

JUDGE SANDRONE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

09 CIV 1936

JOYCE LIN, CAROLINE SAMPANARO,
JORDAN GROH, CHRISTIAN GUTIERREZ,
and RICHARD VAZQUEZ,

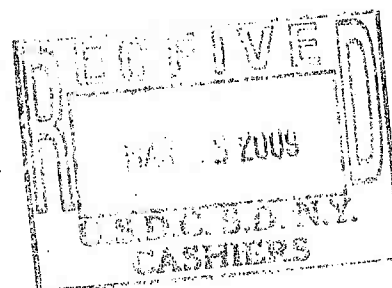
PGG

Plaintiffs,

**COMPLAINT AND
DEMAND FOR
JURY TRIAL**

-versus-

THE CITY OF NEW YORK; NEW YORK CITY
POLICE DEPARTMENT ("NYPD") RETIRED
ASSISTANT CHIEF BRUCE SMOLKA; DEPUTY
CHIEF STEPHEN PARAGELLO; SERGEANT
TIMOTHY HOROHOE, SHIELD # 01657; OFFICER
CHRISTOPHER QUIRK, SHIELD # 08692; OFFICER
RICHARD PIERRE, SHIELD # 04236; OFFICER
KEVIN STEWART, SHIELD #14870; OFFICER
KRISTIN ALAGNA, SHIELD # 04759; OFFICER
DAVID KANTOR; OFFICER THOMAS GRAHAM;
and OFFICER FNU LNU (FIRST NAME UNKNOWN,
LAST NAME UNKNOWN),



Defendants.

Plaintiffs JOYCE LIN, CAROLINE SAMPANARO, JORDAN GROH,
CHRISTIAN GUTIERREZ, and RICHARD VAZQUEZ by their attorney, DAVID B.
RANKIN and WYLIE M. STECKLOW as and for their complaints, does hereby state
and allege:

STATEMENT OF THE CASE

1. This is a civil rights action in which the Plaintiffs, JOYCE LIN,
CAROLINE SAMPANARO, JORDAN GROH, CHRISTIAN GUTIERREZ, and
RICHARD VAZQUEZ seeks redress from the defendants, THE CITY OF NEW YORK;

NEW YORK CITY POLICE DEPARTMENT ASSISTANT CHIEF SMOLKA; DEPUTY CHIEF STEPHEN PARAGELLO; SERGEANT HOROHOE, SHIELD # 01657; POLICE OFFICER CHRISTOPHER QUIRK, SHIELD # 08692; POLICE OFFICER RICHARD PIERRE, SHIELD # 04236; POLICE OFFICER KEVIN STEWART, SHIELD # 14870; POLICE OFFICER KRISTIN ALAGNA, SHIELD # 04759; POLICE OFFICER DAVID KANTOR; POLICE OFFICER THOMAS GRAHAM; and POLICE OFFICER FNU LNU for violation of their rights as guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §§ 1983 and 1998 and the laws of the State of New York.

JURISDICTION

2. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

3. This Court has original jurisdiction over plaintiff's causes of action brought pursuant to 28 U.S.C. §§ 1331 and 1343 (3) and (4), since they seek redress for the violation of plaintiff's federal constitutional and civil rights.

VENUE

4. Venue is properly laid in the Southern District of New York under U.S.C. § 1391(b), because it is within this District the claim arose.

JURY DEMAND

5. Plaintiffs respectfully demand a trial by jury of all issues in this matter pursuant to Fed. R. Civ. P. 38(b).

6. Plaintiffs demand a trial by jury in this action on each and every one of the

damage claims.

PARTIES

7. At all times pertinent to this complaint, Plaintiffs JOYCE LIN, CAROLINE SAMPANARO, JORDAN GROH, CHRISTIAN GUTIERREZ and RICHARD VAZQUEZ were citizens of the United States.

8. At all times pertinent to this complaint, Plaintiff JOYCE LIN is and was a resident of the City of Glendora, State of California, and the County of Los Angeles.

9. At all times pertinent to this complaint, Plaintiff CAROLINE SAMPANARO is and was a resident of Kings County in the State of New York.

10. At all times pertinent to this complaint, Plaintiff JORDAN GROH is and was a resident of the City of Rockford, State of Illinois, and the County of Winnebago.

11. At all times pertinent to this complaint, Plaintiff CHRISTIAN GUTIERREZ is and was a resident of the City of New York, State of New York, and the County of Kings.

12. At all times pertinent to this complaint, Plaintiff RICHARD VAZQUEZ is and was a resident of the Town of West Islip, State of New York, and the County of Suffolk.

13. Defendant THE CITY OF NEW YORK is and was at all times relevant to this action a municipal corporation authorized under the laws of the State of New York.

14. Defendants NEW YORK CITY POLICE DEPARTMENT ASSISTANT CHIEF SMOLKA; DEPUTY CHIEF STEPHEN PARAGELLO; SERGEANT HOROHOE, SHIELD # 01657; POLICE OFFICER CHRISTOPHER QUIRK, SHIELD

08692; POLICE OFFICER RICHARD PIERRE, SHIELD # 04236; POLICE OFFICER KEVIN STEWART, SHIELD # 14870; POLICE OFFICER KRISTIN ALAGNA, SHIELD # 04759; POLICE OFFICER DAVID KANTOR; POLICE OFFICER THOMAS GRAHAM; and POLICE OFFICER FNU LNU is and were at all times relevant to this action police officers employed by defendant City of New York.

15. At all times pertinent to this complaint, in doing the acts and things hereafter complained of, defendants were acting within the scope of their employment and using their authority in furtherance of their employer's interests and were acting in their respective capacities as stated, and said defendants were acting under color of state law.

16. Defendants SMOLKA, PARAGELLO, HOROHOE, QUIRK, PIERRE, STEWART, ALAGNA, KANTOR, GRAHAM, and LNU are sued individually. They are being sued in their official capacity for injunctive relief and they are being sued in their official and individual capacity for monetary damages.

17. Defendants' acts hereafter complained of were carried out intentionally, recklessly, with malice and gross disregard for Plaintiffs' rights.

STATEMENT OF FACTS

18. Plaintiff Joyce Lin resides at 858 East Comstock Avenue in the City and State of Glendora, California.

19. Plaintiff Jordan Groh resides at 1307 31st Street in the City and State of Rockford, Illinois.

20. Plaintiff Christian Gutierrez resides at 317 Siegel Street in the City and State of Brooklyn, New York.

21. Plaintiff Richard Vazquez resides at 612 Keith Lane in the City and State of West Islip, New York.

22. Plaintiff Caroline Sampanaro resides in Kings County in the State of New York.

CRITICAL MASS

23. Critical Mass is a bicycling event typically held on the last Friday of every month in over 300 cities around the world. The ride was originally founded with the idea of drawing attention to how unfriendly cities are to bicyclists, however, due to the leaderless and informal structure of Critical Mass, it is difficult to assign it any one specific goal.

24. Critical Mass is characterized as a social movement and a “pro-bike celebration.” It is not a monthly political protest, although it is often perceived to be.

25. The New York City Critical Mass ride participants meet on the last Friday of every month at 7:00 P.M., usually at Union Square North, although other starting points have included Washington Square Park, Tompkins Square Park, and Madison Square Park.

26. The Critical Mass ride does not have a set route. The rides go wherever the mood of the participants brings them. As such, the people at the front tend to decide by consensus where each turn will be.

27. Under New York State Vehicle & Traffic Law, Article 34 § 1231, traffic laws apply to persons riding bicycles or gliding on in-line skates. Article 34 § 1231 states, “every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties application to the driver of a vehicle.”

28. Critical Mass participants understand and comply with all traffic laws, including street restrictions, traffic lights, light requirements after dark, and helmet requirements.

MARCH 30, 2007

29. On March 30, 2007, at approximately 9:00 P.M., in the vicinity of 43rd Street and Broadway in the City and State of New York, in New York County, Richard Vazquez was participating in the monthly Critical Mass bicycle ride while Plaintiffs Joyce Lin, Caroline Sampanaro, Jordan Groh, and Christian Gutierrez were observing and documenting police interactions with the Critical Mass riders.

30. Each Plaintiff's encounter with the police and subsequent arrest was recorded on video, audio, and in still photographs with multiple observers.

31. Upon information and belief, Sergeant Timothy Horohoe was the officer in charge of the police operation to harass and frustrate the Critical Mass bicyclists and citizen journalists documenting unlawful police action.

32. At approximately 9:00 P.M., Sgt. Horohoe and other unidentified officers under his command pulled over two pedicabs to the side of 43rd Street and Broadway.

33. Plaintiff Groh was among several bystanders who documented the stop from a distance with his still-photography camera.

34. As Plaintiff Groh knelt on the sidewalk taking photographs of the pedicab stop, Sgt. Horohoe approached him, seized him by the arm, and pulled him approximately twenty feet away, telling Plaintiff something to the effect of, "we are in the middle of a police action here. Take your camera and go somewhere else."

35. Once Sgt. Horohoe let go of Plaintiff Groh's arm, Plaintiff Groh again knelt on the pavement among a crowd of bystanders several feet further away from the police officers and pedicabs. He again attempted to photograph the arrest in progress.

36. Turning and spotting Plaintiff Groh, Sgt. Horohoe again seized him, pulling him into the street, and violently pushing him against the side of a pedicab, handcuffing him and searching his pockets.

37. At the time of his arrest, Plaintiff Groh was engaged in no activity which was in violation of law and Defendants lacked probable cause to arrest him.

38. In Defendant Officer Christopher Quirk's sworn statement describing Plaintiff Groh's arrest, Officer Quirk alleges and swears that Sgt. Horohoe told Plaintiff Groh that he "was allowed to take pictures so long as...[Plaintiff Groh] backed away from [Sgt. Horohoe]."

39. The video and audio recordings of the events leading up to Plaintiff Groh's arrest, as well as the recordings of the arrest itself, clearly contradict Officer Quirk's sworn statement.

40. As Plaintiff Richard Vazquez rode his bicycle through the intersection of 43rd Street and Broadway at approximately 9:00 P.M., Sgt. Horohoe intercepted Plaintiff

Vazquez on foot, threw up his arms and violently knocked Plaintiff Vazquez off his bicycle, "blind-siding" him.

41. While on the corner of 43rd Street and Broadway, Plaintiff Christian Gutierrez observed Sgt. Horohoe unlawfully hit Plaintiff Vazquez off his bicycle. Plaintiff Gutierrez approached the site of the incident on foot with his own bicycle and three-hundred-sixty degree camera apparatus, which was active and recording throughout the incident.

42. Plaintiff Gutierrez approached to approximately 15 feet from Sgt. Horohoe arresting Plaintiff Vazquez.

43. Sgt. Horohoe and another unidentified officer picked up Plaintiff Vazquez, violently shoved him against a nearby covered garbage can, handcuffed and arrested him.

44. Plaintiff Vazquez was brought to the substation on 42nd Street and Broadway.

45. At the time of his arrest, Plaintiff Vazquez was engaged in no activity which was in violation of law and Defendants lacked probable cause to arrest him.

46. Defendant Horohoe then noticed Plaintiff Gutierrez. Sgt. Horohoe approached Plaintiff Gutierrez and told him something to the effect of, "this is a police activity that is in progress. You'll have to take your camera and get out of here."

47. Before Plaintiff Gutierrez could comply, Sgt. Horohoe physically seized him and began pushing him away from the arrest of Plaintiff Vazquez.

48. As he was being forcibly moved by Sgt. Horohoe, Plaintiff Gutierrez repeatedly shouted, "you're hurting me! You're hurting me!" To which Defendant Horohoe responded, "good!"

49. Sgt. Horohoe did not alter his conduct in any way in response to Plaintiff Gutierrez exclamations of pain.

50. After violently shoving Plaintiff Gutierrez down the street, away from the arrest of Plaintiff Vazquez, Sgt. Horohoe continued to pursue Plaintiff Gutierrez as he crossed to the island in between 7th Avenue and Broadway. Sgt. Horohoe approached Plaintiff Gutierrez again as he walked his bicycle past that location, telling him something to the effect of, "if you place your bicycle there, you will be arrested."

51. At no point during this incident had Plaintiff Gutierrez stopped moving and immediately responded to Sgt. Horohoe's order in a positive manner, telling Sgt. Horohoe that he would do whatever the officer wanted and that he would leave.

52. As Sgt. Horohoe approached Plaintiff Gutierrez, he began shoving Plaintiff Gutierrez before ordering Plaintiff Gutierrez to place his hands behind his back and placing him under arrest.

53. At the time of his arrest, Plaintiff Gutierrez was engaged in no activity which was in violation of law and Defendants lacked probable cause to arrest him.

54. At or around the same time of the arrest of Plaintiff Gutierrez, Plaintiff Joyce Lin, who had been walking with her bicycle, had paused to photograph the arrest of Plaintiff Vazquez, from a distance of approximately 10 feet away.

55. Plaintiff Lin had seen Plaintiff Vazquez been pushed off his bicycle and felt it was “unnecessarily violent.”

56. Plaintiff Lin approached Defendant Police Officer Kristin Alagna and asked why he was being arrested, to which Defendant Alagna told Plaintiff Lin to “go away.”

57. Plaintiff Lin moved back on the sidewalk to allow space between her and the arrest taking place so that pedestrians had space to walk in between them and began to take pictures of Mr. Vazquez being arrested.

58. At approximately the same time and location, Plaintiff Sampanaro was taking photographs of the unlawful arrest of Plaintiff Gutierrez. An officer FNU LNU stopped Plaintiff Sampanaro from taking photographs, moved her away from the incident so Ms. Sampanaro would no longer be able to photograph the arrest of Plaintiff Gutierrez. Officer FNU LNU forcibly held and detained Plaintiff Sampanaro until she was able to produce identification, at which point she was not further detained. Plaintiff Sampanaro was detained without reasonable suspicion or probable cause as she was not committing any criminal acts.

59. Defendant Officer Kristin Alagna approached Plaintiff Lin and requested identification.

60. Plaintiff Lin did not initially respond to Defendant Alagna because her identification had been stolen while traveling through Alabama. Instead Plaintiff Lin began to walk away from the arrest of Plaintiff Vazquez.

61. Another unidentified officer in the area yelled, "Stop! Grab her!" and between 4 and 6 NYPD officers surrounded Plaintiff Lin, grabbed her, violently forced her to the ground, and arrested her.

62. Plaintiff Lin, a visitor from California, had only recently partially recovered from a major mountain climbing accident that required total immobilization for medical evacuation to the nearest hospital via helicopter.

63. Plaintiff Lin was climbing 12,608-foot-high Giraud Peak in Kings Canyon National Park in California. After a loose rock Plaintiff Lin was holding onto broke off, she fell 30 feet, tumbled down a 40 degree snow field for 150 feet, then tumbled another 150 feet down a talus slope.

64. Plaintiff Lin was not wearing a helmet at the time of her accident. Her injuries included facial and head lacerations and fractures, two broken arms, and numerous other lacerations and contusions.

65. Plaintiff Lin's injuries required several surgical procedures, 53 stitches in her face, several staples in her head, and a stainless steel plate, 2 screws, and 4 pins in her right arm.

66. On March 30, 2007, Plaintiff Lin was forced to undergo unnecessary physical violence as she was forced to the ground. The unwarranted violence by the police officers caused Plaintiff Lin unbelievable pain in her right arm, as it was not completely healed and the police officers were forcibly moving it in unnatural positions.

67. As a result of the intense pain Defendant Officers were inflicting on Plaintiff Lin, she began screaming and thrashing around.

68. At the time of her arrest, Plaintiff Lin was engaged in no activity which was in violation of law and Defendants lacked probable cause to arrest her.

69. Despite video documentation showing Plaintiff Gutierrez in handcuffs a block away from Plaintiff Lin at the time of her arrest, Defendant Officer Kevin Stewart alleges in a sworn report that Plaintiff Gutierrez was standing over him during the arrest of Plaintiff Lin and was arrested for interfering in the arrest of Plaintiff Gutierrez.

70. Despite video documentation showing Plaintiff Gutierrez had complied with Sgt. Horohoe's first order to move and was attempting to comply with the second order to move, Defendant Stewart alleges in a sworn statement that Plaintiff Gutierrez was arrested after refusing to leave the area following two requests by Sgt. Horohoe.

71. Despite video documentation showing Plaintiff Lin was arrested after being asked for identification by Defendant Alagna, Defendant Alagna alleged and swore in her statement that she told Plaintiff Lin to move away multiple times and Plaintiff Lin refused to comply with that order.

72. Plaintiffs Lin, Gutierrez, and Groh's presence, peaceable public conduct and documentation of Police activities are protected as free assembly and speech under the Constitutions of the United States and New York.

73. In a flagrant infringement on Plaintiffs' rights, Defendants Horohoe, Pierre, Stewart, Quirk, and Alagna placed Plaintiffs Lin, Gutierrez, and Groh under arrest for observing a police action in progress.

74. Defendants Stewart, Quirk, and Alagna materially misstated the circumstances of Plaintiffs Lin, Groh, and Gutierrez's arrests in their sworn statements.

75. Plaintiffs Joyce Lin, Christian Gutierrez, and Jordan Groh spent the night of March 30, 2007 incarcerated as they were being processed as overnight arrestees, who were only released after their respective arraignments.

76. Defendant Police Officer David Kantor issued Plaintiff Richard Vazquez three summonses for going through a red light, disorderly conduct, and reckless operation of a bicycle.

77. The summonses for disorderly conduct and reckless operation of a bicycle were dismissed in court, and Plaintiff Vazquez submitted the traffic summons, number AAD4650166, for going through a red light.

78. There was no probable cause for the arrests of Plaintiffs. There was no basis, even, for stops and detention.

79. Plaintiff Richard Vazquez submitted a complaint to the New York City Civilian Complaint Review Board on May 21, 2007, case number 200705829.

80. The charge of "physical force against Richard Vazquez" alleged against Defendant Sergeant Timothy Horohoe were found substantiated and Sgt. Horohoe will be brought up on charges.

81. Plaintiff Jordan Groh swore and deposed that he is a witness in connection to CCRB case number case number 200705917.

82. Plaintiff Christian Gutierrez swore and deposed that he is a witness in connection to CCRB case number 200705829.

83. Plaintiff Joyce Lin swore and deposed that she is a witness in connection to CCRB case number 200705829.

84. Ms. Lin, Mr. Gutierrez, Mr. Groh, and Mr. Vazquez spent sums of money retaining a lawyer to help prepare the defense.

85. The criminal charges against Plaintiffs Lin, Gutierrez, and Groh have been dismissed.

86. The actions of Defendants Smolka, Paragello, Horohoe, Quirk, Pierre, Stewart, Alagna, Kantor, and Graham were in contravention of the consent decree entered into by the NYPD in Codd v. Black, 73 Civ. 5283 (S.D.N.Y. June 1, 1977).

87. This consent decree was incorporated into the New York Police Department Patrol Guide in 1990, setting forth the New York Police Department's recognition of this rule explicitly recognizing the rights of onlookers to police actions to take photographs of the police action in progress and to ask police officers questions.

88. The consent decree in Codd v. Black states: "It is the police of the New York City Police Department...that when a person (or persons) is detained, stopped or arrested in public areas[,] a person or persons not involved in the conduct for which the first person is stopped or arrested may remain in the vicinity of the stop or arrest as an onlooker or onlookers, subject to the safety of the person stopped, the third persons, the general public, and officer of the police department, and to provisions of the law..."

89. The Critical Mass bicycle ride is always held once a month, always starting from the same general location. The Critical Mass bicycle ride is a lawful event and the participants are mindful, aware, and abide by all traffic laws.

90. Although the NYPD is well aware of the monthly Critical Mass bicycle ride, police officers continually, deliberately, and unlawfully violate the decree stated in Codd v. Black and the rights of the law-abiding Critical Mass participants.

FIRST CLAIM
DEPRIVATION OF RIGHTS UNDER THE
UNITED STATES CONSTITUTION AND 42 U.S.C. §1983

91. Plaintiffs incorporate by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.

92. By their conduct and actions in falsely arresting, abusing process against, maliciously prosecuting, assaulting and battering, violating rights to equal protection under law of, violating the substantive due process rights of, violating the right to a fair trial of, inflicting emotional distress upon, failing to intercede on behalf of, and fabricating an account and/or evidence surrounding the March 30, 2007 incident, Defendants Smolka, Paragello, Horohoe, Quirk, Pierre, Stewart, Alagna, Kantor, and Graham, acting under color of law and without lawful justification, intentionally, maliciously, and with a deliberate indifference to or a reckless disregard for the natural and probable consequences of their acts, caused injury and damage in violation of plaintiffs' constitutional rights as guaranteed under 42 U.S.C. §1983 and the United States Constitution, including its First, Fourth and Fourteenth Amendments.

93. As a result of the foregoing, Plaintiffs were deprived of their liberty, suffered specific and serious bodily injury, pain and suffering, psychological and emotional injury, costs and expenses, and were otherwise damaged and injured.

SECOND CLAIM
SUPERVISORY LIABILITY FOR DEPRIVATION OF RIGHTS UNDER
THE UNITED STATES CONSTITUTION AND 42 U.S.C. §1983

94. Plaintiffs incorporate by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.

95. By failing to remedy the wrongs committed by their subordinates, and in failing to properly train, screen, supervise, or discipline their subordinates, supervisory officers of Smolka, Paragello, Horohoe, Quirk, Pierre, Stewart, Alagna, Kantor, and Graham caused damage and injury in violation of Plaintiff's rights guaranteed under 42 U.S.C. §1983, and the United States Constitution, including its First, Fourth and Fourteenth Amendments.

96. As a result of the foregoing, Plaintiffs were deprived of their liberty, suffered specific and serious bodily injury, pain and suffering, psychological and emotional injury, costs and expenses, and were otherwise damaged and injured.

THIRD CLAIM
FIRST AMENDMENT – RIGHT OF ASSOCIATION AND RIGHT OF EXPRESSION

97. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs with the same force and effect as though more fully set forth herein again at length.

98. The defendants' actions as alleged herein were committed under color of law.

99. The actions, conduct and policies and practices of defendants as alleged herein violated Plaintiffs' rights because of their association and or their participation in

the Critical Mass Ride under the First and Fourteenth Amendment to the Constitution of the United States and the Civil Rights Act of 1871, Title 42 U.S.C. §1983.

100. As a result of the foregoing, Plaintiffs were deprived of their liberty, suffered specific and serious bodily injury, pain and suffering, psychological and emotional injury, costs and expenses, and were otherwise damaged and injured.

WHEREFORE, Plaintiffs demand judgment against the Defendants individually and jointly and prays for relief as follows:

- a. That they be compensated for violation of their constitutional rights, pain, suffering, mental anguish, and humiliation; and
- b. That they be awarded punitive damages against the individual defendants; and
- c. That they be compensated for attorneys' fees and the costs and disbursements of this action; and
- d. For such other further and different relief as to the Court may seem just and proper.

JURY DEMAND

101. Each Plaintiff demands a trial by jury in this action on each and every one of the damage claims.

DATED: New York, New York
March 2, 2009

Respectfully Submitted,

By: _____
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