

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

PATRICK J. LYNCH, as President of the Patrolmen’s  
Benevolent Association of the City of New York, Inc., on  
behalf of himself and all police officers employed by the  
City of New York, and THE PATROLMEN’S  
BENEVOLENT ASSOCIATION OF THE CITY OF  
NEW YORK, INC.,

Index. No. \_\_\_\_\_

Plaintiffs-Petitioners,

-against-

THE NEW YORK CITY CIVILIAN COMPLAINT  
REVIEW BOARD and FREDERICK DAVIE, in his  
Official Capacity as Acting Chair of the New York City  
Civilian Complaint Review Board,

Defendants-Respondents,

-and-

JAMES P. O’NEILL, in his Official Capacity as  
Commissioner of the New York City Police Department,

Nominal Defendant-Respondent.

**VERIFIED ARTICLE 78 &  
DECLARATORY JUDGMENT PETITION**

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Plaintiffs-Petitioners Patrick J. Lynch, as President of the Patrolmen's Benevolent Association of the City of New York, Inc. (the "PBA"), on behalf of himself and all police officers employed by the City of New York, and the PBA (collectively, "Petitioners"), for their Verified Article 78 & Declaratory Judgment Petition against defendants-respondents The New York City Civilian Complaint Review Board (the "CCRB") and its Acting Chair, Frederick Davie (collectively, "Respondents"), respectfully allege as follows:

**PRELIMINARY STATEMENT**

1. Pursuant to Article 78 and CPLR 3001, the Court should declare invalid, and enjoin the CCRB from implementing or enforcing, the CCRB's latest power grabs: (i) a vast overhaul of its rules that concluded with the publication of revised rules in January 2018 (the "Revised Rules"); and (ii) a February 2018 "resolution" (the "Resolution"), by which the CCRB unilaterally and impermissibly granted itself authority to investigate sexual misconduct allegations against police officers.
2. The Revised Rules and the Resolution cavalierly disregard the limited jurisdiction and authority imposed on the CCRB by its Charter and other legislative mandates, as well as powers granted instead to the Police Commissioner, the New York Police Department ("NYPD"), and other bodies.
3. The Revised Rules and Resolution further lack any rational basis (in many instances, by the CCRB's own admission) or objective standards that could be used to reasonably address any legitimate concerns.
4. The result is gross overreaching by the CCRB, in a manner that undermines its legislative purpose: to be a fair, impartial, and independent body to receive and investigate a limited sub-set of civilian complaints against police officers in a manner in which the public and the police department can have confidence.

5. The CCRB's jurisdiction is limited to receiving, investigating, and making findings and recommendations on complaints from the public of police misconduct that involve only four limited categories of jurisdiction: excessive use of force, abuse of authority, discourtesy, or use of offensive language (commonly referred to as "FADO" jurisdiction). The statute makes it abundantly clear that the final determination over any complaint against a police officer is vested with the Police Commissioner, and the CCRB cannot do anything to interfere with this statutory right.

6. At issue are thirteen provisions of the Revised Rules, nearly all of which impermissibly expand the CCRB's limited jurisdiction and authority, and all of which are arbitrary and capricious. The CCRB has given itself the power, for example, to receive and investigate complaints filed *after the statute of limitations has expired*; ignored its limited FADO jurisdiction and purported to authorize itself to investigate all forms of "other misconduct"; changed the very nature of the agency by empowering itself to commence investigations even without anyone having filed a complaint; and more. With these changes, the CCRB even grants itself powers expressly vested in the Police Commissioner under the pertinent statutory authority, ignores procedures put in place by the statute to attempt to minimize the filing of unreliable complaints (which can have lasting and serious effects on the targeted police officers), and deviates from its own procedures that were designed to create a fair playing field in the make-up of CCRB panels.

7. The result is a series of Revised Rules that violate statutory mandates, lack any rational justification, unfairly prejudice Police Officers, and threaten to undermine public confidence in the CCRB.

8. Not satisfied with the dramatic expansion of its powers under the Revised Rules, a month later the CCRB expanded its jurisdiction by means of a “Resolution,” passed on February 14, 2018, that improperly grants the CCRB a fifth category of jurisdiction. In an area in which it has no statutory authority or experience, the CCRB has suddenly granted itself the power to investigate complaints of sexual misconduct, despite the fact that other bodies have historically handled these types of complaints. The CCRB provided no reason or rational basis for the change. With this change, the CCRB is treading in waters in which it has no legislative authority and no experience, to the detriment of both Police Officers and the public.

9. The Resolution is invalid for the independent reason that the CCRB passed it without complying with the applicable public notice, comment, and hearing requirements of the Administrative Procedure Act. While significantly expanding its own authority, the CCRB disregarded the public review and scrutiny process that is designed to prevent just this type of agency abuse of power.

10. For these reasons, the Revised Rules discussed herein and the Resolution should be declared invalid and stricken, and the CCRB enjoined from implementing or enforcing them or engaging in the conduct therein.<sup>1</sup>

### **PARTIES**

11. Plaintiff-Petitioner PBA is the designated collective bargaining agent for the more than 23,000 police officers employed by the NYPD (“Police Officers”). The PBA negotiates and advocates on Police Officers’ behalf with the City and the NYPD in matters of policy, terms and conditions of employment, and all matters relating to Police Officers’

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<sup>1</sup> Copies of the Revised Rules (redlined against the prior Rules) and the Resolution are attached as Exhibits 1 and 2 to the Affirmation of Jacqueline G. Veit (“Veit Affirmation”), submitted in support of this Petition. Exhibit numbers throughout this Petition refer to the Exhibits to the Veit Affirmation.

general welfare. The core function of the PBA is to advocate for, and protect and advance the rights and interests of, Police Officers.

12. Plaintiff-Petitioner Patrick Lynch, a New York City Police Officer, is the duly elected President of the PBA.

13. Defendant-Respondent the CCRB is an agency of the City, the purpose of which is to be a fair, impartial, and independent body to investigate complaints from the public against police officers involving excessive use of force, abuse of authority, discourtesy, or use of offensive language. Its authority derives from the New York City Charter, ch. 18-A, § 440 (the “Charter”).

14. Defendant-Respondent Frederick Davie is the Acting Chair of the CCRB (Chair Davie and the CCRB are collectively referred to herein as “Respondents”).

15. Nominal Defendant-Respondent James P. O’Neill is the Commissioner of the NYPD (“Nominal Respondent”).

#### **JURISDICTION AND VENUE**

16. This Court has subject matter jurisdiction pursuant to CPLR § 7803 because the Revised Rules and the Resolution constitute final determinations that the CCRB made without jurisdiction and that are arbitrary and capricious. This Court also has jurisdiction to render a declaratory judgment pursuant to CPLR § 3001.

17. This Court has personal jurisdiction over Respondents because the CCRB’s principal place of business is located at 100 Church Street, 10th Floor, New York, New York, and Respondents and the Nominal Respondent transact business within the state pursuant to CPLR § 302(a)(1).

18. Venue lies in New York County pursuant to CPLR §§ 506(b) and 7804(b) because it is where Respondents’ and Nominal Respondent’s principal offices are located.

## FACTUAL BACKGROUND

### *History of the CCRB*

19. In 1953, the NYPD established the predecessor to today's CCRB to investigate civilian complaints against Police Officers. At that time, all functions of the CCRB were exclusively within the NYPD. With the exception of a one year experiment with including civilians on the Board, the CCRB was staffed only with NYPD members until 1986. That year, the City Council passed Local Law No. 13-A, which amended the former Charter Section 440, and provided for the CCRB to be comprised of twelve members: six civilians and six full-time employees of the NYPD.

20. In 1993, the City Council passed Local Law 1, which modified Section 440 of the Charter to establish the CCRB in its current all-civilian form, independent of the NYPD.

21. The agency's purpose is set forth in Charter Section 440(a):

It is in the interest of the people of the city of New York and the New York City police department that the investigation of complaints concerning misconduct by officers of the department towards members of the public be complete, thorough, and impartial. These inquiries must be conducted fairly and independently, and in a manner in which the public and the police department have confidence. An independent civilian complaint review board is hereby established as a body comprised solely of members of the public with the authority to investigate allegations of police misconduct as provided in this section.

22. Pursuant to the Charter, the CCRB consists of 13 members. The City Council designates five members; the Police Commissioner designates three members; and the Mayor designates five members. Charter § 440(b)(1). No member of the CCRB may have a law enforcement background, except those designated by the Police Commissioner. No member may be a public employee or serve in public office. *Id.* § 440(b)(2).

23. The CCRB also has an Executive Director who is responsible for managing the day-to-day-operations of the agency. The CCRB has 180 employees, including a 110-member Investigations Division.

***The CCRB's Limited Jurisdiction and the Police Commissioner's Authority Over Police Discipline***

24. The Charter confers upon the CCRB the following limited "FADO" jurisdiction:

The board shall have the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public against members of the police department that allege misconduct involving excessive use of force, abuse of authority, discourtesy, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability.

*Id.* § 440(c)(1) (boldface added).

25. The findings and recommendation of the CCRB are submitted to the Police Commissioner for final determination. *Id.*

26. The Charter vests the Police Commissioner with authority in matters of police discipline. Charter Section 434 states: "The commissioner shall have cognizance and control of the government, administration, disposition and discipline of the department, and of the police force of the department." Similarly, the Administrative Code states: "Members of the force, except as elsewhere provided herein, shall be fined, reprimanded, removed, suspended or dismissed from the force *only* on written charges made or preferred against them, after such charges have been *examined, heard and investigated by the commissioner or one of his deputies* . . ." N.Y. City Admin. Code § 14-115(b) (emphasis added).

27. In creating the CCRB, the City Council made clear that it was not disturbing the Police Commissioner's authority over police discipline. Charter § 440(e) states: "The provisions of this section shall not be construed to limit or impair the authority of the police

commissioner to discipline members of the department.” It further provides, “[n]or shall the provisions of this section be construed to limit the rights of members of the department with respect to disciplinary action . . . .”

28. The City Council also restricted the CCRB from interfering in matters that are being handled by other authorized agencies or bodies, including, but not limited to, criminal matters. Charter Section 440(f) provides: “The provisions of this section shall not be construed to prevent or hinder the investigation or prosecution of members of the department for violations of law by any court of competent jurisdiction, a grand jury, district attorney, or other authorized officer, agency or body.”<sup>2</sup>

### ***The Substantial Impact of a CCRB Complaint on a Police Officer***

29. The CCRB’s own data shows that thousands of Police Officers are being adversely impacted by meritless complaints. For example, according to the CCRB’s most recent report, in the first half of 2017, out of 1,972 filed complaints, only 131 complaints (6.6%) were substantiated. *See* CCRB 2017 Semi-Annual Report, at 19, 23, Ex. 15. On the other hand, 317 complaints were deemed unsubstantiated, 116 were deemed exonerated, 42 were deemed unfounded, and 1,117 were dismissed (referred to as “truncated”) due to, among other things, witness unavailable or uncooperative, complaint withdrawn, or victim unidentified.<sup>3</sup> *See id.* at 20, 23. The CCRB data further shows that, for the five-year period between 2012 and 2016, there were 26,395 complaints filed, and of those only 1,664 complaints (6.3%) were substantiated. *See* CCRB 2016 Statistical Appendix, at 60, Ex. 16.

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<sup>2</sup> An “other authorized officer, agency or body” may include, for example, the NYPD’s Internal Affairs Bureau, the New York City Commission on Human Rights, or a court (*e.g.*, a civil action under 42 U.S.C. § 1983).

<sup>3</sup> The small remainder were resolved through mediation, miscellaneous closure, or officer unidentified. *See* Ex. 15 at 19.



30. Nonetheless, even as to complaints that are ultimately unsubstantiated or entirely false to begin with, the mere filing of a CCRB complaint has deleterious effects on a Police Officer's career. Once a complaint has been filed against a Police Officer, damage has been done.

31. As the CCRB's website explains, "[a]ll complaints, regardless of outcome, remain on an officer's CCRB history which is part of their personnel record at the police department." CCRB, *Frequently Asked Questions*, available at <https://www1.nyc.gov/site/ccrb/about/frequently-asked-questions-faq.page>, Ex. 18. According to the CCRB, CCRB complaints "can affect assignments and promotions." CCRB, *Police Discipline*, available at <https://www1.nyc.gov/site/ccrb/prosecution/police-discipline.page>, Ex. 19.

32. Among other things, a Police Officer will be placed on performance monitoring simply due to the number of complaints filed, regardless of the ultimate disposition of those complaints. Performance monitoring has negative employment consequences, including, among other things, being subject to unnecessary and unwarranted training and increased scrutiny, and impairing the Officer's ability to be promoted, transferred, or receive certain assignments.

33. The pendency of a CCRB investigation also has adverse employment consequences for a Police Officer. The Officer may be placed on modified assignment or suspended from duty either at the beginning or during the course of a disciplinary proceeding.

#### ***The CCRB Complaint Procedure***

34. After a complaint within its jurisdiction is filed, a CCRB investigator interviews the complainant and any witnesses, collects evidence, and identifies the Police Officer(s) involved in the encounter. The Charter requires certain cooperation in the investigation by the NYPD:

It shall be the duty of the police department to provide such assistance as the board may reasonably request, to cooperate fully with investigations by the board, and to provide to the board upon request records and other materials which are necessary for the investigation of complaints submitted pursuant to this section, except such records or materials that cannot be disclosed by law.

Charter § 440(d)(1).

35. Police Officers are required to appear before the CCRB and respond to its inquiries. *Id.* § 440(d)(2). The CCRB also has the power, by majority vote of its members, to compel the attendance of witnesses and require the production of records and materials it deems necessary for the investigation. *Id.* § 440(c)(3).

36. Once the investigative team completes its investigation, it makes a recommendation to the Board. A panel of three Board members then votes on the investigators' recommendations. Until the introduction of the Revised Rules, panels consisted of a designee from each of the Mayor, the City Council, and the Police Commissioner.

37. A complaint that is fully investigated generally receives one of the following outcomes:

- Substantiated: Conduct is found to be improper by a preponderance of the evidence.
- Unsubstantiated: There was insufficient evidence to establish whether or not misconduct occurred.
- Unfounded: A preponderance of the evidence suggests that the event or alleged act did not occur.
- Exonerated: The alleged acts did occur but were not found to be improper.

Additional possible outcomes include, among others: Complaint Withdrawn, Complainant Unavailable, Complainant Uncooperative, Officer Unidentified, No Jurisdiction, and Mediated. *See Ex. 1 at 14.*

38. When the CCRB “substantiates” an allegation of misconduct, it makes a recommendation of the type of discipline to be imposed. The disciplinary recommendations range from “Instructions,” the least severe, to “Charges and Specifications,” the most severe. If Charges and Specifications are recommended, the Police Officer is entitled, by statute, to an administrative hearing. Pursuant to the City Charter, the Police Commissioner makes the final determination of any discipline imposed.

***The Memorandum of Understanding Between The NYPD and the CCRB***

39. In 2012, the CCRB and NYPD entered into a memorandum of understanding with respect to substantiated complaints, which became effective in 2013. *See* Memorandum of Understanding Between the CCRB and the NYPD Concerning the Processing of Substantiated Complaints, dated April 2, 2012 (“MOU”), Ex. 5. The MOU is incorporated into the Rules of the City of New York, at Title 38, Chapter 15, Subchapter B.

40. Of note for purposes of this proceeding, the MOU established an administrative prosecution unit (“APU”) within the CCRB. When the CCRB recommends Charges and Specifications, the CCRB’s APU “prosecutes” the substantiated allegations before the NYPD Trial Commissioner.<sup>4</sup>

41. The MOU is clear, however, that “[t]he Police Commissioner shall retain in all respects the authority and discretion to make final disciplinary determinations.” *Id.* § 8. In this regard, the MOU provides that the NYPD need only report back to the CCRB *after* the Police Commissioner has made a final determination whether to accept, reject, or modify the CCRB’s

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<sup>4</sup> In 2003, the First Department held that a prior MOU between the NYPD and the CCRB entered into in 2001 was invalid, in part, because it provided for the administrative prosecution of substantiated complaints to be tried outside the NYPD. *See Matter of Lynch v. Giuliani*, 301 A.D.2d 351, 359-60 (1st Dep’t 2003). The Court held that the MOU cannot “grant[] the CCRB any new substantive rights, nor . . . diminish[] the Police Commissioner’s authority to make final determinations as to appropriate disciplinary sanctions.” *Id.* at 358.

recommendation. Specifically, it states that the NYPD “shall ensure that CCRB is notified of the *final disciplinary result* and specific penalty in each case within thirty calendar days of the Police Commissioner’s *final determination*.” *Id.* § 24 (emphasis added).

42. The MOU permits the CCRB to conduct plea negotiations with subject Officers, but similarly requires that such pleas be “presented to the Police Commissioner for final determination.” *Id.* § 21. Indeed, the MOU expressly contemplates that the Police Commissioner may reject a plea and sets forth specific procedures to govern this occurrence:

In all instances where the Police Commissioner rejects a negotiated plea, CCRB shall be responsible for implementing the Police Commissioner’s decision, including negotiating the case consistent with the Police Commissioner’s determination or proceeding with the prosecution of the subject officer.

*Id.* § 22.

***The Revised Rules At Issue In This Proceeding***

43. The Charter provides limited rule-making authority to the CCRB. Specifically, the CCRB can promulgate rules of procedure, “including rules that prescribe the manner in which investigations are to be conducted and recommendations made and the manner by which a member of the public is to be informed of the status of his or her complaint,” provided that the CCRB complies with the rule-making procedures in the Administrative Procedure Act. Charter § 440(c)(2). The CCRB rules are found in the Rules of the City of New York, Title 38A, Chapter 1.

44. On January 2, 2018, the CCRB published the Revised Rules in the City Record. *See* The City Record Online, available at <https://a856-cityrecord.nyc.gov/RequestDetail/201712111110>, Ex. 13.

45. In the Notice of Adoption of the Revised Rules, the CCRB stated its rationales for the Revised Rules. The “Statement of Basis and Purpose” states:

The purpose of these revised rules is to simplify the language in the rules of the CCRB to make them easier for the public to understand, to accelerate investigations and make them more transparent to the public, and to codify certain Board resolutions that were previously voted on and adopted.

CCRB Notice of Adoption (“Notice of Adoption”), at 2, Ex. 1.

46. Not only does the CCRB lack jurisdiction to adopt many of the Revised Rules, but they are also inimical to the CCRB’s stated purposes.

47. The Revised Rules at issue in this Petition are:

- **The Late Complaint Rule (Revised Rule 1-15(a))** -- The CCRB has improperly authorized itself to investigate and make findings and recommendations on complaints filed *after* the expiration of the applicable statute of limitations.
- **Handling of Non-FADO Matters Rule (Revised Rule 1-44)** -- The CCRB has improperly authorized itself to investigate and make findings about undefined “other misconduct” that, by definition, is outside the CCRB’s limited FADO jurisdiction.
- **Lack of Civilian Oath Rule (Revised Rules 1-24(d) & (l))** – The CCRB has breached the Charter and created a gross inequity in the interview process by not requiring complainants or witnesses to make their allegations under oath and without warning them of the repercussions of false statements, while requiring Police Officers to be warned of substantial consequences for false statements.
- ***Sua Sponte* Investigations Rule (Revised Rule 1-11(c))** -- The CCRB has improperly authorized itself, *sua sponte*, to commence investigations and make findings and recommendations without any complaint having been filed by a member of the public.
- **YouTube Complaints Rule (Revised Rule 1-11(a) & (b))** -- The CCRB has expanded the category of individuals with standing to file a CCRB complaint beyond persons who were allegedly harmed, and with a reach so broad that it includes persons who merely viewed unauthenticated videos on the Internet.
- **Reliance on Prior Meritless Complaints Rule (Revised Rule 1-33(a))** -- The CCRB has improperly authorized itself to consider prior unsubstantiated, unfounded, or withdrawn complaints as the basis for its findings and recommendations.
- **Undermine Plea Authority Rule (1-46(d))** – The CCRB has undermined the Police Commissioner’s authority to have final say over plea agreements.

- **Unauthorized Reconsiderations Rule (Revised Rule 1-36(b))** – The CCRB has undermined the Police Commissioner’s authority to deviate from the CCRB’s recommendations by requiring “reconsideration” from the CCRB.
- **Excessive APU Power Rule (Revised Rule 1-42(h))** – The CCRB has improperly imbued its prosecutorial arm with powers reserved for the Police Commissioner.
- **Panels Without Police Commissioner Reps Rule (Revised Rule 1-31)** – The CCRB has improperly and unfairly altered the balance of the CCRB panels hearing charges against Police Officers by eliminating the required presence of a NYPD designee.
- **Undermine Settlements Rule (Revised Rule 1-47(h))** -- The CCRB has improperly eliminated the execution requirement for settlements of complaints.
- **Executive Director Delegation Rule (Revised Rule 1-53(a))** – The CCRB has improperly eliminated restrictions on the power of the Executive Director to delegate responsibilities.<sup>5</sup>

### *Procedural History of the Revised Rules*

48. In early 2015, the CCRB began a process to revise its Rules. Proposed revisions were discussed in CCRB meetings in the spring of 2015. *See* Tr. of CCRB Public Meeting, Mar. 11, 2015 (“Mar. 2015 Tr.”), Ex. 7; CCRB Tr. of Public Meeting, Apr. 8, 2015 (“Apr. 2015 Tr.”), Ex. 8; Tr. of CCRB Public Meeting, May 13, 2015 (“May 2015 Tr.”), Ex. 9. On April 13, 2015, the PBA submitted a letter to the CCRB commenting on the Lack of Civilian Oath Rule. Ex. 11.

49. A year later, the CCRB published a “Notice of Public Hearing and Opportunity to Comment on Proposed Rules,” which set a deadline for public comment of June 10, 2016, and scheduled a public hearing for June 13, 2016. Ex. 10 (“Notice of Hearing”).

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<sup>5</sup> In the Notice of Adoption for the Revised Rules, the CCRB indicated that it deleted in its entirety subsection (b) of Rule 1-52 that required Board members to be present at meetings and panels in person or by videoconference to vote. *See* Notice of Adoption, at 25-26, Ex. 1. However, the version of the Revised Rules on the website of the City’s official rule publisher includes Rule 1-52(b). *See* Ex. 14 at 12. To the extent the CCRB’s position is that Rule 1-52(b) has been eliminated (the “Hide From the Public Rule”), that position should be declared invalid. The deletion of Rule 1-52(b) would constitute a violation of Section 1043(b) of the Administrative Procedure Act, because the CCRB never publicly proposed the complete deletion of Rule 1-52(b) prior to the public hearing. *Compare* Notice of Hearing, at 26-27, *with* Notice of Adoption, at 25-26. Additionally, the CCRB lacks jurisdiction and authority to delete Rule 1-52(b) because it would violate N.Y. Pub. Officers Law § 103(a) and General Construction Law § 41.

50. On June 10, 2016, the PBA timely submitted written comments on the proposed Rules, objecting on the grounds, among others, that they would violate the City Charter, the Civil Service Law, the MOU, and/or public policy. *See* Ex. 12. At the public hearing on June 13, 2016, the CCRB did not respond to the PBA's comments and did not engage in any substantive discussion of the Revised Rules at all. The CCRB rejected all but one of the PBA's comments.<sup>6</sup>

51. On October 11, 2017, the CCRB voted to adopt the Revised Rules. On January 2, 2018, the CCRB published the revisions to the Revised Rules in the City Record, and the Revised Rules went into effect on February 1, 2018. *See* Exs. 13, 14.

### ***The Resolution***

52. At its monthly Board meeting on February 14, 2018, the CCRB adopted the Resolution without complying with the public notice requirement and other procedures required by the Administrative Procedure Act. *See* CCRB "Board Resolution" and "Memorandum Accompanying Public Vote," dated February 14, 2018, Ex. 2. The Resolution dramatically changes more than two decades of past practice by the CCRB and confers on the CCRB new power that is outside the scope of its jurisdiction and authority and that it has never held before.

53. Since its inception, the CCRB has referred complaints of sexual misconduct against Police Officers to the NYPD's Internal Affairs Bureau (the "IAB"). *See id.* at 1, 3.

54. With the Resolution, the CCRB is taking on for itself the investigation and administrative prosecution of sexual misconduct complaints against Police Officers, asserting for

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<sup>6</sup> While the CCRB posts other minutes on its website, as of the date of this Petition the minutes from the June 13, 2016, hearing are not posted. The public comments to the proposed rules also are not posted as of the date of this Petition, notwithstanding that Section 1043 of the Administrative Procedure Act states that "[a]ll written comments and a summary of oral comments concerning a proposed rule received from the public or any agency shall be placed in a public record and made readily available to the public as soon as practicable . . . ." N.Y. City Admin. Proc. Act §1043(e). Additionally, an agency is required to "establish a system for maintaining and making available for public inspection all written comments received in response to each notice of rulemaking." *Id.* § 1043(h). The CCRB appears to have failed to comply with these requirements.

the first time that it falls within a broad new interpretation of the “abuse of authority” prong of FADO jurisdiction. This purported “new interpretation” is a pretext for the CCRB’s true objective: to effectively grant itself a fifth category of jurisdiction for sexual misconduct complaints. The CCRB admits that it has no experience or training in this area, and has provided no reason for the change. *See id.* at 4-6.

55. The Resolution provides for implementation in two “Phases.” The CCRB will begin investigating “Phase One” sexual misconduct allegations immediately. Those allegations include: verbal sexual harassment; sexual harassment using physical gestures; taking unwarranted photographs or videos; sexual humiliation; sexually motivated stops, summonses, or arrests; and sexual or romantic propositions. *See id.* at 3-4.

56. Following an unspecified period of purported training, staffing, and addressing of budgetary needs, the CCRB will begin investigating “Phase Two” sexual misconduct allegations, which include more severe and even criminal conduct: over-the-clothing groping during frisks; sexual assault; forcible rape; on-duty sexual activity; and penetrative sexual contact. *See id.* at 4-5.

### **FIRST CAUSE OF ACTION**

#### **(Request for Relief under Article 78 of the CPLR - The Late Complaint Rule, Revised Rule 1-15(a))**

57. Petitioners incorporate by reference the allegations set forth in all of the preceding paragraphs of this Petition as if fully set forth herein.

58. The CCRB lacks jurisdiction and authority for the Late Complaint Rule because the Rule conflicts with the applicable statute of limitations by purporting to allow the CCRB to commence investigations that are barred by the statute of limitations.



59. Civil Service Law § 75(4) imposes an eighteen-month statute of limitations for “disciplinary proceedings,” which include CCRB investigations.

60. Subsection (a) of Revised Rule 1-15 provides:

When a complaint is filed with the Board after the 18-month statute of limitations has expired pursuant to Civil Service Law §75(4), the Chair in consultation with the Executive Director will determine whether to investigate the complaint.

Subsection (b) sets the same rule for delayed but not statutorily expired complaints (those filed “more than one year after the incident”), and subsection (c) lists non-exclusive factors to be considered in deciding whether to pursue claims in (a) or (b).

61. The CCRB has stated that it will treat investigations commenced after the statute of limitations has expired “like any other case,” meaning a full investigation and CCRB panel recommendation. Mar. 2015 Tr., at 14:18-15:6, Ex. 7.

62. Any investigation or recommendation by the CCRB with respect to a complaint is a disciplinary proceeding subject to the statute of limitations in Civil Service Law § 75(4), and cannot be started more than eighteen months after the incident.

63. In addition to violating the face of Civil Service Law § 75(4) by permitting the investigation of time-barred complaints, the Late Complaint Rule is invalid because it also violates the design and purpose of that statute. The Late Complaint Rule vitiates the certainty and repose that the statute of limitations is intended to promote because it allows the CCRB to commence disciplinary investigations at any time based on a complaint filed at any time.

64. In addition to violating the statute of limitations, the Late Complaint Rule is invalid as arbitrary and capricious because, among other things, it: (i) lacks a rational basis; (ii) undermines the CCRB’s stated purposes for the Revised Rules; and/or (iii) affords the CCRB unfettered discretion and allows for uneven enforcement across Police Officers.

65. The CCRB has not provided any rationale for commencing investigations after the statute of limitations has expired.

66. The Late Complaint Rule directly undermines the CCRB's stated purposes: "to accelerate investigations and make them more transparent to the public," Notice of Adoption, at 2, Ex. 1, because the Rule: (i) allows investigations to be commenced an indefinite amount of time after the incident occurred; and (ii) does not provide any transparency into what purpose or outcome would be served by an investigation commenced outside the statute of limitations.

67. The Late Complaint Rule is also arbitrary and capricious because it gives the CCRB unfettered discretion to decide when to commence an investigation after the statute of limitations has expired. The lack of objective standards for determining when to commence investigations outside the statute of limitations will lead to uneven application of the Rule across Police Officers.

68. The Late Complaint Rule harms Police Officers because, among other things, it allows CCRB investigations to be commenced an indefinite amount of time after the incident occurred, depriving Police Officers of the repose to which they have a right under the statute of limitations and resulting in investigations that might be based on stale information. It also invites complaints to be filed after the statute of limitations has expired and therefore enlarges the number of complaints against Police Officers, creating negative employment consequences. Additionally, it subjects Police Officers to CCRB disciplinary investigations that should not be commenced because they are barred by the statute of limitations.

69. Revised Rule 1-15(a) is invalid and should be stricken, and the CCRB should be enjoined from accepting complaints filed after the statute of limitations has expired or from taking any action with respect to such complaints.

**SECOND CAUSE OF ACTION****(Request for Relief under Article 78 of the CPLR  
- The Handling of Non-FADO Matters Rule, Revised Rule 1-44)**

70. Petitioners incorporate by reference the allegations set forth in all of the preceding paragraphs of this Petition as if fully set forth herein.

71. The CCRB lacks jurisdiction and authority for the Handling of Non-FADO Matters Rule because: (i) the Rule violates the CCRB's limited FADO jurisdiction by purporting to allow the CCRB to investigate and opine on non-FADO matters; and (ii) violates the MOU, which requires the CCRB immediately to refer non-FADO matters to the NYPD.

72. The Charter limits the CCRB's jurisdiction to receive, investigate, hear, and make findings and recommendations solely to allegations of "excessive use of force, abuse of authority, discourtesy, or use of offensive language." Charter § 440(c)(1).

73. The MOU requires that, if the CCRB becomes aware of possible other misconduct outside its FADO jurisdiction, the "CCRB shall immediately refer the allegation of other misconduct to the NYPD for investigation and shall not itself undertake the prosecution of such allegation." MOU § 7, Ex. 5.

74. Rule 1-44 at its outset acknowledges the CCRB's limited jurisdiction, and its obligation to refer any "other misconduct" to the Police Department for investigation:

If during the course of a Prosecution, the [CCRB] becomes aware of possible misconduct falling outside its jurisdiction, such as the making of a false statement by an officer, the Board shall not itself prosecute such possible misconduct but shall instead immediately refer such possible misconduct to the Police Department for investigation and possible prosecution by the Police Department.

75. However, with the Revised Rule, the CCRB adds a new sentence at the end of Rule 1-44 that is directly contrary to its acknowledged limited jurisdiction: "Other misconduct will be noted in case dispositions by categories describing the possible misconduct and the

evidence of such misconduct.” The Rule defines “other misconduct” as “possible misconduct falling outside [the CCRB’s] jurisdiction.”

76. The CCRB lacks jurisdiction and authority for this new Rule because, among other things, it: (i) enables the CCRB to consider non-FADO allegations and evidence for purposes of case dispositions; and/or (ii) necessarily places the CCRB in the improper position of gathering and evaluating “evidence” of alleged non-FADO misconduct, and making a case for such alleged misconduct, where any such investigation and determination is solely within the jurisdiction of the NYPD.

77. In addition to lacking jurisdiction and authority, the CCRB’s handling of non-FADO matters under Revised Rule 1-44 is arbitrary and capricious because, among other things, it lacks a rational basis and/or is not limited by any objective standards.

78. The CCRB has not identified any rational basis for Revised Rule 1-44 granting the CCRB power to investigate and opine on other misconduct outside its jurisdiction.

79. Revised Rule 1-44 lacks objective standards for its implementation and grants the CCRB unfettered discretion, including, without limitation, because it imposes no limitation on “other misconduct” and therefore purports to authorize the CCRB to investigate evidence of and make findings on any and all types of conduct without limit and without regard to whether it falls within FADO jurisdiction.

80. The unfettered discretion provided by Revised Rule 1-44 will lead to uneven enforcement against Police Officers.

81. The Handling of Non-FADO Matters Rule harms Police Officers because it creates adverse employment consequences by, among other things, purporting to allow the CCRB to conduct unlawful investigations of “other misconduct” outside the CCRB’s

jurisdiction, to determine in its sole discretion what constitutes “other misconduct” that will be investigated, and to make findings on “other misconduct” that will go on the Police Officer’s record, creating adverse employment consequences.

82. Revised Rule 1-44 is invalid and should be stricken, and the CCRB should be enjoined from investigating, opining on, or reporting on matters outside of FADO jurisdiction.

**THIRD CAUSE OF ACTION**

**(Request for Relief under Article 78 of the CPLR  
- The Lack of Civilian Oath Rule, Revised Rule 1-24)**

83. Petitioners incorporate by reference the allegations set forth in all of the preceding paragraphs of this Petition as if fully set forth herein.

84. The CCRB lacks jurisdiction and authority for the Lack of Civilian Oath Rule because the Rule violates Charter Section 440(c).

85. Charter Section 440(c) requires that “[n]o finding or recommendation [of the CCRB] shall be based solely upon an unsworn complaint or statement . . . .”

86. Revised Rule 1-24(l) addresses the conduct of complainant and witness interviews and provides, among other things, that witnesses “will be asked to sign a verification statement at the conclusion of th[e] interview verifying that all of the statements you have provided in connection with this investigation are true to your knowledge.”

87. The “verification” under Revised Rule 1-24 is not a “sworn” statement as required by the Charter. The “verification” is not given under oath or under penalty of perjury.

88. In addition to failing to comply with the Charter, Revised Rule 1-24 is arbitrary and capricious because, among other things, the new provision requiring Police Officers to be given a warning of potential consequences of false statements, while not requiring complainants

or other witnesses be provided with any such warning lacks any rational basis and undermines the CCRB's stated purpose.

89. Revised Rule 1-24(d) adds new language for the conduct of interviews of Police Officers, providing that: "All interviewed police officers will also be informed prior to the commencement of an interview that under the New York City Police Department Patrol Guide, absent exceptional circumstances, an officer will be dismissed from the Police Department for intentionally making a false official statement that is material to the pending investigation."

90. Revised Rules 1-24(d) and (l) create an arbitrary and capricious imbalance in the pre-interview instructions given to Police Officers versus complainants and witnesses: they impose a more burdensome statement on Police Officers, warning them prior to CCRB interviews that they "will be dismissed" from the NYPD for intentionally making false statements, whereas complainants and witnesses are not warned of any consequences for making a false complaint or statement, and are not providing sworn statements.

91. The CCRB has provided no rational basis for including the new warning language for Police Officers in Revised Rule 1-24(d), or for the imbalance in the pre-interview statements between Police Officers and complainants/witnesses in Revised Rule 1-24(l).

92. The CCRB cited no data to suggest a problem in obtaining truthful testimony from Police Officers.

93. To the contrary, the CCRB's own data clearly demonstrates a problem of an excessive and increasing number of false complaints, supporting a need for witness statements to be under oath. The data does not demonstrate any need for the discriminatory system created by Revised Rule 1-24, which adversely impacts Police Officers and allows the real problem to remain unaddressed. *See supra* ¶ 29.

94. Revised Rules 1-24(d) and (l) also undermine the CCRB's stated purpose, which was to create parallel circumstances for the Police Officer and complainant and to incentivize truth-telling and deter lying. *See* Mar. 2015 Tr., at 16:17-22, 19:14-16, 20:2-6, 23:14-25, Ex. 7; Apr. 2015 Tr., at 45:16-46:2, 50:22-25, Ex. 8.

95. Revised Rule 1-24 does not accomplish, and is not reasonably related to, the CCRB's stated purpose because, among other things: (i) the system it creates is not "parallel" since it imposes a more burdensome statement on Police Officers; and/or (ii) it does nothing to incentivize truth-telling by complainants and witnesses.

96. The Lack of Civilian Oath Rule harms Police Officers because, among other things, it exacerbates the number of false complaints that will be filed against Police Officers, creating negative consequences for their careers.

97. The new sentence at the end of Revised Rule 1-24(d) and the non-compliant "verification" procedure in Revised Rule 1-24(l) are invalid and should be stricken, and the CCRB should be enjoined from conducting complainant or witness interviews without an oath.

#### **FOURTH CAUSE OF ACTION**

##### **(Request for Relief under Article 78 of the CPLR - The *Sua Sponte* Investigations Rule, Revised Rule 1-11(c))**

98. Petitioners incorporate by reference the allegations set forth in all of the preceding paragraphs of this Petition as if fully set forth herein.

99. The CCRB lacks jurisdiction and authority for the *Sua Sponte* Investigations Rule because the Rule violates the Charter.

100. The Charter restricts the CCRB's jurisdiction to acting upon "complaints by members of the public." *See* Charter § 440(c)(1).

101. Revised Rule 1-11(c) is an entirely new rule that provides: “The Board has the power to review incidents involving members of the [NYPD] and investigate Cases arising therefrom within the Board’s jurisdiction under the New York City Charter.” The term “Case” is defined in Section 1.01 as “an investigation undertaken by the [CCRB].”

102. The CCRB’s stated purpose for Revised Rule 1-11(c) is to give itself authority to commence an investigation in the absence of a complaint having been filed. *See* Apr. 2015 Tr., at 38:6-24, Ex. 8; *see also* Mar. 2015 Tr., at 6:3-7, Ex. 7.

103. Revised Rule 1-11(c) violates the Charter’s express limitation on the CCRB’s jurisdiction, which allows the CCRB to act only upon complaints filed by the public.

104. While the express language of the Charter unambiguously demonstrates that the CCRB is not empowered to commence investigations *sua sponte*, the legislative intent to limit the CCRB’s authority to complaints from the public is also demonstrated by the very name of the CCRB itself, the title of the Charter, its statement of purpose, and the Bill Jacket, each of which refer to the purpose of the CCRB to investigate *complaints*, and none of which mention any authority of the CCRB to commence investigation without a complaint. *See* Charter § 440(a); Bill Jacket, N.Y. City Local Law 1 of 1993 (“Bill Jacket”), Ex. 4.

105. When the City Council has intended to give an agency power to commence investigations *sua sponte*, it has done so expressly. *See, e.g.*, N.Y. City Admin. Code § 8-105(4) (granting authority to Commission on Human Rights to “receive, investigate and pass upon complaints *and to initiate its own investigations . . .*” (emphasis added)). The City Council did not vest such authority in the CCRB.

106. In addition to lacking jurisdiction and authority, Revised Rules 1-11(c) is arbitrary and capricious because, among other things, it: (i) has no rational basis; (ii) is not based on any



empirical data or study; and/or (iii) affords the CCRB unfettered discretion resulting in uneven enforcement across Police Officers.

107. The CCRB has not provided any reason at all for extending its power to commence investigations without a complaint having been filed. The Revised Rule does not further any of the stated purposes for the overall revisions.

108. The CCRB has not identified any study or empirical data to establish that there is any existing problem being remedied by this Revised Rule, or that granting the CCRB unfettered discretion to commence investigations *sua sponte* is reasonably related to any such problem.

109. Revised Rule 1-11(c) gives the CCRB unfettered discretion to decide when to commence an investigation without a complaint having been filed, leading to arbitrary and uneven enforcement across Police Officers.

110. There are no objective standards for the application of Revised Rule 1-11(c).

111. The *Sua Sponte* Investigations Rule harms Police Officers because, among other things, it subjects Police Officers to unauthorized CCRB investigations, the mere filing of which have negative consequences for their careers, in the absence of any complaint having been filed against the Officer.

112. Revised Rule 1-11(c) is invalid and should be stricken, and the CCRB should be enjoined from commencing investigations without a complaint having been filed by a member of the public.

### **FIFTH CAUSE OF ACTION**

#### **(Request for Relief under Article 78 of the CPLR - The YouTube Complaints Rule, Revised Rules 1-11(a) & (b))**

113. Petitioners incorporate by reference the allegations set forth in all of the preceding paragraphs of this Petition as if fully set forth herein.

114. The CCRB lacks jurisdiction and authority for the YouTube Complaints Rule because it violates the Charter.

115. The Charter limits the CCRB's authority to receiving and acting upon complaints from persons who were allegedly harmed. For example, Charter Section 440(c)(4) provides that "[t]he board shall establish a mediation program pursuant to which a complainant may voluntarily choose to resolve a complaint by means of informal conciliation." A person who was not harmed would not be in a position to "resolve" an investigation through mediation.

116. Additionally, Charter Section 440(c)(1) requires that complaints and witness statements be sworn. A person without personal knowledge cannot give a sworn complaint or statement.

117. The Charter also mandates that CCRB investigations are to be "conducted fairly and independently, and in a manner in which the public and the police department have confidence." Charter § 440(a).

118. The Charter's legislative history demonstrates that the City Council limited the CCRB to receiving and investigating complaints only from persons who were allegedly harmed. *See* Bill Jacket, Public Hearing on Local Laws, Jan. 5, 1993, at 27:19-23, 30:16-22, 31:21-23, Ex. 4.

119. Revised Rules 1-11(a) and (b) grant standing to file a complaint not only to the person allegedly harmed, but to: (i) "any individual having Personal Knowledge," defined as "knowledge of a circumstance or fact gained through firsthand observation or experience"; or (ii) "Reporting Non-Witnesses," defined as "person(s) without personal knowledge of the alleged police misconduct filing a complaint on behalf of another person."

120. Revised Rules 1-11(a) and (b) violate the Charter because they expand the categories of persons who may file a complaint beyond the persons allegedly harmed, and to include even persons with no personal knowledge of the event.

121. The CCRB has stated that these new Rules were purposefully drafted broadly and were designed to accept complaints from anyone, including persons who may merely have viewed a video on YouTube. *See* Mar. 2015 Tr., at 9:14-10:25, 14:1-10, 56:1-7, Ex. 7.

122. The YouTube Complaints Rule is inimical to the black-letter notion that a complainant should have standing to bring a proceeding.

123. In addition to lacking jurisdiction and authority, Revised Rules 1-11(a) and (b) are arbitrary and capricious because, among other things, they: (i) have no rational basis; (ii) are not based on any empirical data; and/or (iii) afford the CCRB unfettered discretion resulting in uneven enforcement across Police Officers.

124. The CCRB has not provided any rational basis for the expansion of its powers to allow complaints from persons who were not allegedly harmed, and/or from persons without personal knowledge of the event.

125. The CCRB's stated purpose of this Rule -- to allow complaints and investigations based on YouTube videos -- is not a rational purpose because, among other reasons, YouTube videos are unauthenticated and unreliable and thus should not reasonably be a basis for allowing any person anywhere who may view them to file CCRB complaints that, simply through their filing, have detrimental consequences for Police Officers.

126. Additionally, the CCRB has not identified any study or empirical data to establish that there is any existing problem of persons who were allegedly harmed not filing their own complaints that would be remedied by allowing complaints from Internet viewers.

127. These Rules will exacerbate the significant problem posed by the filing of frivolous complaints, and will cause even more frivolous complaints to be filed, prejudicing Police Officers and wasting public resources. *See supra* ¶¶ 29-33.

128. Revised Rules 1-11(a) and (b) give the CCRB unfettered discretion to decide to receive and investigate complaints from persons without any personal knowledge, leading to arbitrary and uneven enforcement across Police Officers.

129. There are no objective standards for the application of Revised Rules 1-11(a) and (b).

130. The YouTube Complaints Rule harms Police Officers because, among other things, it invites complaints from persons who do not have standing to file complaints under the Charter and/or allows complaints based on unreliable and unauthenticated information to be filed, thereby increasing the number of complaints against Police Officers, which, even when frivolous, have negative consequences for their careers.

131. Revised Rules 1-11(a) and (b) are invalid and should be stricken, and the CCRB should be enjoined from accepting or acting upon complaints from persons who were not allegedly harmed and/or from persons without personal knowledge of the event.

**SIXTH CAUSE OF ACTION**

**(Request for Relief under Article 78 of the CPLR  
- The Reliance on Prior Meritless Complaints Rule, Revised Rule 1-33(a))**

132. Petitioners incorporate by reference the allegations set forth in all of the preceding paragraphs of this Petition as if fully set forth herein.

133. The CCRB lacks jurisdiction and authority for the Reliance on Prior Meritless Complaints Rule because the Rule violates the Charter and the policies underlying the Charter.

134. Charter Section 440(c)(1) states: “nor shall prior unsubstantiated, unfounded or withdrawn complaints be the basis for any . . . finding or recommendation” by the CCRB.

135. Revised Rule 1-33(a) violates the Charter by re-writing the Charter language to include the word “sole,” thereby dramatically changing the Charter’s meaning and permitting the very act that the Charter expressly prohibits: “nor shall prior unsubstantiated, unfounded or withdrawn complaints be the *sole* basis for any . . . finding or recommendation” by the CCRB.

136. Revised Rule 1-33(a) purports to allow the CCRB to use prior unsubstantiated, unfounded, or withdrawn complaints to constitute part of the basis for a finding or recommendation against a Police Officer, and thus violates the Charter’s prohibition on using such information to support a finding or recommendation against a Police Officer.

137. Revised Rule 1-33(a) also violates the policies underlying Charter Section 44(c)(1).

138. The statute is clear in not allowing prior meritless complaints to be a basis for “any” finding, whether the reliance is sole or otherwise. The statute embodies the double jeopardy concept that a prior complaint that has been resolved in a Police Officer’s favor or otherwise withdrawn or dismissed should not be somehow re-opened and used against the Police Officer in a subsequent proceeding.

139. Revised Rule 1-33(a), like the Late Complaint Rule, also circumvents the statute of limitations, allowing such rejected or withdrawn complaints essentially to be reinvestigated or reinstated at unlimited times in the future, when evidence may no longer be available.

140. In addition to lacking jurisdiction and authority, Revised Rule 1-33(a) is arbitrary and capricious because, among other things, it has no rational basis and/or affords the CCRB unfettered discretion resulting in uneven enforcement across Police Officers.

141. The CCRB has not provided any rational basis for Revised Rule 1-33(a).

142. This Rule is unreasonable because, among other things, it needlessly prolongs a Police Officer's ability to obtain closure on unsubstantiated allegations, and may subject him or her to the unfairness that arises from the pursuit of stale claims.

143. Revised Rule 1-33(a) affords the CCRB unfettered discretion, leading to arbitrary and uneven enforcement across Police Officers.

144. There are no objective standards for the application of Revised Rule 1-33(a).

145. The Reliance on Prior Meritless Complaints Rule harms Police Officers because, among other things, it deprives Police Officers of finality from prior closed investigations, violates their right under the Charter that prior unsubstantiated, unfounded, or withdrawn complaints not form any basis for findings or recommendations by the CCRB, and allows for subsequent CCRB findings and recommendations to be based on unreliable information from prior meritless complaints.

146. Revised Rule 1-33(a) is invalid and should be stricken, and the CCRB should be enjoined from using prior unsubstantiated, unfounded, or withdrawn complaints as any basis for any finding or recommendation by the CCRB.

**SEVENTH CAUSE OF ACTION**

**(Request for Relief under Article 78 of the CPLR  
- The Undermine Plea Authority Rule, Revised Rule 1-46(d))**

147. Petitioners incorporate by reference the allegations set forth in all of the preceding paragraphs of this Petition as if fully set forth herein.

148. The CCRB lacks jurisdiction and authority for the Undermine Plea Authority Rule because it purports to: (i) re-write the procedures in the MOU for plea negotiations, which the CCRB has no authority to do unilaterally; and (ii) do so in a manner that limits and impedes

the Police Commissioner's final disciplinary authority, and thus exceeds the CCRB's power under the Charter.

149. The MOU requires pleas conducted by the CCRB to be "presented to the Police Commissioner for final determination." MOU § 21, Ex. 5.

150. The MOU also provides that the Police Commissioner may reject a plea and sets forth specific procedures to govern this occurrence:

In all instances where the Police Commissioner rejects a negotiated plea, CCRB shall be responsible for implementing the Police Commissioner's decision, including negotiating the case consistent with the Police Commissioner's determination or proceeding with the prosecution of the subject officer.

*Id.* § 22.

151. Charter Section 434(a) gives the Police Commissioner authority over police discipline.

152. Charter Section 440(e) states that the CCRB may not "limit or impair the authority of the police commissioner to discipline members of the department," or "limit the rights of members of the department with respect to disciplinary action."

153. Revised Rule 1-46(d) violates the Charter and the MOU because it purports to give the CCRB, rather than the Police Commissioner, final say over plea deals.

154. Revised Rule 1-46(d) removes a requirement from the former Rule that any plea deal be "presented to the Police Commissioner for final determination," and instead provides that: "The Police Commissioner will be informed of any proposed plea and said plea will be held in abeyance until approved by the Police Commissioner."

155. The CCRB has stated that the purpose of Revised Rule 1-46(d) is to give the CCRB, rather than the Police Commissioner, final approval over a plea. *See* Mar. 2015 Tr., at 57:8-15, Ex. 7.

156. Revised Rule 1-46(d) exceeds the CCRB's authority under the Charter and the MOU and improperly limits the statutory rights of Police Officers to have such determinations made by the Police Commissioner.

157. In addition to lacking jurisdiction and authority, the Undermine Plea Authority Rule is arbitrary and capricious because, among other things, it lacks a rational basis.

158. The CCRB's stated purpose for the Undermine Plea Authority Rule is to avoid having the Police Commissioner "water down" a plea that the APU reached with a Police Officer. Mar. 2015 Tr., at 57:8-15, Ex. 7. The CCRB's stated purpose is expressly precluded by the MOU and the Charter, and is not reasonable.

159. The Undermine Plea Authority Rule harms Police Officers because, among other things, it deprives them of their statutory right to have the Police Commissioner have authority over pleas and effectively prevents the Police Commissioner from imposing a lower level of discipline than that provided for in the plea.

160. Revised Rule 1-46(d) is invalid and should be stricken, and the CCRB should be enjoined from holding pleas in abeyance pending pre-approval by the Police Commissioner.

### **EIGHTH CAUSE OF ACTION**

#### **(Request for Relief under Article 78 of the CPLR**

#### **- The Unauthorized Reconsiderations Rule, Revised Rule 1-36(b))**

161. Petitioners incorporate by reference the allegations set forth in all of the preceding paragraphs of this Petition as if fully set forth herein.

162. The CCRB lacks jurisdiction for the Unauthorized Reconsiderations Rule because it conflicts with the Police Commissioner's authority over disciplinary matters, in addition to conflicting with procedures in the Charter and the MOU.



163. Charter Section 434(a) gives the Police Commissioner authority over police discipline.

164. Charter Section 440(e) states that the CCRB may not “limit or impair the authority of the police commissioner to discipline members of the department,” or “limit the rights of members of the department with respect to disciplinary action.”

165. Both the Charter and the MOU provide that the NYPD shall report to the CCRB only after the Police Commissioner has made a final determination on the CCRB’s recommendation.

166. Charter Section 440(d)(3) provides that “[t]he police commissioner shall report to the board on any action taken in cases in which the board submitted a finding or recommendation to the police commissioner with respect to a complaint.”

167. The MOU provides that the NYPD “shall ensure that CCRB is notified of the final disciplinary result and specific penalty in each case within thirty calendar days of the Police Commissioner’s final determination.”

168. Revised Rule 1-36(b) is an entirely new Rule that provides for the NYPD to seek “reconsideration” from the CCRB if the NYPD disagrees with the CCRB’s findings or recommendations.

169. The CCRB has indicated that it views the Reconsiderations Rule as imposing a mandatory requirement on the NYPD to send findings and recommendations back to the CCRB for “reconsideration” before the Police Commissioner may deviate from the CCRB’s decision. *See* CCRB Tr. of Public Meeting, Nov. 12, 2014, at 63:9-18, 65:25-66:21, Ex. 6.

170. The CCRB’s attempt to limit the NYPD’s ability to impose a different level of discipline without first seeking “reconsideration” from the CCRB violates Charter Section 440(e)

prohibiting the CCRB from doing anything to “limit or impair the authority of the police commissioner to discipline members of the department.”

171. Revised Rule 1-36(b) also conflicts with the Charter and the MOU because both provide that the NYPD shall report to the CCRB only after the NYPD has made a final determination.

172. In addition to lacking jurisdiction and authority, the Unauthorized Reconsiderations Rule is arbitrary and capricious because, among other things, it lacks a rational basis and/or undermines the CCRB’s stated purpose for the Revised Rules “to accelerate investigations.” Notice of Adoption, at 2, Ex. 1.

173. The Unauthorized Reconsiderations Rule harms Police Officers because, among other things, it infringes on their statutory right to have the Police Commissioner issue disciplinary determinations and delays the resolution of CCRB complaints.

174. Revised Rule 1-36(b) is invalid and should be stricken, and the CCRB should be enjoined from attempting to require the NYPD to seek “reconsideration” from the CCRB prior to deviating from the CCRB’s findings or recommendations.

### **NINTH CAUSE OF ACTION**

#### **(Request for Relief under Article 78 of the CPLR - The Excessive APU Power Rule, Revised Rule 1-42(h))**

175. Petitioners incorporate by reference the allegations set forth in all of the preceding paragraphs of this Petition as if fully set forth herein.

176. The CCRB lacks authority for Revised Rule 1-42(h) because it conflicts with the MOU.

177. The MOU gives limited authority to the APU to administratively prosecute before the NYPD Trial Commissioner substantiated allegations for which the CCRB has recommended Charges and Specifications. *See* MOU § 1, Ex. 5.

178. The MOU provides that only the Police Commissioner may “request further investigation or development of the record in the case to enable him to make a final disciplinary determination.” *Id.* § 20.

179. Revised Rule 1-42(h) is an entirely new Rule that grants new powers to the APU to: (1) “request[] that additional allegations be considered against a subject officer in addition to the allegations previously recommended by the Board”; and (2) “request[] that previously considered allegations against a subject officer that did not previously result in a substantiation by the Board be reconsidered for substantiation.”

180. Nothing in the MOU gives the APU these powers.

181. The CCRB cannot unilaterally expand the powers of the APU.

182. In addition to lacking jurisdiction and authority, the Excessive APU Power Rule is arbitrary and capricious because, among other things, it lacks a rational basis and/or undermines the CCRB’s stated purpose “to accelerate investigations.” Notice of Adoption, at 2, Ex. 1.

183. The Excessive APU Power Rule harms Police Officers because, among other things, it deprives them of finality of CCRB investigations and delays the resolution of complaints by allowing CCRB “prosecutors” to expand and change the case against the Officer, or even decide to reconsider portions of the case that were not substantiated, after charges have already been investigated and the Police Officer faces a hearing on only charges that the Board determined were substantiated.

184. Revised Rule 1-42(h) is invalid and should be stricken, and the CCRB's APU should be enjoined from requesting that additional allegations be considered against a subject Officer in addition to the allegations previously recommended by the Board or requesting that previously considered allegations against a subject Officer that did not previously result in a substantiation by the Board be reconsidered for substantiation.

### **TENTH CAUSE OF ACTION**

#### **(Request for Relief under Article 78 of the CPLR - The Panels Without Police Commissioner Reps Rule, Revised Rule 1-31(b))**

185. Petitioners incorporate by reference the allegations set forth in all of the preceding paragraphs of this Petition as if fully set forth herein.

186. The Panels Without Police Commissioner Reps Rule is arbitrary and capricious because, among other things, it: (i) prejudices the interests of Police Officers for no rational reason; and/or (ii) lacks any objective standards for its application.

187. Since the inception of the all-civilian CCRB in 1993, CCRB panels have been composed of a Police Commissioner designee, a Mayoral designee, and a City Council designee.

188. Revised Rule 1-31(b) empowers the CCRB to compose panels without a Police Commissioner designee where, in the CCRB's unilateral discretion, "such a panel composition would interfere with or unreasonably delay the [CCRB's] operations."

189. Revised Rule 1-31(b) lacks a rational basis.

190. The CCRB has not provided any rational explanation, let alone one supported by any study or data, to suggest that a problem of "interference" or "unreasonable delay" exists.

191. Additionally, the CCRB has provided no basis to suggest that the perceived expediency outweighs the unfairness that is achieved by omitting a Police Commissioner representative from a Panel.

192. CCRB members recognize the importance of having the perspective of a law enforcement representative on each panel. *See* Mar. 2015 Tr., at 30:10-20, 31:2-16, 33:13-19, 35:11-15, Ex. 7; *see also* Apr. 2015 Tr., at 63:4-10, Ex. 8.

193. The CCRB provided no rational reason to justify depriving Police Officers of the long-standing right to have a Police Commissioner designee on every panel.

194. The Rule lacks any objective standards for its application. The Rule gives the CCRB unfettered discretion to deviate from a balanced panel.

195. The lack of objective standards for application of the Rule, and the omission of a Police Commissioner designee from some Panels, allows for a disparate impact on Police Officers being investigated.

196. The Panels Without Police Commissioner Reps Rule harms Police Officers because, among other things, it allows the CCRB to create panels that do not have a Police Commissioner designee, thereby depriving Police Officers of the benefit of a law enforcement perspective on the panels deciding complaints against them.

197. Revised Rule 1-31(b) is invalid and should be stricken, and the CCRB should be enjoined from composing panels that do not have a Police Commissioner designee.

### **ELEVENTH CAUSE OF ACTION**

#### **(Request for Relief under Article 78 of the CPLR - The Undermine Settlements Rule, Revised Rule 1-47(h))**

198. Petitioners incorporate by reference the allegations set forth in all of the preceding paragraphs of this Petition as if fully set forth herein.

199. Revised Rule 1-47(h) is arbitrary and capricious because, among other things, it has no rational basis and/or undermines public policy favoring the finality of settlements.

200. Revised Rule 1-47(h) eliminates a requirement that parties to a “successful” CCRB mediation “sign an agreement stating that each believes the issues have been satisfactorily resolved.”

201. The Rule further provides that: “The Director of Mediation, or any Agency Staff designee, will advise the Board when a Mediation is concluded and whether such Mediation was successful or unsuccessful . . . .”

202. The CCRB has provided no reason for eliminating the requirement in Rule 1-47(h) that parties to a “successful” CCRB mediation “sign an agreement stating that each believes the issues have been satisfactorily resolved.” The Notice of Adoption is silent on this issue.

203. Absent a signed agreement, there may be disagreement or misunderstanding as to whether a mediation was “successful or unsuccessful,” which in turn may lead to misinformation being provided to the CCRB and Police Commissioner.

204. Additionally, the signed agreement requirement serves the purpose of preventing a party to the mediation from later denying or disclaiming what was agreed to at the mediation.

205. The elimination of the signed agreement requirement undermines public policy to the prejudice of Police Officers. New York recognizes a policy that settlements be put in writing, and the same policy is implicated in mediations of CCRB complaints. The CCRB’s removal of the signed agreement requirement undermines this policy by exposing mediations to ambiguity and lack of finality.

206. The Undermine Settlements Rule harms Police Officers because, among other things, it deprives them of the benefits of predictability and finality in CCRB mediations and injects ambiguity into the mediation process by eliminating the requirement that successful mediations be put in writing.

207. Revised Rule 1-47(h) is invalid and should be stricken, and the CCRB should be enjoined from deviating from the requirement that parties to a successful CCRB mediation sign an agreement stating that each believes the issues have been satisfactorily resolved.

### **TWELFTH CAUSE OF ACTION**

#### **(Request for Relief under Article 78 of the CPLR - The Executive Director Delegation Rule, Revised Rule 1-53(a))**

208. Petitioners incorporate by reference the allegations set forth in all of the preceding paragraphs of this Petition as if fully set forth herein.

209. The Executive Director Delegation Rule is arbitrary and capricious because, among other things, it is not reasonably related to any rational purpose and/or undermines the CCRB's stated purpose of making CCRB investigations "more transparent to the public." Notice of Adoption, at 2, Ex. 1.

210. The Executive Director Delegation Rule allows the CCRB's Executive Director to delegate any and all of his or her authority to any "Agency Staff," which is defined as any of the 180 employees of the CCRB.

211. The CCRB has not provided any rational basis for allowing the unlimited delegation of the Executive Director's authority.

212. Revised Rule 1-53(a) is also overbroad and therefore not reasonably related to any rational purpose.

213. The Executive Director Delegation Rule harms Police Officers (as well as the public) because, among other things, it deprives them of transparency as to who may be making significant decisions concerning the investigation and administration of a complaint against them and allows persons who are not qualified to make those significant decisions.

214. Revised Rule 1-53(a) is invalid and should be stricken, and the CCRB should be enjoined from authorizing its Executive Director to delegate all of his or her authority to any member of the CCRB's staff.

### **THIRTEENTH CAUSE OF ACTION**

#### **(Request for Relief under Article 78 of the CPLR - The Hide From the Public Rule, Revised Rule 1-52(b))**

215. Petitioners incorporate by reference the allegations set forth in all of the preceding paragraphs of this Petition as if fully set forth herein.

216. Rule 1-52(b) required that CCRB members "be present at a meeting of the Board or a panel in person or, subject to such limitations as the Board may by resolution from time to time determine, by videoconference in order to register their votes."

217. To the extent the CCRB's position is that Rule 1-52(b) has been deleted, as per the Notice of Adoption, the deletion of Rule 1-52(b) is invalid because its deletion violates state statutes, is arbitrary and capricious, and is procedurally defective.

218. The Open Meetings Law (N.Y. Pub. Officers. Law § 103(a)) requires that the CCRB's meetings be open to the public. The CCRB's deletion of Rule 1-52(b) violates this statute by purporting to authorize its members to conduct meetings by means other than open to the public.

219. General Construction Law § 41 requires presence in person or through videoconference for a member's presence to count for quorum purposes. The law is applicable



to both Board and panel meetings. The CCRB's authorization of voting other than in person or through videoconference violates this statute.

220. The Hide From the Public Rule is also arbitrary and capricious because, among other things, it undermines the CCRB's stated purposes for the Revised Rules and is not reasonably related to any rational purpose.

221. The Hide From the Public Rule undermines the CCRB's stated purpose of making investigations more transparent to the public by allowing members to appear and vote by means that are not subject to public scrutiny.

222. The deletion of Rule 1-52(b) would also violate Section 1043(b) of the Administrative Procedure Act, because the CCRB never publicly proposed the complete deletion of Rule 1-52(b) prior to the public hearing.

223. To the extent the CCRB deleted Rule 1-52(b), such action is invalid and Rule 1-52(b) should be reinstated, and the CCRB should be enjoined from conducting Board or panel meetings other than in compliance with Rule 1-52(b).

#### **FOURTEENTH CAUSE OF ACTION**

##### **(Request for Relief under Article 78 of the CPLR - The Resolution)**

224. Petitioners incorporate by reference the allegations set forth in all of the preceding paragraphs of this Petition as if fully set forth herein.

225. The Charter expressly requires the CCRB to comply with the Administrative Procedure Act when the CCRB promulgates "rules of procedure" such as the Resolution. *See* Charter § 440(c)(2)

226. The Resolution is invalid because with its passage, the CCRB did not follow the publication, public comment, and hearing procedures under Section 1043 of the Administrative Procedure Act.

227. Section 1043 requires an agency to, among other things: (i) publish a notice of the proposed rule in the City Record, including a statement of basis and purpose, the statutory authority, the time and place of public hearing, and the final date for receipt of written comments; (ii) obtain certifications from the New York City Law Department and the Mayor's Office that the proposed rule is lawful and appropriate; (iii) provide the public an opportunity to comment on the proposed rule; and (iv) hold a public hearing at least thirty days from the date of publication of the proposed rule in the City Record. *See* N.Y. City Admin. Proc. Act. §§ 1043(b), (d), and (e). The CCRB failed to comply with these requirements with the passage of the Resolution.

228. Moreover, the CCRB cannot avoid compliance with the Administrative Procedure Act simply by labeling the changes to its procedures as a "resolution" instead of a rule.

229. The Resolution substantially alters the CCRB's procedures with a direct impact on the public and Police Officers, and the CCRB therefore was required to go through the formal rule-making procedures. The Resolution contains fixed, general principles to be applied by the CCRB going forward and sets standards that substantially alter and can determine the result of future CCRB determinations. The Resolution changes more than two decades of past practice, sets a new standard for the investigation and administrative prosecution of sexual misconduct complaints going forward, and unquestionably affects the rights of and procedures available to the public and Police Officers in these cases.

230. In addition to being procedurally invalid, the CCRB lacks jurisdiction and authority for the Resolution because it violates the Charter, its legislative history, and more than two decades of practice.

231. The Charter limits the CCRB's jurisdiction to complaints that allege misconduct involving "excessive use of force, abuse of authority, discourtesy, or use of offensive language." Charter § 440(c)(1).

232. Prior to the passage of the Resolution in February 2018, the CCRB referred complaints of sexual misconduct against Police Officers to the IAB. *See* CCRB Memorandum, at 1, 3, Ex. 2

233. The Resolution violates the Charter because it purports to give the CCRB jurisdiction to investigate and administratively prosecute sexual misconduct complaints, even complaints of criminal sexual misconduct.

234. Sexual misconduct complaints do not fall within FADO jurisdiction.

235. In the 229-page legislative history of the CCRB's Charter, there is no reference to sexual misconduct or any intent to include sexual misconduct in the CCRB's limited jurisdiction. *See* Bill Jacket, Ex. 4.

236. The CCRB has conceded that sexual misconduct does not fall within FADO jurisdiction through more than two decades of referring sexual misconduct complaints to the IAB, just as it does with all other non-FADO complaints.

237. The CCRB lacks the training and experience to handle sexual misconduct complaints against Police Officers.

238. The Resolution is inconsistent with the Charter's mandate that investigations of CCRB complaints are to be conducted "in a manner in which the public and the police

department have confidence.” Charter § 440(a). Neither the public nor Police Officers can have confidence in the CCRB -- an agency that lacks the training and experience -- handling sexual misconduct complaints.

239. The Resolution is arbitrary and capricious because, among other things, it lacks a rational basis and/or creates the unreasonable result of funneling sexual misconduct complaints to an agency that admittedly lacks the training and experience to handle them.

240. The CCRB has provided no reason for the Resolution.

241. The Resolution does not fill a void, because sexual misconduct complaints are already being handled by the IAB, a body that has been doing so for decades.

242. The CCRB does not claim, nor does it cite any evidence to indicate, that any change is needed in the handling of these claims.

243. The Resolution is also unreasonable because it purports to shift sexual misconduct complaints to an admittedly inexperienced and unprepared agency.

244. The Resolution harms Police Officers because, among other things, it shifts the investigation and administrative prosecution of sexual misconduct complaints to an agency that lacks the experience and training to handle them and, as a result of the CCRB’s lack of experience with and understanding of issues relating to sexual misconduct, there is a greater risk of flaws and mistakes in its investigations and conclusions. Additionally, the Resolution does not contain any mechanisms to address the potential for overlapping investigations by the IAB or other agencies or bodies, and Police Officers thus face the risk of being subject to multiple overlapping investigations and the risk of inconsistent determinations.

245. The Resolution is invalid and should be stricken, and the CCRB should be enjoined from investigating or making findings or recommendations on allegations of sexual misconduct against Police Officers.

**FIFTEENTH CAUSE OF ACTION**

**(Request for Declaratory Relief under Article 30 of the CPLR)**

246. Petitioners incorporate by reference the allegations set forth in all of the preceding paragraphs of this Petition as if fully set forth herein.

247. There is a ripe justiciable controversy between the parties as to the validity and enforceability of the thirteen Revised Rules at issue and the Resolution.

248. For reasons set forth above, which are incorporated by reference herein, the thirteen Revised Rules and the Resolution are invalid because, among other reasons, they violate the Charter, the Civil Service Law and other state statutes, the MOU, and/or the Administrative Procedure Act, and they are arbitrary and capricious.

249. Accordingly, the Court should issue a declaratory judgment pursuant to CPLR 3001 declaring that the thirteen Revised Rules and the Resolution are invalid, and that the Respondents may not take any actions as described in such Revised Rules and the Resolution.

**RELIEF REQUESTED**

WHEREFORE, Petitioners request that this Court enter an Order and Judgment:

(a) Striking Revised Rule 1-15(a), enjoining and permanently restraining Respondents and any of their agents, officers, and employees from implementing or enforcing Revised Rule 1-15(a), and declaring that Revised Rule 1-15(a) is invalid and that Respondents may not take any actions as described in such Revised Rule;

(b) Striking Revised Rule 1-44, enjoining and permanently restraining Respondents and any of their agents, officers, and employees from implementing or enforcing Revised Rule 1-

44, and declaring that Revised Rule 1-44 is invalid and that Respondents may not take any actions as described in such Revised Rule.

(c) Striking the new last sentence in Revised Rule 1-24(d) and the non-compliant “verification” procedure in Revised Rule 1-24(l), enjoining and permanently restraining Respondents and any of their agents, officers, and employees from implementing or enforcing the new last sentence in Revised Rule 1-24(d) and the non-compliant “verification” procedure in Revised Rule 1-24(l), and declaring that the new last sentence in Revised Rule 1-24(d) and the non-compliant “verification” procedure in Revised Rule 1-24(l) are invalid and that Respondents may not conduct complainant or witness interviews that are not under oath;

(d) Striking Revised Rule 1-11(c), enjoining and permanently restraining Respondents and any of their agents, officers, and employees from implementing or enforcing Revised Rule 1-11(c), and declaring that Revised Rule 1-11(c) is invalid and that Respondents may not take any actions as described in such Revised Rule;

(e) Striking Revised Rules 1-11(a) and (b), enjoining and permanently restraining Respondents and any of their agents, officers, and employees from implementing or enforcing Revised Rules 1-11(a) and (b) to the extent they purport to allow the filing or investigation of complaints by persons who were not allegedly harmed, and declaring that Revised Rules 1-11(a) and (b) are invalid to the extent they purport to allow the filing or investigation of complaints by persons who were not allegedly harmed and that Respondents may not accept or investigate complaints from persons who were not allegedly harmed;

(f) Strike Revised Rule 1-33(a), enjoining and permanently restraining Respondents and any of their agents, officers, and employees from implementing or enforcing Revised Rule 1-

33(a), and declaring that Revised Rule 1-33(a) is invalid and that Respondents may not take any actions as described in such Revised Rule;

(g) Striking Revised Rule 1-46(d), enjoining and permanently restraining Respondents and any of their agents, officers, and employees from implementing or enforcing Revised Rule 1-46(d), and declaring that Revised Rule 1-46(d) is invalid and that Respondents may not take any actions as described in such Revised Rule;

(h) Striking Revised Rule 1-36(b), enjoining and permanently restraining Respondents and any of their agents, officers, and employees from implementing or enforcing Revised Rule 1-36(b), and declaring that Revised Rule 1-36(b) is invalid and that Respondents may not take any actions as described in such Revised Rule;

(i) Striking Revised Rule 1-42(h), enjoining and permanently restraining Respondents and any of their agents, officers, and employees from implementing or enforcing Revised Rule 1-42(h), and declaring that Revised Rule 1-42(h) is invalid and that Respondents may not take any actions as described in such Revised Rule;

(j) Striking Revised Rule 1-31(b), enjoining and permanently restraining Respondents and any of their agents, officers, and employees from implementing or enforcing Revised Rule 1-31(b), and declaring that Revised Rule 1-31(b) is invalid and that Respondents may not take any actions as described in such Revised Rule;

(k) Striking Revised Rule 1-47(h), enjoining and permanently restraining Respondents and any of their agents, officers, and employees from implementing or enforcing Revised Rule 1-47(h), and declaring that Revised Rule 1-47(h) is invalid and that Respondents may not take any actions as described in such Revised Rule;

(l) Striking Revised Rule 1-53(a), enjoining and permanently restraining Respondents and any of their agents, officers, and employees from implementing or enforcing Revised Rule 1-53(a), and declaring that Revised Rule 1-53(a) is invalid and that Respondents may not take any actions as described in such Revised Rule;

(m) To the extent the CCRB deleted Rule 1-52(b), reinstating Rule 1-52(b), enjoining and permanently restraining Respondents and any of their agents, officers, and employees from conducting Board or panel meetings other than in compliance with Rule 1-52(b), and declaring that the deletion of Rule 1-52(b) is invalid and that Respondents may not conduct Board or panel meetings other than in compliance with Rule 1-52(b).

(n) Striking the Resolution, enjoining and permanently restraining Respondents and any of their agents, officers, and employees from implementing or enforcing the Resolution, and declaring that the Resolution is invalid and that Respondents may not take any actions as described in the Resolution;

(o) Awarding Petitioners attorneys' fees, as well as costs and disbursements against Respondents pursuant to CPLR § 8101; and

(p) Granting such other and further relief as the Court deems just and proper.



Dated: New York, New York  
March 13, 2018

MICHAEL T. MURRAY  
Office of the General Counsel of  
the Patrolmen's Benevolent  
Association of the City of New  
York, Inc.  
125 Broad Street  
New York, New York 10004

Of Counsel:  
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Respectfully submitted,

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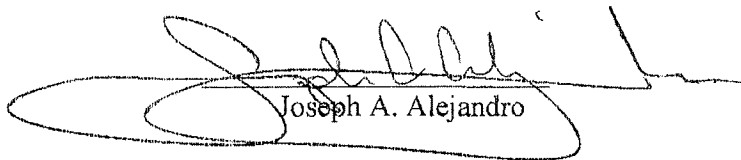
VERIFICATION

STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF NEW YORK        )


Joseph A. Alejandro, being duly sworn, deposes and says:

I am an officer of The Patrolmen’s Benevolent Association of the City of New York, Inc., Plaintiff-Petitioner in the above-entitled action.

I have read the foregoing Verified Article 78 & Declaratory Judgment Petition and all the material allegations are true and accurate to the best of my personal knowledge, except to the extent allegations therein are made upon information and belief, and, as to those allegations, I believe them to be true. The grounds for my belief include (a) public statements by Respondents and their representatives; (b) public statements by third parties; and (c) other materials referred to in the Petition.

  
Joseph A. Alejandro

Sworn to before me  
this 9<sup>th</sup> day of March, 2018

  
Notary Public

CHRISTOPHER J MCGRIATH  
NOTARY PUBLIC STATE OF NEW YORK  
NASSAU COUNTY  
LIC. #02MC6008082  
COMM. EXP. JUNE 1, 2019