a man in the front yard of his home. They arrested Mr. Massey and charged him with Obstruction of Governmental Administration and Resisting Arrest. RPD Chief La'Ron Singletary admitted that based on the officers Body Worn Camera recordings and cell phone recordings of the

incident, the officers lacked any reason to arrest Mr. Massey, charge him with any crime, or use any force against him.

405. On July 5, 2020, at approximately 2:00 a.m., RPD officers responded to a house on Pennsylvania Avenue in response in response to a 911 call that a 16-year-old boy was shot in the face and needed medical assistance. When RPD officers arrived at the house, they immediately assaulted and handcuffed two Black people who were comforting the boy and tending to his wounds. Coincidentally, several local activists were sitting in the back yard of a neighboring home when the police arrived. When Ms. Martin and her friends heard the boy yell out, “we called you for help and now you’re abusing us,” they responded to the scene. When the group of activists began recording the incident and demanding the release of the two individuals who were handcuffed, the RPD retaliated against them by arresting four of the activists and charging them with Obstruction of Governmental Administration.

406. On September 15, 2016, RPD officers were captured on video falsely arresting Lentorya Parker and violently throwing her to the ground.³⁰ The officers involved were never disciplined.

³⁰ Amy Hudak, *Body camera video released in Hollenbeck St. incident*, WHAM13 (Sept. 27, 2016), <http://13wham.com/news/top-stories/body-camera-video-released-in-hollenbeck-st-incident>; Amy Hudak, *Woman sues RPD, claiming excessive force in viral video*, WHAM13 (Sept. 6, 2017), <http://13wham.com/news/local/woman-sues-rpd-claiming-excessive-force-in-viral-video>. Articles and videos linked to therein are incorporated by reference hereto.

407. On August 27, 2013, RPD officers were captured on video assaulting a pregnant woman, Brenda Hardaway, punching her in the head and violently throwing her to the ground.³¹ The officers involved were never disciplined.

408. Often, RPD officers' unjustified use force is motivated by a desire to punish the arrestee for his or her perceived failure to display the degree of deference or subservience demanded by the arresting officers and is unsupported by any objectively reasonable evidence. Often, the officer's racist beliefs also play a role in their perception that the arrestee has failed to comply with their demands and the officer's decision to use force without justification.

409. Bad cops are the result of bad policy—and the CITY and the RPD have for decades maintained an unlawful municipal policy, practice and custom of failing to discipline officers who use excessive force and then fabricate their account of their interactions with said individuals in arrest and charging paperwork to bring one or more of a trinity of offenses as their favored cover charges: disorderly conduct, resisting arrest, and obstruction of governmental administration.

410. RPD Officers often charge resisting arrest in conjunction with other charges when they are attempting to justify or conceal their unjustified use of force against the arrestee.

411. The CITY and RPD's historic failure to discipline officers has created an entrenched culture within the RPD that condones and encourages officers to use

³¹ Christine Carrie Fien, *Arrest video provokes outrage; chief responds*, CITY NEWSPAPER (Aug. 28, 2013), <https://www.rochestercitynewspaper.com/rochester/arrest-video-provokes-outrage-chief-responds/Content?oid=2265099>. Articles and videos linked to therein are incorporated by reference herein.

excessive force as a matter of course, and to lie in official police paperwork and sworn testimony to justify their unlawful actions, as demonstrated by the incident involving Mr. Pate, and in the incident underlying the instant lawsuit, as detailed herein.

THESE UNCONSTITUTIONAL POLICIES AND PRACTICES RESULTED IN PLAINTIFF'S INJURIES

412. The CITY's policy and custom of failing to discipline officers who make false arrests, use excessive force and lie about the reasons for making arrests and using force caused Plaintiffs' constitutional rights to be violated as alleged herein.

413. As pleaded above, between August 21, 2014—when Stephens brutally attacked and blinded Dudley Scott—and the May 27, 2018 incident in this case, STEPHENS was never disciplined by the CITY or the RPD and was permitted to remain on active patrol duty, making arrests and using force against citizens of Rochester.

414. The Defendant CITY and the RPD's practice of tolerating and condoning police misconduct by its officers, including but not limited to STEPHENS, directly and proximately resulted in Plaintiffs' injuries.

415. The Defendant CITY and the RPD's policy, practice and custom of condoning the use of force without justification has caused countless individuals to be victimized by RPD Officers' repeated use of excessive force, including Plaintiffs.

416. As a result of the above constitutionally impermissible conduct, Plaintiffs suffered violations of their civil rights, emotional distress, anguish, anxiety, fear, humiliation, and physical injury.

417. Accordingly, Plaintiffs demand judgment against Defendants in a sum of money to be determined at trial.

418. Plaintiff also demands injunctive relief in the form of an Order directing the Defendant CITY and the RPD to implement a new system for investigating use-of-force incidents and disciplining officers that use force without justification.

419. Because the Defendant CITY and RPD have persistently resisted calls for such reforms, Plaintiff demands that any injunctive relief ordered by the Court include independent oversight—such as a Federal Monitor.

420. Because accountability begins with access to reliable data, any remedy must include mechanisms to ensure the accurate tracking of use-of-force incidents, lawsuits, misconduct complaints and internal probes. Compilation of this data is the only way to find patterns and effectively (1) root out bad officers, (2) amend or change RPD policy, and (3) identify issues that need to be addressed via additional training.³²

421. Because of the foregoing, Plaintiffs sustained, *inter alia*, physical pain, permanent physical injuries, mental injuries, emotional distress, embarrassment, humiliation, loss of standing in the community, adverse employment consequences, loss of liberty, and deprivation of their common law and constitutional rights, and seek compensation in an amount to be determined at trial.

422. Defendants committed the foregoing violations of decedent's rights knowingly, intentionally, willfully, recklessly, and/or with deliberate indifference to

³² See, e.g., Long, Colleen, *NYPD tracking officer data on lawsuits, complaints*, AP (Jul. 15, 2011), <http://www.policeone.com/officer-misconduct-internal-affairs/articles/8656321-NYPDtracking-officer-data-on-lawsuits-complaints>. Article incorporated by reference herein.

decendent's constitutional rights or to the effect of such misconduct upon decendent's constitutional rights.

423. By reason of the foregoing, the Defendants are liable to Plaintiff, pursuant to 42 U.S.C. § 1983, for compensatory and for punitive damages.

WHEREFORE and in light of the foregoing, Plaintiff respectfully requests that the Court assume jurisdiction and:

[b] Award appropriate compensatory and punitive damages.

[c] Award appropriate declaratory and injunctive relief, including appointing a federal monitor to oversee necessary reforms of the Defendant CITY 's process for investigating incidents where RPD Officers use force, and implementing measures to ensure that officers who use force without justification are disciplined.

[d] Empanel a jury.

[e] Award attorney's fees and costs.

[f] Award such other and further relief as the Court deems to be in the interest of justice.

Dated: New York, New York
January 14, 2021

Respectfully Submitted,
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