

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MARK A. FIORINO,

Plaintiff,

v.

CITY OF PHILADELPHIA,
COMMISSIONER CHARLES H. RAMSEY,
SERGEANT KULP (Badge #542),
SERGEANT MICHAEL DOUGHERTY (Badge #8830),
OFFICER DANIEL B. RUBIN (Badge #3422),
OFFICER DANIEL G. SHELLHAMMER (Badge #3029),
DETECTIVE THOMAS F. BOYD, JR. (Badge #9039), and
UNKNOWN NUMBER OF JOHN AND JANE DOES,
Defendants.

Civil Action No. _____

Complaint – Civil Rights

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Mark A. Fiorino, by and through his attorneys, Benjamin R. Picker and Glenn S. Gitomer of McCausland Keen & Buckman, and Mary Catherine Roper and Christopher Markos of the American Civil Liberties Foundation of Pennsylvania, hereby files this civil rights action against the City of Philadelphia and against the above-named persons in their individual capacities, for violation of his constitutional rights to be free from unreasonable searches, excessive force and malicious prosecution, and to speak without fear of retaliation.

JURISDICTION, VENUE AND PARTIES

1. This action is brought pursuant to 42 U.S.C. § 1983. Jurisdiction is based on 28 U.S.C. §§ 1331 and 1343(a).

2. Venue is proper in this Court pursuant to 28 U.S.C § 1391(a) because all of the events giving rise to this action took place within the territory of the Eastern District of

Pennsylvania.

3. Plaintiff, Mark A. Fiorino (“Plaintiff” or “Mr. Fiorino”), is an adult individual residing in Lansdale, Montgomery County, Pennsylvania.

4. Defendant, City of Philadelphia (“Philadelphia” or “the City”) is a municipality in the Commonwealth of Pennsylvania and owns, operates, manages, directs and controls the Philadelphia Police Department (the “PPD”), which employs each of the individual defendants named in the caption of this Complaint.

5. The individual defendants named in the caption of this Complaint were, at all times relevant hereto, adult individuals and police officers or other agents of the PPD, and they are each being sued in their individual capacities.

6. The “John and Jane Doe” defendants set forth in the caption of this Complaint were, at all time relevant hereto, police officers or other agents of the PPD, and they are each being sued in their individual capacities. Mr. Fiorino names “John and Jane Doe” defendants in the caption of this Complaint because he is not currently aware of the identities of all persons involved in and liable for certain acts described herein.

7. At all times relevant hereto, for purposes of all civil rights claims asserted herein, all Defendants, including any and all John and Jane Doe defendants, were acting under color of state law.

8. At all times relevant hereto, the actions taken by the Defendants, including John and Jane Doe defendants, deprived Mr. Fiorino of his constitutional rights including, but not limited to, his rights under the First and Fourth Amendments to the United States Constitution, applicable to the Defendants by way of the Due Process Clause of the Fourteenth Amendment.

THE PENNSYLVANIA UNIFORMS FIREARMS ACT

9. The Pennsylvania Uniform Firearms Act (hereinafter the “UFA”) is set forth at 18 Pa.C.S. §§ 6101 et seq.

10. Pennsylvania is an “open carry” state, meaning that any person who is otherwise permitted to own a firearm may *openly* carry a firearm in Pennsylvania, with certain exceptions. To carry a firearm in a motor vehicle, to carry a *concealed* firearm anywhere in Pennsylvania, or to carry a firearm in Philadelphia openly or concealed, a person must obtain a License to Carry Firearms (hereinafter collectively, a “LTCF”) through the procedure set forth in the UFA, or must generally obtain a comparable license from a “reciprocity” state.

11. The UFA and, in particular, 18 Pa.C.S. § 6109, *does not require* a person with an LTCF to conceal his or her firearm when in Philadelphia. Therefore, it is clearly established that if a person has an LTCF, he or she may carry a firearm either openly or concealed when in Philadelphia. Moreover, a person who is openly carrying a firearm in Philadelphia need only be “licensed to carry a firearm” and need not keep his actual LTCF on his person.

12. Police can check the validity of an LTCF in only a few minutes by calling a Pennsylvania State Police twenty-four hour hotline or by conducting a computer database query.

FACTS

13. Since January 14, 2010, Mr. Fiorino has held a valid LTCF issued by the Sheriff of Montgomery County, Pennsylvania, which LTCF is valid throughout the Commonwealth of Pennsylvania and in the twenty-eight other states that honor a Pennsylvania LTCF.

14. Mr. Fiorino openly carries his firearm in a retention holster for self-defense purposes as he is legally entitled to do. Mr. Fiorino chooses to openly carry his firearm in a retention holster because: (a) it is more comfortable than carrying the firearm in a concealed

manner; (b) it makes it easier to access the firearm should it be necessary to do so in an emergency situation; and (c) it has a deterrence effect on any person who might otherwise choose to commit a violent crime against Mr. Fiorino and any family and friends who might be accompanying him.

15. Mr. Fiorino, like many people who carry firearms in public for self defense purposes, carries an audio recorder with him at all times to ensure that an accurate record is made in the unfortunate event that he is accosted by police, or in the unfortunate event that he must legitimately use his firearm in self defense or the defense of others.

16. The claims alleged herein arise from a series of related incidents and constitutional violations by PPD officers, the moving force behind which violations were the official policies, procedures and customs of the PPD, and/or were caused by the PPD's deliberate indifference to the need to train, supervise and/or discipline its officers. The facts of each incident are set forth below.

The First Incident

17. On July 31, 2010, Mr. Fiorino was resting on a park bench after riding his bicycle on Kelly Drive near the Philadelphia Museum of Art in Philadelphia. At the time, Mr. Fiorino was openly carrying a firearm in a retention holster on his left hip on the outside of his pants.

18. Shortly after 3:00 p.m. on that date, Mr. Fiorino was detained by three PPD officers because he was openly carrying a firearm in a holster. The three officers have been identified as Officer Robert McCuen (Badge #2007), Officer Dennis Murtha (Badge #4571), and Sergeant David Bonk (Badge #521), all of whom were assigned to a bicycle patrol unit with the PPD's 39th Police District.

19. Officer McCuen first asked Mr. Fiorino why he was openly carrying a firearm and

then asked to see Mr. Fiorino's "permit," which Mr. Fiorino construed to mean his LTCF.

20. Mr. Fiorino explained that he was carrying a firearm for self defense purposes and he then provided Officer McCuen with proof that he had an LTCF.

21. Officer McCuen directed Officer Murtha to remove Mr. Fiorino's firearm. Officer Murtha then removed the firearm from Mr. Fiorino's holster.

22. Officer McCuen then conducted a pat down of Mr. Fiorino, followed by a full search of Mr. Fiorino without his consent.

23. When Mr. Fiorino asked if he was being detained and, if so, why, Sergeant Bonk responded in the affirmative and then incorrectly stated that it is illegal to openly carry a firearm in Philadelphia.

24. Mr. Fiorino was seized and was not free to leave during the course of this incident, which needlessly lasted in excess of fifteen minutes.

25. During the course of this July 31, 2010 incident, Mr. Fiorino repeatedly cited to relevant provisions of the UFA, advised Sergeant Bonk and Officers McCuen and Murtha that openly carrying a firearm in Philadelphia is not illegal if one had a valid LTCF, and told the officers they were violating his Fourth Amendment rights. However, Sergeant Bonk and Officers McCuen and Murtha ignored Mr. Fiorino's protests and citations to legal authority.

26. On the date of this incident, the PPD and, therefore, the City, had in place an erroneous official written policy known as Directive 137 (the "Policy"), which stated, "The [LTCF] holder will ensure that his/her firearm is concealed at all times on or about his/her person." In other words, it was official policy of the PPD and the City that openly carrying firearms was illegal and not permitted in Philadelphia, even with a valid LTCF.

27. Upon information and belief, the Policy had been in effect since, at least, March

3, 1997, and was later revised on or about October 31, 2001.

28. The last page of the Policy includes the statement, “BY COMMAND OF THE POLICE COMMISSIONER.” Therefore, the Policy was approved and implemented by the Philadelphia Police Commissioner on behalf of the PPD and the City.

29. The PPD’s misunderstanding of Pennsylvania law was especially unreasonable given the fact that, in as early as June 2008, the Philadelphia District Attorney’s Office, through its Gun Violence Task Force, had acknowledged in writing that under Pennsylvania law a person may legally openly carry a firearm on the public streets of Philadelphia if such person has a valid LTCF.

30. Upon information and belief, during this July 31, 2010 incident, Sergeant Bonk was on the telephone for most of this July 31, 2010 incident *not* to check the validity of Mr. Fiorino’s LTCF (which could have been accomplished in only a few minutes), but instead to determine through cell phone and/or radio calls to others in the PPD whether it was legal to openly carry a firearm in Philadelphia with a valid LTCF.

31. At the conclusion of the July 31, 2010 incident, Sergeant Bonk admitted that Mr. Fiorino had not been in violation of any laws and then returned Mr. Fiorino’s firearm, magazines and ammunition.

32. Upon information and belief, Sergeant Bonk and Officers McCuen and Murtha were following the Policy during the course of this July 31, 2010 incident and, therefore, the Policy was the moving force behind their unconstitutional acts.

33. Most of the July 31, 2010 incident was audio recorded by Mr. Fiorino with the knowledge of the officers on scene.

34. No charges were filed against Mr. Fiorino in connection with the July 31, 2010

incident, which is hereinafter referred to as the “First Incident”.

35. Mr. Fiorino filed a written complaint with the PPD’s Internal Affairs Bureau/Office of Professional Responsibility (“Internal Affairs”) a few days after the First Incident setting forth the facts of the incident and stating that he believed his civil rights had been violated.

36. A few days later, by letter dated August 5, 2010, Deputy Police Commissioner Stephen Johnson (badge number unknown), who is, and at the time was, in charge of Internal Affairs, notified Mr. Fiorino that the PPD denied that the officers involved in the July 31, 2010 incident had violated Mr. Fiorino's civil rights. The August 5, 2010 letter failed to indicate whether any investigation whatsoever was conducted and failed to provide any further explanation.

The Second Incident

37. On August 13, 2010, at approximately 7:30 p.m., Mr. Fiorino had just entered a restaurant on the 400 block of South Street in Philadelphia for a dinner date with a female companion. At the time, Mr. Fiorino was openly carrying a firearm in a retention holster on his left hip on the outside of his pants.

38. PPD officers, Daniel Corbo (Badge #3765) and Jerald Furey (Badge #7100), both of whom were assigned to the PPD’s 3rd Police District, followed Mr. Fiorino into the restaurant, grabbed him by the arm, and forcibly escorted him back outside. Mr. Fiorino was seized and was not free to leave during the course of this August 13, 2010 incident.

39. When Mr. Fiorino asked why he was being detained, Officers Corbo and Furey erroneously informed him that it was illegal to openly carry a firearm in Philadelphia, even with a valid LTCF, and advised Mr. Fiorino that he must conceal his firearm while in Philadelphia.

40. Mr. Fiorino then immediately provided the aforementioned officers, as well as Officer Moore (Badge #9575) (first name unknown), who was assigned to the PPD's 12th Police District, with proof that he had a valid LTCF. In addition, by this time, at least fourteen PPD officers, most of whose identities are currently unknown, had responded to the scene.

41. During the course of this August 13, 2010 incident, Mr. Fiorino repeatedly cited to the relevant provisions of the UFA, and advised the officers on scene that openly carrying a firearm in Philadelphia is legal if one has an LTCF and that they were violating his Fourth Amendment rights.

42. Officer Moore repeatedly and incorrectly informed Mr. Fiorino that he was "100% correct" that it was illegal to openly carry a firearm in Philadelphia even with an LTCF, that he "just got training" on the issue, and that if Mr. Fiorino were to argue that open carry is permitted in Philadelphia with an LTCF, they would "take" his firearm and Mr. Fiorino would "go to jail."

43. The seizure of Mr. Fiorino by the PPD officers on scene needlessly lasted for approximately sixteen (16) minutes because the officers believed it was illegal to openly carry a firearm in Philadelphia, even with a valid LTCF.

44. Incredibly, one of the PPD officers on scene actually stated that he believed it was illegal to openly carry a firearm in Philadelphia because there was no law *permitting* it.

45. Although Mr. Fiorino had committed no crime, Sergeant Kulp (Badge #542) (first name unknown), who was a supervisor assigned to the PPD's 3rd Police District, specifically authorized the illegal confiscation of Mr. Fiorino's firearm, magazines and ammunition and advised Mr. Fiorino that confiscation of his firearm would not have been necessary had Mr. Fiorino concealed his firearm.

46. Sergeant Kulp advised Mr. Fiorino that he had violated “city law” despite the fact that no such Philadelphia ordinance existed.

47. The Policy was still in effect as of the August 13, 2010 incident (hereinafter referred to as the “Second Incident”).

48. The Policy also authorized officers to illegally confiscate the firearms of any person found to be openly carrying a firearm in Philadelphia, regardless of whether such person had a valid LTCF, and regardless of whether the person was actually arrested or cited for any criminal offense. In particular, the illegal Policy stated that officers may confiscate a citizen’s legally owned and carried firearm where no crime has been committed so long as there are “reasonable grounds involving public safety requiring confiscation of the firearm(s).”

49. According to the property receipt given to Mr. Fiorino, his firearm, magazines, and ammunition were confiscated because he refused to conceal his firearm and because of unspecified reasons of “public safety.” Such seizure was illegal and violated Mr. Fiorino’s Fourth Amendment right to be free from unreasonable or illegal seizures of his property.

50. Most of the Second Incident was audio recorded by Mr. Fiorino with the knowledge of the officers on scene.

51. Upon information and belief, Sergeant Kulp and Officers Corbo, Furey and Moore were following the Policy during the course of the Second Incident and, therefore, the Policy was the moving force behind their unconstitutional acts.

52. Mr. Fiorino followed the procedure set forth in the Policy to seek return of his firearm, magazines and ammunition. The relevant provision of the Policy states, “A citizen requesting the return of a confiscated firearm will be directed to forward a letter to the Police Commissioner requesting the return. The Gun Permits and Tracking Unit will respond to

requests by Certified Mail with the results of the investigation.” Mr. Fiorino was not given notice of any other procedure to follow to obtain return of his property.

53. Although no charges were filed against Mr. Fiorino in connection with the Second Incident, the PPD retained Mr. Fiorino's firearm and magazines for approximately five months without any legal basis to do so and despite Mr. Fiorino's repeated requests to the PPD for return of his property, in violation of his Fourteenth Amendment right to due process.

54. As a result, Mr. Fiorino incurred expenses, including the cost of a replacement firearm and ammunition so that he could continue to defend himself until his original firearm was returned.

55. Moreover, Mr. Fiorino incurred substantial inconvenience to secure the return of his firearm and magazines. The substantial inconvenience suffered by Mr. Fiorino is consistent with a later statement by PPD spokesman, Lieutenant Raymond J. Evers (badge number unknown) and published in the Philadelphia Daily News on November 3, 2010, wherein he declared that any firearm owners whose guns are confiscated by police will have to “fight to get it back.”

56. Furthermore, unknown officers or agents of the PPD destroyed fifty (50) rounds of Mr. Fiorino's *Hornady Critical Defense* ammunition, with a value of approximately \$50.00, pursuant to an illegal policy of the Evidence Custodian of the PPD, which apparently states that live ammunition will not be returned to an owner following confiscation of a firearm, regardless of whether the confiscation was legal and/or permissible in the first instance. The PPD and/or the City have never compensated Mr. Fiorino for the destruction of his ammunition or for the loss of use of his firearm and magazines.

57. A few weeks after the Second Incident, Mr. Fiorino filed another written

complaint with Internal Affairs relating to the Second Incident, in which Mr. Fiorino set forth the facts of the incident and stated that he believed that his civil rights had been violated.

58. These incidents were not isolated. During this general time period, PPD officers often illegally detained, and firearms were often illegally seized from, citizens who were legally carrying firearms in Philadelphia.

59. For example, as reported in the Philadelphia Daily News on August 31, 2010, during the two years prior to publication of the article, the PPD had illegally confiscated firearms from at least nine men who were legally carrying them in Philadelphia. In fact, according to the article, only one of those nine guns had been returned as of the date the article was published. The article explains, “Despite following the law, all of the men said that they were treated like criminals by city cops who either ignored their rights or didn’t know the laws.”

The Internal Affairs Investigation and Change in Policy

60. During discussions with PPD Internal Affairs Sergeant Maria Cianfrani (Badge #8704), which occurred after Mr. Fiorino filed a written complaint with Internal Affairs relating to the Second Incident, Sergeant Cianfrani specifically stated to Mr. Fiorino that what happened to him with regard to the First and Second Incidents was “outright illegal.”

61. Sergeant Cianfrani also admitted to Mr. Fiorino that the Policy was illegal, and admitted that the officers involved in the First and Second Incidents were following the Policy when they detained Mr. Fiorino and when they confiscated his firearm, magazines and ammunition.

62. As a direct result of the First and Second Incidents and Mr. Fiorino's Internal Affairs complaints, and in recognition of the illegality of its Policy and the fact that its Policy was the moving force behind numerous constitutional violations, on or about September 22,

2010, the PPD modified its Policy to eliminate the prohibition on the open carry of firearms in Philadelphia by LTCF holders (the “Modified Policy”).

63. Upon information and belief, despite the Modified Policy, and despite knowledge that the original Policy was the moving force behind multiple constitutional violations, the PPD utterly failed to train its police officers regarding the Modified Policy as explained in more depth hereinbelow.

64. Moreover, despite knowing that the Policy permitted the confiscation of citizens’ legally owned and carried firearms where no crime has been committed, and despite knowing that the Policy was the moving force behind numerous illegal and unconstitutional firearm confiscations by the PPD, the City has failed to modify the Policy to eliminate the directive that officers may confiscate firearms of citizens merely because of purported “reasonable grounds involving public safety.”

The Third Incident

65. In the early afternoon of February 13, 2011 (nearly five months after the Policy was modified), Mr. Fiorino was walking on the public sidewalk on or about the 8800 block of Frankford Avenue in northeast Philadelphia from his mother’s house to the local AutoZone store to obtain a new mirror for his car. At the time, Mr. Fiorino was openly carrying a firearm in a retention holster on his left hip on the outside of his pants.

66. Only minutes after stepping out in public, Mr. Fiorino heard a male voice behind him yell, “Yo junior, what are you doing!”

67. Mr. Fiorino turned around to find Sergeant Michael Dougherty (Badge #8830), a twenty-three year veteran of the PPD who was assigned to the PPD’s 8th Police District, pointing his service weapon at Mr. Fiorino's chest, thereby threatening him with deadly force.

68. When Mr. Fiorino asked Sergeant Dougherty why he was pointing a weapon at him, Sergeant Dougherty stated that he did not know who Mr. Fiorino was and that Mr. Fiorino had a gun.

69. Mr. Fiorino did not speak or act in any way that would lead Sergeant Dougherty, or any reasonable police officer, to believe that he was dangerous, or to otherwise warrant Sergeant Dougherty, or a reasonable police officer, to point a firearm at him.

70. Only seconds into this February 13, 2011 incident, Mr. Fiorino offered to provide Sergeant Dougherty with his LTCF, which Sergeant Dougherty outright refused.

71. Sergeant Dougherty ordered Mr. Fiorino to get down on his knees and told Mr. Fiorino to comply or else, "I am gonna fucking shoot ya."

72. Sergeant Dougherty also gave conflicting commands to Mr. Fiorino, including, "Keep your hands down" and "If you make a move I'm gonna fucking shoot ya!" As a result, Mr. Fiorino was afraid to move because he feared that he would be shot by Sergeant Dougherty.

73. Officer Daniel B. Rubin (Badge #3422), who was also assigned to the PPD's 8th Police District, then arrived on the scene and threatened Mr. Fiorino with a Taser. Officer Rubin also verbally abused and humiliated Mr. Fiorino by calling him a "piece of shit" and by yelling, "Get on the fucking ground," "Lay the fuck down," "Put your fucking hands behind your fucking back," "Shut the fuck up," and "Shut your fucking mouth."

74. Mr. Fiorino was violently thrown down onto the cement and handcuffed by Officer Rubin and his partner, Officer Daniel Shellhammer (Badge #3029), who was also assigned to the PPD's 8th Police District. Officers Rubin and Shellhammer placed their knees on Mr. Fiorino back and legs, pressing him to the cement and causing pain in Mr. Fiorino's knees and back.

75. Sergeant Dougherty then incorrectly advised Mr. Fiorino that Pennsylvania isn't an open carry state and that open carry is not permitted in Philadelphia, even with an LTCF.

76. In response, Mr. Fiorino advised Sergeant Dougherty and the other officers on scene that he had broken no law, and that openly carrying a firearm was permitted in Philadelphia with an LTCF pursuant to the UFA and the Modified Policy. Mr. Fiorino then cited to the PPD's own Modified Policy by name, "Directive 137," of which Mr. Fiorino had become aware because of the First Incident, Second Incident, and the Internal Affairs investigation relating thereto.

77. At least five additional police officers arrived on the scene within a few minutes.

78. Mr. Fiorino's firearm, magazines and ammunition were then taken from him, and he was placed in a police paddy wagon while handcuffed.

79. After a few additional minutes, Sergeant Dougherty admitted to other officers on the scene that Mr. Fiorino had an LTCF.

80. During the following forty minutes, Sergeant Dougherty spoke to other officers on scene and made at least four telephone calls in an attempt to find a single PPD official who could advise him regarding whether it was legal to openly carry a firearm in Philadelphia with a valid LTCF.

81. Throughout this February 13, 2011 incident, Mr. Fiorino continually attempted to deescalate the situation through calm verbal communication with the officers, all to no avail.

82. At the time of this February 13, 2011 incident, despite the change in the Policy nearly five months earlier, Sergeant Dougherty did not know that it was legal to openly carry a firearm in Philadelphia with a valid LTCF, and Sergeant Dougherty admitted such during testimony in the Philadelphia Municipal Court on October 27, 2011.

83. Upon information and belief, none of the officers on scene, nor any of the PPD officials contacted by phone and radio, knew that it was legal to openly carry a firearm in Philadelphia with a valid LTCF. In fact, Sergeant Dougherty was overheard saying, “Nobody knows the right answer on this.”

84. Upon information and belief, Sergeant Dougherty was eventually able to reach Lieutenant Lisa King (badge number unknown), who is the head of the PPD’s Gun Permits Unit and/or Lieutenant (now Captain) Francis T. Healy (badge number unknown), a licensed Pennsylvania attorney and Special Advisor to Philadelphia Police Commissioner Charles H. Ramsey, who advised Sergeant Dougherty that it was legal to openly carry a firearm in Philadelphia with a valid LTCF.

85. Most of the Third Incident was audio recorded by Mr. Fiorino, and the officers on the scene of the Third Incident became aware of the audio recording during the course of the Third Incident.

86. After an approximately forty-five minute ordeal (hereinafter referred to as the “Third Incident”), Mr. Fiorino was released and his firearm and recorder was returned to him.

87. No charges were filed against Mr. Fiorino on or around the date of the Third Incident.

The Failure to Train and Supervise

88. In a videotaped interview conducted on May 14, 2011 in Philadelphia, Captain Healy stated that officers generally should not point their weapons at citizens and force them to get onto the ground in incidents similar to the Third Incident, and that pointing a gun at Mr. Fiorino was a “disconnect in the [police officer] training.”

89. Moreover, in that same videotaped interview, Captain Healy admitted that

Sergeant Dougherty was not aware that it was legal to openly carry a firearm in Philadelphia with a valid LTCF and admitted that the PPD did not properly train PPD officers regarding the right to open carry with a valid LTCF.

90. Likewise, in an article published in the Philadelphia Daily News on May 16, 2011, Captain Healy was reported to have admitted that police officers, “can use caution, but ... don’t need to curse [citizens who are openly carrying firearms] up and down and put a gun in their face.”

91. In that same May 16, 2011 article, Captain Healy was also reported to have admitted, “Our officers weren’t up to speed [on openly carrying firearms in Philadelphia because] we never really addressed it.”

92. In an article published in Philadelphia Weekly on May 17, 2011, an anonymous PPD officer was reported to have said that he was unaware that carrying a firearm openly in Philadelphia could be legal.

93. Captain Healy was also reported in that same May 17, 2011 article to have admitted that PPD officers are often ignorant about the fact that it is legal to openly carry a firearm in Philadelphia with an LTCF.

94. Moreover, Lieutenant King was reported in that same May 17, 2011 article to have admitted that she was unaware that it was legal to openly carry a firearm in Philadelphia with an LTCF before it had recently been brought to her attention.

95. In that same May 17, 2011 article, Captain Healy was reported to have admitted that it was not until *after* the Third Incident that the PPD began providing its officers with any training whatsoever on the legality of openly carrying a firearm in Philadelphia with a valid LTCF, limited to clearly insufficient and ineffective “roll call” and “teletype” announcements.

96. In that same May 17, 2011 article, Captain Healy was also reported to have stated that an individual stopped by officers for openly carrying a firearm should simply confirm that a person is lawfully carrying his or her firearm and then let that person go on his or her way.

97. Furthermore, in a May 18, 2011 radio interview with Michael Smerconish, which aired live on 1210 AM WPHT Philadelphia, Commissioner Ramsey admitted that at the time of the three aforementioned incidents, PPD officers were not aware that open carry was legal with a valid LTCF and that training on the issue was necessary and would be given to all officers.

98. In that same May 18, 2011 interview, Commissioner Ramsey stated that the profanity used by Sergeant Dougherty and Officer Rubin, and their treatment of Mr. Fiorino, was inappropriate.

99. Likewise, in an article published by Fox News on May 21, 2011, it was reported that with regard to the right to openly carry a firearm in Philadelphia with a valid LTCF Lieutenant Evers admitted, “[w]e weren't as up on that crime code as we should have been” and, as a result, officers would have to be “re-educated on open carry”.

100. Despite the foregoing, on July 27, 2011, more than ten months after the Policy was modified, Officer Richard Brehant (badge number unknown), from the PPD's Gun Permits Unit, admitted to Mr. Fiorino on the telephone that “there is a training issue” and that “officers may [still] not know that open carry is legal if you have a valid LTCF”.

101. Likewise, in a telephone conversation between Mr. Fiorino and Lieutenant King, which occurred on July 28, 2011, Lieutenant King admitted that the PPD had only recently begun training its police officers on the right of citizens to openly carry a firearm in Philadelphia with a valid LTCF, such training only recently began trickling down through the ranks, and it would take a while for such training to get to police officers on the street.

102. Illegal stops and seizures of other citizens who were legally carrying firearms in Philadelphia by PPD officers continued to occur even after the purported change in the Policy on September 22, 2010. In fact, since the Policy was modified in September 2010, many other citizens have been forced by PPD officers to conceal their firearms, have had their firearms illegally confiscated, or have been detained by PPD officers for unreasonably and unnecessarily long periods of time for openly carrying firearms in Philadelphia, despite having valid LTCFs, because of the City's failure sufficiently to train, supervise and/or discipline its officers.

The Frivolous Criminal Charges and Other Retaliatory Actions

103. Mr. Fiorino posted a description of what occurred during each of the three incidents on the Internet shortly after each such incident to bring awareness of this issue to the public. Moreover, Mr. Fiorino posted the audio recording of the first two incidents on the Internet shortly after each such incident to bring awareness of this issue to the public.

Thereafter, on or about March 23, 2011, Mr. Fiorino caused the audio recording of the Third Incident to be posted on the Internet, including on the website YouTube, for the same reason.

104. Thereafter, more than two (2) months after the Third Incident, the PPD filed a frivolous criminal complaint against Mr. Fiorino as explained in more detail hereinbelow.

105. The criminal complaint was not filed until *after*: (a) Mr. Fiorino had posted detailed descriptions of the incidents on the Internet; (b) the audio recordings of the three incidents were posted on the Internet; (c) Mr. Fiorino publicly posted on the Internet that he was considering filing a civil rights lawsuit against the City and the PPD officers involved in the three incidents; (d) Mr. Fiorino publicly posted on the Internet that he was seeking donations to help pay for the costs of such a civil rights lawsuit; and (e) an article regarding the Third Incident, which was critical of the PPD, was published in the Roxborough-Manayunk Patch. It is

believed and therefore averred that the PPD was aware of all of the foregoing prior to filing the criminal complaint against Mr. Fiorino.

106. At all relevant times, it was clearly established that Mr. Fiorino's foregoing actions were protected under the First Amendment of the United States Constitution (applicable by way of the Fourteenth Amendment).

107. On May 16, 2011, it was reported by the Philadelphia Daily News that Lieutenant Evers stated that the PPD decided to take a second look at the Fiorino case after learning that the recording of the Third Incident had been posted on YouTube. Likewise, on that same date, the Associated Press, NBC Philadelphia, ABC Philadelphia, and The Daily Local (Chester County, PA) each reported that Lieutenant Evers had stated that it was not until Mr. Fiorino posted the audio recording of the Third Incident on the Internet that the PPD and, in particular, Commissioner Ramsey, specifically directed detectives to reinvestigate Mr. Fiorino.

108. It is believed and therefore averred that Commissioner Ramsey directed the PPD to "re-investigate" the incident, and to assert frivolous criminal charges against Mr. Fiorino, in an attempt to save face, to retaliate against Mr. Fiorino for making the audio recordings of the three incidents public, to discourage Mr. Fiorino and others from legally carrying firearms in Philadelphia, to discourage Mr. Fiorino and others from recording encounters with police, and to discourage Mr. Fiorino from filing the instant civil rights action.

109. On March 28, 2011, nearly a month and a half after the Third Incident, but only five days after the audio of the Third Incident was posted on YouTube (and after it had gone viral and had been viewed approximately thirty thousand times), Detective Thomas F. Boyd, Jr. (Badge #9039) of the PPD's Northeast Detectives Division was assigned by the PPD to re-investigate the Third Incident and Mr. Fiorino.

110. On April 15, 2011, after completing his “investigation,” Detective Boyd filed a Criminal Complaint against Mr. Fiorino asserting charges of Recklessly Endangering Another Person (18 Pa.C.S. § 2705) and Disorderly Conduct (18 Pa.C.S. § 5503(a)(4)), both misdemeanors (the “Charges”).

111. Furthermore, on or about that same date, Detective Boyd requested a Warrant of Arrest (the “Warrant”) for Mr. Fiorino, which was issued on that same date based on an Affidavit of Probable Cause (the “Affidavit”) signed by Detective Boyd.

112. On the morning of April 20, 2011, the PPD caused five Media Police officers to attempt to serve the Warrant and arrest Mr. Fiorino by going to Mr. Fiorino’s place of employment in Media, Delaware County, Pennsylvania. Upon information and belief, this was a blatant attempt by the PPD to harm Mr. Fiorino’s reputation and to intentionally interfere with Mr. Fiorino’s employment.

113. After learning about the Warrant later that morning, Mr. Fiorino contacted Detective Boyd, who refused to divulge the nature of the charges until Mr. Fiorino turned himself in to police.

114. After retaining an attorney, Mr. Fiorino turned himself in at the PPD’s Northeast Detectives Division at approximately 10:00 a.m. on April 21, 2011, at which time he was handcuffed and taken to a holding cell.

115. While in custody, Detective Boyd told Mr. Fiorino that he was fully aware of and had previously reviewed Mr. Fiorino’s Internet postings regarding the three incidents, among which were detailed descriptions of the three incidents, audio recordings of the three incidents, Mr. Fiorino’s discussion of filing a civil rights lawsuit, and Mr. Fiorino’s solicitation of donations for that purpose. In addition, while in custody, Detective Boyd advised Mr. Fiorino

that he, “needs to find a more positive outlet.”

116. Mr. Fiorino was in police custody for approximately sixteen hours as a result of the two misdemeanor Charges before he was brought before Philadelphia Magistrate James O’Brien for a preliminary arraignment at approximately 1:22 a.m. on April 22, 2011. Mr. Fiorino was then released on non-monetary bail in the early morning of April 22, 2011.

The Rearrest

117. Despite having turned himself in a week earlier, on April 28, 2011, Mr. Fiorino was arrested while attending a mandatory bail condition orientation meeting on the fifth floor at 1401 Arch Street in Philadelphia. While there, Officer Thomas (Badge #369) (first name unknown) and Officer Sasselli (first name unknown) (Badge #361) approached Mr. Fiorino, advised him that unidentified detectives from Northeast Detectives wanted to speak to him, handcuffed him in the presence of twenty-five to thirty other people, and placed him in a holding cell on the third floor of the same building.

118. After being held in the jail cell for nearly half an hour, Officer Thomas released Mr. Fiorino after stating that the unidentified Northeast Detectives had “changed their minds.” This incident is hereinafter referred to as the “Rearrest.”

119. When Mr. Fiorino contacted Detective Boyd to find out the reason for the Rearrest, Detective Boyd professed that he knew nothing about the Rearrest and promptly hung up on Mr. Fiorino.

120. When Mr. Fiorino’s undersigned counsel, Benjamin R. Picker, Esquire, called Detective Boyd for the same reason later that day, Detective Boyd became enraged and threatened to file frivolous criminal charges against Mr. Picker.

121. According to Officer Thomas, the Rearrest occurred because members of the

Northeast Detectives unit and, in particular, Detective Boyd (the arresting officer), failed to remove the Warrant from the NCIC system and, therefore, the Warrant remained listed as “active.”

122. In further retaliation, and to discourage otherwise legal activity with which the PPD and the City did not approve, it was reported by Fox News on May 21, 2011 that the PPD stated that citizens “will be ‘inconvenienced’ if they carry unconcealed handguns in the city,” and they may be required “to lay on the ground until officers feel safe while they check permits.”

123. Trial on the Charges was originally scheduled for July 14, 2011 in the Philadelphia Municipal Court and Mr. Fiorino was compelled to appear in court on that date pursuant to a subpoena. However, the trial was delayed until September 15, 2011 because the prosecution was not ready to proceed with its case. The trial was then postponed yet again to October 27, 2011.

124. Ultimately, on October 27, 2011, immediately upon the conclusion of the trial, Mr. Fiorino was acquitted on both of the Charges by the Honorable Felice Stack.

125. With regard to the Affidavit, Detective Boyd specifically admits therein that he and Sergeant Dougherty had reviewed the audio of the Third Incident that was posted on YouTube and that the Charges were filed and the Warrant was requested, in substantial part, because he believed Mr. Fiorino had a “hidden self absorbed motive, be it a chance to gain notoriety or a political and/or money motivated agenda” In other words, Detective Boyd admitted in the Affidavit that the Charges were filed against Mr. Fiorino in retaliation for his publication of his complaints about the PPD, which are protected by the First Amendment of the United States Constitution.

126. Taking the facts set forth in the Affidavit as true, a reasonably well-trained police

officer would have known that the Affidavit failed to establish probable cause for Mr. Fiorino's arrest.

127. Even assuming, *arguendo*, that the Affidavit established probable cause for either or both of the Charges, Sergeant Dougherty and Detective Boyd knowingly and deliberately, or with reckless disregard of the truth, provided false and/or misleading information material to the finding of probable cause, which was included in the Affidavit, such as: (a) stating that it was a cold day and, therefore, that it was very strange that Mr. Fiorino was not wearing a jacket and not concealing his firearm; (b) stating that a bank was located across the street from where Plaintiff was walking; (c) stating that Mr. Fiorino was acting strangely and might have mental issues; and (d) stating that Plaintiff placed the responding officers and the surrounding public in direct peril.

128. However, in direct contradiction to the aforementioned allegations set forth in the Affidavit: (a) it was a sunny and unseasonably warm day on February 13, 2011 (in fact, at Plaintiff's criminal trial, Plaintiff and the Commonwealth stipulated that the high temperature that day was 62° F); (b) there was absolutely no reason to believe that Mr. Fiorino was planning to rob a bank or even cross the street and go near the bank, and the Affidavit was devoid of any facts supporting any such contentions; (c) Mr. Fiorino was not acting strangely, had no mental issues, and the Affidavit was devoid of any facts supporting any such contentions; and (d) no such peril existed and, if any peril existed, it was solely the result of the improper actions of the officers on scene.

129. Furthermore, Sergeant Dougherty and Detective Boyd knowingly and deliberately, or with reckless disregard of the truth, failed to provide a copy of the audio recording of the Third Incident to the Magistrate and failed to include certain material and

known information in the Affidavit that would have been material to the finding of a lack of probable, including that: (a) Mr. Fiorino carried a firearm for the legitimate purpose of self defense; (b) Mr. Fiorino had a valid LTCF; (c) the firearm was in a retention holster and, throughout the Third Incident, Mr. Fiorino neither touched nor reached anywhere near his firearm; (d) Mr. Fiorino remained calm and repeatedly attempted to deescalate the encounter; and (e) Sergeant Dougherty gave conflicting commands to Mr. Fiorino throughout the Third Incident, including, to put up his hands, to keep his hands down, to keep his hands where they were, and that he would be shot if he moved.

Other Allegations

130. Upon information and belief, some or all of Mr. Fiorino's constitutionally protected actions described hereinabove were substantial or motivating factors in Commissioner Ramsey's decision to direct the PPD to reinvestigate Mr. Fiorino and the Third Incident, and in Detective Boyd's and the PPD's conduct in requesting the Warrant, filing the Charges, failing to timely remove the Warrant from the NCIC system, and re-arresting Mr. Fiorino.

131. Indeed, the circumstances suggest that the Department was interested in causing as much trouble as possible for Mr. Fiorino, rather than in investigating an incident in which they had ample in-house witnesses. Detective Boyd and/or John and Jane Does interviewed the officers about whom Mr. Fiorino had filed Internal Affairs complaints in 2010, and contacted both the Montgomery County Sheriff (who issued and could revoke Mr. Fiorino's LTCF) and the FBI while concocting the Affidavit of Probable Cause. Upon information and belief, these actions and others were designed to preempt any civil rights complaint by Mr. Fiorino, and retroactively legitimize the illegal seizure and arrest of Mr. Fiorino and the illegal seizure of his property.

132. As a result of the Warrant, Charges, and the proceedings related thereto, Mr. Fiorino was caused to spend significant sums for a criminal defense attorney and, in addition, was caused to miss approximately nine days of work due to his incarceration, court appearances, efforts to retrieve his firearm, meetings with his attorneys, and other mandatory appearances associated with the Warrant, Charges and Rearrest.

CAUSES OF ACTION

COUNT I - 42 U.S.C. § 1983 - WRONGFUL DETENTION UNDER THE FOURTH AMENDMENT – FIRST INCIDENT (Fiorino v. City of Philadelphia)

133. The foregoing paragraphs are incorporated herein as if set forth in full.

134. As of the date of each of the incidents, it was clearly established that it is not illegal to openly carry a firearm in Philadelphia if one has a valid LTCF and, therefore, the stated reason and purpose for the detention and seizure of Mr. Fiorino was improper, illegal, and violated his Fourth Amendment rights.

135. Moreover, as of the date of each of the incidents, it was clearly established that the Fourth Amendment protects against unreasonable searches and seizures, including those entailing only a brief detention.

136. Furthermore, as of the date of each of the incidents, it was clearly established that an investigative detention may continue only so long as is necessary to confirm or dispel any reasonable suspicion. Likewise, an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop and the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time.

137. Mr. Fiorino was stopped, searched and detained by Sergeant Bonk and Officers

McCuen and Murtha not to confirm the validity of his LTCF but, instead, because said officers incorrectly believed that it was illegal to openly carry a firearm in Philadelphia, even if one has an LTCF.

138. Assuming, *arguendo*, that the officers had reasonable and articulable suspicion that criminal activity was afoot, any such reasonable suspicion should, and could have been, dispelled in only a few minutes by checking the validity of Mr. Fiorino's LTCF via telephone or radio.

139. In fact, in the aforementioned videotaped interview conducted on May 14, 2011, Captain Healy admitted that such stops "can be over in minutes."

140. The detention of Mr. Fiorino by the officers involved in and present during the First Incident lasted significantly longer than necessary because they incorrectly and unreasonably believed that it was illegal to openly carry a firearm in Philadelphia, even with a valid LTCF, despite clearly established law to the contrary.

141. During the course of the First Incident, Mr. Fiorino's liberty was unconstitutionally restrained and invaded, and he was embarrassed and humiliated by the officers involved in and present during the First Incident in the presence of the many citizens who witnessed the incident, thereby directly and proximately causing harm and damage to Mr. Fiorino.

142. The PPD and, by extension, the City, caused these violations of Mr. Fiorino's civil rights through its execution of the Policy, and through its encouragement, toleration, and ratification of, and its deliberate indifference to the need to properly discipline, train, and supervise officers with regard to the standards for reasonable suspicion and investigative detention, the ability quickly check the validity of a person's LTCF, the right to openly carry

firearms in Philadelphia with an LTCF, all in the face of numerous ongoing complaints and incidents in which officers violated people's rights. Such discipline, training and supervision were obviously necessary to avoid constitutional violations, and both the illegal Policy and the failure to carry out such discipline, training and supervision were direct and proximate causes of Plaintiff's damages with regard to the First Incident.

WHEREFORE, Plaintiff, Mark A. Fiorino, requests judgment in his favor and against the City and requests the following relief:

- (a) A declaration that the City violated Mr. Fiorino's constitutional rights;
- (b) An award of compensatory damages against the City in a sum to be determined at trial; and
- (c) An award of reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

**COUNT II - 42 U.S.C. § 1983 - WRONGFUL DETENTION
AND WRONGFUL SEIZURE OF PROPERTY UNDER THE
FOURTH AND FOURTEENTH AMENDMENTS- SECOND INCIDENT
(Fiorino v. City of Philadelphia, and Sergeant Kulp in his individual capacity)**

143. The foregoing paragraphs are incorporated herein as if set forth in full.

144. Mr. Fiorino was detained and searched by Sergeant Kulp and Officers Moore, Corbo and Furey not to confirm the validity of his LTCF but, instead, because the officers involved in the Second Incident incorrectly believed that it was illegal to openly carry a firearm in Philadelphia, even if one has an LTCF.

145. Assuming, *arguendo*, that the police had reasonable and articulable suspicion that criminal activity was afoot, any such reasonable suspicion should, and could have been, dispelled in only a few minutes by confirming the validity of Mr. Fiorino's LTCF as aforesaid.

146. The detention of Mr. Fiorino by the officers involved in the Second Incident

lasted significantly longer than necessary because the officers incorrectly and unreasonably believed that it was illegal to openly carry a firearm in Philadelphia, even with a valid LTCF, despite clearly established law to the contrary.

147. The illegal confiscation and detention of Mr. Fiorino's firearm and magazines, and the confiscation and destruction of Mr. Fiorino's ammunition, by Sergeant Kulp and the City, constituted an unconstitutional seizure and continued detention of Mr. Fiorino's property in violation of the Fourth and Fourteenth Amendments.

148. During the course of the Second Incident, Mr. Fiorino's liberty was unconstitutionally restrained and invaded, and he was embarrassed and humiliated in the presence of his female companion and the many citizens who witnessed the incident, thereby directly and proximately causing harm and damage to Mr. Fiorino.

149. The actions of Sergeant Kulp in confiscating Mr. Fiorino's property were intentional, willful, malicious and/or in reckless disregard of Mr. Fiorino's constitutional rights.

150. The PPD and, by extension, the City, caused these violations of Mr. Fiorino's civil rights through its execution of the Policy, and through its encouragement, toleration, and ratification of, and its deliberate indifference to the need to properly discipline, train, and supervise officers with regard to the standards for reasonable suspicion and investigative detention, the ability to confirm the validity of a person's LTCF, the grounds and procedure for confiscation, continued detention, and destruction of citizens' property, and the statutory right to openly carry firearms in Philadelphia with an LTCF, all in the face of numerous ongoing complaints and incidents in which officers violated people's rights. Such discipline, training and supervision were obviously necessary to avoid constitutional violations, and both the illegal Policy and the failure to carry out such discipline, training and supervision were direct and

proximate causes of Plaintiff's damages with regard to the Second Incident.

WHEREFORE, Plaintiff, Mark A. Fiorino, requests judgment in his favor and against the City and Sergeant Kulp, and requests the following relief:

- (a) A declaration that the City and Sergeant Kulp violated Mr. Fiorino's constitutional rights;
- (b) A permanent injunction prohibiting the City from confiscating citizens' legally owned and carried firearms, unless the owner/carrier has committed a crime for which he/she is arrested, or unless the firearm is needed as evidence for a bona fide criminal investigation or prosecution;
- (c) An award of compensatory damages against the City and Sergeant Kulp, jointly and severally, in a sum to be determined at trial;
- (d) An award of punitive damages against Sergeant Kulp as a result of his authorization of the illegal confiscation of Mr. Fiorino's property; and
- (e) An award of reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

**COUNT III - 42 U.S.C. § 1983 - EXCESSIVE FORCE AND WRONGFUL
DETENTION UNDER THE FOURTH AMENDMENT – THIRD INCIDENT**
**(Fiorino v. City of Philadelphia, and Sergeant Dougherty,
Officer Rubin, and Officer Shellhammer in their individual capacities)**

151. The foregoing paragraphs are incorporated herein as if set forth in full.

152. Assuming, *arguendo*, that the police officers involved in the Third Incident had reasonable and articulable suspicion that criminal activity was afoot, any such reasonable suspicion should, and could have been, dispelled in only a few minute by confirming the validity of Mr. Fiorino's LTCF.

153. Furthermore, it was clearly established law at the time of this Third Incident that

by pointing of a gun at Mr. Fiorino, handcuffing him, and placing him in a police paddy wagon, the police had effectuated an arrest of Mr. Fiorino, an act for which probable cause was required.

154. Given the fact that Mr. Fiorino immediately notified the officers that he had a valid LTCF, the police had no probable cause to arrest Mr. Fiorino because it is not illegal to openly carry a firearm in Philadelphia with a valid LTCF.

155. The officers could have easily confirmed the validity of Mr. Fiorino's LTCF in in only a few minutes. Instead, the officers' seizure and arrest of Mr. Fiorino lasted for approximately forty-five minutes because the officers incorrectly and unreasonably believed that it was illegal to openly carry a firearm in Philadelphia, even with a valid LTCF, despite clearly established law and a purported official PPD Policy to the contrary.

156. Furthermore, Sergeant Dougherty's conduct in pointing a gun at Mr. Fiorino and threatening to shoot him, and Officers Rubin's and Shellhammer's conduct in throwing and pinning Mr. Fiorino to the ground and causing him pain, constituted unlawful and excessive force, and the Fourth Amendment right to be free from such unlawful and excessive force was clearly established at the time of this Third Incident.

157. During the course of this third incident, Mr. Fiorino was deprived of his liberty and embarrassed and humiliated by Sergeant Dougherty and Officers Rubin and Shellhammer in the presence of the many citizens who witnessed the incident.

158. Mr. Fiorino suffered from pain, mental anguish and emotional distress as a direct and proximate result of the aforementioned actions of the officers on scene, including from the excessive force by Sergeant Dougherty and Officers Rubin and Shellhammer.

159. The actions of Sergeant Dougherty and Officers Rubin and Shellhammer were intentional, willful, malicious and/or in reckless disregard of Mr. Fiorino's constitutional rights.

160. The PPD and, by extension, the City, caused these violations of Mr. Fiorino's civil rights through continued enforcement of the illegal Policy, and through its encouragement, toleration, and ratification of, and its deliberate indifference to the need to properly discipline, train, and supervise officers with regard to the standards for when it is permissible to detain, seize and/or arrest citizens, the standards for reasonable suspicion and probable cause, the statutory right to openly carry firearms in Philadelphia with a valid LTCF, the ability to check the validity of a person's LTCF, and regarding the appropriate use of force, all in the face of numerous ongoing complaints and incidents in which officers violated people's rights. Such discipline, training and supervision were obviously necessary to avoid constitutional violations, the Policy and Modified Policy were moving forces behind the aforementioned constitutional violations, and the failure to carry out such discipline, training and supervision were direct and proximate causes of the aforementioned constitutional violations, thereby causing Plaintiff's damages with regard to the Third Incident.

WHEREFORE, Plaintiff, Mark A. Fiorino, requests judgment in his favor and against the City, Sergeant Dougherty, Officer Rubin, and Officer Shellhammer, and requests the following relief:

- (a) A declaration that the City, Sergeant Dougherty, Officer Rubin, and Officer Shellhammer violated Mr. Fiorino's constitutional rights;
- (b) An award of compensatory damages against the City, Sergeant Dougherty, Officer Rubin, and Officer Shellhammer, jointly and severally, in a sum to be determined at trial;
- (c) An award of punitive damages against Sergeant Dougherty, Officer Rubin, and Officer Shellhammer; and
- (d) An award of reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

COUNT IV - 42 U.S.C. § 1983 - WRONGFUL DETENTION
UNDER THE FOURTH AMENDMENT – THE REARREST
(Fiorino v. City of Philadelphia, and Detective Boyd and
Unknown John and Jane Does in their individual capacities)

161. The foregoing paragraphs are incorporated herein as if set forth in full.

162. As a result of the Rearrest, Mr. Fiorino was deprived of his liberty and embarrassed and humiliated in the presence of the many citizens who witnessed the incident, in violation of the Fourth Amendment.

163. Mr. Fiorino suffered from mental anguish and emotional distress as a direct and proximate result of the Rearrest.

164. Detective Boyd and/or the other John and Jane Doe employees or agents of the PPD responsible for removing the Warrant from the NCIC system and/or other warrant database(s) intentionally, willfully, maliciously and/or with reckless disregard to Mr. Fiorino's rights, failed to remove the active Warrant from such system and/or database(s) once Mr. Fiorino turned himself in to police on April 21, 2011.

165. Furthermore, such officers knew, or with reckless disregard to Mr. Fiorino's rights should have known, that failing to remove the Warrant from the aforementioned system and/or database(s) was likely to result in the Rearrest.

166. It is believed and therefore averred that the PPD and, by extension, the City, has insufficient policies regarding who must and when that person must remove active arrest warrants from the NCIC system and other warrant databases, and encouraged, tolerated, ratified and have been deliberately indifferent to the need to discipline, train and supervise its officers with regard to the necessity of promptly removing active arrest warrants from the NCIC system and other warrant databases, once the subject of a warrant is taken into custody so as to avoid the

possibility of a rearrest on an inactive warrant. Such policies, procedures, discipline, training and supervision were obviously necessary to avoid constitutional violations, and the failure to promulgate such policies and procedures, and to carry out such discipline, training and supervision, were moving forces and/or direct and proximate causes of the constitutional violations and Plaintiff's damages with regard to the Rearrest.

WHEREFORE, Plaintiff, Mark A. Fiorino, requests judgment in his favor and against the City, Detective Boyd, and the John and Jane Doe employees or agents of the PPD responsible for failing to remove the Warrant from the NCIC System and other applicable warrant databases, and requests the following relief:

- (a) A declaration that the defendants violated Mr. Fiorino's constitutional rights;
- (b) An award of compensatory damages against the City, Detective Boyd, and the unknown John and Jane Doe employees or agents of the PPD responsible for failing to remove the Warrant from the NCIC System and other applicable warrant databases, jointly and severally, in a sum to be determined at trial;
- (c) An award of punitive damages against Detective Boyd, and the John and Jane Doe employees or agents of the PPD responsible for failing to remove the Warrant from the NCIC System and other applicable warrant databases; and
- (d) An award of reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

COUNT V - 42 U.S.C. § 1983 -
FIRST AMENDMENT RETALIATION

(Fiorino v. City of Philadelphia, and Commissioner Ramsey, Detective Boyd, Sergeant Dougherty, and Unknown John and Jane Does in their individual capacities)

- 167. The foregoing paragraphs are incorporated herein as if set forth in full.
- 168. After Mr. Fiorino posted detailed descriptions and audio recordings of the three

incidents on the Internet, publicly posted on the Internet that he was considering filing a civil rights lawsuit against the City and the officers involved in the three incidents and was soliciting donations for that purpose, and spoke with the press regarding his unconstitutional treatment at the hands of the PPD, Commissioner Ramsey and other unknown members of the command structure of the PPD learned of Mr. Fiorino's public statements and directed that an investigation and prosecution be instituted against him in retaliation therefor.

169. Detective Boyd carried out the investigation and initiation of prosecution against Mr. Fiorino at the direction of the City and/or Commissioner Ramsey and in retaliation for Mr. Fiorino's public statements about the PPD. Sergeant Dougherty assisted Detective Boyd, and provided false and misleading information, and/or omitted material information, for the affidavit of probable cause, also in retaliation for Mr. Fiorino's public statements about the PPD and the Third Incident.

170. Neither the PPD's aforementioned second look at or reinvestigation of Mr. Fiorino and the Third Incident, nor the filing of the Charges, would have occurred but for Mr. Fiorino's public statements, and there would have been no prosecution if Mr. Fiorino had not made the Internet Postings and criticized the PPD.

171. Commissioner Ramsey, Sergeant Dougherty, Detective Boyd, and the other unknown John and Jane Doe employees and agents of the PPD involved in the decision to prosecute Mr. Fiorino in retaliation for protected First Amendment activities acted intentionally, willfully, maliciously and/or with reckless disregard of Mr. Fiorino's constitutional rights.

172. The PPD and, by extension, the City, caused the violations of Mr. Fiorino's constitutional rights through the direction and ratification by PPD policy makers and final decision makers, including Commissioner Ramsey.

173. In addition, this retaliatory prosecution was caused by a long-standing custom and practice within the PPD of initiating criminal charges against people who complain about PPD officers, who record police officers in the course of their duties, or who may assert claims for excessive force or other Fourth Amendment violations against Philadelphia police officers.

174. The PPD and, by extension, the City, has encouraged, tolerated, ratified and have been deliberately indifferent to the need to discipline, train and supervise its officers to prevent retaliatory filing of criminal charges against citizens, all in the face of numerous and ongoing complaints and incidents in which officers violated people's rights. Such discipline, training and supervision was obviously necessary to avoid constitutional violations and the failure to carry out such discipline, training and supervision was the direct and proximate cause of Mr. Fiorino's damages with regard to the false and retaliatory charges filed against him.

WHEREFORE, Plaintiff, Mark A. Fiorino, requests judgment in his favor and against the City, Commissioner Ramsey, Detective Boyd, Sergeant Dougherty, and the John and Jane Doe employees or agents of the PPD involved in the initiation of the false criminal charges against him, and requests the following relief:

(a) A declaration that the City, Commissioner Ramsey, Detective Boyd, Sergeant Dougherty, and the John and Jane Doe employees or agents of the PPD involved in the initiation of the criminal charges against Mr. Fiorino without probable cause violated Mr. Fiorino's constitutional rights;

(b) An award of compensatory damages against the City, Commissioner Ramsey, Detective Boyd, Sergeant Dougherty, and the John and Jane Doe employees or agents of the PPD involved in the initiation of the false criminal charges against Mr. Fiorino, jointly and severally, in a sum to be determined at trial;

(c) An award of punitive damages against Commissioner Ramsey, Detective Boyd, Sergeant Dougherty, and the John and Jane Doe defendants employees or agents of the PPD involved in the initiation of the retaliatory criminal charges against Mr. Fiorino; and

(d) An award of reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

COUNT VI - 42 U.S.C. § 1983 –
MALICIOUS PROSECUTION UNDER THE FOURTH AMENDMENT
(Fiorino v. City of Philadelphia, and Commissioner Ramsey, Detective Boyd, Sergeant Dougherty, and Unknown John and Jane Does in their individual capacities)

175. The foregoing paragraphs are incorporated herein as if set forth in full.

176. As set forth hereinabove, at Commissioner Ramsey's specific direction, Detective Boyd, Sergeant Dougherty, and certain John and Jane Doe employees or agents of the PPD maliciously instituted the investigation, filed the false criminal Charges against Mr. Fiorino, and requested the Warrant.

177. Mr. Fiorino was acquitted of the Charges and, therefore, the prosecution was terminated in Mr. Fiorino's favor.

178. As explained hereinabove, there was no probable cause to initiate the criminal proceedings against Mr. Fiorino.

179. In addition, Detective Boyd conducted an insufficient investigation and maliciously provided false and misleading material information to the Magistrate and the District Attorney's office, and omitted certain other material information, resulting in the filing and approval of the Charges and the Warrant.

180. The foregoing constitutes malicious prosecution, which is actionable under the Fourth and Fourteenth Amendments.

181. Commissioner Ramsey, Sergeant Dougherty, Detective Boyd, and the other

unknown John and Jane Doe employees and agents of the PPD involved in the decision to maliciously prosecute Mr. Fiorino acted intentionally, willfully, maliciously and/or with reckless disregard of Mr. Fiorino's constitutional rights.

182. The PPD and, by extension, the City, caused the violations of Mr. Fiorino's constitutional rights through the direction and ratification by PPD policy makers and final decision makers, including Commissioner Ramsey.

183. The PPD and, by extension, the City, has encouraged, tolerated, ratified and have been deliberately indifferent to the need to discipline, train and supervise its officers to prevent malicious filing of false criminal charges against citizens, all in the face of numerous and ongoing complaints and incidents in which officers violated people's rights. Such discipline, training and supervision was obviously necessary to avoid constitutional violations and the failure to carry out such discipline, training and supervision was the direct and proximate cause of Mr. Fiorino's damages with regard to the false charges filed against him.

WHEREFORE, Plaintiff, Mark A. Fiorino, requests judgment in his favor and against the City, Commissioner Ramsey, Detective Boyd, Sergeant Dougherty, and the John and Jane Doe employees or agents of the PPD involved in the initiation of the false criminal charges against him, and requests the following relief:

(a) A declaration that the City, Commissioner Ramsey, Detective Boyd, Sergeant Dougherty, and the John and Jane Doe employees or agents of the PPD involved in the initiation of the criminal charges against Mr. Fiorino without probable cause violated Mr. Fiorino's constitutional rights;

(b) An award of compensatory damages against the City, Commissioner Ramsey, Detective Boyd, Sergeant Dougherty, and the John and Jane Doe employees or agents of the

PPD involved in the initiation of the false criminal charges against Mr. Fiorino, jointly and severally, in a sum to be determined at trial;

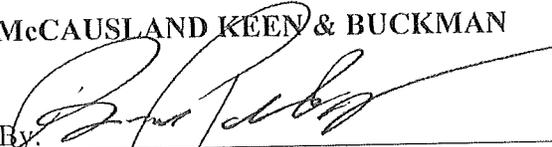
(c) An award of punitive damages against Commissioner Ramsey, Detective Boyd, Sergeant Dougherty, and the John and Jane Doe defendants employees or agents of the PPD involved in the initiation of the false criminal charges against Mr. Fiorino; and

(d) An award of reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

JURY DEMAND

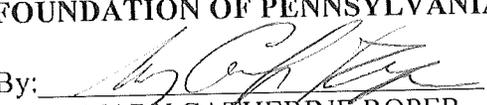
Plaintiff, Mark A. Fiorino, hereby demands a jury trial on all claims.

McCAUSLAND KEEN & BUCKMAN

By: 

BENJAMIN R. PICKER
PA Attorney I.D. No. 93089
bpicker@mkbattorneys.com
GLENN S. GITOMER
PA Attorney I.D. No. 19287
ggitomer@mkbattorneys.com
Radnor Court, Suite 160
259 North Radnor-Chester Road
Radnor, Pennsylvania 19087-5257
(610) 341-1000 (telephone)
(610) 341-1099 (facsimile)

**AMERICAN CIVIL LIBERTIES
FOUNDATION OF PENNSYLVANIA**

By: 

MARY CATHERINE ROPER
PA Attorney I.D. No. 71107
mroper@aclupa.org
CHRISTOPHER MARKOS
PA Attorney I.D. No. 308997
cmarkos@aclupa.org
P.O. Box 40008
Philadelphia, PA 19106
(215) 592-1513 (telephone)
(215) 592-1343 (facsimile)

Attorneys for Plaintiff, Mark Fiorino

Date: February 14, 2012