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

R.C., J.J., and A.G., suing under pseudonyms, On behalf of themselves and all others similarly situated, Plaintiffs, -against- THE CITY OF NEW YORK and KEECHANT L. SEWELL, New York City Police Department Commissioner, in her official capacity, Defendants.	Index No. 153739/2018 Justice Lyle E. Frank IAS Pt. 52

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO ENFORCE THE PRELIMINARY INJUNCTION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Rules and Statutes

INTRODUCTION

On August 3, 2022, class counsel learned that Defendants had created a report filled with sealed arrest information (the "Report"), had given it to the New York Post, and would be holding a press conference about the Report in less than two hours. The press conference appeared to be engineered to publicly name and shame the ten class members in the Report—and it would have, had it not been for class counsel's last-minute intervention. Despite that intervention—and the warning from class counsel that the Report itself violated the preliminary injunction in this action—Defendants used the sealed arrest information at the press conference to publicly smear the reputations of the class members and create a frenzy of speculation around their identities. The sealed information about the ten class members in the Report—which likely amounts to well over 400 sealed arrests—has now been publicized several times over, including in multiple media sources. Perhaps most egregiously, despite Mayor Eric Adams's acknowledgment during the press conference that Defendants were unable to release the names of the ten individuals in the Report due to legal concerns, the following day, multiple articles in the New York Post and other sources identified a class member in the Report by name.

These violations by Defendants' top-ranking officials come almost a year after the Court issued its preliminary injunction barring the NYPD's unauthorized use of sealed arrest records, and despite Defendants' representations that they are working hard to fix their unlawful conduct via the implementation plan. This publicity stunt using sealed arrest records raises concerns about Defendants' efforts to develop the implementation plan and retrain line officers, given the apparent readiness of top City and NYPD officials to disregard the law and this Court's prior order. Defendants' conduct violated the rights of class members, and swift remedial action is needed to protect them.

Therefore, Plaintiffs respectfully request an order sufficient to protect the class from continued violations by: directing Defendants not to share with the media numeric counts of arrests that include sealed arrests, as well as information sufficient to identify the subject of a sealed arrest; directing Defendants to take reasonable steps to ensure that no representative of the City and/or the NYPD provides information to the press that was obtained in violation of the preliminary injunction and the Sealing Statutes;[1] and ordering sanctions against Defendant City of New York in the form of a statutory fine, as well as costs and attorneys' fees incurred in connection with this motion.

FACTUAL BACKGROUND

On September 27, 2021, this Court issued a preliminary injunction (NYSCEF No. 200, the "PI"), which, among other things, granted Plaintiffs' request "to restrain and enjoin defendants from instructing [NYPD] personnel that they may access and use sealed arrest information without a court order" and "to prohibit defendants from providing NYPD personnel with access to sealed arrest information for law enforcement purposes without a court order." PI at 1. The Court's PI is designed to force compliance with the Sealing Statutes, which principally seek to protect people from reputational and other harms arising out of the use of sealed arrest information and restore the accused "to the status he occupied before the arrest," N.Y. Crim. Proc. Law § 160.60 (McKinney 2018).

On August 3, the New York Post published an article titled "10 career criminals racked up nearly 500 arrests since NY bail reform began" (the "August 3 Post Article"). *See Borchetta Affirmation in Support of Plaintiffs' Motion to Enforce the Preliminary Injunction*, filed

[1] Capitalized terms used but not defined herein have the meaning ascribed to them in the complaint (NYSCEF No. 2) (the "Complaint" or "Compl.").

contemporaneously herewith (the "Borchetta Aff."), at Ex. B.[2] The August 3 Post Article repeatedly cites to "statistics compiled by the NYPD, and obtained first by [the New York Post]" as its source for specific details on the number, date, type, and location for the arrests of the ten individuals profiled in the Report. *Id.* [3]

Class counsel learned of the Report and August 3 Post Article at approximately 12:20 p.m. Shortly thereafter, counsel also became aware that Mayor Eric Adams planned to hold a press conference on the same subject matter at 2 p.m. that day, with indications that the press conference would include revealing the names of the individuals profiled in the Report. *See* Borchetta Aff. at ¶¶ 5–6; Ex. C.

As soon as they learned of the 2 p.m. press conference, class counsel rushed to contact Defendants' counsel. At 1:02 p.m., class counsel sent an email to Defendants' counsel with the subject line "Urgent: Mayor 2pm release of sealed info?", asking Defendants to "confirm that the City will not identify anyone's sealed arrest information at this press conference, including inter alia not sharing a numeric count of prior arrests that includes sealed arrests." *See* Borchetta Aff. at ¶ 7. Defendants' counsel responded shortly thereafter confirming receipt and stating they would reach out to their client. *See id.* at ¶ 8.

At 1:59 p.m., Mayor Adams tweeted, "Join me and @NYPDPC Sewell for an announcement," and included a link to the live broadcast of the press conference, and the official Twitter account for the Mayor's office retweeted this. Borchetta Aff. at ¶ 9; Ex. D. At 2 p.m., Mayor Eric Adams conducted this press conference (the "Press Conference") with NYPD Commissioner Sewell and Chief of Crime Control Strategies Michael Lipetri. *See* Borchetta Aff.

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[2] All exhibits referenced or cited herein are attached as exhibits to the Borchetta Aff. Hereinafter, citations to exhibits refer to exhibits to the Borchetta Aff.

[3] The August 3 Post Article was subsequently updated several times to include additional information.

at ¶¶ 9–10; Ex. E. The Press Conference was purportedly on the topic of "public safety" issues—specifically, a small number of alleged "recidivists" who "exploit[ed] [bail] reforms," as evidenced by records of their prior arrests.[4] Ex. E at 11:5. Despite class counsel having raised concerns that this violated the PI, during the Press Conference, Chief Lipetri discussed the information in the Report in depth and identified individuals as "recidivist number [X]," detailing each individual's arrest history, including numbers and types of arrests. *See id.* at 13:16–15:14. Chief Lipetri emphasized that this list represented the NYPD's focus on "the worst of the worst." *Id.* at 11:17–19; 22:13–15. While not relevant to this motion, it should be noted that all of the people included in the Report would have been bail eligible, and therefore do not even support the Mayor's political point.

At the Press Conference, when asked whether the Mayor's office or the NYPD would release the names of any of the individuals identified in the Report, Mayor Adams stated:

> Trust me, I want to. You know, sometimes I don't know why we hire lawyers, you know. They say we can't show the name and faces, so I have to abide by the rules. But people in the public need to see the names and faces of these individuals who are repeatedly creat[ing] violence in our community, but I'm restricted by rules of my counsels.

See Ex. E at 23:13–19. During the Press Conference, Mayor Eric Adams also discussed plans to share the information with State Assembly Member Carl Heastie and stated they would "turn over this package" of information to the district attorneys. *Id.* at 16:14.

On August 4, 2022, the New York Post published an additional article titled "101 damnations: Meet the NYC shoplifter with 101 arrests – and let go almost every time", s*ee*, Ex. I (the "August 4 Post Article"). The August 4 Post Article is wholly devoted to H.G., whom the

[4] As of the date of this filing, a recording of the press conference is available on YouTube at: https://www.youtube.com/watch?v=sNhYJ7vjdrk.

Post identifies as "recidivist no. 1," as referred to by Chief Lipetri in the Press Conference.[5] The article states that H.G. was identified by "sources" as the "unnamed person at the top of the NYPD's list" and includes photographs of H.G. *See* Borchetta Aff. at ¶ 14; Ex. I. The August 3 Post Article was also subsequently updated to add class member H.G.'s name and information there as well. *See* Borchetta Aff. at ¶ 13, Ex. B.

Class counsel followed up with Defendants' counsel on August 4, 2022, reaffirming Plaintiffs' concern regarding these violations of the PI. Ex. C. Plaintiffs stated that "based on available information, it appears that both the report that the NYPD provided to the Post and the press conference disclosed sealed arrest information, including numerical counts of arrests that included sealed arrests, as well as the name of at least one class member." *Id.* Plaintiffs also requested a copy of the Report, which Defendants' counsel provided on August 5, 2022. *See* Borchetta Aff. at ¶ 11; Ex. C.

The Report, which is entitled "NYC – Notable Recent 'Worst of the Worst,'" includes detailed arrest histories for ten class members, listing, among other information: (1) number of "Career Arrests"; (2) number of "Arrests Since Bail Reform in 2020," including charging information related to certain arrests; (3) number of "Total Convictions"; and (4) number of "Pending Matters." Ex. F. The Report has since been published online in full by the New York Daily News. *See* Borchetta Aff. at ¶ 12; Ex. G.

Plaintiffs have asked Defendants whether they took the position that the Report did not contain sealed information or did not violate the PI. *See* Borchetta Aff. at ¶ 7; Ex. C. They have

[5] In order not to compound Defendants' violations of the PI and the Sealing Statutes, class counsel will refer to the individual whose full name was disclosed as "H.G."

not responded taking such a position. As discussed below, simple math makes clear that the Report amounts to the disclosure of hundreds of likely sealed arrests.[6]

ARGUMENT

A. The City's Report and Press Conference Violated the Preliminary Injunction

As this Court has held, longstanding New York law prohibits the use or disclosure of records related to arrests and prosecutions that terminate in a person's favor and permits law enforcement to access these records only if they first obtain an unsealing order, with limited exceptions. *See* N.Y. Crim. Proc. Law §§ 160.50, 160.55. Likewise, this Court's PI is clear: the NYPD may not use sealed arrest records absent authorization. Despite the Court's PI last September and the NYPD's recent FINEST message advising all personnel of the Court's direction that sealed records may not be used without an exception or unsealing order, NYSCEF 233, Defendants' conduct related to the Report and Press Conference violated the Sealing Statutes and this Court's PI in at least the following ways.

1. Creation of the Report

The NYPD's Report contains detailed profiles of ten individuals. To create this report, the NYPD would have had to access each person's records, including arrest histories. These arrest histories appear to include numerous sealed arrests, as follows.

- Class Member #1[7]: The Report lists 101 arrests but only 15 convictions and 5 open incidents, which indicates that the remaining 81 arrests included in the numerical arrest count were resolved without a conviction and therefore are sealed. In addition, the Report lists two more "convictions" than the numbers of identified misdemeanor and felony convictions, indicating two of the listed "convictions" were likely for violations,

[6] As explained more fully herein, the Report on its face suggests sealed arrests are included in the Report. After Plaintiffs' counsel emailed the Law Department with concerns about these violations, the Mayor declined to share names of individuals during the press conference, citing legal concerns—legal concerns that presumably would not exist if the Report did not contain sealed arrests. Likewise, Defendants have not denied Plaintiffs' allegations that the Report violated the Sealing Statutes and PI. We therefore assume throughout this motion that the Report contains sealed arrest information.

[7] "Class Member #1" refers to the individual identified in the Report as "Recidivist #1," "Class Member #2" refers to the individual identified in the Report as "Recidivist #2," and so on.

which are also sealed pursuant to CPL 160.55 and should not have been included in the Report.

- Class Member #2: Based on the listed arrests, convictions, and pending matters, it appears that up to 48 arrests included in the numerical arrest count were resolved without a conviction and therefore are sealed. In addition, the Report lists two more "convictions" than the numbers of identified misdemeanor and felony convictions, indicating two of the listed "convictions" were likely for violations, which are also sealed pursuant to CPL 160.55 and should not have been included in the Report.

For the remaining class members, the Report appears to include up to 300 additional sealed arrests, based on the listed arrests, convictions, and pending matters, including:

- Class Member #3: Up to 23 arrests resolved without a conviction and therefore are sealed.
- Class Member #4: Up to 34 sealed arrests, including two likely sealed violations.
- Class Member #5: Up to 9 sealed arrests.
- Class Member #6: Up to 69 sealed arrests.
- Class Member #7: Up to 22 sealed arrests.
- Class Member #8: Up to 67 sealed arrests.
- Class Member #9: Up to 36 sealed arrests, including a likely sealed violation.
- Class Member #10: Up to 40 sealed arrests, including a likely sealed violation.

Each of these individuals' rights under the Sealing Statutes were violated when the NYPD personnel accessed their sealed arrest records and included those sealed arrests in the Report. In addition to the numerical counts of arrests that include sealed arrests, the profiles also include information about charges, locations of arrests, and dates, all of which constitutes sealed arrest information. As this Court has observed, a person suffers irreparable harm at the moment an officer views that individual's sealed records because "once a sealed document is seen it cannot be unseen." PI at 3. Moreover, as Plaintiffs alleged in the Complaint and have

previously argued, many sealed arrests in New York City arise from specious law enforcement activity that is targeted at primarily Black and brown people—such as racially biased stops—and political misuse of those dismissed arrests compounds racially disparate impacts the Sealing Statutes were in part designed to prevent. *See* Compl. ¶ 16; Pls. Mem. of Law in Opp. to Defs. Motion to Dismiss, NYSCEF No. 41 at 4.

2. Dissemination of the Report

In addition to the unlawful accessing of sealed records by the NYPD in creating the Report, distributing this Report to the media was a second and distinct violation of the Sealing Statutes and the PI. Disclosures of sealed arrest information to the media are a central part of the case and one of the major harms for which the class seeks redress. *See* Compl. ¶¶ 77–79; Pls. Mem. of Law in Support of their Motion to Lift the Stay of Discovery, NYSCEF No. 53 at 3. This Court recently ordered Defendants to make announcements reminding NYPD personnel of existing policy (pre-dating the PI) that sealed arrest information may not be disclosed to the media. NYSCEF 233 at 2 ("all members of the service are further reminded that sealed records, and any information associated with a sealed arrest, also must not be released to the media . . . This includes, for example, informing the media how many sealed arrests a person has."). This publicity stunt makes a farce of those policies and this Court's directives by indicating that the City and NYPD leadership do not respect the mandate.

Regardless of whether Defendants provided the Report to the media with or without individual class members' names included, the Report violated the Sealing Statutes and the PI. Simply removing someone's name while leaving detailed information about that individual's arrest history is not sufficient to comply with the law; the goal of the Sealing Statutes is to prevent the use of sealed arrest records against an individual. This violation encapsulates an unlawful use against the impacted class members: first, the information included in the Report

was sufficient to identify at least one class member (H.G.); and second, the disclosures smeared their reputations—the Report explicitly labeled them "recidivists" and "the worst of the worst" based on sealed records.

3. The Press Conference

Defendants' remarks at the press conference—including NYPD Chief of Crime Control Strategies Michael Lipetri's remarks about the individuals that the Report identified as Recidivists #1, 6, and 10—were violations of the Sealing Statutes. The Press Conference compounded the reputational harm done in the Report by using the high numerical arrest counts to propound damaging implications and assumptions about class members. For example, as discussed above, the individual described as Recidivist #1 likely has upward of 80 sealed arrests in their numerical arrest count. Based on that class member's number of total arrests, Mr. Lipetri announced at the press conference, "How many crimes do you think [this individual is] really committing, 200, 300, a thousand?" *See* Ex. E at 14:18–19. Similarly, Mr. Lipetri remarked about "Recidivist #10," "he's walking around the streets of New York City tonight, probably committing another crime right now and hopefully in handcuffs." *Id.* at 15:19–21. Instead of respecting the purpose of the Sealing Statutes, which is to restore the accused "to the status he occupied before the arrest," N.Y. Crim. Proc. Law § 160.60 (McKinney 2018), the City's and the NYPD's most senior leadership leveraged sealed arrest records to make stigmatizing remarks.

In addition to what was said at the Press Conference, it is equally troubling what was almost said. Had class counsel not found out about the Press Conference and rushed to intervene—less than an hour before it was scheduled to start—the Mayor and the NYPD were poised to disclose the names of the class members identified in the Report. *See* Borchetta Aff. at ¶¶ 7–8; Ex. E at 23:15–19 ("I have to abide by the rules. But people in the public need to see the

names and faces of these individuals . . . but I'm restricted by rules of my counsels."); *see also* Borchetta Aff. at ¶ 11 (noting filename of report containing the word "Anonymized," which implies that a non-anonymized version existed). Indeed, it appears that Defendants may have called the Press Conference specifically to create fanfare around naming names. This conduct—creating a spectacle using people's sealed records—is itself a violation of the letter and spirit of the law.

Finally, the Mayor stated during the conference that Defendants intend to share and turn over more of this type of information to prosecutors and lawmakers, raising the specter of continued violations. *See* Ex. E. at 16:6–15.

4. Leaking of H.G.'s Name

Despite the Mayor's clear admission during the Press Conference that Defendants were not legally permitted to name the people included in the Report, the following morning, the Post published two articles that included the name of class member H.G. Exs. B, I. Other news outlets followed.[8] As of the filing of the instant motion, class member H.G.'s name has been published in multiple newspapers and online sources, along with his photograph, alias, age, and other personal information. Reporters even approached his mother, who is also identified by name in the media coverage. *See* Ex. H. This harm to H.G.'s reputation and the invasion of his and his family's privacy can never be undone. When his name is typed into Google, the first several results that come up pertain to his arrest record, and all of these are connected with news articles published on or after August 3, 2022. *See* Borchetta Aff. at ¶ 15.

The disclosure of class member H.G.'s name, or the conduct that caused its disclosure and publication, was a violation of the Sealing Statutes and the Court's PI. To date, Defendants

[8] *See, e.g.*, Exs. G, H.

have not taken responsibility for disclosing H.G.'s name to the press, but that is not necessary for establishing a violation. Even if Defendants were to represent that it was not an official City or NYPD action to disclose H.G.'s name, it was a violation in and of itself that the supposedly "anonymized" profile of H.G. was detailed enough for someone to identify him and disclose his name to the media. Defendants at least created the foreseeable risk of this disclosure by including detailed information in the report and creating the appetite for media speculation about his identity during the press conference. These actions demonstrate that, in order to protect the class, this Court must issue Defendants a directive that, among other things, prohibits further stunts using sealed arrest information.

B. The Court Should Issue an Order Enforcing Compliance with the Preliminary Injunction and Ordering Sanctions

It is axiomatic that the Court has the authority to enforce and compel compliance with its own orders. N.Y. Judiciary Law § 2–b(3) ("A court of record has power . . . to devise and make new process and forms of proceedings, necessary to carry into effect the powers and jurisdiction possessed by it."). This Court has the authority to issue orders necessary to enforce compliance with its injunction. Furthermore, this Court also has the "power to punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced…" N.Y. Judiciary Law § 753 (McKinney).

To demonstrate such a violation under N.Y. Judiciary Law § 753, the movant must show with "reasonable certainty," *McCormick v. Axelrod*, 59 N.Y.2d 574, 583, *amended,* 60 N.Y.2d 652 (1983), that: (1) "a lawful judicial order expressing an unequivocal mandate must have been in effect and disobeyed"; (2) "the [offending] party [] must have had knowledge of the order"; and (3) the rights of the party to the litigation have been prejudiced. *McCain v. Dinkins*, 84

N.Y.2d 216, 226 (1994). Here, it is indisputable that the Court's PI is an order containing a mandate to comply with the Sealing Statutes and that Defendants had knowledge of that order.[9]

As discussed above, Defendants have engaged in conduct that violates the Sealing Statues and the PI, infringing the rights of the class members whose Sealed Arrest Information was accessed and disclosed. Defendants' press spectacle was tailored to publicly embarrass and scapegoat people based on sealed arrests, which is a quintessential example of the type of harm the Sealing Statutes are designed to prevent. The Report appears to have labeled the class members identified therein as "recidivists" in large part on the basis of Sealed Arrest Information. *See* Borchetta Aff. at ¶ 4. Moreover, at the Press Conference, Chief Lipetri repeatedly referred to the class members in the Report as "the worst of the worst" among repeat offenders. Ex. E at 11:17–19; 22:13–15. And all indications are that—were it not for a speedily-drafted email from class counsel—the Mayor and Police Commissioner would presumably have named specific class members and displayed their photos at the press conference for widespread public flagellation.

These highly publicized violations by high-ranking City and NYPD officials, despite Defendants' representations that they have spent months working on an Implementation Plan to ensure compliance with the Sealing Statutes, demonstrate that protection of class members necessitates a further order from this Court that is tailored to prevent future violations of the PI and the Sealing Statutes.

[9] On January 18, 2022, Defendants submitted a letter to the Court seeking an extension until April 1, 2022 to submit the Implementation Plan and the FINEST message, arguing that the new mayor and NYPD leadership require three months "to familiarize themselves" with this case and "conduct an informed evaluation" of the Implementation Plan. Defs.' Letter to the Ct. 2, Jan. 18, 2022. As such, Defendants are plainly on notice regarding the PI.

Accordingly, Plaintiffs respectfully request that the Court issue an order consistent with, and in order to enforce, the Preliminary Injunction. This order should: (1) direct Defendants not to share with the media sealed arrest information, including but not limited to numerical counts of arrests that include sealed arrests; (2) direct Defendants not to share with the media information sufficient to identify the subject of a sealed arrest, including but not limited to detailed arrest histories from which NYPD personnel or members of the public might be able to identify the subject of a sealed arrest; and (3) direct Defendants to take reasonable steps to ensure that no representative of the City and/or the NYPD provides information to the press that otherwise violates the PI or the Sealing Statutes or was obtained in violation of the PI or the Sealing Statutes.

In addition, Plaintiffs respectfully request that the Court order sanctions against Defendants in the form of a statutory fine, in an amount to be paid to class counsel, who will then donate it to a nonprofit chosen by, and unaffiliated with, class counsel. Where a violation of N.Y. Judiciary Law § 753 has been shown, a fine of $250 may be imposed. N.Y. Judiciary Law § 773.[10] The $250 fine may be imposed as against each defendant, multiplied for each distinct violation, and as against each aggrieved plaintiff. *See Town of Southampton v R.K.B. Realty, LLC*, 91 A.D. 3d 628, 631 (2d Dep't 2012) (imposing aggregate fine by multiplying $250 maximum statutory fine by number of violations, and by number of aggrieved plaintiffs); *see*

[10] Here, the harm—while significant—primarily prejudiced the class members' rights and reputations, and Plaintiffs accordingly request the imposition of the statutory fine. *See, e.g.*, *Speirs v. Leffer*, 246 A.D.2d 590, 591 (2d Dep't 1998) (where "damage caused by the violation was chiefly to the good will and reputation" of the movant, court found no actual damages but awarded maximum statutory fine of $250).

Plaintiffs' counsel reserves the right to seek remedial fines or other sanctions on behalf of individual class members who experience sealing statute violations in the form of disclosures of their protected information to the press or other harms. *See, e.g.*, *McCain*, 84 N.Y.2d at 229 (approving imposition of penalty against the City and city officials, payable to injured plaintiff families, relating to violations of prior contempt orders for failure to provide adequate housing for families in emergency shelter housing). Nor should the imposition of any sanctions as a result of this motion limit the ability of individual class members to seek actual damages themselves.

also Tishman Constr. Corp. v. United Hisp. Constr. Workers, Inc., 2015 WL 5643618 at *11–12 (Sup. Ct. N.Y. Cty. 2015) (awarding fine of $1000 against defendant construction workers' union for four acts of violation of prior court order, and separate fine of $500 against separate defendant for similar violations).

As demonstrated in the below chart, Plaintiffs have calculated the amount of the fine to be $6,000, by multiplying the $250 statutory fine by the number of violations, and with respect to each violation, the number of aggrieved class members.

Violation	**No. of Aggrieved Class Members**	**Requested Fine**
Creation of the Report	10	10 x $250 = $2,500
Dissemination of the Report	10	10 x $250 = $2,500
Press Conference	3[11]	3 x $250 = $750
Leaking of H.G.'s name	1	$250
Total		$6,000

Plaintiffs also request the payment of attorneys' fees and costs incurred as a result of Defendants' violations of the PI, including fees and costs in connection with the preparation and submission of this motion. *See Tishman*, 2015 WL 5643618 at *11–12 (granting attorneys' fees and costs in addition to $250 statutory fine); *see also Ortega v. City of New York*, 809 N.Y.S.2d 884, 897–98 (Sup. Ct. Kings Cty. 2006), *aff'd,* 824 N.Y.S.2d 714 (2d Dep't 2006), *aff'd,* 9 N.Y.3d 69 (2007) (attorneys' fees recoverable under Judiciary Law § 773); *Children's Vill. v. Greenburgh Eleven Tchrs' Union Fed'n of Tchrs., Loc. 1532, AFT, AFL-CIO*, 671 N.Y.S.2d

[11] "Recidivists" numbers 1, 6 and 10.

503, 504 (2d Dep't 1998) (attorneys' fees recoverable under Judiciary Law § 773 because the "intent of [section 773] is to indemnify the aggrieved party for costs and expenses incurred as a result of [the violation]").

The above remedial measures are particularly important in light of the fact that Defendants were poised to commit even greater violations of the PI had class counsel not dropped everything to frantically email Defendants' counsel to stop them from naming names in a public spectacle. Class counsel should not be responsible for policing the NYPD to ensure compliance with the PI and longstanding state laws. The additional directives Plaintiffs now seek are necessary to remedy the violations detailed above and to protect the class from future unlawful conduct.

CONCLUSION

Therefore, and as set forth in Plaintiffs' proposed order, Plaintiffs respectfully request that the Court find each of the following a violation of the Sealing Statutes and the PI:

1. Defendants' access of sealed information used to create the profiles included in the Report;
2. Defendants' distribution of the Report to the press and public;
3. Defendants' remarks at the Press Conference, through NYPD Chief of Crime Control Strategies Michael Lipetri, about the individuals identified as Recidivists #1, 6, and 10; and
4. Defendants' disclosure of the name of class member H.G., or the conduct that caused such disclosure and publication.

Plaintiffs further request that the Court issue an order sufficient to protect the class from continued violations by directing Defendants not to share sealed arrest information with the media, including but not limited to numerical counts of arrests that include sealed arrests or information sufficient to identify the subject of a sealed arrest. The order should further direct

Defendants to take reasonable steps to ensure that no representative of the City and/or the NYPD provides information to the media that was obtained in violation of the PI or the Sealing Statutes.

Finally, Plaintiffs respectfully request that the Court order sanctions against Defendant City of New York in the form of a $6,000 fine, as well as Plaintiffs' costs and attorneys' fees incurred in connection with this motion.

Dated: New York, New York
August 23, 2022

Respectfully submitted,

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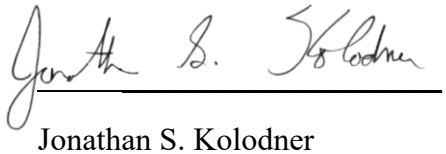
CERTIFICATION OF COMPLIANCE

This memorandum complies with Section 202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court, 22 NYCRR 202.8-b, because it contains 4,990 words.



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