

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

AMANDA GERACI, \_\_\_\_\_ )

Plaintiff, )

v. )

Civil Action No. \_\_\_\_\_ )

CITY OF PHILADELPHIA; POLICE )  
OFFICER DAWN BROWN, Badge No. )  
2454; POLICE OFFICER TERRA M. )  
BARROW, Badge No. 1147; POLICE )  
OFFICER NIKKI L. JONES, Badge No. )  
2549; POLICE OFFICER RHONDA )  
SMITH, Badge No. 1373, )

Defendants. )

**COMPLAINT**

**INTRODUCTION**

Observing police officers' behavior in public is activity protected by the First Amendment to the U.S. Constitution. It is not a crime. Nevertheless, notwithstanding a widely publicized Department policy endorsing these principles, Philadelphia police officers, due to serious deficits in training, supervision, and discipline, have routinely punished civilians who observe or record police activity by filing false criminal charges against them or otherwise acting to prevent them from engaging in this constitutionally protected activity. This case is brought by a woman who, due to the deliberate indifference of the City of Philadelphia and the unlawful actions of four police officers, was stopped, detained, and subjected to excessive and unreasonable force in retaliation for her efforts to observe and photograph a police officer at work. This civil rights action seeks declaratory relief and damages.

## **JURISDICTION AND VENUE**

1. This action to vindicate Plaintiff's rights protected by the First, Fourth, and Fourteenth Amendments to the U.S. Constitution is brought under 42 U.S.C. § 1983. This Court has jurisdiction over this civil rights action under 28 U.S.C. §§ 1331 and 1343. This Court also has jurisdiction under 28 U.S.C. §§ 2201 and 2202 to declare the rights of the parties and to grant all further relief found necessary and proper.

2. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391(a) in that the defendants are subject to personal jurisdiction within the Eastern District of Pennsylvania and the events that give rise to this action occurred within the Eastern District of Pennsylvania.

## **PARTIES**

3. Plaintiff Amanda Geraci is a resident of the City of Philadelphia in the Commonwealth of Pennsylvania.

4. Defendant City of Philadelphia is a political subdivision of the Commonwealth of Pennsylvania and manages, directs, and controls the Philadelphia Police Department ("PPD"), which employs Defendants Brown, Barrow, Jones, and Smith.

5. Defendant Police Officer Dawn Brown, Badge No. 2454, was, at all times here mentioned, an officer with the PPD and was acting under color of state law. Defendant Brown is sued in her individual capacity.

6. Defendant Police Officer Terra M. Barrow, Badge No. 1147, was, at all times here mentioned, an officer with the PPD and was acting under color of state law. Defendant Barrow is sued in her individual capacity.

7. Defendant Police Officer Nikki L. Jones, Badge No. 2549, was, at all times here mentioned, an officer with the PPD and was acting under color of state law. Defendant Jones is sued in her individual capacity.

8. Defendant Police Officer Rhonda Smith, Badge No. 1373, was, at all times here mentioned, an officer with the PPD and was acting under color of state law. Defendant Smith is sued in her individual capacity.

### **FACTUAL ALLEGATIONS**

#### **Ms. Geraci's Unlawful Detention**

9. Plaintiff, Ms. Geraci, is a professional psychotherapist with an active practice counseling persons with trauma and substance abuse issues.

10. In addition to her employment, Ms. Geraci volunteers as a trained legal observer. In this capacity she attends political demonstrations to counsel demonstrators on their rights to assembly and free speech and to observe and record any conflicts between law enforcement officers and demonstrators.

11. Based on her 8 years serving as a legal observer, Ms. Geraci is familiar with legal protections for political demonstrators and, further, legal rules concerning the rights of civilians to observe and record police in the performance of their duties.

12. On the morning of September 21, 2012, Ms. Geraci served as a legal observer at a demonstration organized by local environmental activist groups to protest the use of hydraulic fracturing, known as "fracking," by private corporations mining for natural gas in northern Pennsylvania.

13. The demonstration was set to take place outside of the Pennsylvania Convention Center on North Broad Street in Philadelphia, where natural gas executives were meeting with state government officials.

14. The demonstration was peaceful as approximately 30 demonstrators marched in a circle on the sidewalk outside the Convention Center, carrying signs, playing music on improvised instruments, and singing.

15. Ms. Geraci circulated around the demonstration, monitoring and observing the activities of the demonstrators and the police at the location.

16. A large number of Philadelphia police officers were present at the demonstration.

17. Many of the officers present were members of the Civil Affairs Unit.

18. Officers in the Civil Affairs Unit are specially assigned to attend political demonstrations.

19. Officers in the Civil Affairs Unit receive extensive training concerning First Amendment protections that apply to persons engaging in political demonstrations.

20. Defendants Brown, Barrow, Jones and Smith (collectively "the officer Defendants") were, at all relevant times, assigned to the Civil Affairs Unit.

21. The officer Defendants were assigned to be present at the Convention Center for the September 21, 2012 demonstration.

22. At some point during the demonstration, Philadelphia police officers took a young man who was participating in the demonstration into custody.

23. The officers who took the man into custody claimed that he had struck an officer with a wooden spoon that he was using to bang a pot as an improvised drum.

24. The man was arrested based on those allegations. He was later acquitted of all charges.

25. When police took the man into custody, they escorted him inside the Convention Center.

26. Once inside the Convention Center, the arresting officers began to handcuff and search the man.

27. The police took these actions immediately inside the entrance to the Convention Center in front of a large bank of floor-to-ceiling windows.

28. In the event of an arrest at a political demonstration, the usual practice and responsibility of legal observers is to photograph or video all interactions between police and the demonstrators to ensure that the arrest is carried out in a peaceful and lawful manner.

29. When Ms. Geraci saw that the young man had been taken into custody by police, she sought to get into a position to photograph the arrest.

30. Ms. Geraci walked from the sidewalk toward the windows on the front of the Convention Center so that she could see through the window to observe the arrest.

31. Ms. Geraci did not intend to enter the Convention Center, nor did she make any effort to approach the entrance of the Convention Center.

32. Instead, in an effort to avoid interfering with the police, Ms. Geraci walked away from a group of police officers and moved toward a pillar approximately 10 feet away from where the arrest was occurring; from this vantage point, Ms. Geraci had a clear view of the arrest through the window.

33. There were no barricades or any other indications that would suggest that Ms. Geraci was prohibited from approaching the window.

34. While Ms. Geraci was engaged in legal observing and taking photos of the arrest, Defendant Officer Brown approached her at a full run and threw her up against a pillar on the Convention Center's facade.

35. Defendant Officer Brown immediately violently placed her forearm into Ms. Geraci's neck; she also shoved her knee between Ms. Geraci's legs.

36. Defendant Officer Brown held Ms. Geraci in a standing position pinned against the pillar.

37. While doing so, Defendant Officer Brown, with her face inches from Ms. Geraci's, yelled loudly that Ms. Geraci could not approach the scene of the arrest.

38. Ms. Geraci had made no effort to interfere with the arrest and had no intention to do so.

39. While Defendant Officer Brown held Ms. Geraci pinned against the pillar, Ms. Geraci attempted to explain to Defendant Officer Brown that she was only attempting to photograph and legally observe the arrest.

40. Ms. Geraci responded to Defendant Officer Brown in a calm, professional tone which she is trained to use to de-escalate tense situations and attempted to minimize Defendant Officer Brown's aggression.

41. Defendant Officer Brown continued to hold Ms. Geraci in her custody for a period of minutes.

42. While Defendant Officer Brown was detaining Ms. Geraci, Defendants Barrow, Jones, and Smith stood in the immediate vicinity of Defendant Officer Brown so as to block the ability of other people in the crowd to photograph and/or video Defendant Officer Brown's detention and use of force against Ms. Geraci.

43. Defendants Barrow, Jones, and Smith did nothing to intervene in Defendant Officer Brown's detention of, and use of force against, Ms. Geraci.

44. After a time, Defendant Officer Brown released Ms. Geraci from her custody.

45. Immediately after Defendant Officer Brown released her, Ms. Geraci had red marks on her neck where Defendant Officer Brown had placed her forearm.

46. At no time did Ms. Geraci do anything that would allow a reasonable officer to believe Ms. Geraci was engaged in any unlawful activity.

47. Nothing within the knowledge of Defendant Officer Brown would have provided a reasonable officer with reason to believe that the officer had legal cause to stop and detain Ms. Geraci.

48. At no time did Ms. Geraci do anything that would have allowed a reasonable officer to believe there was legal cause to use force against her.

49. Ms. Geraci was not charged with any offense.

50. Defendant Officer Brown's use of force against Ms. Geraci was excessive and unreasonable under the circumstances.

51. Defendant Officer Brown did not consult a supervisor before using force against Ms. Geraci and interfering with her right to observe and document public interactions between the police and protesters.

52. The Defendant officers' actions were motivated by their efforts to retaliate against Ms. Geraci for her actions in attempting to photograph other Philadelphia police officers conducting an arrest of a political demonstrator.

The City's Policy, Practice, and Custom

53. Ms. Geraci's retaliatory detention and the use of force against Ms. Geraci for photographing the police is a direct result of the policies, practices, and customs of Defendant City of Philadelphia ("City"), whereby Philadelphia police officers routinely arrest and/or detain civilians who observe or record police activities.

54. Officers act in this fashion in order to intimidate civilians so that they will not continue to monitor and record police behavior and in retaliation against civilians' constitutionally protected activity.

55. Supervisory police officials, up to and including Police Commissioner Charles H. Ramsey, are aware of, and have been deliberately indifferent to, the practice of Philadelphia police officers to routinely retaliate against civilians for observing and/or recording them.

56. Prior to the detention of and use of force against Ms. Geraci in September 2012, Defendant City of Philadelphia, through its policymakers, knew or had reason to know of these practices due to multiple incidents reported to local media and Philadelphia civil rights groups involving police conduct similar to that of the Defendant officers in this case.

#### Early Cases: 2010 – 2011

57. The incidents that placed the City on notice as to the practice of PPD officers to retaliate against citizens for observing and/or recording police date back more than two years prior to Ms. Geraci's unlawful seizure.

58. For instance, on July 23, 2010, Melissa Hurling and Shakir Riley were assaulted by PPD officers when they attempted to use their cellphones to record what they considered to be a violent arrest. When police saw Riley filming them, they chased him and then slammed him to the ground, kicking and punching him. When Hurling pulled out her phone to record the police assaulting Riley, she was pushed against a jeep and punched by an officer, and then grabbed by her hair and slammed against the ground. Hurling's mother then found her cellphone at the scene of the incident broken in half as if it had been intentionally destroyed. Riley and Hurling were charged with disorderly conduct, but the charges were dismissed at a summary trial in March 2011.



59. On January 23, 2011, Christopher Montgomery, a journalism student at Temple University, was arrested for using his cellphone to record PPD officers making arrests on the corner of 15th and Chestnut Streets. Mr. Montgomery complied with the police officers' requests to step back. Mr. Montgomery remained a safe distance away from the arresting officers and did not attempt to interfere with the investigation in any way. Nevertheless, police confiscated his cellphone and charged him with disorderly conduct; he was later found not guilty of those charges.

60. In March 2011, PPD policymakers, including—according to a department spokesman—Commissioner Ramsey, directed a detective to “re-investigate” a February 13, 2011 incident involving Mark Fiorino, who was stopped and threatened—*but not charged*—by a Philadelphia police officer for openly carrying his licensed firearm. According to a reporter quoting a PPD spokesperson, the Commissioner gave this order after learning that Mr. Fiorino had posted an audio recording of the February 13 incident on YouTube. The detective assigned to investigate criminal charges against Mr. Fiorino believed he was being directed to investigate the potential for charges against Mr. Fiorino because of the audio recording. As a result of this “re-investigation,” on April 15, 2011—two months after the incident—a PPD detective initiated charges of disorderly conduct and recklessly endangering another person against Mr. Fiorino, alleging that his simultaneous possession of a licensed firearm *and an audio recorder* meant that Mr. Fiorino was trying to spark a violent police reaction. Mr. Fiorino was ultimately found not guilty of all charges.

61. On June 15, 2011, Alexine Fleck was arrested near her home for observing a police officer in his interactions with an apparently intoxicated man sitting on a stoop. Although she

stepped back when the officer instructed her to do so, she would not leave. The officer took her into custody and charged her with “failure to disperse.” Those charges were later dismissed.

62. On July 2, 2011, according to media reports, a woman named Zanberle Sheppard was told by neighbors that PPD officers were beating her handcuffed boyfriend in an alley outside their home. Using her cellphone, she recorded the arrest. Sheppard then ran into the alley where, following an altercation, the officers seized her phone. When Sheppard later received her phone back from the PPD, the battery was missing and the video was gone. Sheppard was charged with disorderly conduct. She was found guilty on August 22, 2011 following a summary trial and was fined.

63. On July 14, 2011, Coulter Loeb was observing and photographing police in Rittenhouse Square as they evicted an apparently homeless man and woman from the park. As the police walked the woman along the sidewalk leading to the street, Mr. Loeb followed at a distance. One of the officers directed Mr. Loeb to walk in the other direction. When Mr. Loeb refused, the officer accused Mr. Loeb of interfering with police business, then arrested him and charged him with disorderly conduct. The charges were later dismissed.

#### Commissioner Ramsey’s September 2011 Memorandum

64. In September 2011, Commissioner Ramsey, having attended a conference with police executives from several other large cities and having discussed the importance of establishing clear policies regarding police response to the use of cell phones to record officers in the performance of their duties, instructed his staff to prepare written guidance for PPD officers.

65. In the course of preparing that guidance, the Commissioner’s legal advisor spoke to multiple Philadelphia police officers and learned that many officers believed it was unlawful for

civilians to record police activities and that, accordingly, police could make arrests in such circumstances.

66. On September 23, 2011, Commissioner Ramsey issued a memorandum to “remove any confusion as to duties and responsibilities of sworn personnel when being photographed, videotaped, or audibly recorded while conducting official business or while acting in an official capacity in any public place” and instructed PPD officers to allow themselves to be recorded.

67. The memorandum was distributed and read to patrol officers at roll call. There was no additional training on the information contained in the memorandum.

#### Continued Improper and Retaliatory Arrests

68. After Commissioner Ramsey’s September 2011 Memorandum, PPD officers continued to arrest citizens for observing or recording the police. Several of these incidents were reported in the press or became the subject of complaints submitted to the PPD.

69. For example, according to press reports, on March 14, 2012, a photojournalism student at Temple University, Ian Van Kuyk, was photographing a traffic stop as part of a course assignment for night photography. When Mr. Van Kuyk refused to stop photographing, PPD officers arrested him and his girlfriend, who attempted to rescue Mr. Van Kuyk’s camera. Mr. Van Kuyk was charged with disorderly conduct, obstruction of justice, resisting arrest and hindering apprehension; his girlfriend was charged with obstruction and disorderly conduct. On November 27, 2012, Mr. Van Kuyk was found not guilty on all charges following a trial.

70. Shortly after Mr. Van Kuyk’s arrest, in or around May 2012, PPD policymakers, including Commissioner Ramsey, learned that the U.S. Department of Justice had filed briefing in a civil rights case brought in Baltimore, Maryland asserting the position of the federal

government that the right of citizens to record police in the performance of their duties is protected by the First Amendment.

71. Based on the Justice Department briefing, policymakers in the Philadelphia Police Department began work on police directive that would further spell out the policies outlined in the September 2011 Memorandum.

#### Directive 145

72. A new directive was not completed until November 2012, approximately two months after the detention of and use of force against Ms. Geraci; the events that occurred subsequent to the unlawful restraint of Ms. Geraci, however, are relevant to explain the later conclusion by the Department's Internal Affairs Division finding no misconduct by the Defendant officers' in this case as they illustrate the Department's indifference to officers' actions violating the Department's written policies.

73. The new policy issued in November 2012, Directive 145, supplemented the September 2011 Memorandum with a more detailed description of PPD officers' responsibilities regarding civilians who observe and record police in the performance of their duties.

74. The Directive specified that PPD officers should expect to be photographed, videotaped, or recorded while performing their official duties in public and instructed that PPD officers should not interfere with such recording.

75. The Directive provided, further, that before taking any action against a person who is recording, police should consult with a supervisor.

76. When Directive 145 was issued, PPD commanding officers were instructed to distribute the new policy to all personnel. Aside from making the Directive available to officers and

reading pertinent parts of the Directive at roll call, PPD provided no additional training to officers concerning their responsibilities as outlined in the Directive.

2013: Notice of Continued Unlawful Police Actions to Engage in Retaliation

77. In January 2013, the undersigned counsel filed the first of four separate lawsuits alleging that PPD officers had violated the First and Fourth Amendments by arresting a civilian for recording police officers in the performance of their duties. The Complaint, filed on behalf of Christopher Montgomery, whose arrest is described above, alleged that he was arrested despite having committed no crime, that his arrest was in retaliation for the exercise of First Amendment rights and that his arrest was the result of a PPD policy, practice, or custom.

78. As a result of the filing of this lawsuit, PPD policymakers were aware of allegations that PPD officers had, pursuant to a City policy, practice, or custom, routinely and unlawfully arrested citizens in retaliation for the recording of police in the performance of their duties despite the fact that no crime had been committed.

79. Just two months after the filing of the Montgomery lawsuit, on March 15, 2013, the Commissioner and his high ranking advisors received a Recommendation Memorandum from the Police Advisory Commission (“PAC”), an appointed board of civilians tasked with monitoring police practices, stating that Philadelphia police had continued to retaliate against people for videotaping police notwithstanding the Commissioner’s September 2011 memorandum prohibiting such conduct.

80. The Memorandum specifically advised PPD policymakers of the PAC’s concern as to the number of reported incidents:

Recent news accounts indicate that Philadelphia police officers are not adhering to Philadelphia Police Department Memorandum 11-01, the directive related to the confiscation of recording devices. Additionally, the Internal Affairs database shows at least eight

citizen complaints since 2011 where people were allegedly retaliated against for videotaping police. Six of those incidents occurred AFTER the directive was issued in September 2011. One of the more serious cases involving the videotaping of police from 2012 resulted in partially sustained charges against two officers.

...

The Police Advisory Commission recommends that all police personnel be reminded, in writing, of the existing recommendation and that departmental action be instituted against any member of the PPD not adhering to the recommendation.

81. Each of the incidents referred to by the PAC had been previously reported to the Philadelphia Police Department's Internal Affairs Division and were thus known to PPD and its policymakers, and, accordingly, the PAC Memorandum served the purpose of highlighting those incidents and reinforcing the need for intervention by PPD policymakers.

82. Two incidents referenced in the PAC Memorandum, which preceded the issuance of the Commissioner's September 2011 memorandum, included the following:

- a. A March 1, 2011 incident where J.C. alleged that he and two other males were physically abused by police and that back-up officers who arrived at the scene confiscated the cellphones of bystanders who had videoed the incident.
- b. A July 29, 2011, incident where B.K-C. alleged that he videotaped police who were striking a male with batons and, after the police realized that he was recording the officers, police attacked him, knocked his cell phone out of his hands, and caused him injury.

83. The PAC Memorandum also referred to seven incidents that post-dated the issuance of the Commissioner's September 2011 memorandum, which included the incident at issue in this case—the detention and use of force by Defendant Officer Brown against Ms. Geraci—and six others, including the following:

- a. An October 2, 2011 incident where T.G. alleged that he was subjected to an unlawful car stop and that, once officers noticed that he was recording the incident, the officers grabbed T.G.'s cellphone, deleted the recording, and damaged the cellphone.
- b. A November 15, 2011 incident where A.R. alleged that officers pulled him out of his vehicle and slammed him to the ground and that one of the involved officers pointed a gun at a bystander, who was videotaping the incident, while ordering the bystander to put away his cellphone.
- c. A February 21, 2012 incident where R.F. alleged that officers who learned that he had previously videoed them physically abusing civilians threatened to kill him if he ever recorded them again and then physically assaulted him.
- d. An April 4, 2012 incident where M.H. and D.C. alleged that M.H. recorded officers assaulting D.C. and that the officers, upon realizing that she had made a recording, threatened M.H. and demanded that she provide the password to her cellphone; once M.H. gave the officers her password, she alleged, the officers deleted all recordings of the assault incident.
- e. A July 16, 2012 incident where R.H. alleged that he was subjected to an unlawful car stop after which officers yelled profanities at him and that once the officers apparently realized that R.H. had videotaped the incident, they attempted to confiscate his cellphone.
- f. An October 30, 2012 incident where T.H. alleged that he was subjected to an unlawful car stop after which he was removed from his car and that when T.H. informed officers that the incident was being recorded, an officer who had drawn

his firearm and approached T.H. in an aggressive manner stated in a threatening way that T.H. would not be recording if “bullets...fly.”

84. One incident, which post-dated the Commissioner’s issuance of Directive 145, included the following: A December 16, 2012 incident where A.S. alleged that he informed a police officer that he had recorded the officer’s actions in violently arresting A.S. and that when A.S. was detained following the arrest and his cellphone was returned to him, the cellphone was damaged and the memory card was missing.

85. Less than two months after the PAC Memorandum was provided to PPD policymakers, on June 5, 2014, the undersigned counsel filed two additional lawsuits alleging that PPD officers had violated the First and Fourth Amendments by arresting a civilian for recording police officers in the performance of their duties. The complaints, filed on behalf of Coulter Loeb and Alexine Fleck, whose arrests are described above, alleged, as in the Complaint filed on behalf of Christopher Montgomery, that each plaintiff was arrested despite having committed no crime, that the plaintiffs’ arrests were in retaliation for the exercise of First Amendment rights, and that the arrests were the result of a PPD policy, practice, or custom.

86. In the course of litigation involving the claims of Christopher Montgomery, Coulter Loeb, and Alexine Fleck, Defendant City of Philadelphia has produced in discovery information concerning at least three other incidents of improper police conduct in retaliation for citizens recording police in the performance of their duties, which incidents were neither reported in the media nor known to the Police Advisory Commission and dated as far back as 2010. The incidents include:

- a. An October 18, 2010 incident where J.Y.H. alleged that she observed police harassing a handcuffed man and that once the involved officers noticed that she



was videotaping the incident, the officers arrested her, confiscated her cellphone, and deleted the video recorded on the cellphone.

- b. A July 21, 2011 incident where J.W. alleged that he was unlawfully arrested for videotaping friends who were standing on a church roof and that, after his arrest, when his cellphone was returned to him, the screen on his cellphone was damaged and the memory card was missing.
- c. An August 11, 2011 incident where M.A. alleged that she videotaped officers who were physically assaulting a man and that officers then confiscated her cellphone, arrested her, and charged her with disorderly conduct.

#### The Internal Affairs Investigation

87. Shortly after Ms. Geraci was detained and subjected to the use of force by Defendant Officer Brown, Ms. Geraci and two of her fellow legal observers submitted complaints to the Philadelphia Police Department's Internal Affairs Division.

88. The Internal Affairs Division is charged with investigating allegations of misconduct by Philadelphia police officers and issuing impartial conclusions concerning any findings of misconduct.

89. Upon the submission of Ms. Geraci's complaint concerning the actions of the Defendant Officers, Internal Affairs investigators interviewed Ms. Geraci, two of her legal observer colleagues, and numerous police officers who were on the scene.

90. The Internal Affairs investigators also viewed a number of photographs showing Defendant Officer Brown with her arm placed on Ms. Geraci's neck, pinning Ms. Geraci up against a pillar.

91. The Internal Affairs investigators were also aware that Defendant Officer Brown did not consult with a supervisor before restraining Ms. Geraci in an effort to prevent her from recording police activity.

92. The Internal Affairs investigators were aware that officers in the Civil Affairs Unit are supposed to be specially trained to preserve and protect the First Amendment rights of demonstrators and, by extension, the First Amendment rights of persons observing the conduct of police during such demonstrations.

93. Further, before it issued its final report concerning Ms. Geraci's complaint, the Internal Affairs investigators were aware, from the incidents described above and from the memorandum issued by the Police Advisory Commission, of substantial evidence indicating that Philadelphia police officers were not acting in compliance with police directives concerning the rights of citizens to observe and record police in the performance of their duties.

94. Despite that knowledge, and despite the evidence presented in support of Ms. Geraci's complaint that the Defendant Officers had violated police directives concerning the right to observe and record police activity, on May 9, 2013, the Internal Affairs investigators issued to Commissioner Ramsey a memorandum indicating that the allegations of improper conduct were either "unfounded" or "not sustained," and, accordingly, recommending that no disciplinary action be taken against the Defendant Officers.

#### Cumulative Notice to the City

95. As of September 2012, when Ms. Geraci was subjected to an unlawful detention and use of force in retaliation for her observation and recording of police, Defendant City of Philadelphia and its policymakers had ample notice through multiple reported incidents that PPD officers

were, despite published policies to the contrary, arresting citizens in retaliation for citizens recording police in the performance of their duties.

96. By time the Internal Affairs Division issued its report in May 2013 finding no wrongdoing on the part of the Defendant Officers, that notice was even more extensive. By that time, the notice included:

- a. More than fifteen incidents, each of which is outlined above, and each of which was made known to the PPD through media reports, complaints to the Internal Affairs Division or Police Advisory Commission, and lawsuits brought against the City of Philadelphia.
- b. A lawsuit specifically alleging that the City, through its policymakers, had, among other things, acted with deliberate indifference to the policy, practice, and custom of PPD officers to arrest citizens in retaliation for recording police in the performance of their duties.
- c. A specific recommendation from the Police Advisory Commission that, due to officers' apparent failure to adhere to PPD directives, PPD take action to remind officers of their responsibilities in dealing with citizens recording police activities and, likewise, institute disciplinary action against PPD officers failing to comply with directives in this context.

97. Notwithstanding this notice, PPD policymakers took no action to remedy the continued failures of police officers to comply with directives providing that citizens have a constitutionally protected right to record officers in the performance of their duties other than providing copies of Directive 145 to be read to officers at roll calls.

98. In particular in relation to this case, despite this notice, PPD policymakers failed to take any action to ensure an objective investigation would be conducted by the Internal Affairs Division.

99. Further, once PPD policymakers received the May 2013 report issued by the Internal Affairs Division, they took no action to ensure that additional or different investigation would be conducted.

100. Accordingly, the only action taken in response to the abundant notice concerning improper police practices regarding the right to record and observe police, was an instruction to re-read police directives to officers.

101. PPD policymakers, including Commissioner Ramsey, are well aware that long directives and other policies are often not read in their entirety at roll call, and are often not read as many times as they are ordered to be read.

102. Further, as evidenced by the fact that incidents of the type outlined above continued even after PPD supervisors read Directive 145 to officers, PPD policymakers were aware that merely reading some or all of the Directive did not impact the views of officers, reported to the Commissioner's legal adviser in 2011, that police can arrest citizens who record police in the performance of their duties.

103. PPD policymakers, including Commissioner Ramsey, understand that the mere reading of a new policy will not change ingrained behavior of PPD officers. When the PPD wants to change a settled practice or a "culture" among officers, it knows that it must do more than announce a new policy and read it at roll call. Despite this, PPD policymakers have made no effort, other than directing the reading of portions of relevant directives to address PPD officers' non-compliance with their responsibilities in this area.

104. Further, despite its knowledge of continued failures by PPD officers to comply with their responsibilities, PPD policymakers have never directed any monitoring of officers' conduct with respect to citizens recording officers in the performance of their duties.

105. Nor have PPD policymakers monitored the conduct of supervisors who, under Directive 145, have a responsibility to approve any restrictive action taken by an officer in response to a civilian recording police. The PPD and its policymakers thus knew that its failure to conduct additional training or supervision or institute any discipline to halt the practice of PPD officers retaliating against people who photograph or record them was likely to lead to additional unconstitutional actions by PPD officers.

106. Accordingly, as demonstrated by their conduct both before and after the detention of and use of force against Ms. Geraci, PPD policymakers have acted with deliberate indifference to the constitutional rights of the persons who watch or record police behavior in the City of Philadelphia by: (a) failing to properly train, supervise, and discipline PPD officers who retaliate against people who observe or record them; (b) inadequately monitoring PPD officers and their practices related to people who watch or record their activities; (c) failing to properly discipline PPD officers who initiate criminal proceedings against people who watch or record their activities or who tamper with the phones of such persons; and (d) failing to rectify the PPD's unconstitutional custom of instituting criminal proceedings against people who watch or record the actions of PPD officers.

107. As a direct and proximate result of the City's policies, practices, and/or customs, Ms. Geraci suffered the following injuries and damages:

- a. Violation of her rights under the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, to be free from retaliation for engaging in constitutionally protected expressive activity;
- b. Violation of her rights under the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, to be free from unlawful detention and unlawful use of force;
- c. Loss of her physical liberty;
- d. Monetary losses;
- e. Emotional trauma, humiliation, and distress.

### **CAUSES OF ACTION**

#### **Count I – First Amendment Retaliation (Against All Defendants)**

108. Observing public police activities, without interfering with those duties, is a legitimate means of gathering information for public dissemination and is expressive conduct protected by the First Amendment to the United States Constitution.

109. Defendant Officer Brown's detention of and use of force against Ms. Geraci and the failure to intervene in that detention and use of force by Defendant Officers Barrow, Jones, and Smith in the absence of legal cause to detain Ms. Geraci or use force against her constituted unlawful retaliation against Ms. Geraci by public officials for engaging in activity protected by the First Amendment to the U.S. Constitution.

110. Defendant City of Philadelphia is responsible for the violations of Plaintiff's constitutional rights because the Defendant officers' actions resulted from the City's deliberate indifference to a custom, pattern, practice, or policy of allowing officers to retaliate against individuals for their expressive conduct in videotaping police undertaking their official duties

and/or a deliberately indifferent failure to train, supervise, and discipline officers who engage in such conduct.

**Count II – Unlawful Use of Force  
(Against All Defendants)**

111. Plaintiff has a clearly established right under the Fourth and Fourteenth Amendments to the U.S. Constitution to be free from the unreasonable use of force, a right that Defendant Brown violated by thrusting her forearm into Ms. Geraci's neck and pinning her against a pillar, causing injury, with no justification for the use of such force, and a right that Defendant Officers Barrow, Jones, and Smith violated by failing to intervene in Defendant Brown's unlawful use of force.

112. Defendant City of Philadelphia is responsible for the violation of Plaintiff's constitutional rights because the Defendant officers' actions resulted from the City's deliberate indifference to a custom, pattern, practice, or policy of allowing officers to retaliate against individuals for their expressive conduct in recording police undertaking their official duties and/or a deliberately indifferent failure to train, supervise, and discipline officers who engage in such conduct.

**PRAYER FOR RELIEF**

Wherefore, in light of the foregoing, Plaintiff respectfully requests the following:

- a. Enter a declaratory judgment that the Defendants violated Plaintiff's First Amendment right to observe police activity;
- b. Enter a declaratory judgment that the Defendants violated Plaintiff's Fourth Amendment right to be free from unlawful detention and use of force;
- c. Award compensatory damages against all Defendants, joint and severally, in an amount to be determined at trial;

- d. Award punitive damages against the Defendant officers;
- e. Enter an award for costs, expenses, and counsel fees pursuant to 42 U.S.C. § 1988; and
- f. Enter such other relief as this honorable Court may deem just and deserving.

Plaintiff hereby demands a jury trial.

September 15, 2014

Respectfully submitted,



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