

SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY: CIVIL TERM: PART

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RICHARD ROSARIO, :

Plaintiff, : **SUMMONS**

-against- :

THE CITY OF NEW YORK; GARY WHITAKER,
IRWIN SILVERMAN, CHARLES CRUGER,
JOSEPH FORTUNATO, RICHARD MARTINEZ,
EDWARD J. MONKS,

Index No.
Bronx County

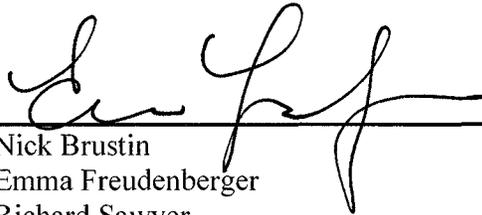
Defendants. :
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TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the Plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be entered against you by default for the relief demanded in the complaint.

Plaintiff designates Bronx County as the place of trial. The basis of this designated venue is that the claim arose in Bronx County.

Dated: New York, New York
January 29, 2018



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To:

The City of New York
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Office of the Corporation Counsel
100 Church Street
New York, NY 10007

Gary Whitaker
Irwin Silverman
Charles Cruger
Joseph Fortunato
Richard Martinez
Edward J. Monks

c/o The New York City Police Department
1 Police Plaza
New York, NY 10038

SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY: CIVIL TERM: PART

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RICHARD ROSARIO, :

Plaintiff, :

COMPLAINT

AND JURY DEMAND

-against- :

THE CITY OF NEW YORK; GARY WHITAKER,
IRWIN SILVERMAN, CHARLES CRUGER,
JOSEPH FORTUNATO, RICHARD MARTINEZ,
EDWARD J. MONKS,

Defendants. :

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Plaintiff Richard Rosario, by and through his attorneys, the law firm of Neufeld Scheck & Brustin, LLP, alleges as follows:

INTRODUCTION

1. Richard Rosario spent nearly 20 years incarcerated for a murder he did not commit. Ten alibi witnesses have sworn to his innocence, including a sheriff's deputy, a pastor, and a correction officer. On the date of the murder, Rosario was in Deltona, Florida, more than a thousand miles away from the Bronx crime scene.

2. He was wrongfully arrested, charged, prosecuted, convicted, and imprisoned for the June 19, 1996 murder of Jorge Collazo in the Bronx. An unknown person, accompanied by an accomplice, shot Collazo in the head on Turnbull Avenue. Rosario did not know Collazo and had no involvement in the crime.

3. Rosario never met Collazo and has no knowledge of the actual perpetrators. He left Florida and returned to New York voluntarily when he learned that police suspected him. Rosario wanted to clear his name; he ended up in prison instead.
4. Rosario's wrongful arrest, prosecution, and incarceration were not inadvertent. They resulted from Defendants' unconstitutional and tortious acts, which included fabricating, coercing, and/or improperly suggesting identifications of Rosario by purported eyewitnesses to the crime, suppressing material exculpatory evidence, failing to investigate Rosario's alibi, and failing to investigate alternative murder suspects.
5. The only evidence against Rosario was identification testimony from three witnesses: **Michael Sanchez**, the friend Collazo was walking with when Collazo was shot, **Robert Davis**, a maintenance worker from a nearby building, and **Jose Diaz**, a food truck vendor. Each of those identifications was tainted by police misconduct.
6. Immediately after the shooting, **Sanchez** told a bystander that he had not seen the shooter. But, after a coercive and/or suggestive interview with Defendant Charles Cruger, Sanchez purportedly identified Rosario as the shooter.
7. Shortly after the shooting, **Davis** could not identify the shooter from photo books. After Sanchez made his purported identification, however, Defendants re-interviewed Davis, showing him two or three photos, including one of Rosario, and told him that another witness had already identified Rosario as the shooter. Because of Defendants' coercive and/or suggestive identification procedure, Davis wrongly identified Rosario as the shooter. Defendants later misrepresented in a written report that Davis identified Rosario after reviewing an entire book of photographs.

8. Of the three witnesses, **Diaz** had the best opportunity to view the shooter. After a coercive and/or suggestive identification procedure, Diaz wrongly identified Rosario, but at trial, Diaz could not identify Rosario from the witness stand.

9. Defendants also sought to obtain an identification from a fourth witness, **Nicole Torres** by showing her a single photograph—of Rosario. Torres did not identify Rosario as the shooter. Defendants suppressed this exculpatory evidence by omitting mention of the identification procedure from the written reports documenting Torres’s interview. Torres also told police that the shooter spoke words indicating he had known Collazo, but Defendants suppressed this evidence by omitting it from their written and oral reports.

10. No physical or forensic evidence implicated Rosario in the crime.

11. Collazo’s shooting drew considerable public attention. Collazo’s father was a New York City transit police officer, and Defendants were under pressure to close the case quickly. To do so, they deliberately manipulated witnesses and prosecuted Rosario for the murder despite lacking any reliable evidence of his guilt.

12. After his arrest, Rosario gave a detailed statement concerning his alibi in Florida, including the names of numerous witnesses and a detailed description of the apartment where he had been staying. But once they obtained the “identifications” of Rosario, Defendants intentionally failed to investigate any evidence that risked undermining their case against him or exposing their misconduct.

13. Defendants even failed to investigate the second perpetrator of Collazo’s murder, an accomplice who drove the shooter’s getaway car. Because Defendants’ case against Rosario was based on false and fabricated identifications, any investigation into the true perpetrator would have undermined their evidence and risked exposing their misconduct.

14. Rosario maintained his innocence at trial and testified in his own defense. His defense counsel called two alibi witnesses but failed to investigate the other witnesses. The jury convicted Rosario of murder based on the false and fabricated identification testimony.

15. Throughout appeals and post-conviction proceedings, Rosario maintained his innocence and his alibi. But Rosario was not released from prison until March 23, 2016, when the Bronx District Attorney's Office conceded that he had not received a fair trial. His indictment was dismissed on the prosecution's motion on November 3, 2016.

16. Rosario would not have been convicted but for the Defendants' misconduct. Sanchez and Davis would not have identified Rosario in the absence of the Defendants' improper coercion or suggestion. Rosario's conviction was caused by Defendants' misconduct in conducting witness interviews, their failure to disclose that the eyewitnesses could not identify Rosario without suggestion, and their suppression of Torres's exculpatory identification procedure. Defendants failed to investigate Rosario's alibi, ignored and suppressed exculpatory evidence, and conspired to prosecute him without probable cause.

17. The individual Defendants' actions were caused by the conduct of police supervisors and policymakers who condoned and facilitated the use of these unconstitutional techniques.

18. As a direct result of Defendants' misconduct, Rosario suffered injury and damages including bodily and personal injuries, pain and suffering; mental anguish; emotional distress; loss of income; infliction of physical illness; inadequate medical care; humiliation of himself and of his family; degradation; restrictions on all forms of personal freedom including but not limited to diet, sleep, personal contact, educational opportunity, and family relations. These injuries began in 1996 and continue to date.

PARTIES, JURISDICTION, AND VENUE

Plaintiff

19. Plaintiff Richard Rosario is a citizen and resident of the State of Florida, residing in Orlando, Florida. On December 17, 1998, he was wrongfully convicted of the murder of Jorge Collazo on Turnbull Avenue in the Bronx. At the time of the Collazo's murder, Rosario lived in Deltona, Florida.

Defendants

20. Defendant City of New York was and is a municipality that is a political subdivision of the State of New York, was the employer of the individual defendants, and is and was at all times relevant to this Complaint responsible for the policies, practices, and customs of the New York City Police Department ("NYPD").

21. Defendant Detective Gary Whitaker was at all times relevant to this Complaint a duly appointed and acting detective of the NYPD, acting under color of law and in his individual capacity within the scope of employment pursuant to the statutes, ordinances, regulations, policies, customs, and usage of the City of New York and the State of New York. He is entitled to indemnification under New York General Municipal Law Section 50-k and by contract. He is sued in his individual capacity.

22. Defendant Detective Irwin Silverman was at all times relevant to this Complaint a duly appointed and acting detective of the NYPD, acting under color of law and in his individual capacity within the scope of employment pursuant to the statutes, ordinances, regulations, policies, customs, and usage of the City of New York and the State of New York. He is entitled to indemnification under New York General Municipal Law Section 50-k and by contract. He is sued in his individual capacity.

23. Defendant Detective Charles Cruger was at all times relevant to this Complaint a duly appointed and acting detective of the NYPD, acting under color of law and in his individual capacity within the scope of employment pursuant to the statutes, ordinances, regulations, policies, customs, and usage of the City of New York and the State of New York. He is entitled to indemnification under New York General Municipal Law Section 50-k and by contract. He is sued in his individual capacity.

24. Defendant Detective Richard Martinez was at all times relevant to this Complaint a duly appointed and acting detective of the NYPD, acting under color of law and in his individual capacity within the scope of employment pursuant to the statutes, ordinances, regulations, policies, customs, and usage of the City of New York and the State of New York. He is entitled to indemnification under New York General Municipal Law Section 50-k and by contract. He is sued in his individual capacity.

25. Defendant Sergeant Edward J. Monks was at all times relevant to this Complaint a duly appointed and acting sergeant of the NYPD, acting under color of law and in his individual capacity within the scope of employment pursuant to the statutes, ordinances, regulations, policies, customs, and usage of the City of New York and the State of New York. He is entitled to indemnification under New York General Municipal Law Section 50-k and by contract. He is sued in his individual capacity.

26. Defendant Detective Joseph Fortunato was at all times relevant to this Complaint a duly appointed and acting detective of the NYPD, acting under color of law and in his individual capacity within the scope of employment pursuant to the statutes, ordinances, regulations, policies, customs, and usage of the City of New York and the State of New York. He is entitled to

indemnification under New York General Municipal Law Section 50-k and by contract. He is sued in his individual capacity.

27. The acts and omissions giving rise to this Complaint occurred in Bronx County.

28. Plaintiff has complied with the requirements of New York City General Municipal Law § 50-i. Rosario made and served a notice of claim on all municipal defendants on January 24, 2017, within the time required by New York General Municipal Law § 50-e. More than thirty days have elapsed since the service of those notices, and no offer of settlement has been made.

29. Plaintiff submitted to a hearing pursuant to New York General Municipal Law § 50-h.

30. Plaintiff's damages exceed \$25,000.

31. Accordingly, this Court has personal and subject matter jurisdiction over this matter, and venue in Bronx County is proper.

FACTS¹

The Crime and Initial Identifications

32. On June 19, 1996, Jorge "George" Collazo and Michael Sanchez, who were respectively 16- and 17-years old, were walking down White Plains Road from a known drug location where they had bought marijuana. Collazo carried a .380 automatic pistol.

33. Two unknown men, one a light-skinned Hispanic and the other dark-skinned, began arguing with Collazo and Sanchez on the street. When the argument ended, the light-skinned man followed Collazo and Sanchez around a corner. The dark-skinned man ran down the block to start his car.

¹ Richard Rosario did not murder Jorge "George" Collazo and has no personal knowledge or involvement in this crime. All descriptions concerning the circumstances of the crimes, as well as portions of the investigation for which Rosario was not personally present, are based upon trial and hearing testimony, police reports, and independent investigation.

34. Approaching from behind, the light-skinned man said, “George, this is for you,” and shot Collazo once in the head. He ran back to the waiting getaway car and drove off. Collazo would eventually die from his injuries.

35. Immediately after Collazo’s murder, Defendant Sergeant Edward J. Monks learned that Collazo’s father was an officer with the NYPD Transit Bureau. The case also drew the attention of the Bronx Borough President’s Office and a City Council member. These factors caused Monks to exert pressure on the investigating officers to close the case quickly.

36. Police identified three eyewitnesses who would later testify at trial: Robert Davis, a porter who had been sweeping the sidewalk down the street from the shooting, Jose Diaz, a food truck vendor who had been parked down the block, and Sanchez himself.

Michael Sanchez

37. Less than 30 minutes after the shooting, Sanchez told his friend Nicole Torres that he had not seen the shooter and did not know who he was.

38. Defendant Cruger, a robbery detective, assisted in the investigation. Cruger knew Rosario as the younger brother of a local troublemaker known to the police.

39. Despite knowing that Sanchez had claimed not to have seen the shooter, Cruger showed him mugshots from the Robbery Unit’s photo book, which included a photograph of Rosario. Using coercion, suggestion and/or other impermissible tactics, Cruger improperly steered Sanchez toward Rosario’s photo. Due to this misconduct, Sanchez incorrectly identified Rosario as the shooter (whom he previously claimed not to have seen).

40. Cruger never reported that he steered Sanchez toward Rosario’s photo. Instead, he intentionally omitted from oral and written reports to the prosecution that Sanchez’s identification was the product of police coercion, suggestion and/or other impermissible tactics.

At a pretrial hearing, Cruger explicitly denied directing Sanchez's attention toward any particular photo.

Robert Davis

41. Davis was the only witness who both consistently claimed to have seen the shooter and who identified Rosario in court. He was the prosecution's most important witness.

42. Initially, on the afternoon of the murder, Defendant Martinez had Davis look through books of arrest photographs at the precinct, but Davis was unable to identify the shooter or his accomplice.

43. After Sanchez identified Rosario at the precinct, Defendants Martinez and Whitaker re-interviewed Davis at his place of employment. Martinez and Whitaker showed Davis two or three photos and told him that a photo of Collazo's shooter was one of them. Guided by Defendants, Davis incorrectly identified Rosario as the shooter. Martinez and Whitaker immediately told Davis that he had chosen the right suspect and that Rosario had shot Jorge Collazo. Defendants' coercion, suggestion and/or other impermissible tactics caused Davis to falsely identify Rosario.

44. Martinez and Whitaker buried their misconduct. Instead of reporting, correctly, that they had shown Davis two or three photos, Martinez filed a police report falsely indicating that Davis had identified Rosario's photograph from approximately 200 photographs in the 43rd precinct's robbery book. Martinez and Whitaker intentionally omitted the fact that Davis's identification was the product of police coercion, suggestion and/or other impermissible tactics from oral and written reports to the prosecution. At the pretrial hearing, both Martinez and Whitaker denied directing Davis's attention to Rosario.

45. Martinez and Whitaker's misconduct did not come to light until 2016, when Davis described the suggestive identification procedure to an independent journalist researching Rosario's conviction. Contrary to the trial testimony, Davis told the reporter that Defendants showed him only two or three photographs, including one of Rosario, that he "pointed out the guy that was supposed to have done it," and that Defendants told him he had the right guy.

Jose Diaz

46. Jose Diaz worked at a hot dog truck near the scene of the murder. Early in the morning of the day of the murder, the perpetrator and his accomplice ordered coffee from Diaz but did not have enough money to pay for it. Diaz later saw the perpetrator and his accomplice accost Collazo before the shooting and heard the fatal gunshots from around the corner.

47. Diaz was the only witness who had an opportunity to view the perpetrator and his accomplice in broad daylight and in a non-stressful setting.

48. The day after the murder, June 20, 1996, Defendants Martinez and Whitaker interviewed Diaz at his food truck for the first time. As with Sanchez and Davis, Martinez and Whitaker steered Diaz to Rosario's photograph using coercion, suggestion and/or other impermissible tactics. Martinez and Whitaker made written and oral reports to the prosecution claiming that Diaz had identified Rosario from photographs but intentionally omitted that his identification was the product of police coercion, suggestion and/or other impermissible tactics.

49. After securing Diaz's inaccurate identification of Rosario, Defendants improperly told Sanchez that Davis and Diaz had identified Rosario.

50. Diaz, who had a face-to-face interaction with the true perpetrator in a non-stressful situation, could not identify Rosario in court. The reason Diaz failed to identify Rosario—who was sitting at the defense table—was that Rosario was innocent; Diaz did not suffer from vision

problems or cognitive issues and simply could not recognize Rosario because Rosario was not the shooter.

51. In the absence of Defendants' unconstitutional identification procedures, no witness would have identified Rosario as Collazo's shooter because he was not.

52. Defendants did not inform the prosecutors of their investigatory misconduct and affirmatively concealed this misconduct by misrepresenting to the prosecution orally and in false and fraudulent police reports that Michael Sanchez, Robert Davis, and Jose Diaz had each independently identified Rosario through lawful photo showings without police suggestion.

Nicole Torres

53. Martinez and Whitaker or other Defendants also approached witness Nicole Torres at her job, showed her a single photograph of Rosario, and asked her to identify him as the shooter.

Torres told Defendants that she did not recognize Rosario.

54. Torres also told Defendants that she heard the shooter say, "This is for you, George!" before shooting Collazo. This evidence demonstrated that the shooter—unlike Rosario—knew Collazo and was therefore exculpatory.

55. Defendants did not document this failed identification procedure and did not disclose this exculpatory evidence to the prosecution or Rosario's defense counsel. Nor did Defendants document that the shooter called out Collazo's name before shooting him.

56. At all times during this investigation, Defendant Sergeant Edward Monks supervised the activity of the other Defendants. On information and belief, Monks was aware of the other Defendants' investigatory misconduct, and either affirmatively condoned it or took no action to prevent it, address it, or report it.

Rosario was in Florida on the day of Collazo's murder.

57. Rosario could not have murdered Collazo because he was in Florida on the date of the murder. Ten witnesses have sworn to his alibi.

58. Rosario grew up in the Bronx, but, between December 1995 and July 1996, he resided part-time in Deltona, Florida.

59. In May and June 1996, Rosario lived with **John Torres**, now a sheriff's deputy, and his then-girlfriend **Jenine Torres**, formerly Jenine Seda. Rosario was an unwelcome guest in Jenine's eyes because her due date with her first child was approaching.

60. John and Jenine Torres remember June 19, 1996, vividly because that was the day Jenine went into labor. Their first son, John Torres Jr., was born the next day.

61. Jenine Torres testified that Rosario was in their house the morning of June 19, 1996. She told him that day that he would have to leave their house to make room for the baby.

62. John Torres testified that he spent the majority of June 19, 1996, in the company of Rosario. Torres and Rosario spent the day driving around looking for parts for Torres's broken car.

63. Pastor **Fernando Torres**, John's father, testified that, during the daytime on June 19, 1996, he accompanied John and Richard to the auto parts store.

64. John testified that he and Rosario returned to John's residence after failing to fix his car.

65. According to Jenine Torres, in the middle of the day on June 19, 1996, John Torres and Rosario were sitting on the couch in Torres's home when Jenine told John they would need to leave for the hospital. Rosario left to stay with another friend. Jenine's labor was induced early the next morning.

66. The Collazo murder took place at approximately 1:00 p.m. on June 19, 1996, in the Bronx. The nearest airport to Deltona, Florida, Orlando International, is approximately 50 minutes away, and a flight from Orlando to New York takes approximately two and a half hours. Rosario could not have woken up in the Torreses' home, shopped for auto parts with John and Fernando Torres, been present midday when Jenine Torres left for the hospital, and also murdered George Collazo in the Bronx on June 19, 1996.

67. Jenine gave birth the next day. Fernando Torres John's father, recalls that Rosario was the first person to tell him about his grandson's birth in the parking lot of the Torreses' apartment complex on June 20, 1996.

68. **Michael Serrano**, now a correction officer, recalls hanging out in the apartment parking lot with Rosario and other friends when John Torres came home from the hospital after his son's birth on June 20, 1996.

69. **Ricardo and Chenoa Ruiz**, who lived next door to the Torreses, knew Rosario from the Bronx. They recall seeing him in Deltona throughout June 1996, including shortly before and shortly after the birth of the Torreses' son.

70. **Denise Hernandez** lived in Deltona in 1996. She had been dating Rosario on-and-off since they met in Deltona on or about her birthday, February 6, 1996. In June 1996, she saw him in Deltona between four and seven times per week. She testified that she had a relationship-ending fight with Rosario when he took her car without permission some time before June 26, 1996. Her friend **Lysette Rivera** recalls seeing Rosario three or four times per week in June 1996 and witnessed the fight between Rosario and Hernandez.

71. **Minerva Rosario**, formerly Minerva Godoy, is Rosario's wife. In 1996, before they married, she lived in Queens with their two children. She testified that Rosario left New York for

Florida in May 1996 and did not return until July 1, 1996. During those months, she talked to Rosario regularly by phone and once wired him money in Deltona by Western Union.

Rosario hears that he is wanted for murder and returns to New York.

72. In late June 1996, NYPD detectives contacted Rosario's mother in the Bronx to tell her that he was wanted for murder. After hearing this, Rosario left Deltona to return to New York. He arrived on July 1, 1996, and called Defendant Cruger to tell him that he planned to come into the precinct to answer any questions. Minutes later, Defendants Whitaker and Martinez arrested Rosario.

73. At the precinct, Rosario truthfully maintained his innocence. Under interrogation by Defendants Martinez, Whitaker, Silverman, Cruger, and Fortunato, Rosario insisted that he had been in Florida on the date of the murder and gave the names of 13 different alibi witnesses and detailed descriptions of the places where he had been living.

74. Defendants Martinez and Whitaker interrogated Rosario for hours in order to get him to confess. Martinez played bad cop and threatened to take him away from his wife and children for the rest of his life. Martinez slammed photos of Collazo's body onto the table in front of Rosario and told him that this was the man he had killed. Whitaker told Rosario that he had already been identified as the shooter and encouraged him to confess. Rosario, however, steadfastly maintained his innocence. Defendants did not document their efforts to browbeat a confession from Rosario.

Defendants deliberately fail to investigate an alternative suspect, the shooter's accomplice, and Rosario's alibi.

75. Defendants' case against Rosario was weak. They had no physical or forensic evidence tying him to the scene. They had no evidence of a motive for Rosario to kill Collazo. The only

evidence of his guilt was three identifications by strangers—two of whom saw the perpetrator for only brief flashes of time during a highly charged shooting.

76. Moreover, Defendants had obtained each of the three identifications through improper suggestion or coercion.

77. Significantly, Defendants had to overcome evidence that the shooter knew Collazo and called to him by name. Rosario had never met Collazo.

78. In order to protect their prosecution against Rosario and to prevent their misconduct from coming to light, Defendants deliberately failed to pursue a significant alternative lead. At the time of the shooting, Collazo feared for his life because he had slapped Lymari Leon, Sanchez's ex-girlfriend. Leon had violent friends who had threatened to murder Collazo in retaliation. Those threats caused Collazo to arm himself with the pistol he carried when he was shot.

79. Defendants knew that if evidence of Rosario's innocence surfaced, there would be no explanation other than police misconduct for the three false identifications of Rosario. Defendants deliberately avoided investigating Leon and her violent associates.

80. Shortly after the murder, both Sanchez and Nicole Torres told police that Collazo had slapped Leon and that her friends had threatened revenge. Aside from a perfunctory interview of Leon, however, Defendants did nothing to investigate this lead.

81. Defendants knew that Rosario had no connection to Leon and that if this lead panned out it would undermine their already flimsy case against Rosario. Defendants did not want to take any investigative steps that would weaken their case against Rosario.

82. For the same reason, Defendants did not investigate the shooter's accomplice. No effort was made to identify the accomplice or to investigate his vehicle, which witnesses had reported was a distinctive station wagon. In fact, when Defendants Martinez, Whitaker, Silverman,

Cruger, and Fortunato interviewed Rosario, whom they purportedly believed to be the shooter, they did not ask him a single question about the accomplice.

83. The only reason Defendants failed to investigate the shooter's accomplice was to avoid undermining their already weak case against Rosario. The shooter's accomplice could not have implicated Rosario because he was innocent. Instead, defendants focused on prosecuting Rosario despite any reasonable basis to believe that he had committed the murder.

84. Defendants also failed to investigate Rosario's alibi. Defendant Silverman had gone to Deltona earlier in 1996 to interview Rosario in connection with an unrelated case. Even though Defendant Silverman *knew* that Rosario had resided in Deltona earlier in 1996 and despite abundant evidence that he was there on the day of the murder, Defendants deliberately failed to contact any of Rosario's alibi witnesses in order to preserve their flimsy case against Rosario and to prevent their misconduct from coming to light.

Defendants introduce the improperly obtained identifications at trial.

85. At Rosario's murder trial, the prosecutor did not introduce any physical or forensic evidence of Rosario's guilt. Nor did the prosecutor introduce any circumstantial evidence suggesting that Rosario was in the Bronx on the day of the murder or that he knew Collazo.

86. The only trial evidence of Rosario's guilt came from the testimony of two eyewitnesses—Sanchez and Davis. Diaz, though he testified at trial, was unable to identify Rosario in the courtroom.

87. Rosario's defense counsel presented only two alibi witnesses at trial and did not interview the ten or more additional witnesses who could have vouched for Rosario's whereabouts. Rosario's defense counsel represented in an affidavit that he had been told that a request for funds to investigate Rosario's alibi had been denied by the trial court.

88. Rosario's defense counsel had also not been provided with key impeachment information. Counsel received a redacted police report documenting Sanchez's statement that he had not seen the shooter—Sanchez's name was omitted. This key impeachment evidence against one of only two eyewitnesses to identify Rosario at trial was therefore not available to Rosario and his trial counsel.

89. The jury convicted Rosario of Collazo's murder on the basis of Sanchez's and Davis's in-court identifications of Rosario. No physical evidence implicated Rosario, and only Sanchez and Davis testified that he was present at the scene. If Sanchez and Davis had not identified Rosario in court, the prosecution would have lacked sufficient evidence for a conviction. The judgment against Rosario issued on December 17, 1998.

90. Sanchez and Davis would not have identified Rosario if it had not been for Defendants' misconduct during the identification proceedings and Defendants' subsequent misrepresentations to the prosecution concerning those "identifications."

Post-Conviction Proceedings

91. Rosario maintained his innocence even after his conviction became final. On June 11, 2003, Rosario moved under CPL 440.10 to set aside his conviction. At a hearing, he presented testimony from seven additional alibi witnesses (aside from John and Jenine Torres) who each testified that he was in Deltona, Florida, on the day of the murder. The court denied his motion.

92. In 2005, he filed a habeas corpus petition in the United States District Court for the Southern District of New York. The district judge and a panel of the Court of Appeals for the Second Circuit both denied Rosario relief under the deferential standard of review for federal habeas.

93. On March 24, 2014, Rosario brought a second motion under CPL 440.10, arguing that newly discovered evidence proved his innocence. The court denied his motion, and a Justice of the Appellate Division granted leave to appeal.

94. After Rosario filed his appellate brief, the Bronx County District Attorney's Office ("BCDAO") reinvestigated his case. The BCDAO concluded that Rosario had not received a fair trial and consented to a vacatur of his conviction. His conviction was vacated on March 23, 2016, and he was freed from custody.

95. The BCDAO determined based on its investigation that it did not have enough evidence to retry Rosario. The BCDAO moved to dismiss Rosario's indictment.

96. On November 3, 2016, Supreme Court, Bronx County, granted the motion and dismissed Rosario's indictment.

DAMAGES

97. The unlawful, intentional, willful, deliberately indifferent, reckless, or bad-faith acts and omissions of the City and Police Defendants caused Richard Rosario to be falsely arrested and imprisoned, unfairly tried, wrongfully convicted, and forced to serve 7,205 days, or nearly 20 years, in jail and prison for a brutal crime he did not commit.

98. As a direct result of Defendants' intentional, bad faith, willful, wanton, reckless, or deliberately indifferent acts and omissions, Rosario sustained injuries and damages that continue to date and will continue into the future, including: loss of freedom for nearly 20 years; pain and suffering; severe mental anguish; emotional distress; loss of family relationships; severe psychological damage; loss of property; legal expenses; loss of income; humiliation, indignities and embarrassment; degradation; permanent loss of natural psychological development; and restrictions on all forms of personal freedom including but not limited to diet, sleep, personal

contact, educational opportunity, vocational opportunity, athletic opportunity, personal fulfillment, sexual activity, family relations, reading, television, movies, travel, enjoyment, and expression, for which he is entitled to monetary relief.

99. Specifically, and as a direct result of Defendants' intentional, bad faith, willful, wanton, reckless, or deliberately indifferent acts and omissions, Rosario sustained physical injuries and damages, including: physical pain and suffering; personal injuries; infliction of physical illness; and inadequate medical care, for which he is entitled to monetary relief.

100. In addition to the physical injury of being wrongfully imprisoned and confined for nearly 20 years, Rosario suffered additional physical harm while incarcerated as a direct result of Defendants' intentional, bad faith, willful, wanton, reckless, or deliberately indifferent acts and omissions.

101. Rosario's son Richard Jr. was 2 years old when Rosario was falsely arrested for this crime and 21 years old when his conviction was finally vacated. Rosario's daughter Amanda was 3 years old when Rosario was falsely arrested for this crime and 23 years old when his conviction was finally vacated. Defendants' unlawful actions caused Rosario to miss the entirety of his children's childhood and adolescence.

102. All of the acts and omissions committed by the Defendants described herein for which liability is claimed were done intentionally, unlawfully, maliciously, wantonly, recklessly, negligently, or with bad faith, and said acts meet all of the standards for imposition of punitive damages.

FEDERAL CLAIMS

COUNT I

Malicious Prosecution under 42 U.S.C. § 1983 and the 4th and 14th Amendments
Against Whitaker, Silverman, Cruger, Fortunato, Martinez, and Monks

103. Plaintiff hereby incorporates by reference all of the foregoing paragraphs and further alleges as follows:

104. Defendants Whitaker, Silverman, Cruger, Fortunato, Martinez, and Monks, with malice and knowing that probable cause did not exist to arrest Richard Rosario and prosecute him for the murder of Jorge Collazo, acting individually and in concert caused Rosario to be arrested, charged, and prosecuted for that crime, thereby violating his clearly established right, under the Fourth and Fourteenth Amendments of the United States Constitution, to be free from unreasonable searches and seizures.

105. Specifically, these Defendants, acting individually and in concert, fabricated evidence and intentionally withheld from and misrepresented to prosecutors and the grand jury exculpatory facts that vitiated probable cause against Richard Rosario and would have impeached witnesses for the prosecution at trial, including but not limited to the fact that the identifications of Rosario as the culprit were the result of impermissible suggestion or coercion, and that the police had fabricated inculpatory evidence and withheld exculpatory and impeachment evidence. These Defendants also failed to conduct a constitutionally adequate investigation in light of evidence pointing to other suspects and away from Rosario or to investigate his alibi.

106. These Defendants performed the above-described acts under color of state law, intentionally, with reckless disregard for the truth, and with deliberate indifference to Rosario's clearly established constitutional rights. No reasonable officer in 1996 would have believed this conduct was lawful.

107. Richard Rosario is completely innocent of the murder of Jorge Collazo. The prosecution finally terminated in Rosario's favor on November 3, 2016, when the indictment was dismissed.

108. As a direct and proximate result of Defendants' actions, Richard Rosario was wrongly convicted and imprisoned for nearly 20 years and suffered the other grievous and continuing damages and injuries set forth above.

COUNT II

**Deprivation of Liberty Without Due Process of Law and Denial of a Fair Trial by
Fabricating Evidence, Withholding Material Exculpatory and Impeachment Evidence, and
Deliberately Failing to Conduct a
Constitutionally Adequate Investigation under 42 U.S.C. § 1983 and the 5th and 14th
Amendments**

Against Whitaker, Silverman, Cruger, Fortunato, Martinez, and Monks

109. Plaintiff hereby incorporates by reference all of the foregoing paragraphs and further alleges as follows:

110. Defendants Whitaker, Silverman, Cruger, Fortunato, Martinez, and Monks, acting individually and in concert, deprived Richard Rosario of his clearly established constitutional right, under the Fifth and Fourteenth Amendments of the United States Constitution, to a fair trial.

111. These Defendants deprived Richard Rosario of his right to a fair trial by fabricating inculpatory evidence and intentionally using unduly suggestive identification procedures, direct suggestion, or coercion to obtain witness identifications, including without limitation: fabricating the false identifications of Rosario by Michael Sanchez, Robert Davis, and Jose Diaz.

112. These Defendants deprived Richard Rosario of his right to a fair trial by withholding material exculpatory and impeachment evidence from prosecutors and defense, including without limitation: information about another lead; information regarding Defendants' early focus on Rosario before he was purportedly identified by Sanchez; the circumstances of the witness interviews with Sanchez, Davis, and Diaz, which would have shown that the identifications of Rosario were fabricated or the result of suggestion or coercion; the witness

interview with Nicole Torres in which she was shown a single photograph of Rosario and told Defendants that he was not the shooter; and Torres's statement that the shooter called Collazo by name just before shooting him.

113. These Defendants deprived Richard Rosario of his right to a fair trial by deliberately failing to conduct a constitutionally adequate investigation, including without limitation by failing to properly investigate who might have killed Collazo by following up the lead that he had been threatened by friends of Lymari Leon; and by failing to investigate Rosario's alibi despite abundant alibi evidence and Defendants' own knowledge that Rosario had been residing in Florida.

114. These Defendants performed the above-described acts under color of state law, intentionally, with reckless disregard for the truth, and with deliberate indifference to Richard Rosario's clearly established constitutional rights. No reasonable officer in 1996 would have believed this conduct was lawful.

115. Richard Rosario is completely innocent of the murder of Jorge Collazo. The prosecution finally terminated in Rosario's favor on November 3, 2016, when the indictment was dismissed.

116. As a direct and proximate result of Defendants' actions, Richard Rosario was wrongly convicted and imprisoned for nearly 20 years and suffered the other grievous and continuing damages and injuries set forth above.

COUNT III

42 U.S.C. § 1983 Failure to Intercede

Against Whitaker, Silverman, Cruger, Fortunato, Martinez, and Monks

117. Plaintiff hereby incorporates by reference all of the foregoing paragraphs and further alleges as follows:

118. By their conduct and under color of state law, Defendants Whitaker, Silverman, Cruger,

Fortunato, Martinez, and Monks had opportunities to intercede on behalf of Richard Rosario to prevent his false arrest, malicious prosecution, false imprisonment, and deprivation of liberty without due process of law, but, due to their intentional conduct, recklessness, or deliberate indifference, declined or refused to do so.

119. These Defendants' failures to intercede violated Richard Rosario's clearly established constitutional right to be free from unreasonable search and seizure and not to be deprived of liberty without due process of law as guaranteed by the Fourth, Fifth, and Fourteenth Amendments. No reasonable police officer in 1996 would have believed that failing to intercede to prevent these defendants from fabricating inculpatory evidence, intentionally using unduly suggestive identification procedures, direct suggestion, or coercion to obtain witness identifications, withholding material, exculpatory, or impeachment evidence, deliberately failing to conduct a constitutionally adequate investigation, and causing Rosario to be arrested and prosecuted without probable cause, were lawful.

120. Richard Rosario is completely innocent of the murder of Jorge Collazo. The prosecution finally terminated in Rosario's favor on November 3, 2016, when the indictment was dismissed.

121. As a direct and proximate result of these Defendants' actions, Richard Rosario was wrongly convicted and imprisoned for nearly 20 years and suffered the other grievous and continuing damages and injuries set forth above.

COUNT IV

42 U.S.C. § 1983 Civil Rights Conspiracy

Against Whitaker, Silverman, Cruger, Fortunato, Martinez, and Monks

122. Plaintiff hereby incorporates by reference all of the foregoing paragraphs and further alleges as follows:

123. Defendants Whitaker, Silverman, Cruger, Fortunato, Martinez, and Monks, acting within

the scope of their employment and under color of state law agreed among themselves and with other individuals to act in concert in order to deprive Richard Rosario of his clearly established Fourth, Fifth, and Fourteenth Amendment rights to be free from unreasonable searches and seizures, false arrest, false imprisonment, malicious prosecution, and deprivation of liberty without due process of law, and to a fair trial.

124. In furtherance of the conspiracy Defendants engaged in and facilitated numerous overt acts, including, without limitation, the following:

- a. Falsely arresting and imprisoning Richard Rosario, knowing that they lacked probable cause;
- b. Fabricating inculpatory evidence in reports and pretrial communications with the prosecution, including the purported independent identifications of Rosario;
- c. Committing perjury during hearings and trials;
- d. Intentionally or with deliberate indifference failing to comply with their duty to disclose *Brady* material during the pendency of the case; and
- e. Working in concert with witness Michael Sanchez to fabricate a prosecution against Rosario for a crime he did not commit.

125. Richard Rosario is completely innocent of the murder of Jorge Collazo. The prosecution finally terminated in Rosario's favor on November 3, 2016, when the indictment was dismissed.

126. As a direct and proximate result of these Defendants' actions, Richard Rosario was wrongly convicted and imprisoned for nearly 20 years and suffered the other grievous and continuing damages and injuries set forth above.

COUNT V
42 U.S.C. § 1983 Supervisory Liability
Against Monks

127. Plaintiff hereby incorporates by reference all of the foregoing paragraphs and further alleges as follows:

128. The individual defendant police officers and detectives Whitaker, Silverman, Cruger, Fortunato, and Martinez acted with impunity in an environment in which they were not

adequately trained, supervised, or disciplined by Defendant Monks and other supervisors, in this case and as a matter of practice.

129. Defendant Monks and other supervisors acted with gross negligence, recklessness, or deliberate indifference to the constitutional rights of citizens by failing to provide adequate training, supervision, and discipline of the defendant police officers, and thereby caused the individual defendant police officers to deprive Richard Rosario of his clearly established constitutional rights, including his rights to be free from unreasonable searches and seizures, false arrest, false imprisonment, malicious prosecution, and deprivation of liberty without due process of law, and to a fair trial.

130. Had Defendant Monks and other supervisors not provided grossly inadequate training, supervision, and discipline of the defendant officers, these defendants would not have used unduly suggestive identification procedures, direct suggestion or coercion to obtain witness identifications of Richard Rosario, fabricated inculpatory evidence, committed perjury, withheld exculpatory and impeachment evidence, and intentionally and maliciously caused Richard Rosario to be arrested and prosecuted without probable cause. Defendant Monks and other supervisors were directly involved in the investigation of Rosario and directly supervised the specific investigative acts taken by the individual officer defendants in this case.

131. The grossly negligent, reckless, or deliberately indifferent conduct of Defendant Monks and other supervisors under color of state law violated their clearly established duty, in 1996, to supervise defendants Whitaker, Silverman, Cruger, Fortunato, and Martinez, and no reasonable police supervisor in 1996 would have believed that grossly negligent, reckless, or deliberately indifferent supervision in the face of actual or constructive notice of misconduct by their subordinate officers was lawful.

132. Richard Rosario is completely innocent of the murder of Jorge Collazo. The prosecution finally terminated in Rosario's favor on November 3, 2016, when the indictment was dismissed.

133. As a direct and proximate result of these Defendants' actions, Richard Rosario was wrongly convicted and imprisoned for nearly 20 years and suffered the other grievous and continuing damages and injuries set forth above.

COUNT VI

42 U.S.C. § 1983 *Monell* Claim

***Monell* Unconstitutional Policy, Custom, or Pattern and Practice of Promoting, Facilitating, or Condoning Improper, Illegal, and Unconstitutional Investigative Techniques and Failure to Supervise, Discipline and Train**

Against Defendant City of New York

134. Plaintiff hereby incorporates by reference all of the foregoing paragraphs and further alleges as follows:

135. Prior to and at the time of the unlawful investigation, prosecution, and conviction of Richard Rosario, the NYPD, by and through its final policymakers, maintained a policy, custom, or pattern and practice of promoting, facilitating, or condoning improper, illegal, and unconstitutional investigative techniques in serious felony investigations, including but not limited to the following: (a) the reliance on witness statements that law enforcement knew or should have known were false; (b) the use of suggestive techniques, direct suggestion, or coercive techniques in interviews and interrogations to obtain false statements; (c) the fabrication of inculpatory evidence; (d) the suppression of exculpatory and impeachment evidence; (e) the intentional failure to conduct adequate investigations of crimes; and (f) engaging in the affirmative concealment and cover up of this type of misconduct.

136. Prior to and at the time of the unlawful investigation, prosecution, and conviction of Richard Rosario, the NYPD, by and through its final policymakers, maintained a policy, custom, or pattern and practice of failing to adequately supervise, discipline and train NYPD detectives

and officers in connection with fundamental investigative tasks implicating the constitutional rights of witnesses and suspects, including but not limited to using police informants, conducting custodial interrogations and witness interviews, documenting and disclosing exculpatory and impeachment evidence to prosecutors, and the affirmative ongoing obligation to come forward with exonerating evidence.

137. The NYPD's policy, custom, or pattern and practice of promoting, facilitating, or condoning improper, illegal, and unconstitutional investigative techniques in serious felony investigations, and its policy, custom, or pattern and practice of failing to adequately supervise, discipline and train NYPD detectives and officers was reflected by the multiple acts of misconduct and illegality committed by multiple NYPD detectives and supervisors in relation to multiple witnesses in the Rosario investigation, as described above.

138. Such unconstitutional municipal customs, practices, or policies were the moving force behind the false evidence used against Richard Rosario, causing his arrest, prosecution, and nearly 20 years of incarceration, as well as all the other grievous injuries and damages set forth above.

STATE LAW CLAIMS

COUNT VII

Malicious Prosecution

Against Whitaker, Silverman, Cruger, Fortunato, Martinez, and Monks

1. Plaintiff hereby incorporates by reference all of the foregoing paragraphs and further alleges as follows:
2. Defendants Whitaker, Silverman, Cruger, Fortunato, Martinez, and Monks, despite knowing that probable cause did not exist to arrest and prosecute Richard Rosario for the murder of Jorge Collazo, intentionally, recklessly, and with malice caused Rosario to be arrested,

prosecuted, and convicted for the murder of Collazo. Furthermore, these Defendants intentionally withheld from and misrepresented to prosecutors and the grand jury facts that further vitiated probable cause against Rosario, including but not limited to the facts that the purported independent identifications of Rosario were the product of unduly suggestive identification procedures, direct suggestion, or coercion and that the police had fabricated inculpatory evidence and withheld exculpatory and impeachment evidence.

139. Richard Rosario is completely innocent of the murder of Jorge Collazo. The prosecution finally terminated in Rosario's favor on November 3, 2016, when the indictment was dismissed.

140. As a direct and proximate result of these Defendants' actions, Richard Rosario was wrongly convicted and imprisoned for nearly 20 years and suffered the other grievous and continuing damages and injuries set forth above.

COUNT VIII

Intentional, Reckless, or Negligent Infliction of Emotional Distress *Against Whitaker, Silverman, Cruger, Fortunato, Martinez, and Monks*

141. Plaintiff hereby incorporates by reference all of the foregoing paragraphs and further alleges as follows:

142. The improper, deliberate, and traumatizing conduct of Defendants Whitaker, Silverman, Cruger, Fortunato, Martinez, and Monks in deliberately causing, or recklessly disregarding the risk of causing, the wrongful prosecution, conviction, incarceration, and concomitant severe emotional distress, was extreme and outrageous, and directly and proximately caused the grievous injuries and damages set forth above.

143. In the alternative, Defendants Whitaker, Silverman, Cruger, Fortunato, Martinez, and Monks negligently and grossly negligently, and in breach of their duties owed to Richard Rosario to refrain from relying on statements from witnesses that these Defendants knew or should have

known were false; refrain from fabricating evidence; refrain from using suggestive techniques, direct suggestion, or coercive techniques in interviews and interrogations to obtain false witness statements; disclose material exculpatory and impeachment evidence; and otherwise act to deny Rosario due process of law, directly and proximately caused Rosario to be falsely arrested, maliciously prosecuted, and wrongly imprisoned for nearly 20 years. Defendants' actions unreasonably endangered Rosario's physical health and safety, and caused him to suffer physical harm, including physical ailments resulting from the circumstances and duration of his wrongful incarceration.

144. These Defendants engaged in these acts within the scope of their employment.

145. These claims are tolled as these defendants concealed from Richard Rosario—and still are concealing to this day—their conduct giving rise to this cause of action.

COUNT IX

State Law Negligence

Against Whitaker, Silverman, Cruger, Fortunato, Martinez, and Monks

146. Plaintiff hereby incorporates by reference all of the foregoing paragraphs and further alleges as follows:

147. Defendants Whitaker, Silverman, Cruger, Fortunato, Martinez, and Monks are liable for negligence, having breached their duty of reasonable care to Richard Rosario. Specifically, and by way of example, these Defendants:

- a. failed to accurately report how Richard Rosario became a suspect in the crime;
- b. failed to accurately report the circumstances of Michael Sanchez's, Robert Davis's, and Jose Diaz's false identifications of Richard Rosario as the person who murdered Jorge Collazo;
- c. failed to properly investigate Richard Rosario's alibi; and
- d. failed to properly investigate leads in the investigation which suggested that Richard Rosario was not involved.

148. Defendants' negligence and gross negligence directly and proximately caused Richard

Rosario to be wrongfully prosecuted and imprisoned for nearly 20 years or extended the length of time he was wrongfully imprisoned.

149. These Defendants engaged in these acts within the scope of their employment.

150. Richard Rosario is completely innocent of the murder of Jorge Collazo. The prosecution finally terminated in Rosario's favor on November 3, 2016, when the indictment was dismissed.

151. As a direct and proximate result of these Defendants' actions, Richard Rosario was wrongly convicted and imprisoned for nearly 20 years and suffered the other grievous and continuing damages and injuries set forth above.

152. Richard Rosario's cause of action for negligence was unavailable to him until the prosecution finally terminated in his favor on November 3, 2016, when the indictment was dismissed. These claims are tolled as Defendants concealed from Rosario—and still are concealing to this day—their conduct giving rise to this cause of action.

COUNT X

Respondeat Superior Claim Against Defendant City of New York

153. Plaintiff hereby incorporates by reference all of the foregoing paragraphs and further alleges as follows:

154. At all times relevant to this Complaint, Defendants Whitaker, Silverman, Cruger, Fortunato, Martinez, and Monks acted as agents of the City of New York, in furtherance of the business, including law enforcement functions, of the City of New York, and within the scope of their employment or agency with the City of New York.

155. The conduct by which the defendant officers committed the torts of malicious prosecution, intentional, reckless or negligent infliction of emotional distress, and negligence was not undertaken for the Police Defendants' personal motives, but rather was undertaken while

the Police Defendants were on duty, carrying out their routine investigative functions as detectives and police officers.

156. Under the doctrine of respondeat superior, the City of New York is liable for its agents' state law torts of malicious prosecution, intentional, reckless or negligent infliction of emotional distress, and negligence.

COUNT XI

New York State Constitution

Against Whitaker, Silverman, Cruger, Fortunato, Martinez, and Monks

157. Plaintiff hereby incorporates by reference all of the foregoing paragraphs and further allege as follows:

158. The conduct of Defendants Whitaker, Silverman, Cruger, Fortunato, Martinez, and Monks described above, also violated Richard Rosario's rights under the New York State Constitution, Article I, §§ 6 and 12, to due process of law and to be free from unreasonable searches and seizures.

159. Richard Rosario is completely innocent of the murder of Jorge Collazo. The prosecution finally terminated in Rosario's favor on November 3, 2016, when the indictment was dismissed.

160. As a direct and proximate result of these Defendants' actions, Richard Rosario was wrongly convicted and imprisoned for nearly 20 years and suffered the other grievous and continuing damages and injuries set forth above.

161. Defendant City of New York is liable under respondeat superior for the actions of its employees within the scope of their employment.

WHEREFORE, Richard Rosario demands judgment jointly and severally against defendants as follows:

A. That the Court award compensatory damages to him and against the defendants, jointly and severally, in an amount to be determined at trial but that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction over this action;

B. That the Court award punitive damages to him, and against all individual defendants, in an amount to be determined at trial, that will deter such conduct by defendants in the future;

C. For a trial by jury;

D. For pre-judgment and post-judgment interest and recovery of his costs, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 for all 42 U.S.C. § 1983 claims; and

E. For any and all other relief to which he may be entitled.

Respectfully submitted,

Dated: New York, New York
January 29, 2018


Nick Brustin
Emma Freudenberger
Richard Sawyer
NEUFELD SCHECK & BRUSTIN, LLP
Attorneys for Plaintiff Richard Rosario
99 Hudson Street, 8th Floor
New York, New York
(212) 965-9081

VERIFICATION

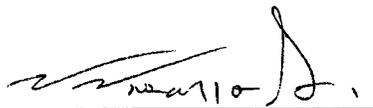
RICHARD ROSARIO, being duly sworn, deposes and says:

I am the Plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same are true to my knowledge, except as to those matters alleged on information and belief and as to those matters, I believe them.

To the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the presentation of these papers and the contentions therein are not frivolous as defined in 22 NYCRR 130-1.1(c).

Dated:

January 29th, 2018

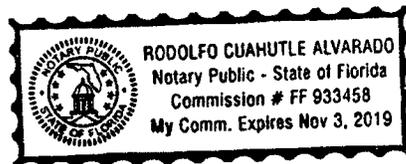


RICHARD ROSARIO

Sworn to me on this 29th day of January, 2018.



Notary Public



SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY: CIVIL TERM: PART

-----X
RICHARD ROSARIO, :

Plaintiff, :
-against- :

**NOTICE OF
ELECTRONIC FILING**

THE CITY OF NEW YORK; GARY WHITAKER,
IRWIN SILVERMAN, CHARLES CRUGER,
JOSEPH FORTUNATO, RICHARD MARTINEZ,
EDWARD J. MONKS,

Defendants.

Index No.
Bronx County

-----X

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that the matter captioned above has been commenced as an electronically filed case in the New York State Courts Electronic Filing System ("NYSCEF") as required by CPLR § 2111 and Uniform Rule § 202.5-bb (mandatory electronic filing). This notice is being served as required by that rule.

NYSCEF is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and unrepresented litigants who have consented to electronic filing. Electronic filing offers significant benefits for attorneys and litigants, permitting papers to be filed with the County Clerk and the court and served on other parties simply, conveniently, and quickly. NYSCEF case documents are filed with the County Clerk and the court by filing on the NYSCEF Website, which can be done at any time of the day or night on any day of the week. The documents are serve automatically on all consenting e-filers as soon as the document is uploaded to the website, which sends out an immediate email notification of the filing.

The NYSCEF System charges no fees for filing, serving, or viewing the electronic case record, nor does it charge any fees to print any filed documents. Normal filing fees must be paid, but this can be done on-line.

Parties represented by an attorney: An attorney representing a party who is served with this notice must either: 1) immediately record his or her representation within the e-filed matter on the NYSCEF site; or 2) file the Notice of Opt-Out form with the clerk of the court where this action is pending. Exemptions from mandatory e-filing are limited to attorneys who certify in good faith that they lack the computer hardware and/or scanner and/or internet connection or that they lack (along with all employees

subject to their direction) the operational knowledge to comply with e-filing requirements. [Section 202.5-bb(e)]

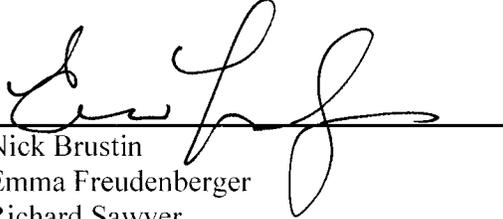
Parties not represented by an attorney: Unrepresented litigants are exempt from e-filing. They can serve and file documents in paper form and must be served with documents in paper form. However, an unrepresented litigant may participate in e-filing.

For information on how to participate in e-filing, unrepresented litigants should contact the appropriate clerk in the court where the action was filed or visit www.nycourts.gov/efileunrepresented. Unrepresented litigants also are encouraged to visit www.nycourthelp.gov or contact the Help Center in the court where the action was filed. An unrepresented litigant who consents to e-filing may cease participation at any time. However, the other parties may continue to e-file their court documents in the case.

For additional information about electronic filing and to create a NYSCEF account, visit the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: efile@nycourts.gov).

Dated: New York, New York

January 29, 2018



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Emma Freudenberger
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Joseph Fortunato
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c/o The New York City Police Department
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