

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

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R.C., J.J., and A.G., suing under pseudonyms,
on behalf of themselves and all others similarly situated,

Index No. 153739/2018

Plaintiffs,

-against-

**CLASS ACTION
COMPLAINT**

THE CITY OF NEW YORK and JAMES P. O'NEILL,
New York City Police Department Commissioner, in
his official capacity,

Defendants.
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NATURE OF THE CASE

1. This class action seeks to enforce the statutory and due process rights of thousands of predominantly Black and Latino people whose sealed arrest information the New York City Police Department (“NYPD” or the “Department”) routinely uses and discloses in violation of New York law. The class seeks declaratory and injunctive relief to end the NYPD’s unlawful practice.

2. The NYPD collects and uses information about everyone the Department has arrested, even in cases where the prosecutor declined to pursue charges, the charges were later dismissed, or the allegations were disproven in court. Under New York law, records of such cases must be sealed. By this action, the Plaintiffs challenge the NYPD’s unlawful and prejudicial use and disclosure of information from records of arrests that do not result in criminal convictions.

3. Through a series of interconnected database systems, the NYPD has a policy and practice of using sealed arrest records in the ordinary course of law enforcement activities. The

NYPD uses information in sealed arrest records to target people—including people who have never been convicted of a crime—for investigation, arrest, and harsher penalties. The NYPD also regularly discloses information from sealed arrest records outside of the Department, including to the media and to prosecutors. In this way, the NYPD is marking, tracking, and punishing scores of people on the basis of mere allegations of criminal conduct.

4. The NYPD's policy and practice of using and disclosing information collected through sealed arrest records violates a forty-year-old New York statute that was designed to prevent the stigmatization of people who were arrested for, but not convicted of, felonies or misdemeanors.

5. Specifically, in 1976, New York enacted Section 160.50 of the Criminal Procedure Law to prevent the use or disclosure of records related to arrests and prosecutions that terminate in a person's favor. Four years later, New York enacted Section 160.55 of the Criminal Procedure Law, which expanded these protections to people accused of crimes who were ultimately convicted of only noncriminal violations. Together, these statutes robustly regulate how information about sealed arrests is maintained, accessed, and disclosed, in furtherance of the principle that people should not face prejudice due to mere allegations.

6. These statutes require law enforcement agencies to: (1) seal and not make available to any person or agency records of arrests and prosecutions that did not result in criminal convictions; (2) destroy or return to the individual any photographs or fingerprints taken in connection with the arrest; and (3) request in writing the return or destruction of any photographs or fingerprints that were forwarded to any other agency prior to sealing.

7. In approving the original statute four decades ago, New York Governor Hugh Carey announced that the law would “protect the rights of individuals against whom criminal

charges have been brought, but which did not ultimately result in a conviction.” Governor’s Approval Memorandum dated July 27, 1976 (filed with Senate Bill Number 9224-A). “This legislation is consistent with the presumption of innocence,” he wrote, “which simply means that no individual should suffer adverse consequences merely on the basis of an accusation, unless the charges were ultimately sustained in a court of law.” *Id.*

8. The statute requires arrest records to be sealed upon a favorable termination of a criminal proceeding, at which point “the arrest and prosecution shall be deemed a nullity and the accused shall be restored, in contemplation of law, to the status he occupied before the arrest and prosecution.” N.Y. Crim. Proc. Law § 160.60 (McKinney 2018).

9. The statutory mandate to seal records provides for limited exceptions that are narrowly tailored to advance certain compelling public interests. Sections 160.50 and 160.55 (collectively, the “New York Sealing Statutes”) require the NYPD to obtain a court order before it can use sealed arrest records for law enforcement purposes or disclose that information to any person or public or private agency. N.Y. Crim. Proc. Law §§ 160.50(1)(d)(ii), 160.55(1)(d)(ii) (McKinney 2018). To obtain an order to access sealed records, the NYPD must establish, to the satisfaction of the court, that justice requires unsealing. *Id.*

10. Despite this statutory mandate, and as more fully detailed in this complaint, the NYPD has a policy and practice of using and disclosing information and records—such as information from arrest reports, photographs, and fingerprints—relating to sealed arrests (“Sealed Arrest Information”) without first obtaining a court order. Indeed, the City of New York and the NYPD have admitted this policy in court filings, and the NYPD has codified this practice in its Detective Guide.

11. The NYPD's refusal to comply with the New York Sealing Statutes violates the rights of people who were arrested but not convicted of the alleged crime.

12. The reach of these violations is expansive. Since 2014, the NYPD has effected over 1 million arrests. For each arrest, the NYPD generates an arrest report and related records that contain detailed personal information about the person arrested, including, among other sensitive information, names, photographs, addresses, arrest charges, phone numbers, Social Security numbers, and the name and phone number of anyone that the person called while in custody. Pursuant to the NYPD policy and practice challenged herein, all of this information from arrests—even those arrests that are sealed under the New York Sealing Statutes—is uploaded to NYPD databases and subject to use and subsequent disclosure for law enforcement purposes without court permission.

13. Notably, much of the arrest information contained in the NYPD's databases is obtained through aggressive policing of low-level offenses, known as Broken Windows or quality of life policing. The majority of all NYPD arrests are for misdemeanor charges. Of the 1.1 million arrests made by the NYPD in the last four years, more than 750,000 were for misdemeanors.

14. At the same time, a significant proportion of arrests do not result in convictions. Between 2014 and 2016—the most recent period for which the New York State Department of Criminal Justice Services provides disposition data—prosecutors declined to pursue charges in over 46,000 misdemeanor arrests, and more than 266,000 misdemeanor arrests resulted in dismissal or acquittal. With respect to felonies, during the same time period, more than 97,000 felony arrests in New York City resulted in dismissal, acquittal, or declined prosecutions. Indeed,

half of all arrest dispositions in this period resulted in outcomes that required sealing under Section 160.50.

15. In total, in the three-year period between 2014 and 2016, the NYPD collected and catalogued information from records of over 400,000 arrests that are required to be sealed under Section 160.50 alone. Because of the NYPD's policy and practice of failing to comply with the New York Sealing Statutes, this represents hundreds of thousands of violations of the law.

16. The NYPD's policy and practice of using and disclosing Sealed Arrest Information may also exacerbate racial disparities that the New York Sealing Statutes aimed to reduce. In recommending approval of the bill forty years ago, the New York State Division of Human Rights wrote optimistically that it would stem the "unjust" and "disproportionately burdensome effect" of the use of arrest records on "racial minorities." Letter from Division of Human Rights to Judah Gribetz, Counsel to Governor Hugh Carey dated June 16, 1976, Bill Jacket, L 1976, ch. 877. Because Black and Latino people are disproportionately targeted for arrests, they have a disproportionate share of sealed arrests: Between 2014 and 2016, more than 330,000 arrests of Black and Latino people resulted in an outcome that requires sealing, compared to around 50,000 arrests of white people. Given this, the NYPD's policy and practice of using and disclosing Sealed Arrest Information threatens to perpetuate a cycle in which Black and Latino people face disproportionate consequences on the basis of mere allegations.

17. As a result of the NYPD's policy and practice of using and disclosing Sealed Arrest Information, the Defendants have violated and continue to violate the statutory and constitutional rights of the named Plaintiffs and all others similarly situated. The Plaintiffs seek a declaration that the Defendants' conduct is unlawful, injunctive relief, damages for named Plaintiff R.C., and attorneys' fees.

PARTIES

18. Plaintiff R.C. is a twenty-four-year-old Latino man and a resident of Bronx County.

19. Plaintiff J.J. is a thirty-year-old African-American man and a resident of Bronx County.

20. Plaintiff A.G. is a fifty-two-year-old African-American man and a resident of New York County.

21. Defendant the City of New York is a municipal corporation within the State of New York.

22. Defendant James P. O'Neill is the Commissioner of the NYPD, which is an agency of the City of New York. He is sued in his official capacity. The NYPD is headquartered at One Police Plaza in New York County.

JURISDICTION AND VENUE

23. This Court has subject-matter jurisdiction over the Plaintiffs' claims pursuant to Article 30 of the New York Civil Practice Law and Rules, Section 3001.

24. Venue is proper pursuant to Article 5 of the New York Civil Practice Law and Rules, Sections 503(a), 503(c), 504(3), and 505(a).

STATEMENT OF FACTS**New York's Sealing Statutes**

25. Pursuant to Criminal Procedure Law Section 160.60, arrests that terminate in favor of the person accused "shall be deemed a nullity and the accused shall be restored, in contemplation of law, to the status he occupied before the arrest and prosecution."

26. The New York Sealing Statutes prohibit the NYPD from using and disclosing records relating to an arrest that did not result in a conviction of a misdemeanor or a felony, and further require the NYPD to destroy or return to the person accused any photographs and fingerprints taken in connection with such an arrest.

27. With respect to arrest records, Criminal Procedure Law Section 160.50 provides that, in every criminal action or proceeding that terminates favorably for the person accused, “all official records and papers . . . relating to the arrest or prosecution, including all duplicates and copies thereof, on file with . . . any . . . police agency . . . shall be sealed and not made available to any person or public or private agency.” Criminal Procedure Law Section 160.55 extends this same requirement to every criminal action or proceeding that terminates by conviction of a traffic infraction or noncriminal violation, with narrow exceptions for convictions related to domestic violence incidents, loitering for purposes of engaging in prostitution, and driving while under the influence of alcohol or drugs.

28. With respect to photographs and fingerprints, Criminal Procedure Law Section 160.50 requires the NYPD to destroy or return to the person accused any photographs or fingerprints “in its possession or under its control” in every criminal action or proceeding that terminates favorably for the person accused. Criminal Procedure Law Section 160.55 extends the same requirement to every criminal action or proceeding that terminates by conviction of a traffic infraction or noncriminal violation, with narrow exceptions for convictions related to domestic violence incidents, loitering for purposes of engaging in prostitution, and driving while under the influence of alcohol or drugs.

29. Consistent with the general proscription against releasing sealed records, the New York Sealing Statutes provide for only a few precisely drawn exceptions that are based on

compelling public interests. The NYPD may only access Sealed Arrest Information for law enforcement purposes after first obtaining a court order. Specifically, Criminal Procedure Law Sections 160.50 and 160.55 both provide that sealed records on file with a police agency “shall be made available to . . . a law enforcement agency upon ex parte motion . . . if such agency demonstrates to the satisfaction of the court that justice requires that such records be made available to it.”

The NYPD’s Policy and Practice of Using and Disclosing Sealed Arrest Information

30. The NYPD has a policy and/or practice of storing, accessing, using, disseminating, and disclosing Sealed Arrest Information, as detailed more fully in paragraphs 31 through 84 below.

Express Policy to Access and Use Sealed Arrest Information for Criminal Investigations

31. As the Defendants, through Corporation Counsel of the City of New York, represented to the United States District Court for the Southern District of New York, it is their position that the NYPD is not prohibited from accessing or using Sealed Arrest Information for law enforcement purposes. See Memorandum of Law in Opposition to Plaintiffs’ Letter Motion at 8, *Stinson v. City of New York*, No. 10 Civ. 4228 (RWS) (S.D.N.Y. Mar. 29, 2016), ECF No. 295 (“*Stinson* NYPD Mem.”). The City of New York admitted that “[t]he NYPD does indeed access sealed information for a variety of reasons” without court permission. *Id.* at 5, 7.

32. Specifically, as Corporation Counsel stated in an email to plaintiffs’ counsel that was submitted to the court in *Stinson*, the Defendants’ position is that “[t]he NYPD is permitted to access and/or use sealed information for a variety of reasons, including for the purposes of investigating crimes and/or apprehending suspects (law enforcement purposes).” Plaintiffs’ Letter Motion, Ex. A at 7, *Stinson*, No. 10 Civ. 4228 (RWS) (S.D.N.Y. Mar. 16, 2016), ECF No.

289. Corporation Counsel further suggested that the NYPD in fact uses Sealed Arrest Information for these purposes without first obtaining a court order. *Stinson* NYPD Mem. at 7–9.

33. This policy appears inconsistent with the NYPD’s understanding of what it means to “seal” records in other contexts. For example, the NYPD Patrol Guide Procedure No. 206-15, entitled “Sealing Disciplinary Charges,” requires commanding officers to delete mention of sealed disciplinary charges from all files and directs that a sealed disciplinary record may not “be referred to when a member is being promoted, transferred or being considered for a detail assignment.” The Department Advocate’s Office—which is the NYPD division responsible for the discipline of officers—maintains a record of the charges but it is only permitted to use it for “informational purposes.”

Use and Disclosure of Sealed Arrest Information in NYPD Databases

34. The NYPD generates records of every arrest it makes, and those records contain detailed information about the person who was arrested. The personal data contained in arrest records may include, but are not limited to, arrest charges, location of arrests, fingerprints, photographs, detailed physical descriptions, Social Security numbers, date and place of birth, residence and contact information, license plate numbers, occupation, family status, known associates, and contact information of known family members and/or associates of individuals who have been in custody.

35. This information is gathered from arrest records and maintained through several record management systems that the NYPD utilizes to collect, aggregate, and disseminate vast amounts of data. These databases include, without limitation, the Domain Awareness System (“DAS”), the Real Time Crime Center (“RTCC”), the Recidivist Tracking and Reporting Database (“RTRD”), the Transit Recidivist Database, Omniform, the Enterprise Case Management System (“ECMS”), the NYPD Adult Suspect Database within PhotoManager, the

On Line Complaint System (“OLCS”), the On Line Booking System (“OLBS”), and the Booking Arraignment Disposition System (“BADs”).

36. Upon information and belief, the NYPD trains Department personnel in the use of some or all of these databases for criminal investigatory and law enforcement purposes.

37. As described by the NYPD Counterterrorism Bureau’s Director of Analytics, “DAS is a network of sensors, databases, devices, software, and infrastructure that delivers tailored information and analytics to mobile devices and precinct desktops.” E.S. Levine et al., *The New York City Police Department’s Domain Awareness System*, 47 *Interfaces* 70, 71 (2017).

38. DAS, as of April 2016, contained records of “two billion readings from license plates (with photos), 100 million summonses, 54 million 911 calls, 15 million complaints, 12 million detective reports, 11 million arrests, two million warrants, and 30 days of video from 9,000 cameras.” *Id.* at 73.

39. DAS is “deployed across every police precinct in the City, on all officers’ smartphones, and on the tablets in all police vehicles.” *Id.* at 71.

40. Authorized DAS users such as NYPD officers and detectives can search for an individual’s records in DAS via a computer connected to the NYPD network or via the DAS Lite application on mobile devices.

41. DAS generates reports about people called the “DAS Snapshot” and the “DAS Import.” Both of these types of reports may contain Sealed Arrest Information, including, among other information, arrest date, arrest number, the top charge associated with the arrest, and arrest photographs.

42. Upon information and belief, reports from DAS contain hyperlinks to, among other records, sealed arrest reports, complaint forms associated with those arrests, and records of co-defendants.

43. RTRD is a database system that “provides a comprehensive snapshot of every previous perpetrator, including his vulnerabilities to arrest, parole violation, or other sanctions.” The New York City Police Department, The Police Commissioner’s Report 48 (2016).

44. RTRD generates reports that may contain Sealed Arrest Information, including, among other information, arrest date, arrest number, the top charge associated with the arrest, and arrest photographs.

45. Upon information and belief, reports from RTRD contain hyperlinks to, among other records, sealed arrest reports, complaint forms associated with those arrests, and records of co-defendants.

46. RTCC occupies physical office space at the NYPD headquarters in New York City and is staffed by detectives and civilian analysts.

47. RTCC provides twenty-four-hours-a-day, seven-days-a-week investigative support to the NYPD and can access data from NYPD and other New York City and State systems.

48. RTCC generates a report called the “RTCC Snapshot.” The RTCC Snapshot may contain Sealed Arrest Information, including, among other information, arrest date, arrest number, the charges associated with the arrest, and arrest photographs.

49. Upon information and belief, RTCC Snapshots contain hyperlinks to, among other records, arrest photographs and Office of Court Administration (“OCA”) records including court records subject to sealing under the Criminal Procedure Law.

50. Sealed Arrest Information is available to Department personnel through, without limitation, DAS, RTRD, RTCC, Omniform, ECMS, and BADS.

51. NYPD personnel may create printouts of information from DAS, RTCC, RTRD, and the NYPD Adult Suspect Database, among other databases, and then attach them to NYPD Complaint Follow-Up Reports, in which detectives record actions they have taken to process or follow up on complaints and which are commonly referred to as DD5s.

52. Upon information and belief, DAS, RTCC, and RTRD are among the primary systems that NYPD officers use to collect and review a person's prior contacts with the NYPD.

53. Upon information and belief, the NYPD makes a variety of law enforcement decisions based in part on Sealed Arrest Information contained in its database systems, including but not limited to determining whether to arrest a person who would otherwise receive a civil summons, whether to label someone a "recidivist," assessing a person's possible affiliation with a gang, identifying geographic locations to be targeted for law enforcement activities, and identifying individuals with prior arrests as potential suspects in subsequent crimes.

54. With respect to the "recidivist" label, pursuant to NYPD policy, a person is labeled a "transit recidivist" if they have had a certain number of prior arrests in the last four years on certain charges, including misdemeanors; if they have had any prior felony or misdemeanor arrest in the City's transit system in the last two years; if they have had three or more violation arrests in transit in the last five years; if they have three or more unanswered Transit Adjudication Bureau summonses; or if they are on parole or probation.

55. Pursuant to NYPD policy, a person labeled as a "Transit Recidivist" who violates transit rules—for example, jumping a turnstile—is ineligible for a civil notice for the offense; NYPD officers have no discretion and must make an arrest.

56. Upon information and belief, this mandatory arrest policy includes arresting people based on sealed prior arrests who otherwise would be subject only to civil consequences.

Procedures That Allow, or Fail to Prevent, Access to and Use of Sealed Arrest Information

57. The NYPD has a written policy of permitting Detective Bureau personnel to access and review Sealed Arrest Information through its database systems for law enforcement purposes without obtaining a court order.

58. Specifically, NYPD Detective Guide Procedure No. 512-05, effective since December 9, 2013, provides that Detective Bureau personnel may access and view Sealed Arrest Information through BADS, OMNI, ECMS, or other NYPD systems in connection with criminal investigations.

59. Procedure No. 512-05 states that the policy “ensures authorized Detective Bureau personnel have access to Sealed Records.” It defines “Sealed Records” as including, among other things, sealed records of adult arrests.

60. Although the New York Sealing Statutes expressly state that Sealed Arrest Information on file with any police agency may not be made available “to any person or public or private agency,” the NYPD Detective Guide expressly permits NYPD personnel to access Sealed Arrest Information as a matter of course when investigating felonies and other offenses, and states that New York law only prohibits dissemination of Sealed Arrest Information outside of the Department.

61. Although the New York Sealing Statutes expressly require law enforcement agencies to obtain a court order prior to accessing Sealed Arrest Information, the NYPD Detective Guide contains no procedure to obtain a court order to access Sealed Arrest Information in NYPD databases. By contrast, the NYPD Detective Guide provides instructions for obtaining a court order to unseal court records and sealed arrest photographs.

62. NYPD Detective Guide Procedure No. 512-05 provides that NYPD personnel should not disclose Sealed Arrest Information outside of the NYPD, including to prosecutors or the media. Despite this, as detailed in paragraphs 70 through 79 herein, NYPD personnel disclose Sealed Arrest Information to outside agencies, including to prosecutors and the media.

63. NYPD Detective Guide Procedure No. 512-05 further provides that NYPD personnel may not print sealed records or include them in case files. Despite this, as detailed in paragraphs 71, 108, 121, 142, and 143 herein, NYPD personnel print sealed records and include them in case files.

64. The NYPD Patrol Guide does not provide clear directions to officers about how to handle Sealed Arrest Information internally, and contains no procedure dedicated to addressing how to handle Sealed Arrest Information internally. The procedures in the NYPD Patrol Guide are insufficient to prevent the internal use and disclosure of Sealed Arrest Information.

65. Additionally, the NYPD's database systems do not consistently identify and label Sealed Arrest Information as subject to sealing.

66. Upon information and belief, the NYPD does not have sufficient controls in place to ensure that Sealed Arrest Information is consistently identified as subject to sealing across the NYPD's database systems, as detailed in paragraphs 145, 147, and 148.

67. Nor do the NYPD's databases or the RTCC consistently restrict access to Sealed Arrest Information that is identified and labeled as sealed.

68. NYPD personnel therefore can access Sealed Arrest Information that is unavailable or inaccessible through one database by searching other databases or requesting the information from the RTCC.

69. Upon information and belief, the NYPD's failure to properly train or advise officers about the requirements of the New York Sealing Statutes causes NYPD personnel to access and use Sealed Arrest Information in violation of the law.

The NYPD's Policy and/or Practice of Disclosing Sealed Arrest Information Outside of the Department

70. The NYPD has a policy and/or practice of disclosing Sealed Arrest Information to prosecutors.

71. The NYPD provides prosecutors with printouts from its databases, including, without limitation, printouts from DAS, RTCC, and RTRD, that include Sealed Arrest Information. The disclosed Sealed Arrest Information includes, without limitation, sealed arrest charges and arrest reports.

72. As a result of the NYPD's disclosures, prosecutors have access to and are able to use Sealed Arrest Information during the pendency of criminal prosecutions when that access and use is prohibited by law.

73. Consistent with the New York Sealing Statutes, OCA removes Sealed Arrest Information from criminal history record search reports ("RAP sheets") that it provides to criminal defendants and their defense attorneys.

74. Because criminal discovery is not provided to defense attorneys until the prosecution is near trial, and because it can often take many months, if not years, to get a trial in New York City, a person's defense attorney may not know that the prosecution is relying on Sealed Arrest Information disclosed by the NYPD during much of the pendency of a criminal proceeding. In many cases, individuals may accept plea agreements without any knowledge that the prosecution's plea offer may have been shaped by the NYPD's unlawful disclosure of Sealed Arrest Information.

75. Additionally, the NYPD has memoranda of understanding with other agencies pursuant to which the NYPD provides access to its databases. This includes, without limitation, the Administration for Children's Services and the Parks Department.

76. Upon information and belief, this sharing results in the disclosure of Sealed Arrest Information to outside agencies.

77. The NYPD also regularly discloses Sealed Arrest Information to the press. Specifically, the NYPD discloses to the press the number of times a person has been arrested, including arrests that are required to be sealed under New York law.

78. For example, on December 30, 2016, online newspaper DNAInfo.com reported on the fatal shooting of Kareem Moyer in the Bronx. The article reported that Mr. Moyer "has been arrested 26 times on various charges . . . police said." Citing an "NYPD spokeswoman," the article further reported that "[p]olice records for 12 of [Mr. Moyer's] arrests are sealed."

79. More recently, on April 5, 2018, the New York Post reported on the NYPD's fatal shooting of Saheed Vassell, a Black man who suffered from mental illness, in Brooklyn. Citing the police, the article reported that Mr. Vassell "has 23 prior arrests on his record," and described three arrests from 1999, 2004, and 2005. The article further reported that "Vassell's other arrests were sealed, but four of them involved gun charges, police sources said." In another article on the same date, the New York Post reported that Mr. Vassell "was also charged with possession of a firearm in 2010," citing "a high-ranking NYPD source."

80. The NYPD's policy and/or practice of routinely accessing, using, and disseminating Sealed Arrest Information is an ongoing unlawful disclosure of Sealed Arrest Information.

81. The NYPD's failure to consistently identify and label Sealed Arrest Information as subject to sealing and failure to prohibit access to Sealed Arrest Information creates a substantial risk of unlawful disclosure of Sealed Arrest Information.

The NYPD's Improper Use and Disclosure of the Named Plaintiffs' Sealed Information

82. Pursuant to the NYPD's policy and/or practice of using and disclosing Sealed Arrest Information, the NYPD has used and continues to use, and has disclosed and may disclose again, Sealed Arrest Information related to Plaintiffs R.C., J.J., and A.G.

83. The NYPD's maintenance, use, and disclosure of Sealed Arrest Information related to Plaintiffs R.C., J.J., and A.G. is consistent with the NYPD's policy and/or practice of using and disclosing Sealed Arrest Information.

84. Upon information and belief, the NYPD maintains, uses, and discloses Sealed Arrest Information related to all members of the plaintiff class in the same manner and pursuant to the same policy and/or practice as the NYPD's maintenance, use, and disclosure of Sealed Arrest Information related to Plaintiffs R.C., J.J., and A.G.

Plaintiff R.C.

85. Plaintiff R.C. lives in the Bronx with his grandmother. In April 2015, he was living with his mother in Wappinger Falls, New York. In the four years prior, he had worked for two locations of a chain restaurant, where he was a shift manager responsible for opening and closing the restaurant. He earned his G.E.D. and had been planning to attend college.

86. At or around 4:30 a.m. on April 12, 2015, two men allegedly robbed a livery driver in the Bronx.

87. R.C. was not in New York City at the time, and he had spent the night with friends in Danbury, Connecticut.

88. On April 12, 2015, NYPD Officer Steven Reyes conducted four photo array viewings with the complaining witness to the robbery using the PhotoManager system. The complaining witness did not identify a suspect from any of these viewings.

89. On April 16, 2015, Officer Reyes conducted a photo array viewing with six photographs using the NYPD Adult Suspect Database within the PhotoManager system. The complaining witness again did not identify a suspect.

90. On or about April 27, 2015, two weeks after the alleged robbery, Officer Reyes prepared another photo array using the NYPD Adult Suspect Database within the PhotoManager system. In compiling the array, Officer Reyes used a photograph of R.C. from a 2011 arrest that had been dismissed. That photograph was required to have been destroyed or returned to R.C.

91. Officer Reyes obtained the photographs used in the array by searching the NYPD Adult Suspect Database for white Hispanic males aged 15 to 19 years old with black hair.

92. On or about April 27, 2015, Officer Reyes showed this photo array to the complaining witness. The witness selected R.C.'s photograph.

93. On Friday, May 22, 2015, R.C. was at home sleeping when his mother woke him and informed him in sum and substance that police were at the door accusing him of robbery.

94. R.C. was placed in handcuffs and driven to the NYPD's 52nd precinct in the Bronx. During the drive to the Bronx, R.C. experienced distress and feared for his future.

95. R.C. was placed in a holding cell at the 52nd precinct and was subsequently interrogated. He requested an attorney during the interrogation.

96. R.C. was thereafter transferred from the precinct to Central Booking, where he was held until his arraignment.

97. After spending about two days in custody, R.C. was arraigned on Sunday, May 24, 2015 and released on his own recognizance.

98. During R.C.'s prosecution, his RAP sheet did not include any information about sealed arrests. The RAP sheet indicated that R.C. had no prior arrests.

99. In the course of criminal discovery in connection with R.C.'s prosecution, the Bronx District Attorney's Office ("Bronx DA") produced documents that were created by the NYPD and contained Sealed Arrest Information related to R.C.

100. Specifically, the Bronx DA produced an "RTCC Snapshot" and a DD5 dated April 27, 2015.

101. Upon information and belief, the NYPD provided the RTCC Snapshot and the DD5 to the Bronx DA in connection with its prosecution of R.C.

102. The first page of the RTCC Snapshot is annexed hereto as Exhibit A.

103. Exhibit A is redacted to protect R.C.'s personal information. The RTCC Snapshot produced by the Bronx DA does not contain redactions.

104. The RTCC Snapshot displays a photograph of R.C. from his 2011 dismissed arrest that should have been destroyed or returned to R.C., and discloses information from records of that sealed arrest and from two other sealed arrest records, including the date of the arrest, the arrest number, and the charges on the arrest.

105. Two of the disclosed arrest records are from a single arrest in 2011, when R.C. was seventeen years old. One set of charges from that arrest was dismissed, and the prosecutor declined to pursue the other charges. The third arrest record, from when R.C. was nineteen years old, is for marijuana possession, and the charges were dismissed. Each of those arrests records were required to be sealed.

106. Each of the sealed arrest numbers in the RTCC printout appears to contain a hyperlink.

107. Upon information and belief, clicking on such hyperlink enables one to view the underlying arrest report.

108. Upon information and belief, Officer Reyes created the DD5 on April 27, 2015 and attached the photo array viewing report that contained Sealed Arrest Information for R.C.

109. Upon information and belief, NYPD supervisor John Mateojerez reviewed the DD5 on April 30, 2015.

110. On November 17, 2016, the robbery charges against R.C. were dismissed on recommendation of the prosecutor. The records of that arrest are required to be sealed, and the photographs and fingerprints of R.C. taken in connection with that arrest must be returned or destroyed by the NYPD.

111. In the year and a half that R.C. faced the robbery charges, he repeatedly had to travel to the Bronx to attend court appearances. In all, R.C. had to attend approximately ten court appearances. During some of this time, he was still living in Wappinger Falls, which is more than an hour-long drive to the Bronx.

112. The repeated trips to the Bronx made it difficult for R.C. to work his shifts at the restaurant. He eventually lost his job there.

113. R.C. eventually left Wappinger Falls—where he had always lived—to move in with his grandmother in the Bronx to make attendance at the court appearances easier.

114. R.C. experienced emotional distress, fear, anxiety, and anger as a result of the arrest and prosecution. He began to internalize the accusation. He began to feel like he was a criminal even though he was innocent.

115. In the course of facing the prosecution for this robbery, R.C. gave up his college plans.

116. Upon information and belief, the NYPD continues to maintain, use, and disclose R.C.'s Sealed Arrest Information.

Plaintiff J.J.

117. J.J. was arrested on April 18, 2016. During the prosecution for this arrest, J.J.'s RAP sheet did not include any information about sealed arrests. The RAP sheet indicated that J.J. had no prior arrests.

118. When the case was ready to go to trial, in the course of criminal discovery, the Bronx DA produced documents that were created by the NYPD and contained Sealed Arrest Information related to J.J.

119. Specifically, the Bronx DA produced several DD5s.

120. Upon information and belief, the NYPD provided the DD5s to the Bronx DA in connection with its prosecution of J.J.

121. The DD5s were created by NYPD Detective Anthony Velez on April 19, 2016. Detective Velez reviewed and attached to the DD5s, among other records, a "DAS Snapshot," "DAS Import" and "RTRD printout."

122. NYPD Supervisor Neftali Betances reviewed the DD5s on April 20, 2016.

123. The DAS Snapshot related to J.J. lists six prior arrests, three of which were dismissed, and three of which resulted in no charges filed. All six prior arrests are required to be sealed.

124. The first page of the DAS Snapshot is annexed hereto as Exhibit B.

125. Exhibit B is redacted to protect J.J.'s personal information. The original DAS Snapshot produced by the Bronx DA does not contain redactions.

126. For each sealed arrest, the DAS Snapshot indicates the arrest number, a description of the types of charges, the date of arrest, and the precinct.

127. Upon information and belief, each sealed arrest number in the DAS Snapshot contains a hyperlink to the underlying arrest report.

128. The DAS Snapshot labels J.J. as a “Transit Recidivist.”

129. When the NYPD created the document labeling J.J. as a “Transit Recidivist,” J.J.’s prior arrests were all sealed, he had no Transit Adjudication Bureau summonses, and he was not on parole or probation.

130. Upon information and belief, the NYPD labeled J.J. a “transit recidivist” based on his sealed arrests.

131. The DAS Import related to J.J. includes detailed information about his sealed arrests, including, among other information, the arrest reports, the charges on the arrests, the arrest numbers, certain associated complaint numbers, dates of the arrests, the precincts of the arrests, details of the incidents, J.J.’s physical description at the time of the arrests (including height, weight, eye and hair color, hairstyle, and complexion), and descriptions of J.J.’s clothing, scars, and tattoos.

132. The DAS Import additionally provides detailed personal data about J.J. from prior sealed arrests, including, but not limited to, his home address and phone number, names and addresses of people he lived with, employment details, education, names and contact information of certain individuals that were discussed during pre-arraignment interviews, and names and phone numbers of individuals that J.J. called while he was in police custody. One arrest report included within the DAS Import contains a photograph of J.J. that the NYPD was required to destroy or return to J.J.

133. The RTRD Report lists information on J.J.'s sealed arrests, including but not limited to the arrest number, arrest precinct, arrest date, top charge, complaint report number, and whether there are co-defendants associated with the arrest.

134. The first page of the RTRD Report is annexed hereto as Exhibit C.

135. Exhibit C is redacted to protect J.J.'s personal information. The original RTRD Report produced by the Bronx DA does not contain redactions.

136. Upon information and belief, the arrest numbers for each sealed arrest listed in the RTRD report contain hyperlinks to detailed records of the arrests, and the complaint report numbers contain hyperlinks to detailed records of the complaints associated with the arrests.

137. Upon information and belief, the NYPD continues to maintain, use, and disclose J.J.'s Sealed Arrest Information.

Plaintiff A.G.

138. A.G. was arrested on February 14, 2017. During the prosecution for this arrest, A.G.'s RAP sheet did not contain any information about sealed arrests.

139. When the case was ready to go to trial, in the course of criminal discovery, the Bronx DA produced documents that were created by the NYPD and contained Sealed Arrest Information related to A.G.

140. Specifically, the Bronx DA produced several DD5s.

141. Upon information and belief, the NYPD provided the DD5s to the Bronx DA in connection with its prosecution of A.G.

142. The DD5s were created by NYPD Detective Nicholas Chabert on February 15, 2017. NYPD Supervisor John Gogarty reviewed the DD5 entries on the same day.

143. The DD5s attach, among other records, a DAS Import (including a DAS Snapshot and DAS Snapshot – Detailed) and an RTRD Report containing A.G.’s information, including Sealed Arrest Information.

144. When A.G. was younger, he was arrested a number of times between 1984 and 2007. Some of those arrests are not sealed. Four of these arrests were dismissed, four resulted in convictions of noncriminal violations, and one arrest resulted in an acquittal. All nine of those arrests are required to be sealed. In the last ten years, with the exception of the arrest on February 14, 2017, A.G. was arrested on three occasions, each time for marijuana possession. Two of these arrests resulted in noncriminal violations and are therefore required to be sealed.

145. The DAS Import contains a document labeled “DAS Snapshot,” which includes information about ten sealed arrests, including the arrest number, description of the type of charge, arrest date, arrest precinct, and, for seven of the arrests, a notation indicating that the arrest is “sealed.” One of the sealed arrests listed in the DAS Snapshot is not listed in the RTRD Report.

146. Upon information and belief, the arrest number for each of the sealed arrests in the DAS Snapshot contains a hyperlink to detailed records of the arrest.

147. The DAS Import contains a document labeled “DAS Snapshot – Detailed,” which includes information about three sealed arrests, including the arrest number, arrest date and time, top charges, and arrest precinct. Upon information and belief, these two arrest numbers contain hyperlinks to detailed records of those arrests. The DAS Snapshot – Detailed also includes the arrest numbers of eight sealed arrests.

148. The RTRD Report lists information about ten sealed arrests and the February 14, 2017 arrest, including but not limited to the arrest number, arrest precinct, arrest date, and, for

seven of the arrests, a notation that the arrest is sealed. Upon information and belief, the arrest number for each sealed arrest contains a hyperlink to detailed records of the arrest, and the complaint number listed contains a hyperlink to detailed records of the complaint associated with the arrest. One of the sealed arrests and the February 14, 2017 arrest listed in the RTRD Report is not listed in the DAS Snapshot.

149. In February 2018, all charges related to A.G.'s February 14, 2017 arrest were dismissed on recommendation of the prosecutor. The records of that arrest are required to be sealed, and the photographs and fingerprints of A.G. taken in connection with that arrest must be returned to A.G. or destroyed by the NYPD.

150. Upon information and belief, the NYPD continues to maintain, use, and disclose A.G.'s Sealed Arrest Information.

CLASS ALLEGATIONS

151. Paragraphs 1 through 150 are incorporated by reference as if set forth fully herein.

152. The Plaintiffs bring this class action pursuant to Article 9 of the New York Civil Practice Law and Rules on behalf of all persons whose records are in the possession of the NYPD and are subject to sealing under Criminal Procedure Law Sections 160.50 and/or 160.55.

153. The class is so numerous that joinder of all members is impractical. Between 2014 and 2016, more than 400,000 arrests in New York City resulted in outcomes subject to sealing under Criminal Procedure Law Sections 160.50 and/or 160.55. Pursuant to the NYPD's policies and practices described in this complaint, the NYPD is maintaining, using, and disclosing information from records related to at least those 400,000 arrests, and, upon information and belief, likely more.

154. There are questions of law and fact common to the class that predominate over questions affecting only individual class members, including but not limited to whether New York Criminal Procedure Law Sections 160.50 and/or 160.55 require the NYPD to seek a court order before accessing and using Sealed Arrest Information for law enforcement purposes, and whether the NYPD's policy and practice of using and disclosing Sealed Arrest Information without a court order violates New York Criminal Procedure Law Sections 160.50 and/or 160.55.

155. The claims of the class representatives are typical of the claims of the class members and, by pursuing their own interests, the class representatives will advance the interests of the absent class members. Each class member has records subject to sealing, photographs subject to return or destruction, and/or fingerprints subject to return or destruction by the NYPD under Criminal Procedure Law Sections 160.50 and/or 160.55 and has had those records, photographs, and/or fingerprints improperly accessed and/or disclosed by the NYPD.

156. The class representatives will fairly and adequately protect the interests of the class. There are no conflicts of interest between the class representatives and the absent class members, the class representatives will vigorously prosecute this action on behalf of the class, and the class representatives have retained counsel competent in this type of litigation.

157. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since most class members do not know about the NYPD's systematic violation of the New York Sealing Statutes, individual class members are unlikely to bring separate actions. Moreover, prosecution of separate actions would lead to duplicative lawsuits and the risk of inconsistent judgments, and would unduly burden the courts.

158. The Defendants have consistently acted and refused to act in ways generally applicable and common to the class such that final declaratory and injunctive relief with respect to the class as a whole is appropriate.

FIRST CAUSE OF ACTION
Violation of Criminal Procedure Law Section 160.50

159. Paragraphs 1 through 158 are incorporated by reference as if set forth fully herein.

160. Criminal Procedure Law Section 160.50 provides that the NYPD must seal records and return or destroy photographs and fingerprints relating to arrests that terminate in the accused person's favor, and prohibits the NYPD from making those sealed records available to any person or public or private agency.

161. Plaintiffs R.C., J.J., and A.G., as well as members of the class, have arrests that terminated in their favor such that records of those arrests are subject to sealing and photographs and fingerprints taken in connection with those arrests are subject to return or destruction by the NYPD under Criminal Procedure Law Section 160.50.

162. The Defendants have a policy and/or practice of using and disclosing arrest information that is sealed pursuant to Section 160.50 for law enforcement purposes without first obtaining a court order, as a matter of course.

163. Pursuant to the Defendants' policy and/or practice, the Defendants have not sealed the Plaintiffs' arrest records, or returned or destroyed their photographs and fingerprints, and have disclosed or made those records, photographs, and fingerprints available to persons or public or private agencies.

164. The named plaintiffs and members of the plaintiff class were injured as a result.

SECOND CAUSE OF ACTION
Violation of Criminal Procedure Law Section 160.55

165. Paragraphs 1 through 164 are incorporated by reference as if set forth fully herein.

166. Criminal Procedure Law Section 160.55 provides that the NYPD must seal records and return or destroy photographs and fingerprints relating to arrests that terminate by a conviction of a violation or infraction, and it prohibits the NYPD from making those sealed records available to any person or public or private agency.

167. Plaintiffs R.C., J.J., and A.G., as well as members of the class, have arrests that terminated by a conviction of a violation or infraction such that records of those arrests are subject to sealing and photographs and fingerprints taken in connection with those arrests are subject to return or destruction by the NYPD under Criminal Procedure Law Section 160.55.

168. The Defendants have a policy and/or practice of using and disclosing arrest information that is sealed pursuant to Section 160.55 for law enforcement purposes without first obtaining a court order, as a matter of course

169. Pursuant to the Defendants' policy and/or practice, the Defendants have not sealed these arrest records, or returned or destroyed their photographs and fingerprints, and have disclosed or made these records, photographs, and fingerprints available to persons or public or private agencies.

170. The named plaintiffs and members of the plaintiff class were injured as a result.

THIRD CAUSE OF ACTION
Violation of Article I, Section 6 of the New York Constitution

171. Paragraphs 1 through 170 are incorporated by reference as if set forth fully herein.

172. Article I, Section 6 of the New York Constitution states that "No person shall be deprived of life, liberty or property without due process of law."

173. The Plaintiffs and members of the class have a protected interest in the sealing of their records and the return or destruction of their photographs and fingerprints by the NYPD as mandated by Criminal Procedure Law Sections 160.50 and/or 160.55.

174. The NYPD has a systematic policy and/or practice of refusing to comply with the mandatory requirements of Criminal Procedure Law Sections 160.50 and 160.55, which has deprived and continues to deprive the named plaintiffs and members of the plaintiff class of due process.

175. The Defendants have thereby violated and continue to violate the procedural due process rights of the Plaintiffs and members of the class whose arrest records should be sealed, and photographs and/or fingerprints should be returned or destroyed, under Criminal Procedure Law Sections 160.50 and/or 160.55.

FOURTH CAUSE OF ACTION
Declaratory Judgment

176. Paragraphs 1 through 175 are incorporated by reference as if set forth fully herein.

177. By reason of the foregoing, there exists a justiciable controversy as to whether, in accordance with Criminal Procedure Law Sections 160.50 and/or 160.55, the NYPD may maintain, use, and/or disclose the Plaintiffs' and class members' photographs and/or fingerprints taken in connection with arrests that are subject to sealing.

178. By reason of the foregoing, there exists a justiciable controversy as to whether, in accordance with Criminal Procedure Law Sections 160.50 and/or 160.55, the NYPD may use and/or disclose the Plaintiffs' and class members' sealed arrest records for law enforcement purposes without first obtaining a court order.

179. By reason of the foregoing, there exists a justiciable controversy as to whether, in accordance with Article I, Section 6 of the New York Constitution, the NYPD may have a policy

and practice of maintaining, using, and/or disclosing the Plaintiffs' and class members' photographs and/or fingerprints taken in connection with arrests that are subject to sealing.

180. By reason of the foregoing, there exists a justiciable controversy as to whether, in accordance with Article I, Section 6 of the New York Constitution, the NYPD may have a policy and practice of using and/or disclosing the Plaintiffs' and class members' sealed arrest records for law enforcement purposes without first obtaining a court order.

PRAYER FOR RELIEF

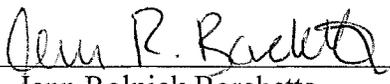
181. WHEREFORE, Plaintiffs request that this Court:

- (1) Certify this action as a class action pursuant to Article 9 of the New York Civil Practice Law and Rules;
- (2) Issue declarations that:
 - i. The NYPD's policy and/or practice of accessing and using sealed records for law enforcement purposes and disclosing sealed records without obtaining a court order violates Criminal Procedure Law Sections 160.50 and 160.55;
 - ii. The NYPD's policy and/or practice of accessing and using sealed records for law enforcement purposes and disclosing sealed records without obtaining a court order violates the Plaintiffs' statutory rights; and
 - iii. The NYPD's policy and/or practice of refusing to implement the mandatory requirements of Criminal Procedure Law Sections 160.50 and 160.55 violates the Plaintiffs' due process rights under the New York Constitution;
- (3) Issue an injunction prohibiting the NYPD from unlawfully accessing, using, or disclosing sealed records in violation of Criminal Procedure Law Sections 160.50 and 160.55, including improper access of sealed records for law enforcement purposes;

- (4) Issue an injunction requiring the NYPD to implement protocols, trainings, and safeguards to prohibit the improper access, use, or disclosure of sealed records;
- (5) Award damages to Plaintiff R.C.;
- (6) Award attorneys' fees and costs; and
- (7) Grant any and all other relief the Court deems just and appropriate.

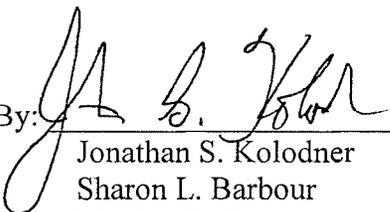
Dated: April 24, 2018
 New York, New York

Respectfully submitted,

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