

Multiple Documents

Part	Description
<u>1</u>	17 pages
<u>2</u>	Exhibit amended complaint
<u>3</u>	Exhibit amended complaint
<u>4</u>	Exhibit amended complaint
<u>5</u>	Exhibit amended complaint
<u>6</u>	Exhibit amended complaint
<u>7</u>	Exhibit amended complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ROBERT BARLEY,

Plaintiff,

-against-

CITY OF NEW YORK, et al.

Defendants.
-----X

11 CV 1300 (RJH)

AFFIRMATION IN
OPPOSITION AND
IN SUPPORT OF
CROSS MOTION

-----X
RALPH RAIA,

Plaintiff,

-against-

THE CITY OF NEW YORK, et al.

Defendants.
-----X

11 CV 1301 (RJH)

-----X
MARIA NEE,

Plaintiff,

-against-

THE CITY OF NEW YORK, et al.

Defendants.
-----X

11 CV 2149 (RJH)

-----X
JOHN PACCIONE and MADELINE PACCIONE

Plaintiffs,

-against-

THE CITY OF NEW YORK, et al.

Defendants.
-----X

11 CV 2150 (RJH)

-----X
 DAMARIE AQUINO
 Plaintiff, 11 CV 2697 (RJH)
 -against-
 THE CITY OF NEW YORK, et al.
 Defendants.

-----X
 -----X
 MARVA HARRISON
 Plaintiff, 11 CV 3277 (RJH)
 -against-
 THE CITY OF NEW YORK, et al.
 Defendants.
 -----X

CHRISTOPHER J. DONADIO, ESQ., an attorney duly admitted to practice law in the Courts of the State of New York, affirms the truth of the following under the penalties of perjury:

1. I am an attorney in the law firm of BURNS & HARRIS, ESQS., attorneys for the plaintiff in the above-captioned matter and, as such, am fully familiar with the facts and circumstances herein based upon my review of the file maintained in this office.

2. I submit this Affirmation in Opposition to the within Motion of defendants to dismiss plaintiff's complaint and in Support of Plaintiffs cross motion for Leave to Amend the Complaint.

3. This is an action for a violation of the Plaintiffs civil rights when they were exposed to harmful toxic chemicals while employed at Rikers Island, after receiving

representations from the Defendants that Rikers Island was a safe working environment.

4. Plaintiffs rely on the Statement of Facts and Procedural History provided by Defendants in their Memorandum of Law.

5. As shall be demonstrated *infra*, defendants' motion for judgment on the pleadings should be denied in its entirety. Additionally, plaintiffs motion for leave to amend the complaint should be granted.

**DEFENDANTS HAVE VIOLATED PLAINTIFFS
SUBSTANTIVE DUE PROCESS RIGHTS**

6. Plaintiffs have brought this action against the Defendants under 42 U.S.C. § 1983. In order to properly plead a 1983 cause of action against a municipality, a party must plead (1) an official policy or custom that (2) causes plaintiff to be subjected to (3) a denial of a constitutional right. Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978). However, there is no requirement for an official custom or policy to be proven in order for a claim to be brought against the individual Defendants. Id. In this case, Plaintiffs have alleged that their substantive due process rights derived from the Fourteenth Amendment have been violated by misrepresentations that Defendants made to the Plaintiffs regarding their safety on Rikers Island. As such, plaintiffs have a valid cause of action under 42 U.S.C. § 1983 against the Defendants and the motion for judgment should be denied.

7. "The doctrine of substantive due process protects the individual against certain government actions 'regardless of the fairness of the procedures used to implement them.'" Daniels v. Williams, 474 U.S. 327, 331, 106 S.Ct. 662, 665 (1986). In order to bring a substantive due process claim, "a plaintiff must show a fundamental

right protected by the constitution, a deprivation of that right, and 'arbitrary' and 'outrageous state conduct that...'shocks the conscience.'" Walker v. City of Waterbury, 601 F.Supp.2d 420, 424 (D.Conn. 2009). In order to "'shock the conscience,' conduct must be such that it 'offend[s] even hardened sensibilities,' or constitute force that is 'brutal' and 'offensive to human dignity.'" Nayak v. Pivarunas, 2011 U.S.Dist.LEXIS 26315 (W.D.N.Y. 2011) citing Rochin v. California, 342 U.S. 165, 172-74, 72 S.Ct. 205, 209-11 (1952), cert. denied, 341 U.S. 939, 71 S.Ct. 997. The government conduct must be "sufficiently severe, sufficiently disproportionate to the need presented and so deliberate and unjustified a misuse of [authority] as to transcend the bounds of ordinary tort law and establish a deprivation of constitutional rights." Shillingford v. Holmes, 634 F.2d 263, 266 (5th Cir. 1981),

8. The Second Circuit, as well as various other Circuits, have recognized the ability to bring a claim under 42 U.S.C. § 1983 for a violation of substantive due process rights. See Morales v. New York State Department of Corrections, 842 F.2d 27 (2nd Cir. 1988) (finding that a state prison guard's deliberate indifference to the consequences of his conduct may support a claim under 1983); Wood v. Ostrander, 879 F.2d 583 (9th Cir. 1989) (holding that a police officer leaving a person on the side of a road in a high crime area amounted to a deliberate indifference that was grounds for a claim of a violation of substantive due process rights); Metzger v. Osbeck, 841 F.2d 518 (3rd Cir. 1988) (holding that the use of excessive force to discipline a student may be a violation of substantive due process rights).

9. In Morales v. New York State Department of Corrections, 842 F.2d 27, the plaintiff was injured when he was attacked in his dormitory while incarcerated in a New

York State prison. Id. at 29. Based on testimony from the plaintiff, a corrections officer stood and watched the assault take place and did not attempt to stop it from occurring. Id. Defendants filed a 12(b)(6) motion, claiming that the plaintiff could not put forth any facts that would entitle him to relief. Id. The Second Circuit overturned the district court's granting to the motion, holding that "a state prison guard's deliberate indifference to the consequences of his conduct for those under his control and dependent upon him may support a claim under §1983." Id. at 30.

10. In Wood v. Ostrander, 879 F.2d 583, the plaintiff brought an action against a police officer for his conduct related to a traffic stop. The plaintiff was a passenger in a car that the defendant pulled over for having its high beams on. Id. at 586. The driver of the vehicle was arrested for driving while intoxicated and the vehicle was impounded. The plaintiff was left on the side of the road by the defendant officer. Id. While trying to walk home, plaintiff was picked up by an unknown driver who took her to a wooded area and raped her. Id. Plaintiff brought a substantive due process claim against the officer for leaving her on the side of the road in a dangerous neighborhood. The court found that the "facts put in issue by Wood that Ostrander arrested the driver, impounded the car, and left Wood by the side of the road at night in a high-crime area – show an assertion of government power which, according to Wood's version of the case, tends to show a disregard for Wood's safety amounting to a deliberate indifference." Id. at 588. The court concluded that "Wood has raised a genuine factual dispute regarding whether Ostrander deprived her of a liberty interest protected by the Constitution by affirmatively placing her in danger and then abandoning her." Id. at 596.

11. In Metzger v. Osbeck, 841 F.2d 518, the plaintiff brought an action against a school teacher who used force as a means to discipline the plaintiff. Defendant placed his arms around the plaintiff's neck and shoulders in order to discipline him for using foul language. Id. at 520. As a result of the force, the plaintiff passed out and fell to the ground and broke his nose and fractured several teeth. Id. The plaintiff brought an action against the defendant under 42 U.S.C. §1983, for a violation of plaintiff's substantive due process rights. Id. The Third Circuit concluded that "a decision to discipline a student, if accomplished through excessive force and appreciable physical pain, may constitute an invasion of the child's Fifth Amendment liberty interest in his personal security and a violation of substantive due process prohibited by the Fourteenth Amendment. Id.

12. Plaintiffs' claims against the defendants in our present action are based on a violation of their substantive due process rights arising from the Government/State Endangerment theory of recovery. This theory of recovery has been defined by the District of Columbia Circuit, and has been recognized in the Second Circuit. See Butera v. District of Columbia, 235 F.3d 637 (D.C. Cir. 2001) (finding that individuals have a constitutional right not to have their employers take affirmative acts that result in employee's harm); Briscoe v. Potter, 355 F.Supp.2d 30 (D.C.D. 2004) (holding that the state endangerment theory puts forth a valid constitutional right); Lombardi v. Whitman, 485 F.3d 73 (2nd Cir. 2007) (finding that employees harmed by affirmative acts of employers may have valid constitutional right violation claim).

13. The State Endangerment theory has been defined as a theory "that makes a government official 'liable for third-party injury where the government official

affirmatively acts to create or enhance the danger that ultimately results in the individual's harm." Briscoe v. Potter, 355 F.Supp.2d 30 (D.C.D. 2004) citing Plaintiff Briscoe's Sur-Reply Brief. "[W]hether Defendants can be held liable under the theory of State Endangerment requires a two-part analysis, which raises the following questions: (1) has there been an affirmative act by Defendants to create or increase the danger that resulted in harm to Plaintiffs and, if so, (2) does that act shock the conscience?" Id. at 43. In Lombardi v. Whitman, 485 F.3d 73, 81 (2nd Cir. 2007), the Second Circuit recognized that there is "support for the idea that a substantive due process violation can be made out when a private individual derives a false sense of security from an intentional misrepresentation by an executive official if foreseeable bodily harm directly results and if the official's conduct shocks the conscience."

14. In Briscoe, the plaintiffs brought an action against the governmental defendants for a variety of claims, including a substantive due process violation under 42 U.S.C. 1983. The due process violation was based on the governmental defendants' misleading the plaintiffs, United States Post Office employees, when the plaintiffs were informed that they were not at risk of being harmed by anthrax that had come through a postal facility. In order to evaluate the legitimacy of the claim, the District of Columbia District Court performed the two part test which is required to bring a government endangerment claim. In analyzing the claim, the District Court relied heavily on the District of Columbia Circuit Court decision Butera v. District of Columbia, 235 F.3d 637 (D.C. Cir. 2001), where the Circuit Court acknowledged the existence of a State/Government Endangerment theory upon which a substantive due process violation may be brought.

15. The first part of the test asks whether or not the plaintiffs have alleged an affirmative act by the defendants that increased plaintiff's harm. Plaintiffs alleged that by Defendants misrepresentations about the safety of the postal facility, Defendants made an affirmative action that harmed the plaintiffs. Id. at 44. Defendants argued as the defendants do in our present case, that plaintiffs claim must fail as a result of the United States Supreme Court's decision in Collins v. City of Harker Heights, 503 U.S. 115, 112 S.Ct. 1061 (1992), citing that a failure to warn plaintiffs about danger of a work place does not expose them to liability. Id. Despite this argument by Defendants, the Court held that

Plaintiffs' allegations are not premised upon the notion that Defendants violated their substantive due-process rights solely by failing to warn them of known risk or to provide them with a safe working environment. Instead, Plaintiffs allege that Defendants made affirmative misrepresentations about the safety of the facility. While it is clear that Plaintiffs do not allege that Defendants created the danger at [the postal facility], Plaintiffs contend that by providing false safety briefings and representing to employees that there was no evidence of anthrax contamination at the facility (despite alleged actual knowledge to the contrary) Defendants increased the risk that Plaintiffs would be exposed to deadly anthrax spores and made Plaintiffs more vulnerable to such danger." Id. at 44.

16. Based on the Court's analysis, it concluded that the Plaintiffs "sufficiently alleged that Defendants took the requisite affirmative actions to trigger liability under the State Endangerment Theory to withstand dismissal on the pleadings." Id. at 45. The Court then proceeded to the second part of the State Endangerment analysis, which requires a finding that Plaintiffs have alleged that Defendants' conduct shocks the conscience. Id. The Court acknowledged that "[w]hile it is generally intentional conduct that satisfies this stringent requirement, the Supreme Court has instructed that, in certain situations, 'deliberate indifference can rise to a constitutionally shocking level.'"

Id. at 46, citing County of Sacramento v. Lewis, 523 U.S. 833, 852, 118 S.Ct. 1708 (1998). The Court held that for the fact pattern in the case, it was appropriate to use a standard of deliberate indifference. Id. The Plaintiffs alleged that “Defendants acted with deliberate indifference because they knew that (the postal facility) was contaminated with anthrax, yet, to keep the employees working, they continued to make affirmative misrepresentations were made concerning the facility’s safety.” Id. at 46. The Court agreed with Plaintiffs assertion and held that plaintiffs “sufficiently alleged that Defendants’ conduct amounted to deliberate indifference, which violated their substantive due-process rights under the State Endangerment theory.” Id.

17. Despite the finding by the Court that the Plaintiffs had sufficiently put forth a claim of a violation of substantive due process on the basis of the State Endangerment theory, the claim was ultimately dismissed on the basis of qualified immunity. The Court held that “the contours of the constitutional duty arising under the State Endangerment theory were not sufficiently clear at the time of Defendants’ alleged conduct such that they would understand that what they were doing violated Plaintiffs’ rights.” Id. at 47.

18. The situation in Briscoe is similar to our present action. Here, the plaintiffs are all current or retired New York City Corrections Officers who have worked for a period of time at Riker’s Island and have been diagnosed with cancer. During the time that the plaintiffs were employed at Rikers Island, they were repeatedly informed by Defendants that there weren’t any toxins or carcinogens located on Rikers Island. Despite these assertions, Defendants had knowledge that the soil, water and air of Rikers Island were contaminated with toxins and carcinogens. Throughout the past

several decades, Defendants have performed repeated testing of the soil, water and air. Upon information and belief, the tests have repeatedly shown that there were hazardous, cancer causing toxins in the soil, water and air of Rikers Island. See Plaintiffs' Proposed Amended Complaint, annexed hereto as Exhibit "A".

19. As noted above, in order to bring a valid cause of action for a violation of substantive due process rights under the state endangerment theory, plaintiffs must meet the two part test established in Briscoe. The first part asks whether or not the plaintiffs have alleged an affirmative act by the Defendants that increased the plaintiffs harm. Here, by informing the plaintiffs that there were no harmful, cancer causing toxins on Rikers Island, Defendants increased plaintiffs harm of contracting cancer. The second part of the test asks whether or not the Defendants conduct shocks the conscience. As the court found in Briscoe, when employers are aware of a hazard to their employees and opt to provide the employees misinformation that may ultimately lead to the death of the plaintiff, it can be said that the employer's conduct shocks the conscience. Here, Defendants provided misinformation to plaintiffs which ultimately lead to their contracting cancer. The Defendants have no excuse for providing the misinformation. Therefore, the conduct clearly shocks the conscience.

20. As this honorable Court is aware, at this early stage in the proceedings "the court must accept as true all of the plaintiff's well-pled factual allegations and draw all reasonable inferences in favor of the plaintiff." See Briscoe v. Potter, 355 F.Supp.2d 30, 37, (D.D.C. 2004), citing Alexis v. District of Columbia, 44 F.Supp.2d 331, 336-7 (D.D.C. 1999). Here, the Plaintiffs have alleged that the Defendants have made representations throughout the plaintiffs' time as corrections officers on Riker's Island

that the officers are not at risk of contracting cancer as a result of their time on the island. Despite the representations, plaintiffs allege that Defendants were aware that there existed harmful, carcinogens on the island that were causing large numbers of Correction's Officers to contract cancer. As a result of the allegations pled by Plaintiffs, and the similarity of the present action to Briscoe, and that qualitative immunity does not apply to the Defendants in this action (argument regarding Qualitative Immunity, *infra*) Plaintiffs' action should not be dismissed.

21. In addition, qualified immunity does not apply to defendant CITY OF NEW YORK. As defendant CITY OF NEW YORK through its employees had a custom and/or policy of providing misinformation regarding the toxins and carcinogens on Rikers Island, the CITY OF NEW YORK is not entitled to a judgment on the pleadings.

22. Defendants' contend that plaintiff does not have a valid cause of action based on the U.S. Supreme Court's holding in Collins v. City of Harker Heights, 503 U.S. 115, 112 S.Ct. 1061 (1992) and the Second Circuit's holding in Murray v. Connetquot Central School District of Islip, 54 Fed. Appx. 18 (2nd Cir. 2002) and McClary v. O'Hare, 786 F.2d 83,88 (2nd. Cir. 1986).

23. In Collins, *supra*, the plaintiff brought an action against a municipality under 42 U.S.C. §1983, seeking damages for fatal injuries suffered by the employee in the course of his employment because defendant failed to train or warn its employees about known hazards in the workplace. *Id.* 117. At the outset of the opinion, Justice Stevens explained that the "question presented is whether §1 of the Civil Rights Act of 1871, Rev. Stat. §1979, 42 U.S.C. § 1983, provides a remedy for a municipal employee

who is fatally injured in the course of his employment because the city customarily failed to train or warn its employees about known hazards in the workplace.” Id.

24. The case involved an employee in the sanitation department of the defendant municipality, who died of asphyxia after entering a manhole to unstop a sewer line. The plaintiff alleged that the city violated the employees constitutional rights by “following a custom and policy of not training its employees about the dangers of working in sewer lines and manholes, not providing safety equipment at jobsites, and not providing safety warnings.” In addition, the plaintiff also alleged that “a prior incident had given the city notice of the risks of entering the sewer lines and that the city had systematically and intentionally failed to provide the equipment and training required by a Texas statute.” Id. at 118.

25. In its decision, the Court explained that “[T]he Due Process Clause of the Fourteenth Amendment was intended to prevent government ‘from abusing [its] power, or employing it as an instrument of oppression.’” Id. at 126, citing DeShaney v. Winnebago County Dept. of Social Services, 489 U.S. at 196, quoting Davidson v. Cannon, 474 U.S. 344, 348 (1986). Despite this, the court found that plaintiff’s two theories of liability could not succeed. First, the Court found that the minimal safety theory could not be successful because the plaintiff voluntarily accepted his position and therefore the city did not have an obligation to provide minimal safety standards under the due process clause. Id. at 128-129. As for the second theory, the Court stated that they were “not persuaded that the city’s alleged failure to train its employees, or to warn them about known risks of harm, was an omission that can properly be characterized as

arbitrary, or conscience shocking, in a constitutional sense.” As a result, the Court found that due process violation did not occur.

26. In Murray v. Connetquot Central School District of Islip, 54 Fed. Appx. 18 (2nd Cir. 2002), the plaintiffs brought an action against a municipal defendant as a result of being exposed to carcinogens while driving buses for the municipal defendant. The plaintiffs alleged a violation of their civil rights under 42 U.S.C. § 1983, through defendants violation of the plaintiffs rights under the Due Process Clause. As discussed by the Second Circuit, plaintiffs’ complaint “premises the due process claim on a denial of a minimal level of workplace safety in public employment, or on defendants’ deliberate indifference to plaintiffs’ safety.” Id. at 19. As the theories alleged in the complaint were identical to those in Collins, the Court followed the U.S. Supreme Court’s decision and dismissed plaintiff’s case.

27. In McClary v. O’Hare, 786 F.2d 83,88 (2nd. Cir. 1986), the Second Circuit dealt with a situation where the plaintiff was killed as a result of a cable breaking on a construction site. The plaintiff’s estate brought several claims against the County who was responsible for the worksite, including a claim for a violation of the substantive due process rights of the plaintiff. In beginning its analysis of the substantive due process claim, the court began by acknowledging that “[i]t thus may fairly be said that a person has a substantive due process right not be deprived of life.” The court continued its analysis by reviewing the conduct of the governmental entity in that particular case. The court held that because plaintiff was harmed as a result of a cable breaking, “while the result was tragic, it does not amount to a deprivation without due process of law in this substantive sense.” Id. at 89.

28. Upon making its decision in McClary, the Second Circuit included the following footnote, commenting on the decision:

Although we hold that reckless acts of a government employer that harm employees do not give rise to a substantive due process violation as long as the challenged conduct is not uniquely governmental in character, we by no means intend to exclude grossly negligent, reckless, or intentional abuses of governmental authority from the purview of section 1983. See Daniels, 54 U.S.L.W. at 4092 & n.3; Davidson, 54 U.S.L.W. at 4096 (Brennan, J., dissenting). Nor do we view this decision as a grant of immunity to government employers acting as such. Where harms caused by government employers to their employees are attributable to the abuse of the government's authority rather than to an ordinary tort, such harms would continue to be actionable under section 1983.

McClary, 786 F.2d at 89, n. 6.

29. The situation in Collins, Murray and McClary are distinguishable from our current case. The theories posed in Collins, Murray and McClary dealt with Defendants failure to warn or a deliberate indifference to the safety of the employees at the workplace. These are not the theories posed in our present case. Here, the theory posed by the plaintiffs is that the defendants violated their substantive due process rights under the State/Government Endangerment Theory. As the Court explained in Briscoe, the Endangerment Theory was not addressed by the Supreme Court in Collins. In addition, the Court in Briscoe noted that the Endangerment Theory is distinct from the theories posed in Collins, Murray and McClary in that it deals with an affirmative misrepresentations about safety rather than a failure to warn or failure to provide a safe working environment. Briscoe, 355 F.Supp.2d 30, 44. As such, the Court's decisions in Collins, Murray and McClary do not apply to our current case.

DEFENDANTS ARE NOT ENTITLED TO QUALIFIED IMMUNITY

30. As cited by the Defendants, qualified immunity is only available when a governmental official does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." Pearson v. Callahan, 129 S.Ct. 808, 815 (2009). As a result of the individual Defendants violation of a defined Constitutional right to be free from state and/or governmental endangerment, qualified immunity can not apply to the Defendants.

31. "In deciding whether a right was clearly established, we ask: (1) Was the law defined with reasonable clarity? (2) Had the Supreme Court or the Second Circuit affirmed the rule? And (3) Would a reasonable defendant have understood from the existing law that the conduct was unlawful?" Young v. County of Fulton, 160 F.3d 899,903 (2nd Cir. 1998).

32. The constitutional right at issue in our present case is the duty of a state or governmental actor not to put a person endanger as a result of misrepresentations. In Briscoe, 355 F.Supp.2d 30 (D.D.C. 2004), the court acknowledged that the state/government endangerment theory was a valid constitutional right, however stated that in 2001, the time at which the basis of the litigation in Briscoe arose, the state/governmental endangerment theory had yet to be clearly defined by the Court. Id. at 47. However, with its holding in 2004, the Briscoe court clearly established the endangerment theory as a valid constitutional right.

33. The Second Circuit acknowledged the existence of the state/government endangerment theory as a constitutional right in Lombardi v. Whitman, 485 F.3d 73, 81 (2nd Cir. 2007). In Lombardi, the Second Circuit found that there is "support for the

idea that a substantive due process violation can be made out when a private individual derives a false sense of security from an intentional misrepresentation by an executive official if foreseeable bodily harm directly results and if the official's conduct shocks the conscience." The Second Circuit's decision, which came down in 2007, clearly established the state endangerment theory as a valid constitutional right, as such defendants can not claim that they were unaware of the right. On this basis, the individual Defendants are not entitled to qualitative immunity for their violation of plaintiffs' substantive due process rights to be free from harm as a result of a misrepresentation from a governmental entity.

CROSS MOTION TO AMEND COMPLAINT

34. Plaintiff seeks leave to amend the complaint. A copy of the proposed amended complaint is annexed hereto as Exhibit "A".

35. "The court should freely give leave when justice requires." Fed. R. Civ. P. 15(a)(2). "Leave to amend should only be denied because of undue delay, bad faith, futility, or prejudice to the nonmoving party." Ganthier v. North Shore-Long Island Jewish Healthy System, 298 F.Supp.2d 342, 349 (E.D.N.Y. 2004) citing Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227 (1962). "[T]he decision to grant or deny a motion to amend rests within the sound discretion of the district court." Ganthier, 298 F.Supp.2d at 349, citing Zahra v. Town of Southold, 48 F.3d 674, 685 (2nd Cir. 1995).

36. In the present case, plaintiffs have moved to amend the complaint prior to the opening of discovery. Defendants can not claim that there has been an undue delay in plaintiffs motion to amend. In addition, Defendants can not claim any prejudice, bad faith or futility. Plaintiffs seek only to clarify their pleadings to ensure that they comply

with the Court's ruling in Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009). The amendments to the pleadings are related to the same incidents that brought rise to the litigation and do not seek to add additional claims. In addition, the amendments can not be deemed futile, as Plaintiffs have put forth a valid cause of action of which they can be successful if the allegations in the Amended Complaint are found to be true.

WHEREFORE, it is respectfully requested that defendant's motion to to dismiss plaintiff's complaint be denied in its entirety. It is also requested that plaintiffs' cross motion to amend their complaints be granted.

Dated: New York, New York
August 8, 2011



CHRISTOPHER J. DONADIO

Exhibit "A"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Index # 11 CV 2150 (RJH)

-----X
JOHN PACCIONE and MADELINE PACCIONE

Plaintiffs

AMENDED
VERIFIED
COMPLAINT

Against

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF CORRECTIONS,
BERNARD B. KERIK, GARY M. LANIGAN,
WILLIAM J. FRASER, MARTIN F. HORN,
JOHN J. ANTONELLI, and
DORA B. SCHIRO, CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Defendants
-----X

Plaintiffs, complaining of the Defendants through their attorneys,
BURNS & HARRIS, ESQS., alleges upon information and belief:

JURISDICTION

1. The occurrences which are the subject of this action took place
in the County of Bronx.

THE PARTIES

2. Defendant CITY OF NEW YORK is a municipal corporation
existing under and by virtue of the laws of the State of New York.

3. Defendant CITY OF NEW YORK is a duly constituted municipal
corporation organized and existing under the laws of the State of New York.
At all times relevant hereto, the defendant CITY OF NEW YORK, action
through the NYC Department of Corrections ("DOC") was responsible for the
policy, practice, supervision, implementation and conduct of all DOC matters

and was responsible for the appointment, training, supervision, and conduct of all DOC personnel. In addition, at all relevant times, defendant CITY OF NEW YORK was responsible for enforcing the rules of the DOC, and for ensuring that DOC personnel obeyed the Constitution and laws of the United States and of the State of New York.

4. Defendant BERNARD KERIK was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner BERNARD KERIK is sued in his individual and official capacity.

5. Defendant GARY M. LANIGAN was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner GARY M. LANIGAN is sued in his individual and official capacity.

6. Defendant WILLIAM J. FRASER was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF

CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner WILLIAM J. FRASER is sued in his individual and official capacity.

7. Defendant MARTIN F. HORN was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner MARTIN F. HORN is sued in his individual and official capacity.

8. Defendant JOHN J. ANTONELLI was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner JOHN J. ANTONELLI is sued in his individual and official capacity.

9. Defendant DORA B. SCHIRO was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under her control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of

New York, City and State of New York. Commissioner DORA B. SCHRIRO is sued in her individual and official capacity.

10. Defendant NEW YORK CITY DEPARTMENT OF CORRECTIONS is an agency of THE CITY OF NEW YORK, responsible for overseeing, organizing, administering and running the City's detention facilities, including RIKERS ISLAND, in which among other people, Corrections Officers are employed. At all times relevant hereto, defendant DOC, together with THE CITY OF NEW YORK, was responsible for the policy, practice, supervision, implementation and conduct of all DOC matters and was responsible for the appointment, training, supervision and conduct of all DOC personnel. In addition, at all relevant times, defendant DOC, together with THE CITY OF NEW YORK, was responsible for enforcing the rules of the DOC, and for ensuring that DOC personnel obeyed the Constitution and laws of the United States and of the State of New York.

11. At all times relevant hereto, Defendant **CITY OF NEW YORK** operated, maintained, managed, supervised and controlled RIKERS ISLAND LANDFILL and RIKERS ISLAND CORRECTIONAL FACILITY as part of and in conjunction with its municipal functions.

12. That plaintiff claims applicability of CPLR §214-(c)(4).

AS AND FOR A FIRST CAUSE OF ACTION

13. That at all times mentioned herein, and from on or about 1990 until present plaintiff JOHN PACCIONE worked as a Plumber at Rikers Island

Correctional Facility, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

14. That from on or about 1990 to present, plaintiff JOHN PACCIONE was exposed to carcinogens and/or toxins at and upon said premises.

15. That the plaintiff JOHN PACCIONE was not diagnosed with brain cancer until on or about January 7, 2010.

16. That at all times mentioned herein, the defendant **CITY OF NEW YORK** was the owner of premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

17. That at all times mentioned herein, the defendant **CITY OF NEW YORK** operated premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

18. That at all times mentioned herein, the defendant **CITY OF NEW YORK** maintained premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

19. That at all times mentioned herein, the defendant **CITY OF NEW YORK** managed premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

20. That at all times mentioned herein, the defendant **CITY OF NEW YORK** controlled premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

21. That at all times mentioned herein, the defendant **CITY OF NEW YORK** supervised premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

22. That at all times mentioned herein, the defendant **CITY OF NEW YORK** renovated premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

23. That at all times mentioned herein, the defendant **CITY OF NEW YORK** repaired premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

24. That at all times mentioned herein, the defendant **CITY OF NEW YORK** inspected premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

25. That at all times mentioned herein, the defendant **CITY OF NEW YORK** hired contractors at premises known as RIKERS ISLAND

CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

26. RIKERS ISLAND CORRECTIONAL FACILITY opened in 1932 as a prison on Rikers Island.

27. At the time of the opening of the Prison in 1932, Rikers Island was approximately 90 acres in size.

28. After the opening of the prison, the City of New York increased the size of Rikers Island to approximately 415 acres.

29. The land of Rikers Island was expanded from 90 acres to 415 acres through the creation of a landfill.

30. The landfill was comprised of garbage from New York City.

31. The landfill was comprised of various toxins and carcinogens.

32. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to operate, maintain, manage, control, repair, renovate supervise and inspect the said premises herein.

33. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to operate, maintain, manage, control, repair, renovate, supervise and inspect the said premises in a reasonably safe and suitable condition and repair.

34. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to take the necessary precautions and remedies to render the said premises habitable and safe for occupancy.

35. That at all times mentioned herein, the defendant CITY OF NEW YORK had a duty to warn persons of the hazardous and dangerous conditions existing at said premises.

36. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to comply with the New York City Health Code and other applicable sections, regulations and statutes under New York State, local and federal law.

37. That at all times mentioned herein, toxins and/or carcinogens were present upon said premises.

38. That at all times mentioned herein, toxins and/or carcinogens were present upon said premises and were known or should have been known to be present upon said premises.

39. That at all times mentioned herein, said carcinogens and/or toxins were caused, permitted and allowed to be and remain upon said premises.

40. That at various and diverse times from on or about 1990 to present and for a period of time prior and subsequent thereto, there existed a dangerous, defective and unsafe condition, including the presence of carcinogens and/or toxins, upon said the premises.

41. That at various and diverse times from 1990 to present and for a period of time prior and subsequent thereto, the defendants maintained a dangerous, defective and unsafe condition, including the presence of carcinogens and/or toxins upon said premises.

42. That at various and diverse times from 1990 to present and for a period of time prior and subsequent thereto the defendants, their agents, servants and/or employees created a dangerous, hazardous and unsafe condition, including the presence of carcinogens and/or toxins upon said premises.

43. It was the duty of the defendants to maintain the premises in a reasonably safe and proper condition and free of dangerous, hazardous, and unsafe conditions, including the presence of carcinogens and/or toxins upon said premises.

44. It was the duty of the defendants to maintain the premises in a reasonably safe condition for use by members of the general public.

45. That at all times mentioned herein, such culpable conduct was a proximate cause of the plaintiff's serious injuries.

46. That the plaintiff **JOHN PACCIONE**, was diagnosed with brain cancer on or about January 7, 2010.

47. That at all times relevant hereto, it was the duty of the defendants their servants, agents, and/or employees to conduct and supervise the maintenance, renovation, inspection, and repair operations at said premises in a lawful fashion to prevent the presence of carcinogens and/or toxins at said premises.

48. That carcinogens and/or toxins were present at said premises, from the time the plaintiff **JOHN PACCIONE** was employed there, which was approximately from 1990 to present.

49. That at all times mentioned herein, the defendant, its agents, servants and/or employees breached their duty to operate, maintain, manage, supervise and control the aforesaid premises in a reasonable and safe condition.

50. That at all times mentioned herein, the defendant, its agents, servants and/or employees breached their duty to take the necessary precautions and remedies to render the said premises habitable and safe for occupancy.

51. That at all times mentioned herein, the defendant, its agents, servants and/or employees failed to warn persons of the hazardous and dangerous conditions existing at said premises.

52. Upon information and belief, during plaintiff's time as an employee at Riker's Island he was told by his supervisors that there were not any toxic, hazardous or cancer causing toxins located on Riker's Island.

53. Upon information and belief, during plaintiff's time as an employee at Riker's Island he was provided internal memorandum indicating that it was safe to work at Riker's Island.

54. Upon information and belief, during plaintiff's time as an employee at Riker's Island he was provided internal memorandum indicating that there were no carcinogens present on Rikers Island.

55. Upon information and belief, during plaintiff's time as an employee at Rikers Island, Defendants were aware that cancer causing toxins were present at Rikers Island.

56. Upon information and belief, during plaintiff's time as an employee at Rikers Island, Defendants performed testing of the soil, air and water.

57. Upon information and belief, during plaintiff's time as an employee at Riker's Island, Defendants performed testing of the soil, air and water that indicated that cancer causing toxins were present on Rikers Island.

58. At the present time, plaintiff is aware of approximately 80 retired and current employees of Riker's Island have been diagnosed with cancer.

59. That at all times mentioned herein, the defendant, its agents, servants and/or employees breached their duty to comply with the New York City Health Code and other applicable sections, regulations and statutes under New York State, local and federal law.

60. That at all times mentioned herein, the defendant, its agents, servants and/or employees breached their duty to conduct and supervise the maintenance, renovation, inspection and repair operations at said premises in a lawful fashion to prevent the presence of carcinogens and/or toxins at said premises.

61. That the negligence of the defendants **CITY OF NEW YORK**, its agents, servants and/or employees consisted of the following: in the negligent, careless and reckless ownership, operation, management, maintenance and control of the aforesaid premises in that they knowingly, and for a long and unreasonable length of time, caused and allowed the aforesaid premises to be maintained in unsafe, improper and unsuitable

condition so as to cause carcinogens and/or toxins and harmful substances to be, become and remain at said premises; in failing to provide plaintiff herein with a safe area in which to work; in failing to give warning to the plaintiff of the unlawful, dangerous, hazardous, unsafe and poisonous condition thereat; in hiring inept, incompetent, inadequate, unskilled and insufficient contractors; in permitting, causing and/or allowing a dangerous and hazardous condition to be, remain and exist upon the premises; in causing, allowing and permitting the premises to be, become and remain uninhabitable and unsafe; in causing, allowing and permitting said carcinogens and/or toxins to be and remain upon said premises when it was known or should have been known that they could cause harm to those persons on said premises; in failing to inspect, timely inspect and/or properly inspect the aforesaid premises; in failing to repair, timely repair and/or properly repair and maintain the aforesaid premises although the defendants had notice or should have had notice of the unsafe conditions complained of herein; in negligently and carelessly repairing and maintaining the premises in such a manner and under such control so as to cause the occurrence complained of herein; in violating statutory obligations; in violating the Health Code and other applicable sections, regulations and statutes under New York State, local and federal law; in providing improper, incompetent and insufficient supervision; in knowingly permitting said carcinogens and/or toxins to remain for an unreasonable period of time; in failing to take the proper and necessary steps

to prevent the happening of the occurrences as herein set forth; and in otherwise being negligent and careless in the premises.

62. That as a result of the foregoing, the plaintiff **JOHN PACCIONE** was caused to sustain severe and permanent personal injuries to become sick, sore, lame and disabled, sustained injuries to various portions of his body and mind, and to suffer great pain and anguish in his body and mind.

63. That this action falls within one or more of the exceptions set forth in CPLR Article 16.

64. That by reason of the foregoing, plaintiff **JOHN PACCIONE**, has sustained damages in an amount in excess of the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction, in an amount to be determined upon the trial of this action.

**SECOND CAUSE OF ACTION:
(POLICY OF NON-FEASANCE IN THE
PROTECTION OF PLAINTIFF'S CIVIL RIGHTS)**

65. Plaintiff, **JOHN PACCIONE**, repeats and realleges each and every allegation contained herein, as though the same were set forth at length

66. This is a Civil Rights action brought pursuant to the United States Constitution, as amended, and the Civil Rights Act of 1871, 42 U.S.C §1983 and the New York State Constitution and seeks redress for defendants' deprivation, under color of State law, of plaintiff's rights, privileges, and immunities secured by the Constitution and laws of the United States and by the new York State Constitution.

67. That at all times mentioned herein, and from on or about 1990 to present plaintiff JOHN PACCIONE worked as a Plumber at Rikers Island Correctional Facility, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

68. That from on or about 1990 to present, plaintiff JOHN PACCIONE was exposed to carcinogens and/or toxins at and upon said premises.

69. That the plaintiff JOHN PACCIONE was not diagnosed with brain cancer until on or about January 7, 2010.

70. At all times mentioned herein, defendants have instituted and are continuing to enforce a policy, practice and custom to cause, permit, allow and require persons legally upon said premises to be exposed to toxic, cancerous substances which are present at Rikers Island, 10-10 Hazen Street, Bronx, NY.

71. Defendants had a policy, practice and custom of causing, permitting, allowing and requiring plaintiff to be exposed to toxic, carcinogenic substances while legally upon said premises.

72. That the deprivation of plaintiff's constitutional rights was the result of the CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of concealing the known existence of cancer causing toxins present at Riker's Island.

73. That the deprivation of plaintiff's constitutional rights was the result of the CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of misrepresenting to plaintiff that Riker's Island was a safe and secure work environment.

74. That the deprivation of plaintiff's constitutional rights was the result of the CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of depriving life, liberty and the pursuit of happiness to those present on Riker's Island.

75. That the deprivation of plaintiff's constitutional rights was the result of the CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of violating the due process rights of those present on Riker's Island.

76. All defendants, THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF CORRECTIONS, BERNARD B. KERIK, GARY M. LANIGAN, WILLIAM J. FRASER, MARTIN F. HORN, JOHN J. ANTONELLI, DORA B. SCHRIRO, and THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE acted under pretense and color of state

law and in their individual and official capacities and within the scope of their employment. Said acts by said defendants were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said defendants acted willfully, knowingly, and with the specific intent to deprive plaintiffs of their constitutional rights secured by 42 U.S.C. §1983, and by the Fourth, Fifth, and Fourteenth amendments to the United States Constitution.

77. Exposure of plaintiff to toxins and carcinogens deprive the plaintiff of his Constitutional rights to life, liberty and the pursuit of happiness and substantive and procedural due process under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution.

78. At all times relevant hereto, defendant CITY OF NEW YORK caused, allowed and permitted persons legally upon said premises to be exposed to toxic, cancerous substances which are present at said premises.

79. At all times relevant hereto, defendant CITY OF NEW YORK instituted and continues to enforce a policy, practice and custom causing, permitting, allowing and requiring plaintiff to be exposed to toxic, cancerous substances which are present at the said premises.

80. Each and all of the acts of the defendants alleged herein were done by the defendants, their agents, servants and/or employees, and each of them, not as individuals, but under the color and pretense of the statutes, ordinances, regulations, customs and usages of the State of New York, the City of New York and the County of Bronx.

81. That from approximately 1990 to the present, the plaintiff, **JOHN PACCIONE**, was lawfully and properly present upon the premises mentioned herein.

82. Commencing approximately 1990 to present, plaintiff **JOHN PACCIONE** was exposed to toxic, cancerous substances which are present at said premises.

83. That commencing approximately 1990 to present, and prior and subsequent thereto, the **CITY OF NEW YORK**, in violation of 42 U.S.C. §1983 caused the plaintiff to be injured and damaged in causing, allowing and permitting plaintiff to be exposed to toxic, cancerous substances which are present at the premises mentioned.

84. The **CITY OF NEW YORK**, its agents, servants and/or employees caused, permitted, allowed and required plaintiff to be exposed to toxic, cancerous substances which are present at Riker's Island, Bronx, NY. Upon information and belief, defendants participated in the enforcement of the policy and/or knowingly or recklessly failed to prevent enforcement of the plainly unconstitutional policy.

85. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to operate, maintain, manage, control, repair, renovate supervise and inspect the said premises herein.

86. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to operate, maintain, manage, control, repair,

renovate, supervise and inspect the said premises in a reasonably safe and suitable condition and repair.

87. As a result of the aforesaid plaintiff **JOHN PACCIONE** was exposed to toxic, cancerous substances which are present at the premises mentioned and thereby deprived of his rights, liberties and freedoms under color of State Law in violation of 42 U.S.C. §1983.

88. As a further result of the deprivation of plaintiff **JOHN PACCIONE's** right to be free from the deprivation of rights guaranteed to him by the Fourth, Fifth and Fourteenth Amendment to the United States Constitution, he was caused to suffer injury and damage both mentally and physically, severe nervous shock and emotional distress and illness.

89. From on or about 1990 to present in violation of the rights, privileges and immunities guaranteed to him under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution and under color of State law, the defendant **CITY OF NEW YORK** caused, permitted, allowed and required plaintiff to be exposed to toxic cancerous substances which are present at said premises, in violation of 42 U.S.C. Section 1983.

90. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to take the necessary precautions and remedies to render the said premises habitable and safe for occupancy.

91. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to warn persons of the hazardous and dangerous conditions existing at said premises.

92. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to comply with the New York City Health Code and other applicable sections, regulations and statutes under New York State, local and federal law.

93. That at all times mentioned herein, toxins and/or carcinogens were present upon said premises.

94. That at all times mentioned herein, toxins and/or carcinogens were present upon said premises and were known or should have been known to be present upon said premises.

95. That at all times mentioned herein, said carcinogens and/or toxins were caused, permitted and allowed to be and remain upon said premises.

96. That at various and diverse times from on or about 1990 to the present and for a period of time prior and subsequent thereto, there existed a dangerous, defective and unsafe condition, including the presence of carcinogens and/or toxins, upon said the premises.

97. That at various and diverse times from 1990 and for a period of time prior and subsequent thereto, the defendants maintained a dangerous, defective and unsafe condition, including the presence of carcinogens and/or toxins upon said premises.

98. That at various and diverse times from 1990 and for a period of time prior and subsequent thereto the defendants, their agents, servants

and/or employees created a dangerous, hazardous and unsafe condition, including the presence of carcinogens and/or toxins upon said premises.

99. At all times mentioned herein, it was the duty of the defendants to maintain the premises in a reasonably safe and proper condition and free of dangerous, hazardous, and unsafe conditions, including the presence of carcinogens and/or toxins upon said premises.

100. At all times mentioned herein, it was the duty of the defendants to maintain the premises in a reasonably safe condition for use by members of the general public.

101. That at all times mentioned herein, such culpable conduct was a proximate cause of the plaintiff's serious injuries.

102. That at all times relevant hereto, it was the duty of the defendants their servants, agents, and/or employees to conduct and supervise the maintenance, renovation, inspection, and repair operations at said premises in a lawful fashion to prevent the presence of carcinogens and/or toxins at said premises.

103. That carcinogens and/or toxins were present at said premises, from the time the plaintiff **JOHN PACCIONE** was employed there, which was approximately from 1990 to present.

104. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to operate, maintain, manage, supervise and control the aforesaid premises in a reasonable and safe condition.

105. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to take the necessary precautions and remedies to render the said premises habitable and safe for occupancy.

106. That at all times mentioned herein, the defendants, their agents, servants and/or employees failed to warn persons of the hazardous and dangerous conditions existing at said premises.

107. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to comply with the New York City Health Code and other applicable sections, regulations and statutes under New York State, local and federal law.

108. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to conduct and supervise the maintenance, renovation, inspection and repair operations at said premises in a lawful fashion to prevent the presence of carcinogens and/or toxins at said premises.

109. Although defendants knew or should have known of the fact that toxic cancerous substances were present at the said premises, the defendants have not taken any steps or made any efforts to halt this course of conduct, to make redress to the plaintiff or other citizens injured thereby.

110. The unlawful and illegal conduct of the defendants, their agents, servants and/or employees to cause, allow and permit the exposure of plaintiff to toxins and carcinogens deprived the plaintiff of his Constitutional

rights to life, liberty and the pursuit of happiness and substantive and procedural due process under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution.

111. That by reason of the foregoing, this plaintiff was severely injured and damaged, rendered sick, sore, lame and disabled, sustained severe nervous shock and mental anguish, great physical pain and emotional upset, has suffered and continues to suffer serious and extreme mental and emotional anguish, distress and psychological damages and difficulties, some of which injuries are permanent in nature and duration, and plaintiffs will be permanently caused to suffer pain, inconvenience and other effects of such injuries; plaintiffs incurred and in the future will necessarily incur further hospital and/or medical expenses in an effort to be cured of said injuries; and plaintiffs have suffered and in the future will necessarily suffer additional loss of time and earnings from employment; and plaintiffs will be unable to pursue the usual duties with the same degree of efficiency as prior to this occurrence, all to plaintiffs' great damage.

112. That commencing on or about 1990 to present, in violation of the rights, privileges and immunities guaranteed to him under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and under the color of State law, the defendants acted individually and in concert causing the plaintiff to have been injured and damaged in an amount exceeding the jurisdictional limit of this Court, to be determined upon the trial of this action.

113. That the negligence of the defendants their agents, servants and/or employees consisted of the following: in the negligent, careless and reckless ownership, operation, management, maintenance and control of the aforesaid premises in that they knowingly, and for a long and unreasonable length of time, caused and allowed the aforesaid premises to be maintained in unsafe, improper and unsuitable condition so as to cause carcinogens and/or toxins and harmful substances to be, become and remain at said premises; in failing to provide plaintiff herein with a safe area in which to work; in failing to give warning to the plaintiff of the unlawful, dangerous, hazardous, unsafe and poisonous condition thereat; in hiring inept, incompetent, inadequate, unskilled and insufficient contractors; in permitting, causing and/or allowing a dangerous and hazardous condition to be, remain and exist upon the premises; in causing, allowing and permitting the premises to be, become and remain uninhabitable and unsafe; in causing, allowing and permitting said carcinogens and/or toxins to be and remain upon said premises when it was known or should have been known that they could cause harm to those persons on said premises; in failing to inspect, timely inspect and/or properly inspect the aforesaid premises; in failing to repair, timely repair and/or properly repair and maintain the aforesaid premises although the defendants had notice or should have had notice of the unsafe conditions complained of herein; in negligently and carelessly repairing and maintaining the premises in such a manner and under such control so as to cause the occurrence complained of herein; in violating statutory obligations;

in violating the Health Code and other applicable sections, regulations and statutes under New York State, local and federal law; in providing improper, incompetent and insufficient supervision; in knowingly permitting said carcinogens and/or toxins to remain for an unreasonable period of time; in failing to take the proper and necessary steps to prevent the happening of the occurrences as herein set forth; and in otherwise being negligent and careless in the premises; in depriving plaintiff **JOHN PACCIONE** of rights guaranteed to him by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

114. That as a result of the foregoing, the plaintiff **JOHN PACCIONE** was caused to sustain severe and permanent personal injuries to become sick, sore, lame and disabled, sustained injuries to various portions of his body and mind, and to suffer great pain and anguish in his body and mind.

115. That this action falls within one or more of the exceptions set forth in CPLR Article 16.

116. That by reason of the foregoing, plaintiff **JOHN PACCIONE**, has sustained damages in an amount in excess of the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction, in an amount to be determined upon the trial of this action.

AS AND FOR A THIRD CAUSE OF ACTION

117. Plaintiff, **MADLINE PACCIONE** repeats and realleges each and every allegation contained herein, as though the same were set forth at length.

118. That at all times herein mentioned, plaintiff, MADELINE PACCIONE, was and still is the wife of the plaintiff, JOHN PACCIONE, and as such is entitled to the services, society, consortium and companionship of her spouse.

55. That as a result of the foregoing on the part of the defendant, and the resulting injuries to the plaintiff, JOHN PACCIONE, this plaintiff has been required to expend various sums of money for the medical care, consultation, advice, and treatment of the plaintiff, and has suffered other indemnifiable economic losses and has been deprived of the services, society, consortium and companionship of the plaintiff.

119. That by reason of the foregoing, plaintiff, MADELINE PACCIONE, has been damaged in an amount which exceeds the monetary jurisdictional limits of any and all lower courts which would otherwise have jurisdiction herein.

WHEREFORE, plaintiffs demand judgment against the defendants in an amount which exceeds the monetary jurisdictional limits of any and all lower courts which would otherwise have jurisdiction herein, in an amount to be determined upon the trial of this action, together with interest and the costs and disbursements of this action, and with interest from the date of this occurrence.

Dated: New York, New York
February 18, 2011

Yours, etc.
BURNS & HARRIS, ESQS.
Attorneys for Plaintiff

BY: _____
CHRISTOPHER J. DONADIO
233 Broadway, Suite 900
New York, NY 10279
212 393-1000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Index # 11 CV 2697 (RJH)

-----X
DAMARIE AQUINO

Plaintiffs

AMENDED
VERIFIED
COMPLAINT

Against

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF CORRECTIONS,
BERNARD B. KERIK, GARY M. LANIGAN,
WILLIAM J. FRASER, MARTIN F. HORN,
JOHN J. ANTONELLI, and
DORA B. SCHIRO, CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Plaintiff demands
a Jury

Defendants
-----X

Plaintiffs, complaining of the Defendants through their attorneys,
BURNS & HARRIS, ESQS., alleges upon information and belief:

JURISDICTION

1. Jurisdiction of this Court is founded upon 28 U.S.C. Subsections 1331, 1343(3) and (4) and 42 U.S.C. Section 1983 and 1988. The matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. Pendant jurisdiction is invoked pursuant to 28 U.S.C. Subsection 1367(a)

THE PARTIES

2. Defendant **CITY OF NEW YORK** is a municipal corporation existing under and by virtue of the laws of the State of New York.

3. Defendant **CITY OF NEW YORK** is a duly constituted municipal corporation organized and existing under the laws of the State of New York. At all times relevant hereto, the defendant **CITY OF NEW YORK**, action

through the NYC Department of Corrections (“DOC”) was responsible for the policy, practice, supervision, implementation and conduct of all DOC matters and was responsible for the appointment, training, supervision, and conduct of all DOC personnel. In addition, at all relevant times, defendant **CITY OF NEW YORK** was responsible for enforcing the rules of the DOC, and for ensuring that DOC personnel obeyed the Constitution and laws of the United States and of the State of New York.

4. Defendant BERNARD KERIK was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the **CITY OF NEW YORK** Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner BERNARD KERIK is sued in his individual and official capacity.

5. Defendant GARY M. LANIGAN was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the **CITY OF NEW YORK** Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner GARY M. LANIGAN is sued in his individual and official capacity.

6. Defendant WILLIAM J. FRASER was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect

to the **CITY OF NEW YORK** Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner WILLIAM J. FRASER is sued in his individual and official capacity.

7. Defendant MARTIN F. HORN was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the **CITY OF NEW YORK** Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner MARTIN F. HORN is sued in his individual and official capacity.

8. Defendant JOHN J. ANTONELLI was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the **CITY OF NEW YORK** Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner JOHN J. ANTONELLI is sued in his individual and official capacity.

9. Defendant DORA B. SCHIRO was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the **CITY OF NEW YORK** Agency under her control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF

CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner DORA B. SCHRIRO is sued in her individual and official capacity.

10. Defendant NEW YORK CITY DEPARTMENT OF CORRECTIONS is an agency of THE **CITY OF NEW YORK**, responsible for overseeing, organizing, administering and running the City's detention facilities, including RIKERS ISLAND, in which among other people, Corrections Officers are employed. At all times relevant hereto, defendant DOC, together with THE **CITY OF NEW YORK**, was responsible for the policy, practice, supervision, implementation and conduct of all DOC matters and was responsible for the appointment, training, supervision and conduct of all DOC personnel. In addition, at all relevant times, defendant DOC, together with THE **CITY OF NEW YORK**, was responsible for enforcing the rules of the DOC, and for ensuring that DOC personnel obeyed the Constitution and laws of the United States and of the State of New York.

11. At all times relevant hereto, Defendant **CITY OF NEW YORK** operated, maintained, managed, supervised and controlled RIKERS ISLAND LANDFILL and RIKERS ISLAND CORRECTIONAL FACILITY as part of and in conjunction with its municipal functions.

12. That plaintiff claims applicability of CPLR §214-(c)(4).

**AS AND FOR A FIRST CAUSE OF ACTION
(POLICY OF NON-FEASANCE IN THE
PROTECTION OF PLAINTIFF'S CIVIL RIGHTS)**

13. This is a Civil Rights action brought pursuant to the United States Constitution, as amended, and the Civil Rights Act of 1871, 42 U.S.C §1983 and the New York State Constitution and seeks redress for defendants' deprivation, under color of State law, of plaintiff's rights, privileges, and immunities secured by the Constitution and laws of the United States and by the new York State Constitution.

14. That at all times mentioned herein, and from on or about 2005 to present plaintiff **DAMARIE AQUINO** worked as a Corrections Officer at Rikers Island Correctional Facility, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

15. That from on or about 2005 to present, plaintiff **DAMARIE AQUINO** was exposed to carcinogens and/or toxins at and upon said premises.

16. That the plaintiff **DAMARIE AQUINO** was not diagnosed with breast cancer until on or about February, 2010.

17. At all times mentioned herein, defendants have instituted and are continuing to enforce a policy, practice and custom to cause, permit, allow and require persons legally upon said premises to be exposed to toxic, cancerous substances which are present at Rikers Island, 10-10 Hazen Street, Bronx, NY.

18. RIKERS ISLAND CORRECTIONAL FACILITY opened in 1932 as a prison on Rikers Island.

19. At the time of the opening of the Prison in 1932, Rikers Island was approximately 90 acres in size.

20. After the opening of the prison, the City of New York increased the size of Rikers Island to approximately 415 acres.

21. The land of Rikers Island was expanded from 90 acres to 415 acres through the creation of a landfill.

22. The landfill was comprised of garbage from New York City.

23. The landfill was comprised of various toxins and carcinogens.

24. Defendants had a policy, practice and custom of causing, permitting, allowing and requiring plaintiff to be exposed to toxic, carcinogenic substances while legally upon said premises.

25. That the deprivation of plaintiff's constitutional rights was the result of the **CITY OF NEW YORK**, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of concealing the known existence of cancer causing toxins present at Riker's Island.

26. That the deprivation of plaintiff's constitutional rights was the result of the **CITY OF NEW YORK**, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of misrepresenting to plaintiff that Riker's Island was a safe and secure work environment.

27. Upon information and belief, during plaintiff's time as an employee at Riker's Island he was told by his supervisors that there were not any toxic, hazardous or cancer causing toxins located on Riker's Island.

28. Upon information and belief, during plaintiff's time as an employee at Riker's Island he was provided internal memorandum indicating that it was safe to work at Riker's Island.

29. Upon information and belief, during plaintiff's time as an employee at Riker's Island he was provided internal memorandum indicating that there were no carcinogens present on Rikers Island.

30. Upon information and belief, during plaintiff's time as an employee at Rikers Island, Defendants were aware that cancer causing toxins were present at Rikers Island.

31. Upon information and belief, during plaintiff's time as an employee at Rikers Island, Defendants performed testing of the soil, air and water.

32. Upon information and belief, during plaintiff's time as an employee at Riker's Island, Defendants performed testing of the soil, air and water that indicated that cancer causing toxins were present on Rikers Island.

33. At the present time, plaintiff is aware of approximately 80 retired and current employees of Riker's Island have been diagnosed with cancer.

34. That the deprivation of plaintiff's constitutional rights was the result of the **CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS**

NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of depriving life, liberty and the pursuit of happiness to those present on Riker's Island.

35. That the deprivation of plaintiff's constitutional rights was the result of the **CITY OF NEW YORK**, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of violating the due process rights of those present on Riker's Island.

36. All defendants, **THE CITY OF NEW YORK**, NEW YORK CITY DEPARTMENT OF CORRECTIONS, BERNARD B. KERIK, GARY M. LANIGAN, WILLIAM J. FRASER, MARTIN F. HORN, JOHN J. ANTONELLI, DORA B. SCHIRO, and THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE acted under pretense and color of state law and in their individual and official capacities and within the scope of their employment. Said acts by said defendants were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said defendants acted willfully, knowingly, and with the specific intent to deprive plaintiffs of their constitutional rights secured by 42 U.S.C. §1983, and by the Fourth, Fifth, and Fourteenth amendments to the United States Constitution.

37. Exposure of plaintiff to toxins and carcinogens deprive the plaintiff of her Constitutional rights to life, liberty and the pursuit of happiness

and substantive and procedural due process under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution.

38. At all times relevant hereto, defendant **CITY OF NEW YORK** caused, allowed and permitted persons legally upon said premises to be exposed to toxic, cancerous substances which are present at said premises.

39. At all times relevant hereto, defendant **CITY OF NEW YORK** instituted and continues to enforce a policy, practice and custom causing, permitting, allowing and requiring plaintiff to be exposed to toxic, cancerous substances which are present at the said premises.

40. Each and all of the acts of the defendants alleged herein were done by the defendants, their agents, servants and/or employees, and each of them, not as individuals, but under the color and pretense of the statutes, ordinances, regulations, customs and usages of the State of New York, the **CITY OF NEW YORK** and the County of Bronx.

41. That from approximately 2005 to present, the plaintiff, **DAMARIE AQUINO**, was lawfully and properly present upon the premises mentioned herein.

42. Commencing approximately 2005 to present, plaintiff **DAMARIE AQUINO** was exposed to toxic, cancerous substances which are present at said premises.

43. That commencing approximately 2005 to present, and prior and subsequent thereto, the **CITY OF NEW YORK**, in violation of 42 U.S.C. §1983 caused the plaintiff to be injured and damaged in causing, allowing and

permitting plaintiff to be exposed to toxic, cancerous substances which are present at the premises mentioned.

44. The **CITY OF NEW YORK**, its agents, servants and/or employees caused, permitted, allowed and required plaintiff to be exposed to toxic, cancerous substances which are present at Riker's Island, Bronx, NY. Upon information and belief, defendants participated in the enforcement of the policy and/or knowingly or recklessly failed to prevent enforcement of the plainly unconstitutional policy.

45. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to operate, maintain, manage, control, repair, renovate supervise and inspect the said premises herein.

46. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to operate, maintain, manage, control, repair, renovate, supervise and inspect the said premises in a reasonably safe and suitable condition and repair.

47. As a result of the aforesaid, plaintiff **DAMARIE AQUINO** was exposed to toxic, cancerous substances which are present at the premises mentioned and thereby deprived of his rights, liberties and freedoms under color of State Law in violation of 42 U.S.C. §1983.

48. As a further result of the deprivation of plaintiff **DAMARIE AQUINO's** right to be free from the deprivation of rights guaranteed to him by the Fourth, Fifth and Fourteenth Amendment to the United States

Constitution, she was caused to suffer injury and damage both mentally and physically, severe nervous shock and emotional distress and illness.

49. From on or about 2005 to present in violation of the rights, privileges and immunities guaranteed to her under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution and under color of State law, the defendant **CITY OF NEW YORK** caused, permitted, allowed and required plaintiff to be exposed to toxic cancerous substances which are present at said premises, in violation of 42 U.S.C. Section 1983.

50. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to take the necessary precautions and remedies to render the said premises habitable and safe for occupancy.

51. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to warn persons of the hazardous and dangerous conditions existing at said premises.

52. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to comply with the New York City Health Code and other applicable sections, regulations and statutes under New York State, local and federal law.

53. That at all times mentioned herein, toxins and/or carcinogens were present upon said premises.

54. That at all times mentioned herein, toxins and/or carcinogens were present upon said premises and were known or should have been known to be present upon said premises.

55. That at all times mentioned herein, said carcinogens and/or toxins were caused, permitted and allowed to be and remain upon said premises.

56. That at various and diverse times from on or about 2005 to the present and for a period of time prior and subsequent thereto, there existed a dangerous, defective and unsafe condition, including the presence of carcinogens and/or toxins, upon said the premises.

57. That at various and diverse times from on or about 2005 to the present and for a period of time prior and subsequent thereto, the defendants maintained a dangerous, defective and unsafe condition, including the presence of carcinogens and/or toxins upon said premises.

58. That at various and diverse times from on or about 2005 to the present and for a period of time prior and subsequent thereto the defendants, their agents, servants and/or employees created a dangerous, hazardous and unsafe condition, including the presence of carcinogens and/or toxins upon said premises.

59. At all times mentioned herein, it was the duty of the defendants to maintain the premises in a reasonably safe and proper condition and free of dangerous, hazardous, and unsafe conditions, including the presence of carcinogens and/or toxins upon said premises.

60. At all times mentioned herein, it was the duty of the defendants to maintain the premises in a reasonably safe condition for use by members of the general public.

61. That at all times mentioned herein, such culpable conduct was a proximate cause of the plaintiff's serious injuries.

62. That at all times relevant hereto, it was the duty of the defendants their servants, agents, and/or employees to conduct and supervise the maintenance, renovation, inspection, and repair operations at said premises in a lawful fashion to prevent the presence of carcinogens and/or toxins at said premises.

63. That carcinogens and/or toxins were present at said premises, from the time the plaintiff **DAMARIE AQUINO** was employed there, which was approximately from 2005 to present.

64. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to operate, maintain, manage, supervise and control the aforesaid premises in a reasonable and safe condition.

65. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to take the necessary precautions and remedies to render the said premises habitable and safe for occupancy.

66. That at all times mentioned herein, the defendants, their agents, servants and/or employees failed to warn persons of the hazardous and dangerous conditions existing at said premises.

67. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to comply with the New York

City Health Code and other applicable sections, regulations and statutes under New York State, local and federal law.

68. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to conduct and supervise the maintenance, renovation, inspection and repair operations at said premises in a lawful fashion to prevent the presence of carcinogens and/or toxins at said premises.

69. Although defendants knew or should have known of the fact that toxic cancerous substances were present at the said premises, the defendants have not taken any steps or made any efforts to halt this course of conduct, to make redress to the plaintiff or other citizens injured thereby.

70. The unlawful and illegal conduct of the defendants, their agents, servants and/or employees to cause, allow and permit the exposure of plaintiff to toxins and carcinogens deprived the plaintiff of her Constitutional rights to life, liberty and the pursuit of happiness and substantive and procedural due process under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution.

71. That by reason of the foregoing, this plaintiff was severely injured and damaged, rendered sick, sore, lame and disabled, sustained severe nervous shock and mental anguish, great physical pain and emotional upset, has suffered and continues to suffer serious and extreme mental and emotional anguish, distress and psychological damages and difficulties, some of which injuries are permanent in nature and duration, and plaintiffs will be

permanently caused to suffer pain, inconvenience and other effects of such injuries; plaintiffs incurred and in the future will necessarily incur further hospital and/or medical expenses in an effort to be cured of said injuries; and plaintiffs have suffered and in the future will necessarily suffer additional loss of time and earnings from employment; and plaintiffs will be unable to pursue the usual duties with the same degree of efficiency as prior to this occurrence, all to plaintiffs' great damage.

72. That commencing on or about 2005 to present, in violation of the rights, privileges and immunities guaranteed to her under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and under the color of State law, the defendants acted individually and in concert causing the plaintiff to have been injured and damaged in an amount exceeding the jurisdictional limit of this Court, to be determined upon the trial of this action.

73. That the negligence of the defendants their agents, servants and/or employees consisted of the following: in the negligent, careless and reckless ownership, operation, management, maintenance and control of the aforesaid premises in that they knowingly, and for a long and unreasonable length of time, caused and allowed the aforesaid premises to be maintained in unsafe, improper and unsuitable condition so as to cause carcinogens and/or toxins and harmful substances to be, become and remain at said premises; in failing to provide plaintiff herein with a safe area in which to work; in failing to give warning to the plaintiff of the unlawful, dangerous, hazardous, unsafe and poisonous condition thereat; in hiring inept,

incompetent, inadequate, unskilled and insufficient contractors; in permitting, causing and/or allowing a dangerous and hazardous condition to be, remain and exist upon the premises; in causing, allowing and permitting the premises to be, become and remain uninhabitable and unsafe; in causing, allowing and permitting said carcinogens and/or toxins to be and remain upon said premises when it was known or should have been known that they could cause harm to those persons on said premises; in failing to inspect, timely inspect and/or properly inspect the aforesaid premises; in failing to repair, timely repair and/or properly repair and maintain the aforesaid premises although the defendants had notice or should have had notice of the unsafe conditions complained of herein; in negligently and carelessly repairing and maintaining the premises in such a manner and under such control so as to cause the occurrence complained of herein; in violating statutory obligations; in violating the Health Code and other applicable sections, regulations and statutes under New York State, local and federal law; in providing improper, incompetent and insufficient supervision; in knowingly permitting said carcinogens and/or toxins to remain for an unreasonable period of time; in failing to take the proper and necessary steps to prevent the happening of the occurrences as herein set forth; and in otherwise being negligent and careless in the premises; in depriving plaintiff **DAMARIE AQUINO** of rights guaranteed to him by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

74. That as a result of the foregoing, the plaintiff **DAMARIE AQUINO** was caused to sustain severe and permanent personal injuries to become sick, sore, lame and disabled, sustained injuries to various portions of his body and mind, and to suffer great pain and anguish in his body and mind.

75. That this action falls within one or more of the exceptions set forth in CPLR Article 16.

76. That by reason of the foregoing, plaintiff **DAMARIE AQUINO**, has sustained damages in an amount in excess of the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction, in an amount to be determined upon the trial of this action.

WHEREFORE, plaintiffs demand judgment against the defendants in an amount which exceeds the monetary jurisdictional limits of any and all lower courts which would otherwise have jurisdiction herein, in an amount to be determined upon the trial of this action, together with interest and the costs and disbursements of this action, and with interest from the date of this occurrence.

Additionally, plaintiff demands in respect of all Causes of Action, the additional total sum of **\$5,000,000.00** in punitive damages and attorney fees pursuant to 42 U.S.C.§1988.

Dated: New York, New York
April 14, 2011

Yours, etc.
BURNS & HARRIS, ESQS.
Attorneys for Plaintiff

BY: _____
CHRISTOPHER J. DONADIO
233 Broadway, Suite 900
New York, NY 10279
212 393-1000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ROBERT BARLEY

Plaintiffs

Against

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF CORRECTIONS,
BERNARD B. KERIK, GARY M. LANIGAN,
WILLIAM J. FRASER, MARTIN F. HORN,
JOHN J. ANTONELLI, and
DORA B. SCHIRO, CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Defendants
-----x

11 CV 1300 (RJH)

AMENDED
VERIFIED
COMPLAINT

Plaintiffs, complaining of the Defendants through their attorneys,

BURNS & HARRIS, ESQS., alleges upon information and belief:

JURISDICTION

1. The occurrences which are the subject of this action took place in the County of Bronx.

THE PARTIES

2. Defendant CITY OF NEW YORK is a municipal corporation existing under and by virtue of the laws of the State of New York.

3. Defendant CITY OF NEW YORK is a duly constituted municipal corporation organized and existing under the laws of the State of New York. At all times relevant hereto, the defendant CITY OF NEW YORK, action through the NYC Department of Corrections ("DOC") was responsible for the policy, practice, supervision, implementation and conduct of all DOC matters

and was responsible for the appointment, training, supervision, and conduct of all DOC personnel. In addition, at all relevant times, defendant CITY OF NEW YORK was responsible for enforcing the rules of the DOC, and for ensuring that DOC personnel obeyed the Constitution and laws of the United States and of the State of New York.

4. Defendant BERNARD KERIK was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner BERNARD KERIK is sued in his individual and official capacity.

5. Defendant GARY M. LANIGAN was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner GARY M. LANIGAN is sued in his individual and official capacity.

6. Defendant WILLIAM J. FRASER was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF

CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner WILLIAM J. FRASER is sued in his individual and official capacity.

7. Defendant MARTIN F. HORN was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner MARTIN F. HORN is sued in his individual and official capacity.

8. Defendant JOHN J. ANTONELLI was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner JOHN J. ANTONELLI is sued in his individual and official capacity.

9. Defendant DORA B. SCHIRO was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under her control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of

New York, City and State of New York. Commissioner DORA B. SCHIRO is sued in her individual and official capacity.

10. Defendant NEW YORK CITY DEPARTMENT OF CORRECTIONS is an agency of THE CITY OF NEW YORK, responsible for overseeing, organizing, administering and running the City's detention facilities, including RIKERS ISLAND, in which among other people, Corrections Officers are employed. At all times relevant hereto, defendant DOC, together with THE CITY OF NEW YORK, was responsible for the policy, practice, supervision, implementation and conduct of all DOC matters and was responsible for the appointment, training, supervision and conduct of all DOC personnel. In addition, at all relevant times, defendant DOC, together with THE CITY OF NEW YORK, was responsible for enforcing the rules of the DOC, and for ensuring that DOC personnel obeyed the Constitution and laws of the United States and of the State of New York.

11. At all times relevant hereto, Defendant CITY OF NEW YORK operated, maintained, managed, supervised and controlled RIKERS ISLAND LANDFILL and RIKERS ISLAND CORRECTIONAL FACILITY as part of and in conjunction with its municipal functions.

12. That plaintiff claims applicability of CPLR §214-(c)(4).

**FIRST CAUSE OF ACTION:
(POLICY OF NON-FEASANCE IN THE
PROTECTION OF PLAINTIFF'S CIVIL RIGHTS)**

13. This is a Civil Rights action brought pursuant to the United States Constitution, as amended, and the Civil Rights Act of 1871, 42 U.S.C

§1983 and the New York State Constitution and seeks redress for defendants' deprivation, under color of State law, of plaintiff's rights, privileges, and immunities secured by the Constitution and laws of the United States and by the new York State Constitution.

14. That at all times mentioned herein, and from on or about October, 1993 until September, 2007 plaintiff ROBERT BARLEY worked as a Cook at Rikers Island Correctional Facility, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

15. That from on or about October, 1993 until September, 2007, plaintiff ROBERT BARLEY was exposed to carcinogens and/or toxins at and upon said premises.

16. That the plaintiff ROBERT BARLEY was not diagnosed with thyroid cancer until on or about March 1, 2008.

17. That at all times mentioned herein, the defendant **CITY OF NEW YORK** was the owner of premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

18. That at all times mentioned herein, the defendant **CITY OF NEW YORK** operated premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

19. That at all times mentioned herein, the defendant **CITY OF NEW YORK** maintained premises known as RIKERS ISLAND

CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

20. That at all times mentioned herein, the defendant **CITY OF NEW YORK** managed premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

21. That at all times mentioned herein, the defendant **CITY OF NEW YORK** controlled premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

22. That at all times mentioned herein, the defendant **CITY OF NEW YORK** supervised premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

23. That at all times mentioned herein, the defendant **CITY OF NEW YORK** renovated premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

24. That at all times mentioned herein, the defendant **CITY OF NEW YORK** repaired premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

25. That at all times mentioned herein, the defendant **CITY OF NEW YORK** inspected premises known as **RIKERS ISLAND CORRECTIONAL FACILITY**, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

26. That at all times mentioned herein, the defendant **CITY OF NEW YORK** hired contractors at premises known as **RIKERS ISLAND CORRECTIONAL FACILITY**, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

27. **RIKERS ISLAND CORRECTIONAL FACILITY** opened in 1932 as a prison on Rikers Island.

28. At the time of the opening of the Prison in 1932, Rikers Island was approximately 90 acres in size.

29. After the opening of the prison, the City of New York increased the size of Rikers Island to approximately 415 acres.

30. The land of Rikers Island was expanded from 90 acres to 415 acres through the creation of a landfill.

31. The landfill was comprised of garbage from New York City.

32. The landfill was comprised of various toxins and carcinogens.

33. At all times mentioned herein, defendants have instituted and are continuing to enforce a policy, practice and custom to cause, permit, allow and require persons legally upon said premises to be exposed to toxic, cancerous substances which are present at Rikers Island, 10-10 Hazen Street, Bronx, NY.

34. Defendants had a policy, practice and custom of causing, permitting, allowing and requiring plaintiff to be exposed to toxic, carcinogenic substances while legally upon said premises.

35. That the deprivation of plaintiff's constitutional rights was the result of the CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of concealing the known existence of cancer causing toxins present at Riker's Island.

36. That the deprivation of plaintiff's constitutional rights was the result of the CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of misrepresenting to class plaintiffs that Riker's Island was a safe and secure work environment.

37. Upon information and belief, during plaintiff's time as an employee at Riker's Island he was told by his supervisors that there were not any toxic, hazardous or cancer causing toxins located on Riker's Island.

38. Upon information and belief, during plaintiff's time as an employee at Riker's Island he was provided internal memorandum indicating that it was safe to work at Riker's Island.

39. Upon information and belief, during plaintiff's time as an employee at Riker's Island he was provided internal memorandum indicating that there were no carcinogens present on Rikers Island.

40. Upon information and belief, during plaintiff's time as an employee at Rikers Island, Defendants were aware that cancer causing toxins were present at Rikers Island.

41. Upon information and belief, during plaintiff's time as an employee at Rikers Island, Defendants performed testing of the soil, air and water.

42. Upon information and belief, during plaintiff's time as an employee at Riker's Island, Defendants performed testing of the soil, air and water that indicated that cancer causing toxins were present on Rikers Island.

43. At the present time, plaintiff is aware of approximately 80 retired and current employees of Riker's Island have been diagnosed with cancer.

44. That the deprivation of plaintiff's constitutional rights was the result of the CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of depriving life, liberty and the pursuit of happiness to those present on Riker's Island.

45. That the deprivation of plaintiff's constitutional rights was the result of the CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS

NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of violating the due process rights of those present on Riker's Island.

46. All defendants, THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF CORRECTIONS, BERNARD B. KERIK, GARY M. LANIGAN, WILLIAM J. FRASER, MARTIN F. HORN, JOHN J. ANTONELLI, DORA B. SCHIRO, and THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE acted under pretense and color of state law and in their individual and official capacities and within the scope of their employment. Said acts by said defendants were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said defendants acted willfully, knowingly, and with the specific intent to deprive plaintiffs of their constitutional rights secured by 42 U.S.C. §1983, and by the Fourth, Fifth, and Fourteenth amendments to the United States Constitution.

47. Exposure of plaintiff to toxins and carcinogens deprive the plaintiff of his Constitutional rights to life, liberty and the pursuit of happiness and substantive and procedural due process under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution.

48. At all times relevant hereto, defendant CITY OF NEW YORK caused, allowed and permitted persons legally upon said premises to be exposed to toxic, cancerous substances which are present at said premises.

49. At all times relevant hereto, defendant CITY OF NEW YORK instituted and continues to enforce a policy, practice and custom causing,

permitting, allowing and requiring plaintiff to be exposed to toxic, cancerous substances which are present at the said premises.

50. Each and all of the acts of the defendants alleged herein were done by the defendants, their agents, servants and/or employees, and each of them, not as individuals, but under the color and pretense of the statutes, ordinances, regulations, customs and usages of the State of New York, the City of New York and the County of Bronx.

51. That from approximately October, 1993 to September, 2007, the plaintiff, **ROBERT BARLEY**, was lawfully and properly present upon the premises mentioned herein.

52. Commencing approximately October, 1993 to September, 2007, plaintiff **ROBERT BARLEY** was exposed to toxic, cancerous substances which are present at said premises.

53. That commencing approximately October, 1993 to September, 2007, and prior and subsequent thereto, the **CITY OF NEW YORK**, in violation of 42 U.S.C. § 1983 caused the plaintiff to be injured and damaged in causing, allowing and permitting plaintiff to be exposed to toxic, cancerous substances which are present at the premises mentioned.

54. The **CITY OF NEW YORK**, its agents, servants and/or employees caused, permitted, allowed and required plaintiff to be exposed to toxic, cancerous substances which are present at Riker's Island, Bronx, NY. Upon information and belief, defendants participated in the enforcement of

the policy and/or knowingly or recklessly failed to prevent enforcement of the plainly unconstitutional policy.

55. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to operate, maintain, manage, control, repair, renovate supervise and inspect the said premises herein.

56. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to operate, maintain, manage, control, repair, renovate, supervise and inspect the said premises in a reasonably safe and suitable condition and repair.

57. As a result of the aforesaid plaintiff **ROBERT BARLEY** was exposed to toxic, cancerous substances which are present at the premises mentioned and thereby deprived of his rights, liberties and freedoms under color of State Law in violation of 42 U.S.C. §1983.

58. As a further result of the deprivation of plaintiff **ROBERT BARLEY's** right to be free from the deprivation of rights guaranteed to him by the Fourth, Fifth and Fourteenth Amendment to the United States Constitution, he was caused to suffer injury and damage both mentally and physically, severe nervous shock and emotional distress and illness.

59. From on or about October, 1993 to 2007 in violation of the rights, privileges and immunities guaranteed to him under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution and under color of State law, the defendant **CITY OF NEW YORK** caused, permitted, allowed

and required plaintiff to be exposed to toxic cancerous substances which are present at said premises, in violation of 42 U.S.C. Section 1983.

60. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to take the necessary precautions and remedies to render the said premises habitable and safe for occupancy.

61. That at all times mentioned herein, the defendant CITY OF NEW YORK had a duty to warn persons of the hazardous and dangerous conditions existing at said premises.

62. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to comply with the New York City Health Code and other applicable sections, regulations and statutes under New York State, local and federal law.

63. That at all times mentioned herein, toxins and/or carcinogens were present upon said premises.

64. Throughout the course of plaintiff's employment, Defendants conducted testing of the soil, water and air that indicated that toxins and/or carcinogens were present at Rikers Island.

65. Defendants represented to plaintiff that there were not any toxins and/or carcinogens present at Rikers Island.

66. Defendants knowingly provided false information to plaintiff as to the presence of toxin and/or carcinogens at Rikers Island.

67. As a result of the false information that Defendants provided to plaintiff, plaintiff has been harmed.

68. That at all times mentioned herein, toxins and/or carcinogens were present upon said premises and were known or should have been known to be present upon said premises.

69. That at all times mentioned herein, said carcinogens and/or toxins were caused, permitted and allowed to be and remain upon said premises.

70. That at various and diverse times from on or about 1993 to the present and for a period of time prior and subsequent thereto, there existed a dangerous, defective and unsafe condition, including the presence of carcinogens and/or toxins, upon said the premises.

71. That at various and diverse times from 1993 and for a period of time prior and subsequent thereto, the defendants maintained a dangerous, defective and unsafe condition, including the presence of carcinogens and/or toxins upon said premises.

72. That at various and diverse times from 1993 and for a period of time prior and subsequent thereto the defendants, their agents, servants and/or employees created a dangerous, hazardous and unsafe condition, including the presence of carcinogens and/or toxins upon said premises.

73. At all times mentioned herein, it was the duty of the defendants to maintain the premises in a reasonably safe and proper condition and free of dangerous, hazardous, and unsafe conditions, including the presence of carcinogens and/or toxins upon said premises.

74. At all times mentioned herein, it was the duty of the defendants to maintain the premises in a reasonably safe condition for use by members of the general public.

75. That at all times mentioned herein, such culpable conduct was a proximate cause of the plaintiff's serious injuries.

76. That at all times relevant hereto, it was the duty of the defendants their servants, agents, and/or employees to conduct and supervise the maintenance, renovation, inspection, and repair operations at said premises in a lawful fashion to prevent the presence of carcinogens and/or toxins at said premises.

77. That carcinogens and/or toxins were present at said premises, from the time the plaintiff **ROBERT BARLEY** was employed there, which was approximately from October, 1993 until September, 2007.

78. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to operate, maintain, manage, supervise and control the aforesaid premises in a reasonable and safe condition.

79. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to take the necessary precautions and remedies to render the said premises habitable and safe for occupancy.

80. That at all times mentioned herein, the defendants, their agents, servants and/or employees failed to warn persons of the hazardous and dangerous conditions existing at said premises.

81. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to comply with the New York City Health Code and other applicable sections, regulations and statutes under New York State, local and federal law.

82. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to conduct and supervise the maintenance, renovation, inspection and repair operations at said premises in a lawful fashion to prevent the presence of carcinogens and/or toxins at said premises.

83. Although defendants knew or should have known of the fact that toxic cancerous substances were present at the said premises, the defendant **CITY OF NEW YORK** has not taken any steps or made any efforts to halt this course of conduct, to make redress to the plaintiff or other citizens injured thereby.

84. The unlawful and illegal conduct of the defendants, their agents, servants and/or employees to cause, allow and permit the exposure of plaintiff to toxins and carcinogens deprived the plaintiff of his Constitutional rights to life, liberty and the pursuit of happiness and substantive and procedural due process under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution.

85. That by reason of the foregoing, this plaintiff was severely injured and damaged, rendered sick, sore, lame and disabled, sustained severe nervous shock and mental anguish, great physical pain and emotional upset, has suffered and continues to suffer serious and extreme mental and emotional anguish, distress and psychological damages and difficulties, some of which injuries are permanent in nature and duration, and plaintiffs will be permanently caused to suffer pain, inconvenience and other effects of such injuries; plaintiffs incurred and in the future will necessarily incur further hospital and/or medical expenses in an effort to be cured of said injuries; and plaintiffs have suffered and in the future will necessarily suffer additional loss of time and earnings from employment; and plaintiffs will be unable to pursue the usual duties with the same degree of efficiency as prior to this occurrence, all to plaintiffs' great damage.

86. That commencing on or about October, 1993 to September, 2007, in violation of the rights, privileges and immunities guaranteed to him under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and under the color of State law, the defendants acted individually and in concert causing the plaintiff to have been injured and damaged in an amount exceeding the jurisdictional limit of this Court, to be determined upon the trial of this action.

87. That the negligence of the defendants **CITY OF NEW YORK**, its agents, servants and/or employees consisted of the following: in the negligent, careless and reckless ownership, operation, management,

maintenance and control of the aforesaid premises in that they knowingly, and for a long and unreasonable length of time, caused and allowed the aforesaid premises to be maintained in unsafe, improper and unsuitable condition so as to cause carcinogens and/or toxins and harmful substances to be, become and remain at said premises; in failing to provide plaintiff herein with a safe area in which to work; in failing to give warning to the plaintiff of the unlawful, dangerous, hazardous, unsafe and poisonous condition thereat; in hiring inept, incompetent, inadequate, unskilled and insufficient contractors; in permitting, causing and/or allowing a dangerous and hazardous condition to be, remain and exist upon the premises; in causing, allowing and permitting the premises to be, become and remain uninhabitable and unsafe; in causing, allowing and permitting said carcinogens and/or toxins to be and remain upon said premises when it was known or should have been known that they could cause harm to those persons on said premises; in failing to inspect, timely inspect and/or properly inspect the aforesaid premises; in failing to repair, timely repair and/or properly repair and maintain the aforesaid premises although the defendants had notice or should have had notice of the unsafe conditions complained of herein; in negligently and carelessly repairing and maintaining the premises in such a manner and under such control so as to cause the occurrence complained of herein; in violating statutory obligations; in violating the Health Code and other applicable sections, regulations and statutes under New York State, local and federal law; in providing improper, incompetent and insufficient supervision; in

knowingly permitting said carcinogens and/or toxins to remain for an unreasonable period of time; in failing to take the proper and necessary steps to prevent the happening of the occurrences as herein set forth; and in otherwise being negligent and careless in the premises; in depriving plaintiff **ROBERT BARLEY** of rights guaranteed to him by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

88. That as a result of the foregoing, the plaintiff **ROBERT BARLEY** was caused to sustain severe and permanent personal injuries to become sick, sore, lame and disabled, sustained injuries to various portions of his body and mind, and to suffer great pain and anguish in his body and mind.

89. That this action falls within one or more of the exceptions set forth in CPLR Article 16.

90. That by reason of the foregoing, plaintiff **ROBERT BARLEY**, has sustained damages in an amount in excess of the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction, in an amount to be determined upon the trial of this action.

WHEREFORE, plaintiffs demand judgment against the defendants on the defendant in an amount which exceeds the monetary jurisdictional limits of any and all lower courts which would otherwise have jurisdiction herein, in an amount to be determined upon the trial of this action, together with interest and the costs and disbursements of this action, and with interest from the date of this occurrence.

Dated: New York, New York
August 5, 2011

Yours, etc.

BURNS & HARRIS, ESQS.
Attorneys for Plaintiff

BY: _____
CHRISTOPHER J. DONADIO
233 Broadway, Suite 900
New York, NY 10279
212 393-1000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Index # 11 CV 3277 (RJH)

-----X
MARVA HARRISON

Plaintiffs

AMENDED
VERIFIED
COMPLAINT

Against

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF CORRECTIONS,
BERNARD B. KERIK, GARY M. LANIGAN,
WILLIAM J. FRASER, MARTIN F. HORN,
JOHN J. ANTONELLI, and
DORA B. SCHRIRO, CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Plaintiff demands
a Jury

Defendants
-----X

Plaintiffs, complaining of the Defendants through their attorneys,
BURNS & HARRIS, ESQS., alleges upon information and belief:

JURISDICTION

1. Jurisdiction of this Court is founded upon 28 U.S.C. Subsections 1331, 1343(3) and (4) and 42 U.S.C. Section 1983 and 1988. The matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. Pendant jurisdiction is invoked pursuant to 28 U.S.C. Subsection 1367(a)

THE PARTIES

2. Defendant **CITY OF NEW YORK** is a municipal corporation existing under and by virtue of the laws of the State of New York.

3. Defendant **CITY OF NEW YORK** is a duly constituted municipal corporation organized and existing under the laws of the State of New York.

At all times relevant hereto, the defendant **CITY OF NEW YORK**, action

through the NYC Department of Corrections ("DOC") was responsible for the policy, practice, supervision, implementation and conduct of all DOC matters and was responsible for the appointment, training, supervision, and conduct of all DOC personnel. In addition, at all relevant times, defendant **CITY OF NEW YORK** was responsible for enforcing the rules of the DOC, and for ensuring that DOC personnel obeyed the Constitution and laws of the United States and of the State of New York.

4. Defendant BERNARD KERIK was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the **CITY OF NEW YORK** Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner BERNARD KERIK is sued in his individual and official capacity.

5. Defendant GARY M. LANIGAN was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the **CITY OF NEW YORK** Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner GARY M. LANIGAN is sued in his individual and official capacity.

6. Defendant WILLIAM J. FRASER was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect

to the **CITY OF NEW YORK** Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner WILLIAM J. FRASER is sued in his individual and official capacity.

7. Defendant MARTIN F. HORN was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the **CITY OF NEW YORK** Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner MARTIN F. HORN is sued in his individual and official capacity.

8. Defendant JOHN J. ANTONELLI was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the **CITY OF NEW YORK** Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner JOHN J. ANTONELLI is sued in his individual and official capacity.

9. Defendant DORA B. SCHIRO was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the **CITY OF NEW YORK** Agency under her control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF

CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner DORA B. SCHRIRO is sued in her individual and official capacity.

10. Defendant NEW YORK CITY DEPARTMENT OF CORRECTIONS is an agency of THE CITY OF NEW YORK, responsible for overseeing, organizing, administering and running the City's detention facilities, including RIKERS ISLAND, in which among other people, Corrections Officers are employed. At all times relevant hereto, defendant DOC, together with THE CITY OF NEW YORK, was responsible for the policy, practice, supervision, implementation and conduct of all DOC matters and was responsible for the appointment, training, supervision and conduct of all DOC personnel. In addition, at all relevant times, defendant DOC, together with THE CITY OF NEW YORK, was responsible for enforcing the rules of the DOC, and for ensuring that DOC personnel obeyed the Constitution and laws of the United States and of the State of New York.

11. At all times relevant hereto, Defendant CITY OF NEW YORK operated, maintained, managed, supervised and controlled RIKERS ISLAND LANDFILL and RIKERS ISLAND CORRECTIONAL FACILITY as part of and in conjunction with its municipal functions.

12. That plaintiff claims applicability of CPLR §214-(c)(4).

**AS AND FOR A FIRST CAUSE OF ACTION
(POLICY OF NON-FEASANCE IN THE
PROTECTION OF PLAINTIFF'S CIVIL RIGHTS)**

13. This is a Civil Rights action brought pursuant to the United States Constitution, as amended, and the Civil Rights Act of 1871, 42 U.S.C §1983 and the New York State Constitution and seeks redress for defendants' deprivation, under color of State law, of plaintiff's rights, privileges, and immunities secured by the Constitution and laws of the United States and by the new York State Constitution.

14. That at all times mentioned herein, and from on or about 1999 to present plaintiff **MARVA HARRISON** worked as a Public Health Education for the NYC Department of Health at Rikers Island Correctional Facility, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

15. That from on or about 1999 to present, plaintiff **MARVA HARRISON** was exposed to carcinogens and/or toxins at and upon said premises.

16. **RIKERS ISLAND CORRECTIONAL FACILITY** opened in 1932 as a prison on Rikers Island.

17. At the time of the opening of the Prison in 1932, Rikers Island was approximately 90 acres in size.

18. After the opening of the prison, the City of New York increased the size of Rikers Island to approximately 415 acres.

19. The land of Rikers Island was expanded from 90 acres to 415 acres through the creation of a landfill.

20. The landfill was comprised of garbage from New York City.

21. The landfill was comprised of various toxins and carcinogens.

22. That the plaintiff **MARVA HARRISON** was not diagnosed with breast cancer until on or about June, 2008.

23. At all times mentioned herein, defendants have instituted and are continuing to enforce a policy, practice and custom to cause, permit, allow and require persons legally upon said premises to be exposed to toxic, cancerous substances which are present at Rikers Island, 10-10 Hazen Street, Bronx, NY.

24. Defendants had a policy, practice and custom of causing, permitting, allowing and requiring plaintiff to be exposed to toxic, carcinogenic substances while legally upon said premises.

25. That the deprivation of plaintiff's constitutional rights was the result of the **CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S** custom and/or policy of concealing the known existence of cancer causing toxins present at Riker's Island.

26. That the deprivation of plaintiff's constitutional rights was the result of the **CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S** custom and/or policy of misrepresenting to plaintiff that Riker's Island was a safe and secure work environment.

27. Upon information and belief, during plaintiff's time as an employee at Riker's Island he was told by his supervisors that there were not any toxic, hazardous or cancer causing toxins located on Riker's Island.

28. Upon information and belief, during plaintiff's time as an employee at Riker's Island he was provided internal memorandum indicating that it was safe to work at Riker's Island.

29. Upon information and belief, during plaintiff's time as an employee at Riker's Island he was provided internal memorandum indicating that there were no carcinogens present on Rikers Island.

30. Upon information and belief, during plaintiff's time as an employee at Rikers Island, Defendants were aware that cancer causing toxins were present at Rikers Island.

31. Upon information and belief, during plaintiff's time as an employee at Rikers Island, Defendants performed testing of the soil, air and water.

32. Upon information and belief, during plaintiff's time as an employee at Riker's Island, Defendants performed testing of the soil, air and water that indicated that cancer causing toxins were present on Rikers Island.

33. At the present time, plaintiff is aware of approximately 80 retired and current employees of Riker's Island have been diagnosed with cancer.

34. That the deprivation of plaintiff's constitutional rights was the result of the **CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS**

NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of depriving life, liberty and the pursuit of happiness to those present on Riker's Island.

35. That the deprivation of plaintiff's constitutional rights was the result of the **CITY OF NEW YORK**, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of violating the due process rights of those present on Riker's Island.

36. All defendants, **THE CITY OF NEW YORK**, NEW YORK CITY DEPARTMENT OF CORRECTIONS, BERNARD B. KERIK, GARY M. LANIGAN, WILLIAM J. FRASER, MARTIN F. HORN, JOHN J. ANTONELLI, DORA B. SCHIRO, and THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE acted under pretense and color of state law and in their individual and official capacities and within the scope of their employment. Said acts by said defendants were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said defendants acted willfully, knowingly, and with the specific intent to deprive plaintiffs of their constitutional rights secured by 42 U.S.C. §1983, and by the Fourth, Fifth, and Fourteenth amendments to the United States Constitution.

37. Exposure of plaintiff to toxins and carcinogens deprives the plaintiff of her Constitutional rights to life, liberty and the pursuit of happiness

and substantive and procedural due process under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution.

38. At all times relevant hereto, defendant **CITY OF NEW YORK** caused, allowed and permitted persons legally upon said premises to be exposed to toxic, cancerous substances which are present at said premises.

39. At all times relevant hereto, defendant **CITY OF NEW YORK** instituted and continues to enforce a policy, practice and custom causing, permitting, allowing and requiring plaintiff to be exposed to toxic, cancerous substances which are present at the said premises.

40. Each and all of the acts of the defendants alleged herein were done by the defendants, their agents, servants and/or employees, and each of them, not as individuals, but under the color and pretense of the statutes, ordinances, regulations, customs and usages of the State of New York, the **CITY OF NEW YORK** and the County of Bronx.

41. That from approximately 1999 to present, the plaintiff, **MARVA HARRISON**, was lawfully and properly present upon the premises mentioned herein.

42. Commencing approximately 1999 to present, plaintiff **MARVA HARRISON** was exposed to toxic, cancerous substances which are present at said premises.

43. That commencing approximately 1999 to present, and prior and subsequent thereto, the **CITY OF NEW YORK**, in violation of 42 U.S.C. §1983 caused the plaintiff to be injured and damaged in causing, allowing and

permitting plaintiff to be exposed to toxic, cancerous substances which are present at the premises mentioned.

44. The **CITY OF NEW YORK**, its agents, servants and/or employees caused, permitted, allowed and required plaintiff to be exposed to toxic, cancerous substances which are present at Riker's Island, Bronx, NY. Upon information and belief, defendants participated in the enforcement of the policy and/or knowingly or recklessly failed to prevent enforcement of the plainly unconstitutional policy.

45. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to operate, maintain, manage, control, repair, renovate supervise and inspect the said premises herein.

46. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to operate, maintain, manage, control, repair, renovate, supervise and inspect the said premises in a reasonably safe and suitable condition and repair.

47. As a result of the aforesaid, plaintiff **MARVA HARRISON** was exposed to toxic, cancerous substances which are present at the premises mentioned and thereby deprived of his rights, liberties and freedoms under color of State Law in violation of 42 U.S.C. §1983.

48. As a further result of the deprivation of plaintiff **MARVA HARRISON's** right to be free from the deprivation of rights guaranteed to him by the Fourth, Fifth and Fourteenth Amendment to the United States

Constitution, she was caused to suffer injury and damage both mentally and physically, severe nervous shock and emotional distress and illness.

49. From on or about 1999 to present in violation of the rights, privileges and immunities guaranteed to her under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution and under color of State law, the defendant **CITY OF NEW YORK** caused, permitted, allowed and required plaintiff to be exposed to toxic cancerous substances which are present at said premises, in violation of 42 U.S.C. Section 1983.

50. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to take the necessary precautions and remedies to render the said premises habitable and safe for occupancy.

51. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to warn persons of the hazardous and dangerous conditions existing at said premises.

52. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to comply with the New York City Health Code and other applicable sections, regulations and statutes under New York State, local and federal law.

53. That at all times mentioned herein, toxins and/or carcinogens were present upon said premises.

54. That at all times mentioned herein, toxins and/or carcinogens were present upon said premises and were known or should have been known to be present upon said premises.

55. That at all times mentioned herein, said carcinogens and/or toxins were caused, permitted and allowed to be and remain upon said premises.

56. That at various and diverse times from on or about 1999 to the present and for a period of time prior and subsequent thereto, there existed a dangerous, defective and unsafe condition, including the presence of carcinogens and/or toxins, upon said the premises.

57. That at various and diverse times from on or about 1999 to the present and for a period of time prior and subsequent thereto, the defendants maintained a dangerous, defective and unsafe condition, including the presence of carcinogens and/or toxins upon said premises.

58. That at various and diverse times from on or about 1999 to the present and for a period of time prior and subsequent thereto the defendants, their agents, servants and/or employees created a dangerous, hazardous and unsafe condition, including the presence of carcinogens and/or toxins upon said premises.

59. At all times mentioned herein, it was the duty of the defendants to maintain the premises in a reasonably safe and proper condition and free of dangerous, hazardous, and unsafe conditions, including the presence of carcinogens and/or toxins upon said premises.

60. At all times mentioned herein, it was the duty of the defendants to maintain the premises in a reasonably safe condition for use by members of the general public.

61. That at all times mentioned herein, such culpable conduct was a proximate cause of the plaintiff's serious injuries.

62. That at all times relevant hereto, it was the duty of the defendants their servants, agents, and/or employees to conduct and supervise the maintenance, renovation, inspection, and repair operations at said premises in a lawful fashion to prevent the presence of carcinogens and/or toxins at said premises.

63. That carcinogens and/or toxins were present at said premises, from the time the plaintiff **MARVA HARRISON** was employed there, which was approximately from 1999 to present.

64. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to operate, maintain, manage, supervise and control the aforesaid premises in a reasonable and safe condition.

65. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to take the necessary precautions and remedies to render the said premises habitable and safe for occupancy.

66. That at all times mentioned herein, the defendants, their agents, servants and/or employees failed to warn persons of the hazardous and dangerous conditions existing at said premises.

67. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to comply with the New York

City Health Code and other applicable sections, regulations and statutes under New York State, local and federal law.

68. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to conduct and supervise the maintenance, renovation, inspection and repair operations at said premises in a lawful fashion to prevent the presence of carcinogens and/or toxins at said premises.

69. Although defendants knew or should have known of the fact that toxic cancerous substances were present at the said premises, the defendants have not taken any steps or made any efforts to halt this course of conduct, to make redress to the plaintiff or other citizens injured thereby.

70. The unlawful and illegal conduct of the defendants, their agents, servants and/or employees to cause, allow and permit the exposure of plaintiff to toxins and carcinogens deprived the plaintiff of her Constitutional rights to life, liberty and the pursuit of happiness and substantive and procedural due process under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution.

71. That by reason of the foregoing, this plaintiff was severely injured and damaged, rendered sick, sore, lame and disabled, sustained severe nervous shock and mental anguish, great physical pain and emotional upset, has suffered and continues to suffer serious and extreme mental and emotional anguish, distress and psychological damages and difficulties, some of which injuries are permanent in nature and duration, and plaintiffs will be

permanently caused to suffer pain, inconvenience and other effects of such injuries; plaintiffs incurred and in the future will necessarily incur further hospital and/or medical expenses in an effort to be cured of said injuries; and plaintiffs have suffered and in the future will necessarily suffer additional loss of time and earnings from employment; and plaintiffs will be unable to pursue the usual duties with the same degree of efficiency as prior to this occurrence, all to plaintiffs' great damage.

72. That commencing on or about 1999 to present, in violation of the rights, privileges and immunities guaranteed to her under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and under the color of State law, the defendants acted individually and in concert causing the plaintiff to have been injured and damaged in an amount exceeding the jurisdictional limit of this Court, to be determined upon the trial of this action.

73. That the negligence of the defendants their agents, servants and/or employees consisted of the following: in the negligent, careless and reckless ownership, operation, management, maintenance and control of the aforesaid premises in that they knowingly, and for a long and unreasonable length of time, caused and allowed the aforesaid premises to be maintained in unsafe, improper and unsuitable condition so as to cause carcinogens and/or toxins and harmful substances to be, become and remain at said premises; in failing to provide plaintiff herein with a safe area in which to work; in failing to give warning to the plaintiff of the unlawful, dangerous, hazardous, unsafe and poisonous condition thereat; in hiring inept,

incompetent, inadequate, unskilled and insufficient contractors; in permitting, causing and/or allowing a dangerous and hazardous condition to be, remain and exist upon the premises; in causing, allowing and permitting the premises to be, become and remain uninhabitable and unsafe; in causing, allowing and permitting said carcinogens and/or toxins to be and remain upon said premises when it was known or should have been known that they could cause harm to those persons on said premises; in failing to inspect, timely inspect and/or properly inspect the aforesaid premises; in failing to repair, timely repair and/or properly repair and maintain the aforesaid premises although the defendants had notice or should have had notice of the unsafe conditions complained of herein; in negligently and carelessly repairing and maintaining the premises in such a manner and under such control so as to cause the occurrence complained of herein; in violating statutory obligations; in violating the Health Code and other applicable sections, regulations and statutes under New York State, local and federal law; in providing improper, incompetent and insufficient supervision; in knowingly permitting said carcinogens and/or toxins to remain for an unreasonable period of time; in failing to take the proper and necessary steps to prevent the happening of the occurrences as herein set forth; and in otherwise being negligent and careless in the premises; in depriving plaintiff **MARVA HARRISON** of rights guaranteed to him by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

74. That as a result of the foregoing, the plaintiff **MARVA HARRISON** was caused to sustain severe and permanent personal injuries to become sick, sore, lame and disabled, sustained injuries to various portions of his body and mind, and to suffer great pain and anguish in his body and mind.

75. That this action falls within one or more of the exceptions set forth in CPLR Article 16.

76. That by reason of the foregoing, plaintiff **MARVA HARRISON**, has sustained damages in an amount in excess of the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction, in an amount to be determined upon the trial of this action.

WHEREFORE, plaintiffs demand judgment against the defendants in an amount which exceeds the monetary jurisdictional limits of any and all lower courts which would otherwise have jurisdiction herein, in an amount to be determined upon the trial of this action, together with interest and the costs and disbursements of this action, and with interest from the date of this occurrence.

Additionally, plaintiff demands in respect of all Causes of Action, the additional total sum of **\$5,000,000.00** in punitive damages and attorney fees pursuant to 42 U.S.C. §1988.

Dated: New York, New York
May 12, 2011

Yours, etc.
BURNS & HARRIS, ESQS.
Attorneys for Plaintiff

BY: _____
CHRISTOPHER J. DONADIO
233 Broadway, Suite 900
New York, NY 10279
212 393-1000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Index # 11 CV 2149 (RJH)

-----X
MARIA NEE

Plaintiffs

AMENDED
VERIFIED
COMPLAINT

Against

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF CORRECTIONS,
BERNARD B. KERIK, GARY M. LANIGAN,
WILLIAM J. FRASER, MARTIN F. HORN,
JOHN J. ANTONELLI, and
DORA B. SCHRIRO, CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Defendants
-----X

Plaintiffs, complaining of the Defendants through their attorneys,
BURNS & HARRIS, ESQS., alleges upon information and belief:

JURISDICTION

1. The occurrences which are the subject of this action took place
in the County of Bronx.

THE PARTIES

2. Defendant CITY OF NEW YORK is a municipal corporation
existing under and by virtue of the laws of the State of New York.

3. Defendant CITY OF NEW YORK is a duly constituted municipal
corporation organized and existing under the laws of the State of New York.

At all times relevant hereto, the defendant CITY OF NEW YORK, action
through the NYC Department of Corrections ("DOC") was responsible for the
policy, practice, supervision, implementation and conduct of all DOC matters

and was responsible for the appointment, training, supervision, and conduct of all DOC personnel. In addition, at all relevant times, defendant CITY OF NEW YORK was responsible for enforcing the rules of the DOC, and for ensuring that DOC personnel obeyed the Constitution and laws of the United States and of the State of New York.

4. Defendant BERNARD KERIK was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner BERNARD KERIK is sued in his individual and official capacity.

5. Defendant GARY M. LANIGAN was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner GARY M. LANIGAN is sued in his individual and official capacity.

6. Defendant WILLIAM J. FRASER was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF

CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner WILLIAM J. FRASER is sued in his individual and official capacity.

7. Defendant MARTIN F. HORN was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner MARTIN F. HORN is sued in his individual and official capacity.

8. Defendant JOHN J. ANTONELLI was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner JOHN J. ANTONELLI is sued in his individual and official capacity.

9. Defendant DORA B. SCHIRO was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under her control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of

New York, City and State of New York. Commissioner DORA B. SCHIRO is sued in her individual and official capacity.

10. Defendant NEW YORK CITY DEPARTMENT OF CORRECTIONS is an agency of THE CITY OF NEW YORK, responsible for overseeing, organizing, administering and running the City's detention facilities, including RIKERS ISLAND, in which among other people, Corrections Officers are employed. At all times relevant hereto, defendant DOC, together with THE CITY OF NEW YORK, was responsible for the policy, practice, supervision, implementation and conduct of all DOC matters and was responsible for the appointment, training, supervision and conduct of all DOC personnel. In addition, at all relevant times, defendant DOC, together with THE CITY OF NEW YORK, was responsible for enforcing the rules of the DOC, and for ensuring that DOC personnel obeyed the Constitution and laws of the United States and of the State of New York.

11. At all times relevant hereto, Defendant **CITY OF NEW YORK** operated, maintained, managed, supervised and controlled RIKERS ISLAND LANDFILL and RIKERS ISLAND CORRECTIONAL FACILITY as part of and in conjunction with its municipal functions.

12. That plaintiff claims applicability of CPLR §214-(c)(4).

AS AND FOR A FIRST CAUSE OF ACTION

13. That at all times mentioned herein, and from on or about 1991 until 2008 plaintiff MARIA NEE worked as a Corrections Officer at Rikers

Island Correctional Facility, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

14. That from on or about 1991 to 2008, plaintiff MARIA NEE was exposed to carcinogens and/or toxins at and upon said premises.

15. That the plaintiff MARIA NEE was not diagnosed with cancer until on or about February 22, 2010.

16. That at all times mentioned herein, the defendant **CITY OF NEW YORK** was the owner of premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

17. That at all times mentioned herein, the defendant **CITY OF NEW YORK** operated premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

18. That at all times mentioned herein, the defendant **CITY OF NEW YORK** maintained premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

19. That at all times mentioned herein, the defendant **CITY OF NEW YORK** managed premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

20. That at all times mentioned herein, the defendant **CITY OF NEW YORK** controlled premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

21. That at all times mentioned herein, the defendant **CITY OF NEW YORK** supervised premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

22. That at all times mentioned herein, the defendant **CITY OF NEW YORK** renovated premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

23. That at all times mentioned herein, the defendant **CITY OF NEW YORK** repaired premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

24. That at all times mentioned herein, the defendant **CITY OF NEW YORK** inspected premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

25. That at all times mentioned herein, the defendant **CITY OF NEW YORK** hired contractors at premises known as RIKERS ISLAND

CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

26. RIKERS ISLAND CORRECTIONAL FACILITY opened in 1932 as a prison on Rikers Island.

27. At the time of the opening of the Prison in 1932, Rikers Island was approximately 90 acres in size.

28. After the opening of the prison, the City of New York increased the size of Rikers Island to approximately 415 acres.

29. The land of Rikers Island was expanded from 90 acres to 415 acres through the creation of a landfill.

30. The landfill was comprised of garbage from New York City.

31. The landfill was comprised of various toxins and carcinogens.

32. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to operate, maintain, manage, control, repair, renovate supervise and inspect the said premises herein.

33. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to operate, maintain, manage, control, repair, renovate, supervise and inspect the said premises in a reasonably safe and suitable condition and repair.

34. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to take the necessary precautions and remedies to render the said premises habitable and safe for occupancy.

35. That at all times mentioned herein, the defendant CITY OF NEW YORK had a duty to warn persons of the hazardous and dangerous conditions existing at said premises.

36. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to comply with the New York City Health Code and other applicable sections, regulations and statutes under New York State, local and federal law.

37. That at all times mentioned herein, toxins and/or carcinogens were present upon said premises.

38. That at all times mentioned herein, toxins and/or carcinogens were present upon said premises and were known or should have been known to be present upon said premises.

39. That at all times mentioned herein, said carcinogens and/or toxins were caused, permitted and allowed to be and remain upon said premises.

40. That at various and diverse times from on or about 1990 to present and for a period of time prior and subsequent thereto, there existed a dangerous, defective and unsafe condition, including the presence of carcinogens and/or toxins, upon said the premises.

41. That at various and diverse times from 1991 to present and for a period of time prior and subsequent thereto, the defendants maintained a dangerous, defective and unsafe condition, including the presence of carcinogens and/or toxins upon said premises.

42. That at various and diverse times from 1991 to present and for a period of time prior and subsequent thereto the defendants, their agents, servants and/or employees created a dangerous, hazardous and unsafe condition, including the presence of carcinogens and/or toxins upon said premises.

43. It was the duty of the defendants to maintain the premises in a reasonably safe and proper condition and free of dangerous, hazardous, and unsafe conditions, including the presence of carcinogens and/or toxins upon said premises.

44. It was the duty of the defendants to maintain the premises in a reasonably safe condition for use by members of the general public.

45. That at all times mentioned herein, such culpable conduct was a proximate cause of the plaintiff's serious injuries.

46. That the plaintiff **MARIA NEE**, was diagnosed with breast cancer on or about February 22, 2010.

47. That at all times relevant hereto, it was the duty of the defendants their servants, agents, and/or employees to conduct and supervise the maintenance, renovation, inspection, and repair operations at said premises in a lawful fashion to prevent the presence of carcinogens and/or toxins at said premises.

48. That carcinogens and/or toxins were present at said premises, from the time the plaintiff **MARIA NEE** was employed there, which was approximately from 1991 to 2008.

49. That at all times mentioned herein, the defendant, its agents, servants and/or employees breached their duty to operate, maintain, manage, supervise and control the aforesaid premises in a reasonable and safe condition.

50. That at all times mentioned herein, the defendant, its agents, servants and/or employees breached their duty to take the necessary precautions and remedies to render the said premises habitable and safe for occupancy.

51. That at all times mentioned herein, the defendant, its agents, servants and/or employees failed to warn persons of the hazardous and dangerous conditions existing at said premises.

52. Upon information and belief, during plaintiff's time as an employee at Riker's Island he was told by his supervisors that there were not any toxic, hazardous or cancer causing toxins located on Riker's Island.

53. Upon information and belief, during plaintiff's time as an employee at Riker's Island he was provided internal memorandum indicating that it was safe to work at Riker's Island.

54. Upon information and belief, during plaintiff's time as an employee at Riker's Island he was provided internal memorandum indicating that there were no carcinogens present on Rikers Island.

55. Upon information and belief, during plaintiff's time as an employee at Rikers Island, Defendants were aware that cancer causing toxins were present at Rikers Island.

56. Upon information and belief, during plaintiff's time as an employee at Rikers Island, Defendants performed testing of the soil, air and water.

57. Upon information and belief, during plaintiff's time as an employee at Riker's Island, Defendants performed testing of the soil, air and water that indicated that cancer causing toxins were present on Rikers Island.

58. At the present time, plaintiff is aware of approximately 80 retired and current employees of Riker's Island have been diagnosed with cancer.

59. That at all times mentioned herein, the defendant, its agents, servants and/or employees breached their duty to comply with the New York City Health Code and other applicable sections, regulations and statutes under New York State, local and federal law.

60. That at all times mentioned herein, the defendant, its agents, servants and/or employees breached their duty to conduct and supervise the maintenance, renovation, inspection and repair operations at said premises in a lawful fashion to prevent the presence of carcinogens and/or toxins at said premises.

61. That the negligence of the defendant **CITY OF NEW YORK**, its agents, servants and/or employees consisted of the following: in the negligent, careless and reckless ownership, operation, management, maintenance and control of the aforesaid premises in that they knowingly, and for a long and unreasonable length of time, caused and allowed the aforesaid premises to be maintained in unsafe, improper and unsuitable

condition so as to cause carcinogens and/or toxins and harmful substances to be, become and remain at said premises; in failing to provide plaintiff herein with a safe area in which to work; in failing to give warning to the plaintiff of the unlawful, dangerous, hazardous, unsafe and poisonous condition thereat; in hiring inept, incompetent, inadequate, unskilled and insufficient contractors; in permitting, causing and/or allowing a dangerous and hazardous condition to be, remain and exist upon the premises; in causing, allowing and permitting the premises to be, become and remain uninhabitable and unsafe; in causing, allowing and permitting said carcinogens and/or toxins to be and remain upon said premises when it was known or should have been known that they could cause harm to those persons on said premises; in failing to inspect, timely inspect and/or properly inspect the aforesaid premises; in failing to repair, timely repair and/or properly repair and maintain the aforesaid premises although the defendants had notice or should have had notice of the unsafe conditions complained of herein; in negligently and carelessly repairing and maintaining the premises in such a manner and under such control so as to cause the occurrence complained of herein; in violating statutory obligations; in violating the Health Code and other applicable sections, regulations and statutes under New York State, local and federal law; in providing improper, incompetent and insufficient supervision; in knowingly permitting said carcinogens and/or toxins to remain for an unreasonable period of time; in failing to take the proper and necessary steps

to prevent the happening of the occurrences as herein set forth; and in otherwise being negligent and careless in the premises.

62. That as a result of the foregoing, the plaintiff **MARIA NEE** was caused to sustain severe and permanent personal injuries to become sick, sore, lame and disabled, sustained injuries to various portions of her body and mind, and to suffer great pain and anguish in her body and mind.

63. That this action falls within one or more of the exceptions set forth in CPLR Article 16.

64. That by reason of the foregoing, plaintiff **MARIA NEE**, has sustained damages in an amount in excess of the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction, in an amount to be determined upon the trial of this action.

**SECOND CAUSE OF ACTION:
(POLICY OF NON-FEASANCE IN THE
PROTECTION OF PLAINTIFF'S CIVIL RIGHTS)**

65. Plaintiff, **MARIA NEE**, repeats and realleges each and every allegation contained herein, as though the same were set forth at length

66. This is a Civil Rights action brought pursuant to the United States Constitution, as amended, and the Civil Rights Act of 1871, 42 U.S.C §1983 and the New York State Constitution and seeks redress for defendants' deprivation, under color of State law, of plaintiff's rights, privileges, and immunities secured by the Constitution and laws of the United States and by the new York State Constitution.

67. That at all times mentioned herein, and from on or about 1991 to 2008 plaintiff **MARIA NEE** worked as a Corrections Officer at Rikers Island Correctional Facility, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

68. That from on or about 1991 to 2008, plaintiff **MARIA NEE** was exposed to carcinogens and/or toxins at and upon said premises.

69. That the plaintiff **MARIA NEE** was not diagnosed with breast cancer until on or about February 22, 2010.

70. At all times mentioned herein, defendants have instituted and are continuing to enforce a policy, practice and custom to cause, permit, allow and require persons legally upon said premises to be exposed to toxic, cancerous substances which are present at Rikers Island, 10-10 Hazen Street, Bronx, NY.

71. Defendants had a policy, practice and custom of causing, permitting, allowing and requiring plaintiff to be exposed to toxic, carcinogenic substances while legally upon said premises.

72. That the deprivation of plaintiff's constitutional rights was the result of the CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of concealing the known existence of cancer causing toxins present at Riker's Island.

73. That the deprivation of plaintiff's constitutional rights was the result of the CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of misrepresenting to plaintiff that Riker's Island was a safe and secure work environment.

74. That the deprivation of plaintiff's constitutional rights was the result of the CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of depriving life, liberty and the pursuit of happiness to those present on Riker's Island.

75. That the deprivation of plaintiff's constitutional rights was the result of the CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of violating the due process rights of those present on Riker's Island.

76. All defendants, THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF CORRECTIONS, BERNARD B. KERIK, GARY M. LANIGAN, WILLIAM J. FRASER, MARTIN F. HORN, JOHN J. ANTONELLI, DORA B. SCHRIRO, and THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE acted under pretense and color of state

law and in their individual and official capacities and within the scope of their employment. Said acts by said defendants were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said defendants acted willfully, knowingly, and with the specific intent to deprive plaintiffs of their constitutional rights secured by 42 U.S.C. §1983, and by the Fourth, Fifth, and Fourteenth amendments to the United States Constitution.

77. Exposure of plaintiff to toxins and carcinogens deprive the plaintiff of her Constitutional rights to life, liberty and the pursuit of happiness and substantive and procedural due process under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution.

78. At all times relevant hereto, defendant CITY OF NEW YORK caused, allowed and permitted persons legally upon said premises to be exposed to toxic, cancerous substances which are present at said premises.

79. At all times relevant hereto, defendant CITY OF NEW YORK instituted and continues to enforce a policy, practice and custom causing, permitting, allowing and requiring plaintiff to be exposed to toxic, cancerous substances which are present at the said premises.

80. Each and all of the acts of the defendants alleged herein were done by the defendants, their agents, servants and/or employees, and each of them, not as individuals, but under the color and pretense of the statutes, ordinances, regulations, customs and usages of the State of New York, the City of New York and the County of Bronx.

81. That from approximately 1991 to 2008, the plaintiff, **MARIA NEE**, was lawfully and properly present upon the premises mentioned herein.

82. Commencing approximately 1991 to 2008, plaintiff **MARIA NEE** was exposed to toxic, cancerous substances which are present at said premises.

83. That commencing approximately 1991 to 2008, and prior and subsequent thereto, the **CITY OF NEW YORK**, in violation of 42 U.S.C. §1983 caused the plaintiff to be injured and damaged in causing, allowing and permitting plaintiff to be exposed to toxic, cancerous substances which are present at the premises mentioned.

84. The **CITY OF NEW YORK**, its agents, servants and/or employees caused, permitted, allowed and required plaintiff to be exposed to toxic, cancerous substances which are present at Riker's Island, Bronx, NY. Upon information and belief, defendants participated in the enforcement of the policy and/or knowingly or recklessly failed to prevent enforcement of the plainly unconstitutional policy.

85. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to operate, maintain, manage, control, repair, renovate supervise and inspect the said premises herein.

86. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to operate, maintain, manage, control, repair, renovate, supervise and inspect the said premises in a reasonably safe and suitable condition and repair.

87. As a result of the aforesaid plaintiff **MARIA NEE** was exposed to toxic, cancerous substances which are present at the premises mentioned and thereby deprived of his rights, liberties and freedoms under color of State Law in violation of 42 U.S.C. §1983.

88. As a further result of the deprivation of plaintiff **MARIA NEE's** right to be free from the deprivation of rights guaranteed to him by the Fourth, Fifth and Fourteenth Amendment to the United States Constitution, she was caused to suffer injury and damage both mentally and physically, severe nervous shock and emotional distress and illness.

89. From on or about 1991 to 2008 in violation of the rights, privileges and immunities guaranteed to her under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution and under color of State law, the defendant **CITY OF NEW YORK** caused, permitted, allowed and required plaintiff to be exposed to toxic cancerous substances which are present at said premises, in violation of 42 U.S.C. Section 1983.

90. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to take the necessary precautions and remedies to render the said premises habitable and safe for occupancy.

91. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to warn persons of the hazardous and dangerous conditions existing at said premises.

92. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to comply with the New York City Health Code and

other applicable sections, regulations and statutes under New York State, local and federal law.

93. That at all times mentioned herein, toxins and/or carcinogens were present upon said premises.

94. That at all times mentioned herein, toxins and/or carcinogens were present upon said premises and were known or should have been known to be present upon said premises.

95. That at all times mentioned herein, said carcinogens and/or toxins were caused, permitted and allowed to be and remain upon said premises.

96. That at various and diverse times from on or about 1991 to the present and for a period of time prior and subsequent thereto, there existed a dangerous, defective and unsafe condition, including the presence of carcinogens and/or toxins, upon said the premises.

97. That at various and diverse times from 1991 and for a period of time prior and subsequent thereto, the defendants maintained a dangerous, defective and unsafe condition, including the presence of carcinogens and/or toxins upon said premises.

98. That at various and diverse times from 1991 and for a period of time prior and subsequent thereto the defendants, their agents, servants and/or employees created a dangerous, hazardous and unsafe condition, including the presence of carcinogens and/or toxins upon said premises.

99. At all times mentioned herein, it was the duty of the defendants to maintain the premises in a reasonably safe and proper condition and free of dangerous, hazardous, and unsafe conditions, including the presence of carcinogens and/or toxins upon said premises.

100. At all times mentioned herein, it was the duty of the defendants to maintain the premises in a reasonably safe condition for use by members of the general public.

101. That at all times mentioned herein, such culpable conduct was a proximate cause of the plaintiff's serious injuries.

102. That at all times relevant hereto, it was the duty of the defendants their servants, agents, and/or employees to conduct and supervise the maintenance, renovation, inspection, and repair operations at said premises in a lawful fashion to prevent the presence of carcinogens and/or toxins at said premises.

103. That carcinogens and/or toxins were present at said premises, from the time the plaintiff **MARIA NEE** was employed there, which was approximately from 1991 to present.

104. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to operate, maintain, manage, supervise and control the aforesaid premises in a reasonable and safe condition.

105. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to take the necessary

precautions and remedies to render the said premises habitable and safe for occupancy.

106. That at all times mentioned herein, the defendants, their agents, servants and/or employees failed to warn persons of the hazardous and dangerous conditions existing at said premises.

107. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to comply with the New York City Health Code and other applicable sections, regulations and statutes under New York State, local and federal law.

108. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to conduct and supervise the maintenance, renovation, inspection and repair operations at said premises in a lawful fashion to prevent the presence of carcinogens and/or toxins at said premises.

109. Although defendants knew or should have known of the fact that toxic cancerous substances were present at the said premises, the defendants have not taken any steps or made any efforts to halt this course of conduct, to make redress to the plaintiff or other citizens injured thereby.

110. The unlawful and illegal conduct of the defendants, their agents, servants and/or employees to cause, allow and permit the exposure of plaintiff to toxins and carcinogens deprived the plaintiff of her Constitutional rights to life, liberty and the pursuit of happiness and substantive and

procedural due process under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution.

111. That by reason of the foregoing, this plaintiff was severely injured and damaged, rendered sick, sore, lame and disabled, sustained severe nervous shock and mental anguish, great physical pain and emotional upset, has suffered and continues to suffer serious and extreme mental and emotional anguish, distress and psychological damages and difficulties, some of which injuries are permanent in nature and duration, and plaintiffs will be permanently caused to suffer pain, inconvenience and other effects of such injuries; plaintiffs incurred and in the future will necessarily incur further hospital and/or medical expenses in an effort to be cured of said injuries; and plaintiffs have suffered and in the future will necessarily suffer additional loss of time and earnings from employment; and plaintiffs will be unable to pursue the usual duties with the same degree of efficiency as prior to this occurrence, all to plaintiffs' great damage.

112. That commencing on or about 1991 to present, in violation of the rights, privileges and immunities guaranteed to her under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and under the color of State law, the defendants acted individually and in concert causing the plaintiff to have been injured and damaged in an amount exceeding the jurisdictional limit of this Court, to be determined upon the trial of this action.

113. That the negligence of the defendants their agents, servants and/or employees consisted of the following: in the negligent, careless and

reckless ownership, operation, management, maintenance and control of the aforesaid premises in that they knowingly, and for a long and unreasonable length of time, caused and allowed the aforesaid premises to be maintained in unsafe, improper and unsuitable condition so as to cause carcinogens and/or toxins and harmful substances to be, become and remain at said premises; in failing to provide plaintiff herein with a safe area in which to work; in failing to give warning to the plaintiff of the unlawful, dangerous, hazardous, unsafe and poisonous condition thereof; in hiring inept, incompetent, inadequate, unskilled and insufficient contractors; in permitting, causing and/or allowing a dangerous and hazardous condition to be, remain and exist upon the premises; in causing, allowing and permitting the premises to be, become and remain uninhabitable and unsafe; in causing, allowing and permitting said carcinogens and/or toxins to be and remain upon said premises when it was known or should have been known that they could cause harm to those persons on said premises; in failing to inspect, timely inspect and/or properly inspect the aforesaid premises; in failing to repair, timely repair and/or properly repair and maintain the aforesaid premises although the defendants had notice or should have had notice of the unsafe conditions complained of herein; in negligently and carelessly repairing and maintaining the premises in such a manner and under such control so as to cause the occurrence complained of herein; in violating statutory obligations; in violating the Health Code and other applicable sections, regulations and statutes under New York State, local and federal law; in providing improper,

incompetent and insufficient supervision; in knowingly permitting said carcinogens and/or toxins to remain for an unreasonable period of time; in failing to take the proper and necessary steps to prevent the happening of the occurrences as herein set forth; and in otherwise being negligent and careless in the premises; in depriving plaintiff **MARIA NEE** of rights guaranteed to him by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

114. That as a result of the foregoing, the plaintiff **MARIA NEE** was caused to sustain severe and permanent personal injuries to become sick, sore, lame and disabled, sustained injuries to various portions of his body and mind, and to suffer great pain and anguish in his body and mind.

115. That this action falls within one or more of the exceptions set forth in CPLR Article 16.

116. That by reason of the foregoing, plaintiff **MARIA NEE**, has sustained damages in an amount in excess of the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction, in an amount to be determined upon the trial of this action.

WHEREFORE, plaintiffs demand judgment against the defendants in an amount which exceeds the monetary jurisdictional limits of any and all lower courts which would otherwise have jurisdiction herein, in an amount to be determined upon the trial of this action, together with interest and the costs and disbursements of this action, and with interest from the date of this occurrence.

Dated: New York, New York
February 7, 2011

Yours, etc.
BURNS & HARRIS, ESQS.
Attorneys for Plaintiff

BY: _____
CHRISTOPHER J. DONADIO
233 Broadway, Suite 900
New York, NY 10279
212 393-1000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Index # 11 CV 1301 (RJH)

-----X
RALPH RAI

Plaintiffs

AMENDED
VERIFIED
COMPLAINT

Against

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF CORRECTIONS,
BERNARD B. KERIK, GARY M. LANIGAN,
WILLIAM J. FRASER, MARTIN F. HORN,
JOHN J. ANTONELLI, and
DORA B. SCHIRO, CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Defendants
-----X

Plaintiffs, complaining of the Defendants through their attorneys,
BURNS & HARRIS, ESQS., alleges upon information and belief:

JURISDICTION

1. The occurrences which are the subject of this action took place
in the County of Bronx.

THE PARTIES

2. Defendant CITY OF NEW YORK is a municipal corporation
existing under and by virtue of the laws of the State of New York.

3. Defendant CITY OF NEW YORK is a duly constituted municipal
corporation organized and existing under the laws of the State of New York.

At all times relevant hereto, the defendant CITY OF NEW YORK, action
through the NYC Department of Corrections ("DOC") was responsible for the
policy, practice, supervision, implementation and conduct of all DOC matters

and was responsible for the appointment, training, supervision, and conduct of all DOC personnel. In addition, at all relevant times, defendant CITY OF NEW YORK was responsible for enforcing the rules of the DOC, and for ensuring that DOC personnel obeyed the Constitution and laws of the United States and of the State of New York.

4. Defendant BERNARD KERIK was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner BERNARD KERIK is sued in his individual and official capacity.

5. Defendant GARY M. LANIGAN was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner GARY M. LANIGAN is sued in his individual and official capacity.

6. Defendant WILLIAM J. FRASER was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF

CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner WILLIAM J. FRASER is sued in his individual and official capacity.

7. Defendant MARTIN F. HORN was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner MARTIN F. HORN is sued in his individual and official capacity.

8. Defendant JOHN J. ANTONELLI was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under his control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of New York, City and State of New York. Commissioner JOHN J. ANTONELLI is sued in his individual and official capacity.

9. Defendant DORA B. SCHIRO was the Commissioner of the NYC Department of Corrections and as such, was a policy maker with respect to the CITY OF NEW YORK Agency under her control, including the NYC DEPARTMENT OF CORRECTIONS. The DEPARTMENT OF CORRECTIONS principal place of business is 60 Hudson Street, County of

New York, City and State of New York. Commissioner DORA B. SCHRIRO is sued in her individual and official capacity.

10. Defendant NEW YORK CITY DEPARTMENT OF CORRECTIONS is an agency of THE CITY OF NEW YORK, responsible for overseeing, organizing, administering and running the City's detention facilities, including RIKERS ISLAND, in which among other people, Corrections Officers are employed. At all times relevant hereto, defendant DOC, together with THE CITY OF NEW YORK, was responsible for the policy, practice, supervision, implementation and conduct of all DOC matters and was responsible for the appointment, training, supervision and conduct of all DOC personnel. In addition, at all relevant times, defendant DOC, together with THE CITY OF NEW YORK, was responsible for enforcing the rules of the DOC, and for ensuring that DOC personnel obeyed the Constitution and laws of the United States and of the State of New York.

11. At all times relevant hereto, Defendant **CITY OF NEW YORK** operated, maintained, managed, supervised and controlled RIKERS ISLAND LANDFILL and RIKERS ISLAND CORRECTIONAL FACILITY as part of and in conjunction with its municipal functions.

12. That plaintiff claims applicability of CPLR §214-(c)(4).

**FIRST CAUSE OF ACTION:
(POLICY OF NON-FEASANCE IN THE
PROTECTION OF PLAINTIFF'S CIVIL RIGHTS)**

13. This is a Civil Rights action brought pursuant to the United States Constitution, as amended, and the Civil Rights Act of 1871, 42 U.S.C

§1983 and the New York State Constitution and seeks redress for defendants' deprivation, under color of State law, of plaintiff's rights, privileges, and immunities secured by the Constitution and laws of the United States and by the new York State Constitution.

14. That at all times mentioned herein, and from on or about 1989 to 2003 plaintiff RALPH RAIA worked as a Corrections Officer at Rikers Island Correctional Facility, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

15. That from on or about 1989 to 2003, plaintiff RALPH RAIA was exposed to carcinogens and/or toxins at and upon said premises.

16. That the plaintiff RALPH RAIA was not diagnosed with renal cancer until on or about February 19, 2008.

17. That at all times mentioned herein, the defendant **CITY OF NEW YORK** was the owner of premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

18. That at all times mentioned herein, the defendant **CITY OF NEW YORK** operated premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

19. That at all times mentioned herein, the defendant **CITY OF NEW YORK** maintained premises known as RIKERS ISLAND

CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

20. That at all times mentioned herein, the defendant **CITY OF NEW YORK** managed premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

21. That at all times mentioned herein, the defendant **CITY OF NEW YORK** controlled premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

22. That at all times mentioned herein, the defendant **CITY OF NEW YORK** supervised premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

23. That at all times mentioned herein, the defendant **CITY OF NEW YORK** renovated premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

24. That at all times mentioned herein, the defendant **CITY OF NEW YORK** repaired premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

25. That at all times mentioned herein, the defendant **CITY OF NEW YORK** inspected premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

26. That at all times mentioned herein, the defendant **CITY OF NEW YORK** hired contractors at premises known as RIKERS ISLAND CORRECTIONAL FACILITY, located at 10-10 Hazen Street, County of Bronx, City and State of New York.

27. RIKERS ISLAND CORRECTIONAL FACILITY opened in 1932 as a prison on Rikers Island.

28. At the time of the opening of the Prison in 1932, Rikers Island was approximately 90 acres in size.

29. After the opening of the prison, the City of New York increased the size of Rikers Island to approximately 415 acres.

30. The land of Rikers Island was expanded from 90 acres to 415 acres through the creation of a landfill.

31. The landfill was comprised of garbage from New York City.

32. The landfill was comprised of various toxins and carcinogens.

33. At all times mentioned herein, defendants have instituted and are continuing to enforce a policy, practice and custom to cause, permit, allow and require persons legally upon said premises to be exposed to toxic, cancerous substances which are present at Rikers Island, 10-10 Hazen Street, Bronx, NY.

34. Defendants had a policy, practice and custom of causing, permitting, allowing and requiring plaintiff to be exposed to toxic, carcinogenic substances while legally upon said premises.

35. That the deprivation of plaintiff's constitutional rights was the result of the CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of concealing the known existence of cancer causing toxins present at Riker's Island.

36. That the deprivation of plaintiff's constitutional rights was the result of the CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of misrepresenting to class plaintiffs that Riker's Island was a safe and secure work environment.

37. Upon information and belief, during plaintiff's time as an employee at Riker's Island he was told by his supervisors that there were not any toxic, hazardous or cancer causing toxins located on Riker's Island.

38. Upon information and belief, during plaintiff's time as an employee at Riker's Island he was provided internal memorandum indicating that it was safe to work at Riker's Island.

39. Upon information and belief, during plaintiff's time as an employee at Riker's Island he was provided internal memorandum indicating that there were no carcinogens present on Rikers Island.

40. Upon information and belief, during plaintiff's time as an employee at Rikers Island, Defendants were aware that cancer causing toxins were present at Rikers Island.

41. Upon information and belief, during plaintiff's time as an employee at Rikers Island, Defendants performed testing of the soil, air and water.

42. Upon information and belief, during plaintiff's time as an employee at Riker's Island, Defendants performed testing of the soil, air and water that indicated that cancer causing toxins were present on Rikers Island.

43. At the present time, plaintiff is aware of approximately 80 retired and current employees of Riker's Island have been diagnosed with cancer.

44. That the deprivation of plaintiff's constitutional rights was the result of the CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of depriving life, liberty and the pursuit of happiness to those present on Riker's Island.

45. That the deprivation of plaintiff's constitutional rights was the result of the CITY OF NEW YORK, NYC DEPARTMENT OF CORRECTIONS AND COMMISSIONERS OF THE NYC DEPARTMENT OF CORRECTIONS

NAMED HEREIN AND THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S custom and/or policy of violating the due process rights of those present on Riker's Island.

46. All defendants, THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF CORRECTIONS, BERNARD B. KERIK, GARY M. LANIGAN, WILLIAM J. FRASER, MARTIN F. HORN, JOHN J. ANTONELLI, DORA B. SCHRIRO, and THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE acted under pretense and color of state law and in their individual and official capacities and within the scope of their employment. Said acts by said defendants were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said defendants acted willfully, knowingly, and with the specific intent to deprive plaintiffs of their constitutional rights secured by 42 U.S.C. §1983, and by the Fourth, Fifth, and Fourteenth amendments to the United States Constitution.

47. Exposure of plaintiff to toxins and carcinogens deprive the plaintiff of his Constitutional rights to life, liberty and the pursuit of happiness and substantive and procedural due process under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution.

48. At all times relevant hereto, defendant CITY OF NEW YORK caused, allowed and permitted persons legally upon said premises to be exposed to toxic, cancerous substances which are present at said premises.

49. At all times relevant hereto, defendant CITY OF NEW YORK instituted and continues to enforce a policy, practice and custom causing,

permitting, allowing and requiring plaintiff to be exposed to toxic, cancerous substances which are present at the said premises.

50. Each and all of the acts of the defendants alleged herein were done by the defendants, their agents, servants and/or employees, and each of them, not as individuals, but under the color and pretense of the statutes, ordinances, regulations, customs and usages of the State of New York, the City of New York and the County of Bronx.

51. That from approximately 1989 to 2003, the plaintiff, **RALPH RAIA**, was lawfully and properly present upon the premises mentioned herein.

52. Commencing approximately 1989 to 2003, plaintiff **RALPH RAIA** was exposed to toxic, cancerous substances which are present at said premises.

53. That commencing approximately 1989 to 2003, and prior and subsequent thereto, the **CITY OF NEW YORK**, in violation of 42 U.S.C. §1983 caused the plaintiff to be injured and damaged in causing, allowing and permitting plaintiff to be exposed to toxic, cancerous substances which are present at the premises mentioned.

54. The **CITY OF NEW YORK**, its agents, servants and/or employees caused, permitted, allowed and required plaintiff to be exposed to toxic, cancerous substances which are present at Riker's Island, Bronx, NY. Upon information and belief, defendants participated in the enforcement of

the policy and/or knowingly or recklessly failed to prevent enforcement of the plainly unconstitutional policy.

55. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to operate, maintain, manage, control, repair, renovate supervise and inspect the said premises herein.

56. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to operate, maintain, manage, control, repair, renovate, supervise and inspect the said premises in a reasonably safe and suitable condition and repair.

57. As a result of the aforesaid plaintiff **RALPH RAIA** was exposed to toxic, cancerous substances which are present at the premises mentioned and thereby deprived of his rights, liberties and freedoms under color of State Law in violation of 42 U.S.C. §1983.

58. As a further result of the deprivation of plaintiff **RALPH RAIA's** right to be free from the deprivation of rights guaranteed to him by the Fourth, Fifth and Fourteenth Amendment to the United States Constitution, he was caused to suffer injury and damage both mentally and physically, severe nervous shock and emotional distress and illness.

59. From on or about 1989 to 2003 in violation of the rights, privileges and immunities guaranteed to him under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution and under color of State law, the defendant **CITY OF NEW YORK** caused, permitted, allowed

and required plaintiff to be exposed to toxic cancerous substances which are present at said premises, in violation of 42 U.S.C. Section 1983.

60. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to take the necessary precautions and remedies to render the said premises habitable and safe for occupancy.

61. That at all times mentioned herein, the defendant CITY OF NEW YORK had a duty to warn persons of the hazardous and dangerous conditions existing at said premises.

62. That at all times mentioned herein, the defendant **CITY OF NEW YORK** had a duty to comply with the New York City Health Code and other applicable sections, regulations and statutes under New York State, local and federal law.

63. That at all times mentioned herein, toxins and/or carcinogens were present upon said premises.

64. That at all times mentioned herein, toxins and/or carcinogens were present upon said premises and were known or should have been known to be present upon said premises.

65. That at all times mentioned herein, said carcinogens and/or toxins were caused, permitted and allowed to be and remain upon said premises.

66. That at various and diverse times from on or about 1989 to the present and for a period of time prior and subsequent thereto, there existed a

dangerous, defective and unsafe condition, including the presence of carcinogens and/or toxins, upon said the premises.

67. That at various and diverse times from 1989 and for a period of time prior and subsequent thereto, the defendants maintained a dangerous, defective and unsafe condition, including the presence of carcinogens and/or toxins upon said premises.

68. That at various and diverse times from 1989 and for a period of time prior and subsequent thereto the defendants, their agents, servants and/or employees created a dangerous, hazardous and unsafe condition, including the presence of carcinogens and/or toxins upon said premises.

69. At all times mentioned herein, it was the duty of the defendants to maintain the premises in a reasonably safe and proper condition and free of dangerous, hazardous, and unsafe conditions, including the presence of carcinogens and/or toxins upon said premises.

70. At all times mentioned herein, it was the duty of the defendants to maintain the premises in a reasonably safe condition for use by members of the general public.

71. That at all times mentioned herein, such culpable conduct was a proximate cause of the plaintiff's serious injuries.

72. That at all times relevant hereto, it was the duty of the defendants their servants, agents, and/or employees to conduct and supervise the maintenance, renovation, inspection, and repair operations at

said premises in a lawful fashion to prevent the presence of carcinogens and/or toxins at said premises.

73. That carcinogens and/or toxins were present at said premises, from the time the plaintiff **RALPH RAIA** was employed there, which was approximately from 1989 to 2003.

74. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to operate, maintain, manage, supervise and control the aforesaid premises in a reasonable and safe condition.

75. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to take the necessary precautions and remedies to render the said premises habitable and safe for occupancy.

76. That at all times mentioned herein, the defendants, their agents, servants and/or employees failed to warn persons of the hazardous and dangerous conditions existing at said premises.

77. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to comply with the New York City Health Code and other applicable sections, regulations and statutes under New York State, local and federal law.

78. That at all times mentioned herein, the defendants, their agents, servants and/or employees breached their duty to conduct and supervise the maintenance, renovation, inspection and repair operations at said premises in

a lawful fashion to prevent the presence of carcinogens and/or toxins at said premises.

79. Although defendants knew or should have known of the fact that toxic cancerous substances were present at the said premises, the defendant **CITY OF NEW YORK** has not taken any steps or made any efforts to halt this course of conduct, to make redress to the plaintiff or other citizens injured thereby.

80. The unlawful and illegal conduct of the defendants, their agents, servants and/or employees to cause, allow and permit the exposure of plaintiff to toxins and carcinogens deprived the plaintiff of his Constitutional rights to life, liberty and the pursuit of happiness and substantive and procedural due process under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution.

81. That by reason of the foregoing, this plaintiff was severely injured and damaged, rendered sick, sore, lame and disabled, sustained severe nervous shock and mental anguish, great physical pain and emotional upset, has suffered and continues to suffer serious and extreme mental and emotional anguish, distress and psychological damages and difficulties, some of which injuries are permanent in nature and duration, and plaintiffs will be permanently caused to suffer pain, inconvenience and other effects of such injuries; plaintiffs incurred and in the future will necessarily incur further hospital and/or medical expenses in an effort to be cured of said injuries; and plaintiffs have suffered and in the future will necessarily suffer additional loss

of time and earnings from employment; and plaintiffs will be unable to pursue the usual duties with the same degree of efficiency as prior to this occurrence, all to plaintiffs' great damage.

82. That commencing on or about 1989 to 2003, in violation of the rights, privileges and immunities guaranteed to him under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and under the color of State law, the defendants acted individually and in concert causing the plaintiff to have been injured and damaged in an amount exceeding the jurisdictional limit of this Court, to be determined upon the trial of this action.

83. That the negligence of the defendants **CITY OF NEW YORK**, its agents, servants and/or employees consisted of the following: in the negligent, careless and reckless ownership, operation, management, maintenance and control of the aforesaid premises in that they knowingly, and for a long and unreasonable length of time, caused and allowed the aforesaid premises to be maintained in unsafe, improper and unsuitable condition so as to cause carcinogens and/or toxins and harmful substances to be, become and remain at said premises; in failing to provide plaintiff herein with a safe area in which to work; in failing to give warning to the plaintiff of the unlawful, dangerous, hazardous, unsafe and poisonous condition thereof; in hiring inept, incompetent, inadequate, unskilled and insufficient contractors; in permitting, causing and/or allowing a dangerous and hazardous condition to be, remain and exist upon the premises; in causing, allowing and permitting the premises to be, become and remain uninhabitable and unsafe;

in causing, allowing and permitting said carcinogens and/or toxins to be and remain upon said premises when it was known or should have been known that they could cause harm to those persons on said premises; in failing to inspect, timely inspect and/or properly inspect the aforesaid premises; in failing to repair, timely repair and/or properly repair and maintain the aforesaid premises although the defendants had notice or should have had notice of the unsafe conditions complained of herein; in negligently and carelessly repairing and maintaining the premises in such a manner and under such control so as to cause the occurrence complained of herein; in violating statutory obligations; in violating the Health Code and other applicable sections, regulations and statutes under New York State, local and federal law; in providing improper, incompetent and insufficient supervision; in knowingly permitting said carcinogens and/or toxins to remain for an unreasonable period of time; in failing to take the proper and necessary steps to prevent the happening of the occurrences as herein set forth; and in otherwise being negligent and careless in the premises; in depriving plaintiff RALPH RAIA of rights guaranteed to him by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

84. That as a result of the foregoing, the plaintiff **RALPH RAIA** was caused to sustain severe and permanent personal injuries to become sick, sore, lame and disabled, sustained injuries to various portions of his body and mind, and to suffer great pain and anguish in his body and mind.

85. That this action falls within one or more of the exceptions set forth in CPLR Article 16.

86. That by reason of the foregoing, plaintiff **RALPH RAIA**, has sustained damages in an amount in excess of the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction, in an amount to be determined upon the trial of this action.

WHEREFORE, plaintiffs demand judgment against the defendants on the defendant in an amount which exceeds the monetary jurisdictional limits of any and all lower courts which would otherwise have jurisdiction herein, in an amount to be determined upon the trial of this action, together with interest and the costs and disbursements of this action, and with interest from the date of this occurrence.

Dated: New York, New York
January 25, 2011

Yours, etc.

BURNS & HARRIS, ESQS.
Attorneys for Plaintiff

BY: _____
CHRISTOPHER J. DONADIO
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General Information

Case Name	Barley v. The City of New York et al
Docket Number	1:11-cv-01300
Court	United States District Court for the Southern District of New York
Nature of Suit	Civil Rights: Other