

APPENDIX: ADDITIONAL FACT PLEADINGS
IN SUPPORT OF MONELL CLAIMS

"CONTEMPT OF COP" AND "COVER CHARGE" ARRESTS

1. Upon information and belief, police officers in the City of Rochester and other municipalities nationwide frequently make arrests in the absence of the commission of any crime by the person arrested, motivated by a desire to punish the arrestee for the arrestee's putative failure to display the degree of deference or subservience demanded by the arresting officers. Such arrests are frequently referred to as "contempt of cop" arrests.

2. Upon information and belief, police officers in the City of Rochester and other municipalities nationwide make "contempt of cop" arrests in the absence of a crime, they frequently justify the arrest by falsely reporting that the arrestee has committed a crime. Such charges are frequently referred to as "cover charges."

3. Upon information and belief, when police officers in the City of Rochester and other municipalities nationwide frequently charge crimes such as disorderly conduct, resisting arrest, and obstruction of governmental administration as cover charges.

4. On February 28, 2008, the Seattle Post-Intelligencer published an investigative review of six (6) years of Seattle Municipal Court files, wherein the Post-Intelligencer's investigators found that African-Americans in that predominantly Caucasian city were arrested solely on charges of "obstructing a public officer" and related crimes such as resisting arrest eight (8) times as often as Caucasians.¹

5. The Seattle Post Intelligencer's investigative review cited above also found that the Seattle City Attorney's Office dropped nearly half of all Seattle criminal cases predicated solely on charges of "obstructing a public officer" and related crimes such as resisting arrest between January 2002 and 2008. See fn1.

6. In response to Seattle Police officers' questionable arrest activities discussed above, "Leo Poort, the [Seattle Police] department's legal adviser, included

¹ Nalder, Kamb and Lathrop, *Blacks Are Arrested on 'Contempt of Cop' Charge at Higher Rate*, SEATTLE POST INTELLIGENCER, February 28, 2008. Article incorporated herein by reference and available online at <http://johnjayresearch.org/cmcy/files/2012/09/seattlepost.pdf>.

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warnings about obstruction arrests in ... her top 12 tips to officers for 'avoiding civil liability lawsuits.' 'Don't arrest for "contempt" of cop,'" she wrote in tip No.3. 'Officers must be thick skinned and not unduly influenced by the attitudes of persons they contact Flunking the "attitude" test (is) not a bookable offense.'" See fn1.

7. In a review of San Jose criminal cases published on October 31, 2009, the San Jose Mercury News reported that the Santa Clara County Prosecutor declined to prosecute over one-third (33.33".%) of resisting arrest cases brought by San Jose police, a rate that is markedly disproportionate to the Santa Clara County Prosecutor's general twenty percent (20%) decline-to-prosecute rate.²

8. The San Jose Mercury News investigation cited above also found that the San Jose Police Department did not sustain or substantiate civilian complaints with respect to any of the ninety-nine (99) use-of-force cases that it reviewed in 2008, even though the San Jose Independent Police Auditor disagreed with police findings in twenty-five (25) of those 99 cases. See fn2.

9. In response to the San Jose Mercury News investigation cited above, the San Jose Police Department instituted a new policy of tracking arrests where it appears that resisting arrest is being used as a cover charge to justify unnecessary and excessive police uses of force on civilians. See fn2.

10. A November 19, 1997 New York Times special report on police brutality predicated on perceived or actual disrespect of New York City Police Officers noted that at that time, the City of New York did not monitor or track police use or levying of charges such as disorderly conduct or resisting arrest.³

11. November 19, 1997 New York Times special report on police brutality predicated on perceived or actual disrespect of New York City Police Officers noted that at that time, the City of New York did not monitor or track police use or levying of charges such as disorderly conduct or resisting arrest, despite considerable anecdotal evidence that New York City Police Officers were arresting individuals on those and other like charges to justify use of force and/or to punish those individuals for "contempt of cop." See fn3.

² Webby, Sean, *Mercury News investigation: San Jose police often use force in resisting-arrest cases*, SAN JOSE MERCURY NEWS, October 31, 2009. Article incorporated by reference herein and available online at: http://www.mercurynews.com/ci_13686438 .

³ Sontag, Deborah, and Barry, Dan, *CHALLENGE TO AUTHORITY: A special report; Disrespect as Catalyst for Brutality*, NEW YORK TIMES, November 19, 1997. Article incorporated by reference herein and available online at: <http://www.nytimes.com/1997/11/19/nyregion/challenge-to-authority-a-special-report-disrespect-as-catalyst-for-brutality.html>

12. The above-cited New York Times special report noted that Los Angeles had already instituted a system for tracking the initiation and dispositions of "contempt of cop" and "cover charge" charges such as resisting arrest and disorderly conduct as of the time of that article's publication in 1997. See fn3.

13. The Rochester Police Department (RPD) has been accused of arresting individuals on disorderly conduct, obstruction of governmental administration, resisting arrest and other like charges to justify use of force and/or to punish those individuals for "contempt of cop."

14. The City of Rochester and the Rochester Police Department maintain a policy, practice and custom of arresting and/or using excessive force against individuals predicated on perceived or actual disrespect of Rochester Police Officers.⁴

15. The City of Rochester is aware of the unlawful policy, practice and custom of Rochester Police Officers arresting and/or using excessive force against individuals predicated on perceived or actual disrespect of Rochester Police Officers, but have done nothing to remedy the unlawful practice, such as implementing a system to monitor or track police use or levying of charges such as disorderly conduct or resisting arrest, despite considerable anecdotal evidence that Rochester Police Officers were arresting individuals on those and other like charges to justify use of force and/or to punish those individuals for "contempt of cop."

16. For example, in May 2011, Rochester police arrested Emily Good. As reported by CNN, after Rochester police pulled over an African American motorist and began searching his vehicle in front of Ms. Good's home, Ms. Good began filming the search because she was concerned it was motivated by racial profiling. Ms. Good filmed the encounter from her front yard. When Ms. Good refused an officer's request to stop filming, Rochester police arrested Ms. Good and charged her with Obstruction of Governmental Administration. The Monroe County District Attorney eventually dismissed all charges against Ms. Good, stating that "Based upon the evidence, we could not make out the elements of the crime charged."⁵

⁴ See Solomon, Jesse, *Charges dismissed against woman who videotaped police encounter*, CNN (June 27, 2011), <http://www.cnn.com/2011/CRIME/06/27/new.york.police.video/> (last visited Dec. 7, 2014); *Cop hit woman who said she's pregnant; chief OKs it*, USA TODAY (Aug. 29, 2013), <http://www.usatoday.com/story/news/nation/2013/08/29/police-pregnant-hit/2728649/> (last visited Dec. 7, 2014);

⁵ See Solomon, Jesse, *Charges dismissed against woman who videotaped police encounter*, CNN (June 27, 2011). Article incorporated by reference herein and available online at: <http://www.cnn.com/2011/CRIME/06/27/new.york.police.video/> (last visited Dec. 7, 2014).

17. On May 1, 2013, Rochester police arrested Benny Warr, a 52-year-old wheelchair bound man, while he was waiting for a RTS bus at the intersection of Jefferson and Bartlett Streets. As reported by the Democrat & Chronicle, Mr. Warr testified to the RPD's Standards Section "that he was maced, thrown to the ground and struck after he responded to an order to move by telling officers that he was just waiting for a bus." The incident between Mr. Warr and the Rochester police officers was caught on video by several bystanders. The Rochester police officers charged Mr. Warr with Disorderly Conduct and Resisting Arrest. Further, "[s]ince reporting his version of the events, [Mr. Warr] has heard nothing from the police or the Civilian Review Board, the body that is supposed to review citizens' complaints of alleged police misconduct."⁶

18. Upon information and belief, Defendant CITY OF ROCHESTER has refused calls for disclosure of statistics concerning minor offenses such as the "cover charge" crimes.

19. Upon information and belief, the "contempt of cop" and "cover charge" charges levied most regularly by Rochester Police Officers are disorderly conduct, resisting arrest, and obstruction of governmental administration.

20. Upon information and belief, "contempt of cop" and "cover charge" charges such as disorderly conduct, resisting arrest, and obstruction of governmental administration are relatively easy for police to levy in the absence of actual probable cause because they may arise out of nearly any police-civilian interaction.

21. Upon information and belief, "contempt of cop" and "cover charge" charges such as disorderly conduct, resisting arrest, and obstruction of governmental administration are relatively easy for police to levy in the absence of actual probable cause because they can be levied solely upon the allegations of the arresting officer(s) without reference to physical evidence or witness observation of criminal acts.

22. Upon information and belief, Defendant CITY OF ROCHESTER has been, and continues to be, aware of the prevalence of the problem of officers of the Rochester Police Department making baseless "contempt of cop" arrests, and bringing false "cover charges" against the arrestees, but has failed to take action to remedy the problem.

⁶ Bryant, Erica, *Whatever Happened to Benny Warr?*, DEMOCRAT & CHRONICLE (Dec. 7, 2013). Article incorporated by reference herein and available online at: <http://www.democratandchronicle.com/story/news/local/2013/12/06/erica-bryant-what-ever-happened-to-benny-warr-/3895715/> (last visited Dec. 8, 2014).

23. Upon information and belief, to date DEFENDANT CITY OF ROCHESTER has not implemented any particular training, oversight measures or policies designed or intended to curtail the improper use by Rochester Police Officers of so-called "contempt of cop" and "cover charge" charges such as disorderly conduct, resisting arrest, and obstruction of governmental administration.

24. Upon information and belief, and despite due and repeated notice that Rochester Police Officers have an ongoing custom or practice of charging individuals with crimes and violations such as resisting arrest, disorderly conduct, and obstruction of governmental administration for personal vindication and/or as pretexts to justify use of force, to date Defendant CITY OF ROCHESTER has not implemented any particular training, oversight measures or policies designed or intended to curtail the improper use by ROCHESTER Police Officers of so-called "contempt of cop" and "cover charge" charges such as disorderly conduct, resisting arrest, and obstruction of governmental administration.

25. Upon information and belief, and despite due and repeated notice that Rochester Police Officers have an ongoing custom or practice of charging individuals with crimes and violations such as resisting arrest, disorderly conduct, and obstruction of governmental administration as pretexts to justify punitive false arrests undertaken in the absence of probable cause, to date Defendant CITY OF ROCHESTER has not implemented any particular training, oversight measures or policies designed or intended to curtail the improper use by Rochester Police Officers of so-called "contempt of cop" and "cover charge" charges such as disorderly conduct, resisting arrest, and obstruction of governmental administration.

26. Upon information and belief, and despite due and repeated notice that Rochester Police Officers such as the Defendant "John Doe" POLICE OFFICERS, and Defendant POLICE OFFICER RODRIGUEZ, Defendant LIEUTENANT PERKOWSKI, Defendant POLICE OFFICER GRANDE, Defendant POLICE OFFICER CAREFLY, and Defendant POLICE OFFICER LYONS have charged and continue to charge individuals with crimes and violations such as resisting arrest, disorderly conduct, obstruction of governmental administration, or fabricating a crime or violation as pretexts to justify punitive false arrests undertaken in the absence of probable cause, to date Defendant CITY OF ROCHESTER has not implemented any particular oversight measures or policies designed or intended to curtail the improper use by Rochester Police Officers of so-called "contempt of cop" and "cover charge" charges such as disorderly conduct, resisting arrest, and obstruction of governmental administration.

27. The particular arrest of Plaintiff MR. REDD is believed to have been motivated in whole or in part by the aforesaid custom or practice of charging individuals

with crimes and violations such as resisting arrest, disorderly conduct, obstruction of governmental administration, or fabricating a violation or crime for personal vindication and/or as pretexts to justify use of force, and/or to justify punitive false arrests because the Plaintiff's arrest was undertaken in the absence of probable cause to arrest.

28. The particular arrest of Plaintiff MR. REDD is believed to have been motivated in whole or in part by the aforesaid custom or practice of charging individuals with crimes and violations such as resisting arrest, disorderly conduct, obstruction of governmental administration, or fabricating a violation or crime for personal vindication and/or as pretexts to justify use of force, and/or to justify punitive false arrests because the Plaintiff's arrest was undertaken a manner which indicated that the individual Defendant Officers who participated in Plaintiff's arrest made the determination to arrest Plaintiff despite compelling evidence indicating that Plaintiff should not be arrested.

“OPERATION COOL DOWN” and “CLEAR THE STREETS” / “CLEAR THE BLOCK” PROGRAMS UNCONSTITUTIONALLY IMPLEMENTED BY THE CITY OF ROCHESTER POLICE DEPARTMENT ARRESTS

29. Upon information and belief, police officers in the Rochester Police Department, including Defendant "John Doe" POLICE OFFICERS, and Defendant POLICE OFFICER RODRIGUEZ, Defendant LIEUTENANT PERKOWSKI, Defendant POLICE OFFICER GRANDE, Defendant POLICE OFFICER CAREFLY, and Defendant POLICE OFFICER LYONS, are required, trained, or encouraged to make arrests in the absence of the commission of any crime by the person arrested, motivated by the desire to clear individuals from the public sidewalks and streets in the City of Rochester.

30. Said training is given to police officers in the Rochester Police Department, including Defendant "John Doe" POLICE OFFICERS, and Defendant POLICE OFFICER RODRIGUEZ, Defendant LIEUTENANT PERKOWSKI, Defendant POLICE OFFICER GRANDE, Defendant POLICE OFFICER CAREFLY, and Defendant POLICE OFFICER LYONS, pursuant to the policies of the Defendant CITY OF ROCHESTER and Rochester Police Department known as “Operation Cool Down” and the “Clear the Streets” and/or “Clear the Block” programs.

31. The need to carry out the goals of “Operation Cool Down” and the “Clear the Streets” and/or “Clear the Block” programs can induce police officers to make arrests in the absence of probable cause.

32. Upon information and belief, "Operation Cool Down" and the "Clear the Streets" and/or "Clear the Block" programs promulgated by Defendant CITY OF ROCHESTER induces Rochester police officers, such as Defendant "John Doe" POLICE OFFICERS, and Defendant POLICE OFFICER RODRIGUEZ, Defendant LIEUTENANT PERKOWSKI, Defendant POLICE OFFICER GRANDE, Defendant POLICE OFFICER CAREFLY, and Defendant POLICE OFFICER LYONS, to make arrests in the absence of probable cause, in violation of the constitutional rights of individuals to be free from unreasonable seizures.

33. The existence of the aforesaid unconstitutional practice of arresting individuals in the absence of probable cause pursuant to "Operation Cool Down" and the "Clear the Streets" and/or "Clear the Block" programs can be inferred from the admission by Rochester Police Chief James Sheppard in his radio interview on 96.5 WCMF on or about May 8, 2013.

34. In his radio interview on 96.5 WCMF on or about May 8, 2013, Rochester Police Chief James Sheppard stated that the Defendant CITY OF ROCHESTER and the Rochester Police Department have worked in conjunction with local businesses and business associations who have "tasked them with clearing the block" since clusters of people standing on public streets and sidewalks in the vicinity of local businesses has a tendency to "kill business."

35. Upon information and belief, in his radio interview on 96.5 WCMF on or about May 8, 2013, Rochester Police Chief James Sheppard publicly acknowledged that the Defendant CITY OF ROCHESTER and the Rochester Police Department is walking a "Razor's Edge" with the competing rights and interests of private citizens and local businesses.

36. Upon information and belief, Defendant POLICE OFFICER RODRIGUEZ, Defendant POLICE OFFICER CAREFLY, and Defendant "John Doe" POLICE OFFICERS purported to act pursuant to their training and/or the official policies and/or customs of "Operation Cool Down," "Clearing the Street" and/or "Clearing the Block" when they patrolled the intersection of East Main Street and Clinton Avenue on November 27, 2013.

37. Upon information and belief, Defendant POLICE OFFICER RODRIGUEZ, Defendant POLICE OFFICER CAREFLY, and Defendant "John Doe" POLICE OFFICERS purported to act pursuant to their training and/or the official policies

and/or customs of “Operation Cool Down,” “Clearing the Street” and/or “Clearing the Block” when they stopped Plaintiff MR. REDD and his friends on November 27, 2013.

38. Upon information and belief, Defendant POLICE OFFICER RODRIGUEZ, Defendant POLICE OFFICER CAREFLY, and Defendant "John Doe" POLICE OFFICERS purported to act pursuant to their training and/or the official policies and/or customs of “Operation Cool Down,” “Clearing the Street” and/or “Clearing the Block” when they arrested Plaintiff MR. REDD and his friends on November 27, 2013.

39. The Defendant CITY OF ROCHESTER and the Rochester Police Department has been accused of requiring, training, and/or encouraging Rochester Police Officers to make arrests in the absence of the commission of any crime by the person arrested, motivated by the desire to clear individuals from the public sidewalks and streets in the City of Rochester pursuant to the official policies and/or customs of “Operation Cool Down,” “Clearing the Street” and/or “Clearing the Block” in at least one lawsuit filed prior to the false arrest of Plaintiff MR. REDD on November 27, 2013. See Warr v. City of Rochester, et al, Case No. 6:13-cv-06508-DGL-MWP (W.D.N.Y. 2013).

40. The existence of the aforementioned unconstitutional practice of arresting individuals in the absence of probable cause pursuant to “Operation Cool Down” and the “Clear the Streets” and/or “Clear the Block” programs can be further inferred from the substantial media coverage of the Rochester Police Department harassing individuals in the downtown Rochester area, including stopping, arresting, and using excessive force in the absence of probable cause or any legal justification.

41. Specifically, on October 26, 2012, Rochester police were videotaped pepper spraying numerous innocent Rochester City School District students who were walking away from the location where a fight had broken out between two other students.⁷

42. Further, Rochester police officers, specifically including Defendant POLICE OFFICER RODRIGUEZ, have been accused by numerous media outlets of harassing individuals in the downtown Rochester area, including stopping, arresting, and using excessive force in the absence of probable cause or any legal justification.⁸

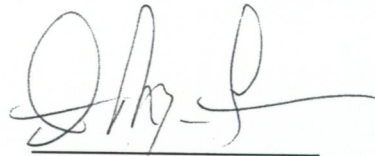
⁷ Hand, Jon, *Pepper spray use decried*, THE DEMOCRAT & CHRONICLE (Oct. 30, 2012). Article incorporated by reference herein.

⁸ See, e.g., Davy V., *Students, Are You being Harassed by Rochester, NY Police officers Downtown?* (Apr. 4, 2013). Article incorporated by reference herein and available online at: <http://rpdexposed.blogspot.com/2013/04/students-are-you-being-harassed-by.html> (last visited Dec. 9, 2014).

43. The particular arrest of Plaintiff MR. REDD is believed to have been motivated in whole or in part by the aforesaid unconstitutional "Operation Cool Down" and the "Clear the Streets" and/or "Clear the Block" custom and/or policy, in that Defendants responding to the incident giving rise to this action arrested Plaintiff MR. REDD and his friends, despite: (i) having not personally viewed any criminal conduct; (ii) having no victim or witness claiming Plaintiff MR. REDD or his friends committed any crime; and (iii) having compelling evidence that no probable cause existed to arrest Plaintiff MR. REDD or his friends.

Dated: New York, New York
December 23, 2014

By:



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