

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

MARIYAH MAPLE,)	
)	
Plaintiff,)	
)	
v.)	Case No. 21-CV-23960-BB
)	
CITY OF MIAMI BEACH,)	
a municipality of the State of Florida,)	
VINCENT STELLA, #1065,)	
JORGE BERCIAN, #2062,)	
KATHLEEN ACEVEDO, #2047,)	
DIEGO RUEDA, #2075,)	
BRANDON CAMPOS, #2054,)	
JOSE DANIEL PEREZ, #1088,)	
RAYMOND DIAZ, #988,)	
STEVEN FELDMAN, #694,)	
ENRIQUE DOCE, #449,)	
each in their individual capacity,)	
)	
Defendants.)	JURY DEMANDED

Plaintiff, through counsel, alleges the following on information and belief:

**THIRD AMENDED COMPLAINT AND DEMAND FOR JURY
TRIAL**

In 2021, Mariyah Maple, a certified nurse's aide, college student, and mother of two, dreamed of celebrating her twenty-seventh birthday in the City of Miami Beach. For over a year, Ms. Maple, a Buffalo, New York native, had juggled a nearly impossible set of responsibilities. COVID-19 restrictions had closed local schools and a long snowy winter had forced the family of three to learn remotely in Ms.

Maple's cramped apartment. Luckily, she kept a few shifts of her job as a certified nurse's aide and worked to support her family. She felt grateful but tired. Her mother, aunt, sister, and best friend knew Ms. Maple needed a break. So, for her birthday, they pooled their savings together and planned a three-day trip to Miami Beach.

As Ms. Maple, her family, and her friend, were planning their trip, the City of Miami Beach was drafting and passing local ordinance 70-8. This law made it a crime to stand within 20 feet of a law enforcement officer, after a warning, with the intent to "indirectly harass" them. And, immediately after it went into effect, Miami Beach Police officers began warning people to stand 20 feet away from them and arresting anyone who ignored them. The ordinance created a vague standard, authorized arbitrary enforcement, criminalized protected speech, and discriminated against certain viewpoints and topics.

Ms. Maple did not know any of this. But, on July 25, 2021, she would learn more about the dangers of unbridled and discriminatory policing than she had ever hoped. On that day, the day after her birthday, Miami Beach Police Department Sergeant Vincent Stella hit Ms. Maple with his bicycle and pepper-sprayed her for filming him from the sidewalk. Then, her mother and friend showed another officer the video of Ms. Maple's attack. Instead of helping her, four officers, two sergeants, a lieutenant, a captain, and a major conspired to arrest and prosecute Ms. Maple under 70-8, a law they knew was unconstitutional. To cover up their unconstitutional

acts, they lied on several government forms about what had happened and about what evidence was available.

Because of these unconstitutional laws and actions, Ms. Maple experienced excruciating eye pain, spent almost a day incarcerated, faced criminal prosecution for a month, lost her job, and developed post-traumatic stress syndrome. Ms. Maple has sued the City of Miami Beach and the officers involved in her attack and coverup.

JURISDICTION AND VENUE

1. This Court has jurisdiction of the action pursuant to 42 U.S.C. §§ 1983, 1985 and 28 U.S.C. § 1331. Venue is proper under 28 U.S.C. §1391. All defendants reside in this judicial district, and the events giving rise to the claims asserted herein occurred within the district.

PARTIES

2. Plaintiff is Mariyah Maple, a Buffalo, New York resident, who was arrested and charged by Miami Beach Police on July 25, 2021.

3. The Defendant, City of Miami Beach, is a political subdivision of the State of Florida, a Florida municipal corporation, and at all relevant times had ultimate authority over the City of Miami Beach Police Department and the other Defendants.

4. Defendant Officer Jorge Bercian (#2062) is being sued in his individual capacity. At all relevant times, Officer Bercian was an officer in the Miami Beach Police Department and was acting under color of state law.

5. Defendant Officer Kathleen Acevedo (#2047) is being sued in her individual capacity. At all relevant times, Officer Acevedo was an officer in the Miami Beach Police Department and was acting under color of state law.

6. Defendant Officer Diego Rueda (#2075) is being sued in his individual capacity. At all relevant times, Officer D. Rueda was an officer in the Miami Beach Police Department and was acting under color of state law.

7. Defendant Officer Brandon Campos (#2054) is being sued in his individual capacity. At all relevant times, Officer Campos was an officer in the Miami Beach Police Department and was acting under color of state law.

8. Defendant Sergeant Vincent Stella (#1065) is being sued in his individual capacity. At all relevant times, Sgt. Stella was a sergeant in the Miami Beach Police Department and was acting under color of state law.

9. Defendant Sergeant Jose Daniel Perez (#1088) is being sued in his individual capacity. At all relevant times, Sgt. Perez was a sergeant in the Miami Beach Police Department and was acting under color of state law.

10. Defendant Lieutenant Raymond Diaz (#988) is being sued in his individual capacity. At all relevant times, Lieutenant Diaz was a lieutenant in the Miami Beach Police Department and was acting under color of state law.

11. Defendant Captain Steven Feldman (#694) is being sued in his individual capacity. At all relevant times, Captain Feldman was a captain in the Miami Beach Police Department and was acting under color of state law.

12. Defendant Major Enrique Doce (#449) is being sued in his individual capacity. At all relevant times, Major Doce was a major in the Miami Beach Police Department and was acting under color of state law.

STATEMENT OF FACTS

13. Ms. Maple, born on July 24, 1994, to Nakeeyah Coleman and Kevin Maple, grew up in a tightknit, working-class community in Buffalo, New York.

14. She was the oldest of her mother's five children.

15. In the fall and winter, her friends and extended family met regularly on Sundays to watch football and to cheer on the Buffalo Bills.

16. In the warmer months, they organized cookouts and threw block parties.

17. The adults protected and cared for their local communities, not just in their personal lives but also professionally. Some, like Ms. Maple's mother, had worked as nurses. Others, like Ms. Maple's uncle, had been police officers.

18. Ms. Maple admired them for their selfless service and for their dedication to their families.

19. So, when she graduated high school in 2012, she decided to become a nurse and to start a family.

20. For almost every year for nearly half a decade, she took a step closer to reaching her goals.

21. In 2013, she received her home health aide certificate.

22. In 2015, she gave birth to her daughter.

23. In 2016, she gave birth to her son.

24. In 2017, she received her nurse's aide certificate.

25. In the fall of 2019, she enrolled in the State University of New York, Erie, and began taking classes in anatomy, physiology, biology and algebra.

26. In the spring of 2020, halfway through the semester, the COVID-19 pandemic began and in-person instruction ended for Ms. Maple and for her children. This made Ms. Maple responsible for caring for two children during the day and keeping up with her own classes. Despite this, Ms. Maple passed all but one of her classes.

27. By the next year, it became unbearable for her to care for two children, take college classes, and pick up shifts at work where she could. As a result, she passed just two classes in the fall of 2020 and in the spring of 2021, she

withdrew from college completely.

28. Her loved ones knew that Ms. Maple needed a break. So, they pooled their money together and planned a trip to the City of Miami Beach for her birthday.

City of Miami Beach Ordinance 70-8

29. As Ms. Maple was caring for her children, taking college classes, and working as much as she could, Florida legislators discussed criminalizing an act they called “indirectly harass[ing] the law enforcement.”

30. In February 2021, members of the Florida Senate filed SB 1912. That law sought to make it a crime:

for any person, after receiving a warning from a law enforcement officer not to approach, to violate such warning and approach or remain within 30 feet of a law enforcement officer who is engaged in the lawful performance of any legal duty with the intent to: 1. Interrupt, disrupt, hinder, impede, or interfere with the law enforcement officer’s ability to perform such duty; 2. Provoke a physical response from the law enforcement officer; or 3. Directly or indirectly harass the law enforcement officer.

31. In March 2021, members of the Florida House of Representatives proposed another similarly worded bill, HB 1581. That bill sought to make it a crime:

for any person, after receiving a warning from a law enforcement officer not to approach, to violate such warning and approach or remain within 30 feet of a law

enforcement officer who is engaged in the lawful performance of any legal duty with the intent to: 1. Interrupt, disrupt, hinder, impede, or interfere with the law enforcement officer's ability to perform such duty; 2. Provoke a physical response from the law enforcement officer; or 3. Directly or indirectly harass the law enforcement officer.

32. Both bills died in committee.

33. Despite these bills' failure in Tallahassee, City of Miami Beach

Commissioners sought to pass Ordinance 70-8, a more restrictive version of these laws.

34. That ordinance provided as follows, in its entirety:

(a) As used in this section, the term "law enforcement officer" shall be defined as set forth in section 70-86 of the City Code. (b) It shall be unlawful for any person, after receiving a warning from a law enforcement officer, to approach or remain within 20 feet of a law enforcement officer engaged in the lawful performance of any legal duty with the intent to: (1) Interrupt, disrupt, hinder, impede or interfere with a law enforcement officer's ability to perform such duty; or (2) Provoke a physical response from a law enforcement officer; or (3) Directly or indirectly harass a law enforcement officer. (c) A violation of this section shall be punished in accordance with section 1-14 of the City Code.

35. The terms "interrupt," "disrupt," "hinder", "impede," "interfere" and "indirectly harass" are not defined in the ordinance. These words do not have settled legal definitions. The statutory context does not narrow their meanings and the ordinance does not provide any examples of what these words might mean.

36. In speaking in favor of the ordinance during a City Commission Meeting on May 12, 2021, a co-sponsor stated, “It doesn’t really matter to me what they did in Tallahassee.”

37. Another co-sponsor stated that he supported the ordinance for the following reason: “I think we need to recognize that some of the behavior that we’re seeing in Miami Beach and, frankly nationwide, in the approach towards law enforcement is at a level of lack of respect that we haven’t seen in a long long time We need to take every opportunity we can to show support for our frontline officers, so I’m delighted to co-sponsor this.”

38. In his June 2021 newsletter, Commissioner Meiner, a co-sponsor, reiterated his belief that others should adopt a viewpoint in favor of the Miami Beach police officers. He wrote, “Our Miami Beach police officers who protect us deserve our support and protection.” Then, he made it clear that this preference for pro-police viewpoints motivated his support for the bill. As he wrote, “This is why last month I brought legislation that would make it illegal to harass or interfere with a Miami Beach officer engaged in the lawful performance of their duties.”

39. According to the meeting minutes, “Mayor Gelber added that Firefighters are more at a disadvantage due to the nature of the work, and he thinks it should be considered.” Yet, the Commission did not expand the ordinance to cover other government workers.

40. The City of Miami Beach passed the ordinance on June 23, 2021, and it went into effect on July 3, 2021.

41. No member of the public spoke for or against the bill.

42. According to sworn testimony from Miami Beach police officers, a practice immediately evolved after the ordinance's enactment: If a person appeared to be closer than 20 feet to an on-duty officer, the officer would command the person to move away and, if the person refused, the officer would arrest them, regardless of their intentions or protected speech.

43. Based on their training and experience, every officer, sergeant, lieutenant, captain, and major in the Miami Beach Police Department knew that 70-8 was grossly and flagrantly unconstitutional. Yet, as evidenced by this case, they still enforced it, regardless of the consequences.

The Excessive Force and Retaliation

44. A little before 3:00 AM, on July 25, 2021, Ms. Maple's mother drove Ms. Maple, her aunt, her sister, and her best friend to 673 Collins Ave. in Miami Beach.

45. Wearing sandals, small pieces of jewelry, and a sequin dress that revealed much of her chest and the sides of her legs, Ms. Maple set out with her friend and family to celebrate her first full day as a 27-year-old woman. To mark the occasion, she wore bright red hair.

46. Like many young people, she and her small group danced, laughed, and posed for their cameras as they made their way north on the sidewalk on Collins Ave.

47. At around 3:02 AM, just after they crossed 7th Street, Officer Bercian and Officer Campos ran southbound by Ms. Maple and her friend in pursuit of a man in a white sleeveless shirt. Sgt. Stella had been running with them but stopped just south of 8th Street. Ms. Maple and her friend moved to the side of the sidewalk and allowed the officers to continue their chase. Officers Bercian and Campos saw that Sgt. Stella was nearly a block away and Ms. Maple was not in a group of more than a few people.

48. Ms. Maple resumed walking, laughing, and dancing north on Collins Ave.

49. Less than a minute later, Ms. Maple stopped on the sidewalk in front of 713 Collins Ave. There, she took out her mobile telephone and began recording an officer arrest an unarmed and compliant 140-pound teenager in the middle of the street. Within a minute, officers began to gather around the arrest. Three officers searched the handcuffed teenager and pinned him to the trunk of a car. One officer grabbed the teenager's shorts and underwear, lifted him, and slammed him back down. Two other officers, Sgt. Stella and Sgt. Perez, stood by idly, and stared at Ms. Maple. Major Doce, Cpt. Feldman, Lt. Diaz, Officer Rueda, and Officer

Acevedo watched the entire interaction, standing on the same block and on the same side of the street as Ms. Maple.

50. Officers Bercian and Campos stood half a block away and could see Ms. Maple's bright red hair and sequin dress. They could also see that there was no crowd around her.

51. To record the arrest, Ms. Maple used her mobile telephone, and a flash on the back of her telephone indicated that she was filming. No officer would have looked at Ms. Maple, standing on a well-lit sidewalk, and thought that she was a threat.

52. Sgt. Stella, Sgt. Perez, Lt. Diaz, Capt. Feldman, Major Doce, Officer Rueda, and Officer Acevedo, could see the flash on Ms. Maple's mobile telephone and knew that that meant that she was recording. They also knew that Ms. Maple had committed no crime and that Miami Beach Ordinance 70-8 was clearly unconstitutional and unenforceable.

53. About a minute after Officers Bercian and Campos passed Ms. Maple half a block away and about thirty seconds since she began filming, Sgt. Stella approached Ms. Maple, still on the sidewalk, lifted his bicycle with two hands, and said "backup." Before Ms. Maple had a chance to move, he slammed the bicycle into Ms. Maple's right arm and knee.

54. In compliance with Sgt. Stella's orders, Ms. Maple took a step

backwards.

55. Within seconds, Sgt. Stella sprayed Ms. Maple directly in the eyes from less than 2 feet away with Sabre Red, an Aerosol Deterrent Spray. According to the City of Miami Beach's training, this spray causes a painful burning sensation, coughing, shortness of breath, tightening of chest, fear, anxiety, and panic. This Third Amended Complaint refers to the Sabre Red as pepper spray.

56. Ms. Maple stopped filming the arrest. Sgt. Stella did not attack those who were not filming.

57. As soon as the spray hit her, pain shot across her face, her eyes burned, her vision blurred, her throat closed, and her stomach churned. She feared that she would suffocate and never see again. It felt like torture and the most intense pain of her life.

58. Sgt. Stella, Lt. Diaz, Sgt. Perez, Cpt. Feldman, Major Doce, Officer Rueda, and Officer Acevedo saw all of this.

59. Miami Beach Police officer Melissa Rosa also saw this and her body worn camera recorded key moments of the event. It showed Ms. Maple walking to 713 Collins Ave., with Sgt. Stella nowhere to be found. Then, about a minute later, Sgt. Stella appears in the frame and attacks Ms. Maple. It is clear from the video that Ms. Maple never left the sidewalk, interfered with the arrest, or interacted with Sgt. Stella before he attacked her.

60. No officer pursued her or provided any medical care to her. Instead, Sgt. Stella chugged some water to clear the spray out of his throat and watched Ms. Maple from a distance.

61. With the help of a friend, Ms. Maple walked slowly to her mother's car parked less than a block south, in front of 673 Collins Ave., and on the same block as Officers Bercian and Campos.

62. A young Black woman, standing on the sidewalk, across the street from where Sgt. Stella had just attacked Ms. Maple, said, "He put his hands on her. That's messed up. He didn't have to put his hands on her. He could have pushed her into the street. That was awful."

63. No police officer took her statement. Instead, seconds after her complaints, Sgt. Perez shouted, "You're impeding my investigation and if you stay here, you're subject to arrest." He followed her down the street and taunted her, "Go take care of your grandkids."

64. Then, Sgt. Perez engaged with another person on the sidewalk, first by implying that the pedestrian performed oral sex for money and then by saying, "fucking wiggers."

65. A handcuffed man sitting in front of a car on the block of Ms. Maple's attack said to the officers and people on the sidewalk, "Everybody recording, please don't go nowhere!" An officer responded by threatening to maliciously

prosecute him: “Keep it up, so you get more charges. You want to say [something]? Who was it who said it?”

66. Another man handcuffed on the ground said, “My stomach was hurting. He was just punching me. We were just trying to talk to females.” The officer who made the earlier threats added specificity, telling the handcuffed man, “Yeah, yeah sure. Breach of peace. What else? You want to continue to call out on people?” Officer Rueda added, “You’re causing a crowd to form, so I suggest that you shut up!”

67. After the handcuffed man complained about Sgt. Perez slapping him in the face, Sgt. Perez said, “Shut the fuck up. Don’t talk to him. He’s a fucking idiot.”

68. Around the same time and less than a block away at 624 Collins Ave., Officer Bercian said to another group of women lawfully filming a different arrest, “Yo, listen, this is going to be your one and only warning, get the fuck out of here or ya’ll are going to go to jail, too!”

69. Five minutes after Sgt. Stella attacked Ms. Maple, Officer Bercian began walking back to Sgt. Stella at 713 Collins Ave. Officer Louis Lergier walked with Officer Bercian north. Officer Lergier’s body worn camera recorded video and sound. Officer Bercian’s body worn camera only recoded video. As they were walking, Ms. Maple’s mother called out for help. Specifically, she said, “Wow. It

was her birthday. Really, why do that to her? Excuse me. Ya'll have anything to take mace out your face? Like, why did you mace my daughter? On her birthday? She had nothing." No officer responded. Frustrated with the officers ignoring their pleas for help, Ms. Maple's friend yelled, "Ya'll got no comment?"

70. Officer Bercian stopped to speak with Ms. Maple, her mother, and her friend. He turned on the sound of his body worn camera. They explained that an officer had pepper-sprayed her for standing on the sidewalk and filming an arrest without violating any law. They showed him a video of Sgt. Stella hitting Ms. Maple with his bicycle, pepper-spraying her, and allowing her to walk back to her mother's car without pursuing her in any way. It was clear from the video that Ms. Maple did not violate any valid law. Furthermore, Officer Bercian recognized Ms. Maple and Sgt. Stella. He knew that, because he had passed Ms. Maple at a different location less than a minute before the attack and because Sgt. Stella was not with her at that time, she could not have refused any lawful order from Sgt. Stella before the attack.

71. As they were talking, Ms. Maple, sitting in the car, writhed in agony and shouted, "it burns."

72. At approximately 3:09 AM, Officer Bercian turned off his body worn camera.

73. With his camera turned off, Officer Bercian called Sgt. Stella on his

radio or mobile telephone to tell him that Ms. Maple writhed in pain, could not decontaminate her eyes, sought medical care, and possessed a video that showed that Sgt. Stella had pepper-sprayed her and that she had not violated any valid law or order. Sgt. Stella told Officer Bercian that Ms. Maple had not violated any valid law but that he wanted him to arrest her because she had requested medical care and could sue him for excessive force.

74. At approximately 3:13 AM, Sgt. Stella, standing in front of 721 Collins Ave. announced to Major Doce, Cpt. Feldman, Lt. Diaz, Sgt. Perez, Officer Rueda, Officer Acevedo, and Officer Campos, “I sprayed her and she ran off during the fight. Now she’s at the corner saying she got sprayed.” Because they witnessed the event, they all knew that Ms. Maple did not run off and that there was no fight. An unidentified voice responded, “She didn’t even do nothing. Why is she getting sprayed?”

75. Bercian walked on Collins Avenue and passed a Miami Beach Parks and Recreation pickup handing out water. He did not pick up any water to help Ms. Maple decontaminate her eyes.

76. About thirty seconds later, Officer Bercian met Sgt. Stella, Lt. Diaz, Sgt. Perez, Major Doce, Cpt. Feldman, Officer Rueda, Officer Acevedo, and Officer Campos. He explained that Ms. Maple writhed in pain, could not decontaminate her eyes, sought medical care, possessed a video that showed that

Sgt. Stella had pepper-sprayed her, could sue him, and that she had not violated any valid law or order.

77. The individual Defendants came to an understanding that, to dissuade Ms. Maple from filing a federal civil rights complaint against Sgt. Stella, they would falsely arrest her, maliciously prosecute her, and try their best to cover it up. They knew that Ms. Maple had not violated any valid state law, such as resisting an officer without violence to his or her person, Fla. Stat. § 843.02, because Ms. Maple had not obstructed any law enforcement activity. So, they decided to arrest her and charge her under the City of Miami Beach Ordinance 70-8, a clearly unconstitutional and nearly limitless law.

78. Under their conspiracy, each officer had a role to play at the scene:

- a. Officers Rueda, Bercian, and Acevedo would arrest Ms. Maple by handcuffing her and taking her to the police van;
- b. No one would allow her to decontaminate her eyes;
- c. Sgt. Perez and Lt. Diaz would tell Ms. Maple and her family that she was lawfully arrested, when they knew she was not;
- d. Sgt. Stella and Lt. Diaz would lie and say that Sgt. Stella had body worn camera footage of the event, even though, they knew he did not;

79. Then, with the help of the entire conspiracy, they would paper over

the incident:

- a. Officer Bercian and Sgt. Perez would create and sign an arrest affidavit that lied about what had happened and about what evidence was available;
- b. Officer Campos and Sgt. Stella would create a similarly false offense incident case report summary;
- c. Lt. Diaz, after learning that a lawsuit was eminent, would double down on his colleagues' lie and write a response to resistance report that contained even bolder misrepresentations of the night's events; and
- d. Cpt. Feldman and Major Doce would help Lt. Diaz craft his false response to resistance report and forward it to the deputy chief.

80. Sgt. Perez and Sgt. Stella supervised Officers Bercian, Acevedo, Rueda, and Campos. Pursuant to the chain of command, they could order the officers to arrest Ms. Maple and file charges against her. They also had the power to order these officers to file the arrest affidavits and the incident case report summary. By the same power and chain of command, they could have also ordered the officers to not perform these actions. As the sergeants directing these known constitutional violations, Sgt. Perez and Sgt. Stella had an opportunity to prevent these constitutional violations, but they failed to act.

81. Major Doce, Cpt. Feldman, and Lt. Diaz supervised Sgt. Perez and Sgt. Stella. Under the chain of command, they knew that Sgt. Perez and Sgt. Stella had unconstitutionally ordered Ms. Maple's arrest and prosecution. They had the power and opportunity to order Sgt. Perez and Sgt. Stella to stop these unconstitutional acts but they failed to exercise that power.

82. Officers Rueda, Bercian, and Acevedo left the meeting to arrest Ms. Maple for violating 70-8. They did not seek to arrest Ms. Maple's mother, her friend, or anyone who was on the sidewalk with her when Sgt. Stella attacked her. They knew they could not be plaintiffs in an excessive force case against Sgt. Stella. Sgt. Perez, Sgt. Stella, Lt. Diaz, Cpt. Feldman, and Major Doce watched as the three officers set off to arrest Ms. Maple.

83. At 3:14:50 AM and 3:14:58 AM, Officers Rueda and Bercian turned on their respective body worn cameras and walked towards Ms. Maple. At 3:15:21 AM and 3:15:15 AM, they turned on the sound.

84. As Officer Bercian, Rueda, and Acevedo were walking to arrest Ms. Maple, every member of the conspiracy knew that the plan was illegal for at least two reasons.

85. First, they knew that 70-8 was flagrantly unconstitutional.

86. Second, they knew that, even if 70-8 were constitutional, they could not arrest Ms. Maple for violating it. Under Florida law, an arrest for the violation

of a municipal ordinance “shall be made immediately or in fresh pursuit.” Fla. Stat. § 901.15(1). Here, Officers Bercian, Rueda, and Acevedo sought to arrest Ms. Maple for violating a municipal ordinance. Yet, they knew the arrest would neither be immediate nor in fresh pursuit because Officer Bercian found Ms. Maple five minutes after the attack, a block from the alleged crime scene, sitting in a car, asking for help.

The Retaliatory False Arrest

87. Ms. Maple sat in the front passenger seat of her mother’s rental car, eyes and face still burning, feeling sick to her stomach and hardly able to stand. Her mother stood outside, hoping that the officers would return to provide medical care.

88. At least five police officers, including Officers Bercian, Rueda, and Acevedo approached the car.

89. Ms. Maple’s mother saw Officer Bercian and said, “She’s nauseous now.” He responded, “That’s fine. Have her step outside.” Ms. Maple’s mother, still believing that the officers would help her daughter said, “Mariyah, can you step outside for a minute?” and warned them, again, “She’s a little nauseous.” Officer Bercian, playing on Ms. Maple’s mother’s faith in law enforcement, hid his retaliatory intentions from Ms. Maple’s mother and said, “That’s fine. We just need to have her walk outside real quick.” Ms. Maple’s mother continued to

explain that an officer had sprayed Ms. Maple and that she had violated no law.

Officers Rueda and Acevedo heard this entire conversation.

90. Officer Rueda opened the passenger door. Ms. Maple, overcome with pain, screamed, “What’s going on? It’s hot. It’s hot. It’s hot. I can’t breath.”

Officers Acevedo, Bercian, and Acevedo heard this.

91. Ms. Maple stepped out of the car and Officer Rueda directed her to Officer Bercian.

92. Ms. Maple yelled, “I can’t see.”

93. Ms. Maple’s mother, recognizing that Ms. Maple needed assistance to walk, offered her arm for support and told her daughter, “Be careful.” Officer Rueda saw this and told her mother to stand back. Ms. Maple’s mother complied.

94. Then, Officer Bercian handcuffed Ms. Maple’s left hand, Officer Rueda held her hips, and Officer Acevedo pulled Ms. Maple’s right hand to the back of her body to be handcuffed.

95. Officer Bercian, Officer Rueda, and Officer Acevedo told Ms. Maple, “You’re under arrest.” Ms. Maple responded, “Are you seriously arresting me right now?” and the officers responded, “Yes, we are.”

96. They told her that they were arresting her for violating a city ordinance. Ms. Maple did not resist in any way.

97. Officers Bercian and Rueda held Ms. Maple, now in handcuffs, and

walked her down the street. Officer Acevedo guarded them as they walked. At 3:16:59 AM, Officer Acevedo turned on her body worn camera and at 3:17:30 AM, she turned on the sound.

98. As they walked, an officer who was not part of the conspiracy, asked Officer Bercian if this was unrelated and Officer Bercian said, “Sort of.” Another officer, who had already heard about the conspiracy, said, “Is this the one that got sprayed?” and an officer responded, “Yeah.”

99. As Ms. Maple walked with Officers Bercian, Rueda, and Acevedo, she told the officers that she had recorded Sgt. Stella but promised that she would delete the video if they freed her.

100. In the middle of the street, just feet from Sgt. Perez and Sgt. Stella, Officer Acevedo ran her hands over Ms. Maple’s body and tugged at her clothing.

101. Feeling pain and humiliation, Ms. Maple began to cry and said, “My fucking eyes is burning.”

102. Officers Bercian, Rueda, Acevedo, Sgt. Stella, Sgt. Perez, Lt. Diaz, Cpt. Feldman, and Major Doce provided no solace to Ms. Maple.

103. Instead, Sgt. Perez, standing with Sgt. Stella, yelled, “She may act like a child but she’s an adult.”

104. After saying this to Ms. Maple, Sgt. Perez walked to meet Ms. Maple’s mother. Ms. Maple’s mother showed Sgt. Perez the video of Ms. Maple

standing on the street, Sgt. Stella hitting her with his bicycle and pepper-spraying her, and Sgt. Stella allowing her to walk off. Sgt. Perez told Ms. Maple's mother that they arrested her for violating a city ordinance and that the arrest and use of force were lawful under the ordinance. He knew this was false because he had seen the video, witnessed Ms. Maple's entire interaction with Sgt. Stella, and understood state and federal law.

105. At around the same time, Ms. Maple had a similar conversation with Lt. Diaz. Lt. Diaz approached Ms. Maple and began interrogating her without reading her *Miranda* rights. Ms. Maple told Lt. Diaz that her face was burning, that she had received an order to back up, that she had complied with the order, and that the officer had sprayed her in the face despite her compliance. Knowing that her arrest was retaliatory, Ms. Maple told Lt. Diaz, "I don't want to press charges." Lt. Diaz told Ms. Maple that he would review body worn camera video. But he knew that was a lie because Sgt. Stella had not turned on his body worn camera video for days. Major Doce, Cpt. Feldman, Sgt. Stella, Sgt. Perez, Ofc. Bercian, Ofc. Rueda, Ofc. Acevedo, and Ofc. Campos heard this conversation.

106. Ms. Maple further pleaded, "I don't want any problems. Please, just let me go. I will get in my car and go to my hotel. Like, I don't want any problems. I'm a nurse. I can't go through stuff like this. I'm having fun on my birthday. I can't go through this type of stuff."

107. An officer approached Sgt. Stella and asked Sgt. Stella if he would be responsible for transporting Ms. Maple to the jail. Sgt. Stella told the other officer that Major Doce had ordered the arrest.

108. Then, Sgt. Stella, Officer Bercian, and another officer organized Ms. Maple's transportation to the jail. In a conversation about whether to take Ms. Maple to Mount Sinai Medical Center for decontamination, Sgt. Stella said, "It's pepper spray. They're not going to do anything."

109. A few minutes later, an unidentified officer within earshot of Ms. Maple said, "That's what you get for talking shit."

110. Then, the transport officer walked Ms. Maple, still handcuffed, to the police van.

111. As she was approaching the van, Sgt. Stella said to Ms. Maple, "Listen. Listen. When you got pepper-sprayed, you ran away. You should have kept running." All the members of the conspiracy heard these words and knew that an interest in retaliation—not law enforcement—motivated their actions.

112. Officer Bercian and the transport officer brought Ms. Maple from the back of the police van to the side. There, they opened the doors to the cage for women. It was approximately 3 feet wide. Ms. Maple looked inside and, without resisting in any way, told the officers, "I'm claustrophobic. I can't." They ignored her pleas and directed her to step into the cage and sit on a raised bench. There,

Ms. Maple sat and looked out onto the street. Anyone passing by could look up Ms. Maple's dress. She felt ashamed in so many ways. Then, they locked the doors behind her. With nowhere to go, the fumes from the pepper spray intensified.

113. A man in another cage in the van said, "Could you open a window or something? It's hot as fuck."

114. Officers mulled around, trying to find additional people to arrest.

115. A few minutes later, they arrested another woman for filming the police and placed her in the cage with Ms. Maple.

116. In a fearful and weak voice, Ms. Maple pleaded with the officers, "Can ya'll leave this open? I really can't breath. Could ya'll leave the doors open like this? I have ex... I can't." Before Ms. Maple could finish her sentence, they slammed the door shut.

117. As Ms. Maple was locked in the van, an officer asked a man on an adjacent sidewalk to keep moving. The man looked at the officer, smiled, said, "Ducks fly together," and gave the officer an approving fist bump. Finding that this speech and conduct did not violate 70-8, the officer allowed the man to walk free and wished him a good weekend.

118. At approximately 3:34 AM, the transport officer opened the door to the van and asked Ms. Maple if she wanted fire and rescue to decontaminate her eyes. Ms. Maple, clearly shaken from the events, asked in a softened voice if it

would burn her eyes even more. They said that it might. She told the transport officer and the paramedics that she did not want to take that risk. At approximately 3:37 AM, the transport officer locked Ms. Maple back in the van.

119. At approximately 4:03 AM, Officer Acevedo removed Ms. Maple from the van and transferred her to a police car.

120. Ms. Maple asked Officer Acevedo if she could roll down the windows, but Officer Acevedo drove with the windows up.

121. Officer Acevedo drove Ms. Maple to the hospital. When they arrived at around 4:16 AM, Ms. Maple asked whether there was a bathroom. Officer Acevedo said no. Ms. Maple then asked the medical staff if there was a bathroom, and they said yes.

122. Under Officer Acevedo's supervision, Ms. Maple walked to the bathroom. There, more than an hour after being pepper sprayed and more than 50 minutes after being locked in an unventilated police van, Ms. Maple decontaminated her eyes for the first time.

123. She received healthcare at the medical center and Officer Acevedo drove her to Miami Dade County's jail.

124. At 8:28 AM, Ms. Maple entered the jail.

125. There, she endured the humiliation of incarcerated life. She appeared naked in front of many strangers, wore prison garb, and lost all her privacy and

freedom of movement. She felt so sick that she could not eat.

126. While incarcerated, her family found her a bail bondsman and paid them for the \$500 bond.

127. At 9:10 PM, Ms. Maple finally left the custody of Miami Beach and Miami-Dade County law enforcement.

128. Ms. Maple's family picked her up and took her back to the hotel. Ms. Maple, shocked by the pepper spray, arrest, incarceration, and prosecution, could not sleep. She tried sitting in the hotel room but even that room felt too small. So, she walked outside and paced in the hotel parking lot, thinking about Sgt. Stella's face, the cramped police van, and the pain of the pepper spray. Her family and friend kept asking her questions, but she felt like she could not answer them. The thoughts and scenes in her head were so powerful, she could hardly hear anything else.

129. Early the next morning, Ms. Maple's mother drove Ms. Maple, her family, and friend more than two hours to Punta Gorda to catch a 7:00 AM flight back to Buffalo. Ms. Maple just stared out the window, watching the still blurry street lights whiz by.

130. Sgt. Perez and Sgt. Stella felt no remorse. Instead, the very next night, they attacked two more people, Khalid Vaughn and Sharif Cobb, for filming Sgt. Perez as he kicked a handcuffed man in the face. As they had done with Ms.

Maple, they arrested Mr. Vaughn and Mr. Cobb for violating 70-8.

Public Response

131. Within a few weeks of these arrests, two videos revealed the unconstitutionality of 70-8 and its enforcement to the public.

132. The first video showed Sgt. Perez, Sgt. Stella, and other officers attacking Mr. Vaughn and Mr. Cobb for filming Sgt. Perez as he kicked a handcuffed man in the face.

133. The second video is the video at issue in this case. This video showed Sgt. Stella attacking Ms. Maple as she stood passively on the sidewalk, filming an arrest at a distance.

134. The State Attorney filed criminal charges against Sgt. Perez and four other officers for their roles in kicking a handcuffed man and attacking and arresting Mr. Vaughn and Mr. Cobb for filming it.

135. The State Attorney began investigating Sgt. Stella for attacking Ms. Maple.

136. Publicly, Miami Beach officials reckoned with their officers' misconduct.

137. Miami Beach Mayor Dan Gelber released a statement saying, "The video is not who we are."

138. Chief Clements struck a similarly remorseful tone. He said that he had

“serious concerns” about the officers’ actions and reminded the public, “This is not indicative of the hard-working men and women of the Miami Beach Police Department and will not be tolerated.” He promised, “as individuals and as an agency, [] we will learn from this” and “we will grow from this.”

139. Then, he temporarily suspended 70-8, pending additional training.

140. Within a week, the Miami Beach Police Department provided this training. They instructed officers, “In most cases, officers do not have the legal authority or constitutional right to stop a person from recording them in public” but that “officers do have the right and authority to ask a person who is encroaching on a scene, materially interfering with police activity, or putting themselves in harm’s way to step away.” According to the training, impede meant “to retard in movement or progress by means of obstacles or hindrances; obstruct; hinder”; provoke meant “to incite or stimulate (a person, animal, etc.) to action”; and harass meant “to intimidate or coerce, as with persistent demands or threats.” It did not, however, define any other words in the ordinance, such as “indirectly harass.”

Private Coverup

141. As Miami Beach officials publicly made amends for 70-8 and its unlawful enforcement, Defendants Bercian, Perez, Campos, Stella, Diaz, Feldman, and Doce continued their conspiracy to prosecute Ms. Maple and falsify government records to cover up their misdeeds.

142. The day of Ms. Maple's arrest, Officer Bercian and Sgt. Perez wrote and signed an arrest affidavit in consultation with Sgt. Stella. The document falsely claimed (a) that a large crowd existed, (b) that Ms. Maple participated in it, (c) that Ms. Maple refused commands to disperse, (e) that Ms. Maple was south of the traffic stop, (f) that she was "unaffected by Sergeant Stella[s] bicycle tactic," (g) that she stood her "ground refusing to move," (h) that Sgt. Stella pepper-sprayed in Ms. Maple's "general direction" (not directly in her face), (i) that Ms. Maple "was treated by fire rescue," and (j) that Sgt. Stella recorded the events with body worn cameras. Officer Bercian and Sgt. Perez knew these statements were false because they had seen the alleged events in person or on video.

143. In addition to these misrepresentations, the arrest affidavit omitted the facts (a) that body worn camera footage disputed these claims, (b) that video footage in Ms. Maple's possession disputed these claims, (c) that Officer Bercian and Sgt. Perez had seen this footage, (e) that Officer Bercian had told his co-conspirators about this video, (f) that Sgt. Stella and Sgt. Perez had ordered Officers Bercian, Rueda, and Acevedo to arrest Ms. Maple, and (g) that Sgt. Stella had sprayed Ms. Maple as she was complying with his requests. Officer Bercian and Sgt. Perez knew that these omissions were material and that no reasonable prosecutor would bring the case if they were included.

144. The arrest affidavit only accused Ms. Maple of violating Miami Beach

Ordinance 70-8.

145. On July 25, 2021, Officer Bercian and Sgt. Perez filed this arrest affidavit. This initiated Ms. Maple's prosecution and justified her detention. Ms. Maple hired a criminal defense lawyer and began preparing for her defense. An arraignment hearing scheduled for September 2 hung over her head.

146. On the same day, Officer Campos and Sgt. Stella created an offense incident case report summary with misrepresentations and omissions nearly identical to the arrest affidavit. Unlike the arrest affidavit, however, this report did not claim that Sgt. Stella had body worn camera video of the event. Officer Campos and Sgt. Stella knew this information was false because they witnessed nearly all of the events firsthand and had heard about Ms. Maple's video.

147. On August 18, Officer Bercian received a glowing Annual Evaluation from Sgt. Stella, Major Doce and Cpt. Feldman. It did not mention the arrest of Ms. Maple, let alone the false information he provided in the arrest affidavit.

148. On August 20, in an email entitled, "FW: 70-8," with an attachment that included Ms. Maple's case number, and sent to various Miami Beach Police Department officials, an Assistant City Attorney wrote, "In preparation for possible litigation, could you please provide me with any and all aForms/OIRs/reports concerning the cases listed in the attached" and "please provide me with all BWC [body worn camera] concerning the cases listed in the

attached.”

149. Later that day, nearly a month after the arrest, Lt. Diaz submitted a response to resistance report to his supervisor, Captain Steven Feldman. The report, edited by Cpt. Feldman, contained nearly all the same misrepresentations and material omissions as the arrest affidavit and offense incident case report summary. It differed in two important ways, however. First, it claimed, “Ms. Maple then returned a short time later to officers holding a perimeter point and [was] subsequently arrested.” This statement is contrary to three body worn camera videos, the arrest affidavit, the offense incident case report summary, and Lt. Diaz’s and Cpt. Feldman’s firsthand experience. Second, it provided, “In reference to the lack of footage from Sergeant Stella’s BWC, he failed to activate it prior to making contact with Ms. Maple.” There is no evidence that Lt. Diaz or Cpt. Feldman corrected the arrest affidavit that claimed the opposite. Instead, Cpt. Feldman forwarded the false report to Major Doce on August 26, 2021. Major Doce, also knowing it was false, forwarded it to the deputy chief the next day.

150. Officer Bercian and Officer Campos had, respectively, completed the arrest affidavit and offense incident case report summary on July 25. Yet, Lt. Diaz blamed them for the delay.

151. None of the co-conspirators corrected any of the misstatements or omissions in the arrest affidavit. But, on September 2, 2021, the City of Miami

Beach's City Attorney decided against prosecuting Ms. Maple for violating 70-8 and her case ended in a nolle prosequi disposition.

152. The City prosecutor had dismissed every case brought under Ordinance 70-8. No judge or jury has interpreted the ordinance or construed its constitutionality. Yet, the ordinance, as of November 9, 2021, is no longer suspended.

The Consequences for Maple

153. Her criminal case ended but Ms. Maple has suffered the consequences of the Defendant's misdeeds.

154. When she returned to Buffalo, she fell into a deep depression. For a week, she stayed in her bed and never wanted to leave her room. She had nightmares about the City of Miami Beach and thought obsessively about what had happened to her.

155. Her daughter, just six years old, knew that her mother was suffering, and she tried her best to care for her with hugs and cuddles.

156. After school, her son, a year younger than her daughter, tugged at Ms. Maple's bed sheets and pleaded with her to take him to football practice. For the first few days, she just looked at him, struggling to find the words to explain what had happened to her.

157. Sometime in August, someone from her job told Ms. Maple that she

could no longer work because a background check had revealed her July 25, 2021, arrest in Miami Beach. A month later, the company sent her an email explaining that they had deactivated her profile.

158. Ms. Maple fell deeper into a pit of fear and despair.

159. In October, she gathered the courage to apply for another job. Unfortunately, that job refused to hire her until she could prove that her July 25, 2021, arrest and prosecution were baseless.

160. Eventually, though, her love for her children trumped her fear of another attack and she began leaving the house and even filed the instant lawsuit.

161. Still, the damage done by Defendants' unconstitutional law and acts linger.

162. Because of the arrest and prosecution, Ms. Maple waited months to bring her excessive force case against Sgt. Stella and to collect evidence in support of that case. Some evidence has been lost and she'll never be able to recover it.

163. Furthermore, to this day, seeing a police cruiser or uniformed officer throws Ms. Maple into a spiral of fear and panic. Whenever she sees those blue and red flashing lights, she sees Sgt. Stella's face and feels frozen, trapped once again in a cage, hardly able to breathe.

164. With her faith in law enforcement deeply shaken, Ms. Maple leaves the house as little as possible. When she does venture out, she asks family

members or friends to accompany her, just in case someone attacks and arrests her again.

165. With her paralyzing fear of police officers and her reluctance to leave the house alone, Ms. Maple worries that she will never live the life of service and family that she had planned.

Violations of Criminal Laws

166. The individual Defendants violated federal and state criminal law.

Violations of Federal Criminal Laws

167. The individual Defendants violated 18 U.S.C. § 241 by conspiring “to injure, oppress, threaten, or intimidate [Ms. Maple] in the free exercise or enjoyment” of her federal constitutional rights to speak freely, to petition the government, and to live free from unreasonable searches and seizures.

168. By making a false entry into Miami Beach Police department records “to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States,” such as the Department of Justice’s Civil Rights Division, Officer Bercian, Sgt. Perez, Officer Campos, Sgt. Stella, Lt. Diaz, Cpt. Feldman, and Major Doce violated 18 U.S.C. § 1519.

Violations of State Criminal Laws

169. Sgt. Stella, Sgt. Perez, and Officer Bercian, being public servants,

unlawfully, knowingly, and intentionally falsified or caused another to falsify an official document, here an arrest affidavit, in violation of Fla. Stat. § 838.022.

170. Sgt. Stella and Officer Campos, being public servants, did unlawfully, knowingly, and intentionally falsify or cause another to falsify, an official document, here an offense incident case report summary, in violation of Fla. Stat. § 838.022.

171. Lt. Diaz, Lt. Feldman, and Major Doce, public servants, did unlawfully, knowingly, and intentionally falsify, or cause another person to falsify, an official document, here a response to resistance report, in violation of Fla. Stat. § 838.022.

Violations of Policies

172. As evidence of their malice, the individual Defendants violated over twenty policies, including those related to using force, documenting use of force, using body worn cameras, documenting use of body worn cameras, making arrests, providing medical care, and reporting policy violations.

Use of Force

173. This use of force violated the Miami Beach Police Department's Standard Operating Procedure.

174. According to the April 29, 2021, version of SOP #17, "Response to Subject Resistance," an officer should consider 12 factors before using force. The

vast majority of these factors weighed in favor of not using force.

175. First, the officer should consider the seriousness of the crime. Here, the only crime that Ms. Maple allegedly committed was violating 70-8, a local ordinance that carries a maximum penalty of \$500 and 60 days in prison.

176. Second, third, fourth, fifth, and sixth, the officer should consider the victim's size, age, weight, apparent physical ability, ability to use weapons, known history of violence, apparent medical condition, mental state, or influence of alcohol or drugs. When Sgt. Stella hit Ms. Maple with his bicycle and pepper-sprayed her, she was a 5'6," 175 pound, 27-year-old woman. She held a cellphone and wore only sandals and a sequined dress that clung to her body and revealed large parts of her legs, thighs, chest, and back. With so much of her body revealed, it was obvious to Sgt. Stella that she could not pose a threat to him because of her physical ability or possession of weapons. Moreover, Sgt. Stella had never met her before and could not assume that she had a history of violence. Finally, before Sgt. Stella asked Ms. Maple to move, she stood firmly on the street, without swaying or giving any indication that she was under the influence of anything.

177. Seventh, the officer should consider the number of subjects present who are involved or may become involved. Here, there were approximately 4 women standing on a sidewalk, all obviously unarmed.

178. Eighth, ninth, and tenth, the officer should consider their physical

ability, defensive tactics expertise, the number of officers present, and the presence of potential victims. Sgt. Stella was taller, heavier, and stronger than Ms. Maple and behind him stood at least ten armed officers. No one was resisting any police order and no one could be the victim of Ms. Maple's actions.

179. Finally, the officer must consider whether the subject can be captured later. Ms. Maple was wearing a sparkling sequin dress and bright red hair. Sgt. Stella could have easily captured her later if necessary.

Failure to Properly Document Use of Force

180. The individual Defendants violated the following Miami Beach Police Department's policies on reporting use of force:

- a. Sgt. Stella did not "notify a supervisor immediately of any incident that involves the response to resistance," SOP #017.XII(A)(1)(c) (April 29, 2021);
- b. No officer "request[ed] Crime Scene Squad personnel to respond for photos of the subject," SOP #017.XII(A)(1)(d) (April 29, 2021);
- c. No supervisor "interview[ed] all witnesses to the incident including witness officers," SOP #017.XII(A)(2)(b) (April 29, 2021);
- d. Lt. Diaz did not "complete the Blue Team RTR [response to resistance] Report prior to the end of [his] shift," SOP

#017.XII(A)(2)(e) (April 29, 2021);

e. Lt. Diaz did not forward the response to resistance report within “three work days after the incident,” SOP #017.XII(A)(2)(h) (April 29, 2021);

f. Cpt. Feldman did not forward the report to his division major within “three work days after receiving the RTR of the incident,” SOP #017.XII(A)(2)(i) (April 29, 2021);

g. No employee who witnessed the alleged response to resistance filed a “Case Supplemental Report,” SOP #017.XIII(C) (April 29, 2021);

h. No discipline was recommended for the “incident in which an officer, regardless of rank or assignment, did not use their issued BWC absent articulable circumstances or exceptions outlined in SOP #162, Body Worn Cameras,” SOP #017.XIII(G)(11) (April 29, 2021);

i. No member of the of the Crime Scene Squad took photographs of any injuries, SOP #017.XV(D) (April 29, 2021);

j. No one ensured that “all bystanders inadvertently exposed to ADS [were] identified and documented in the Case Report Form and the Blue Team Control of Persons Report form,” SOP #017.XV(E) (April 29, 2021); and

k. No Department employee on the scene “prepare[d] a Narrative Continuation Report (NCR) under the original case number detailing their activity at the scene and any relevant information they may possess,” SOP #017.XV(I) (April 29, 2021).

Failure to Use Body Worn Cameras and Failure to Report Failure to Use Body Worn Cameras

181. The individual Defendants violated the following Miami Beach Police Department’s policies on using body worn cameras and documenting failure to use body worn cameras:

- a. At times, Officer Bercian, Officer Rueda, Officer Acevedo, Officer Campos, Sgt. Perez, Sgt. Stella did not “activate their BWC in recording mode while [at a] crime scene,” SOP #152.I(B) (September 17, 2020);
- b. No officer “verbally document[ed] on the BWC and in the case report that a supervisor ha[d] authorized that a recording be stopped as well as the authorizing supervisors’ name,” SOP #152.III(D) (September 17, 2020);
- c. No one who failed to activate their BWC “notif[ied] their immediate supervisor as soon as practicable, but no later than the end of their tour of duty or detail,” SOP #152.III(K)(1) (September 17, 2020);

- d. No one who failed to activate their BWC “[d]ocument[ed] the name of the supervisor notified and the reasons for failing to activate the BWC on all reports related to the incident,” SOP #152.III(K)(2) (September 17, 2020);
- e. No “lead investigator, with the assistance of a Crime Scene Technician, . . . retrieve[ed] the BWC device from the employee and process[ed] it according to the investigating agency’s standards for the handling of evidence,” SOP #152.V(C) (September 17, 2020);
- f. No “BWC System Administrator” “download[ed] the BWC video in the presence of the lead investigator,” SOP #152.V(D) (September 17, 2020);
- g. For some officers, Sgt. Perez, Sgt. Stella, Lt. Diaz, Cpt. Feldman, and Major Doce, did not “document circumstances in which an employee failed to activate the BWC,” SOP #152.VI(C) (September 17, 2020); and
- h. Sgt. Perez, Sgt. Stella, Lt. Diaz, Cpt. Feldman, and Major Doce, did not “confer with officers at the end of each tour of duty to ensure that BWC recordings are categorized, identified and preserved pursuant to this SOP,” SOP #152.VI(J) (September 17, 2020).

Failure to Follow Arrest Procedures

182. Ms. Maple's arrest for allegedly violating a municipal ordinance did not occur "immediately or in fresh pursuit" or with probable cause. SOP #001.IV.B.2 (September 30, 2020).

Failure to Provide Medical Care

183. The individual Defendants decision to ignore Ms. Maple's medical needs violated the Miami Beach Police Department's Standard Operating Procedure:

- a. "Medical treatment [was not] summoned immediately after a subject [was] injured, complain[ed] of injury or request[ed] medical attention following the response to resistance." SOP #017.XII(A)(1)(b) (April 29, 2021); and
- b. No officer "[a]ssist[ed] affected subjects and/or bystanders with the decontamination process." SOP #017.VIII(A)(3)(j) (April 29, 2021).

184. The individual Defendants did not help Ms. Maple with the decontamination process at all. Instead, they arrested and prosecuted her.

Failure to Report Violation of Policies

185. Under the April 29, 2021, version of SOP #017, "employees that become aware of any violation of Department policy, state/provincial or federal law or a local ordinance will notify a supervisor as soon as it is reasonably safe to do so." Here, Officers Bercian, Acevedo, Campo, Sgts. Stella and Perez, Lt. Diaz.

Cpt. Feldman, and Major Doce all knew that their colleagues had violated these policies and laws but no one reported it.

CLAIMS FOR RELIEF

**COUNT 1 - VIOLATION OF 42 U.S.C. § 1983 FOR FIRST AMENDMENT
RETALIATION BY EXCESSIVE FORCE FOR FILMING POLICE
(AGAINST SGT. STELLA)**

Plaintiff repeats and re-alleges paragraphs 1 through 185 above, as if fully set forth herein and further alleges:

186. On or about July 25, 2021, Ms. Maple, standing on the sidewalk, filmed Sgt. Stella, standing in the middle of the street.

187. As retaliation for Plaintiff's desire to exercise her First Amendment rights, Sgt. Stella charged Ms. Maple, hit her with his bicycle, and pepper-sprayed her directly in her eyes from less than two feet away. He did this maliciously and sadistically without any legitimate need to maintain or restore safety or for any other good faith reason.

188. Sgt. Stella made his retaliatory motive clear by attacking Ms. Maple as she filmed him.

189. Sgt. Stella would not have hit Ms. Maple with his bicycle or pepper-sprayed her if she had not filmed him.

190. Plaintiff “had a First Amendment right, subject to reasonable time, manner and place restrictions, to photograph or videotape police conduct.” *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000).

191. No reasonable time, manner, and place restriction prohibited Ms. Maple from standing on the sidewalk and filming an officer who was standing in the middle of the street.

192. Sgt. Stella’s attack of Ms. Maple adversely affected her protected speech because she stopped filming after it.

193. Hitting someone with a bicycle and prepper spraying them would likely deter a person of ordinary firmness from the exercise of First Amendment rights.

194. Sgt. Stella, while acting under color of state law, deprived Ms. Maple of her First Amendment rights by attacking her.

195. Sgt. Stella’s conduct was motivated by evil intent to deprive Ms. Maple of her First Amendment rights or by callous or reckless indifference to those rights.

196. As a direct and proximate result of these unlawful acts, Ms. Maple has suffered various emotional and physical injuries, distress and pain, as described more fully herein.

197. Ms. Maple has been required to engage the services of the undersigned counsel. As such, Plaintiff is entitled to an award of reasonable attorney's fees and costs pursuant to 42 U.S.C. §§ 1983 and 1988.

WHEREFORE, Ms. Maple demands (a) judgment for compensatory and punitive damages against Sgt. Stella; (b) alternatively, to the extent that any of the above wrongful acts are deemed not to have caused a "more than de minimis" physical injury, nominal and punitive damages against Sgt. Stella; and (c) an order awarding Ms. Maple reasonable attorneys' fees, litigation expenses, and costs pursuant to 42 U.S.C. § 1988 and any other applicable law.

**COUNT 2 - VIOLATION OF 42 U.S.C. § 1983 FOR EXCESSIVE FORCE
(AGAINST SGT. STELLA)**

Plaintiff repeats and re-alleges paragraphs 1 through 185 above, as if fully set forth herein and further alleges:

198. Acting under the color of law, Defendant Stella deprived Ms. Maple of the rights and privileges secured to her by the Fourth and Fourteenth Amendments to the United States Constitution and by other laws of the United States to be free from illegal and unreasonable seizures by the use of force.

199. Sgt. Stella violated that right by acting maliciously and sadistically with a sufficiently culpable state of mind to cause harm to Ms. Maple.

200. Specifically, to retaliate against Ms. Maple for exercising her First Amendment right to film the police, Sgt. Stella hit Ms. Maple with his bicycle and pepper-sprayed her directly in her eyes from less than two feet away.

201. Sgt. Stella pepper-sprayed Ms. Maple and hit her with his bicycle without any legitimate need to maintain or restore safety or for any other good faith reason because Ms. Maple did not resist or pose any threat to anyone. Furthermore, he never attempted to temper or limit the amount of force.

202. Sgt. Stella's conduct was motivated by evil intent to harm and torment Plaintiff for her desire to lawfully exercise her First Amendment rights or by callous or reckless indifference to her right to be free from illegal and unreasonable seizures by the use of force.

203. As a direct and proximate result of Sgt. Stella's unlawful violence, Plaintiff has suffered various emotional and physical injuries, distress and pain, as described more fully herein.

204. Plaintiff has been required to engage the services of the undersigned counsel. As such, Plaintiff is entitled to an award of reasonable attorney's fees and costs pursuant to 42 U.S.C. §§ 1983 and 1988.

WHEREFORE, Plaintiff demands (a) judgment for compensatory and punitive damages against Sgt. Stella; (b) alternatively, to the extent that any of the above wrongful acts are deemed not to have caused a "more than de minimis"

physical injury, nominal and punitive damages against Sgt. Stella; and (c) an order awarding Plaintiff's reasonable attorneys' fees, litigation expenses, and costs pursuant to 42 U.S.C. § 1988 and any other applicable law.

COUNT 3 - VIOLATION OF 42 U.S.C. § 1983 FOR FIRST AMENDMENT RETALIATION BY FALSE ARREST FOR REPORTING EXCESSIVE FORCE (AGAINST OFFICERS BERCIAN, RUEDA, AND ACEVEDO)

Plaintiff repeats and re-alleges paragraphs 1 through 185 above, as if fully set forth herein and further alleges:

205. On or about July 25, 2021, Ms. Maple, her mother, and her friend reported to Officer Bercian that Sgt. Stella had unlawfully hit her with his bicycle and pepper-sprayed her.

206. As retaliation for Plaintiff's desire to exercise her First Amendment rights to report police misconduct, Officers Bercian, Rueda, and Acevedo arrested Ms. Maple, maliciously and sadistically without arguable probable cause or for any other good faith reason.

207. Ordinance 70-8 is so grossly and flagrantly unconstitutional that any person of reasonable prudence would be bound to see its flaws. Also, as Ordinance 70-8 is a municipal ordinance, Officers Bercian, Rueda, and Acevedo knew that they could not arrest her for violating it because the arrest did not occur immediately or in fresh pursuit after the incident.

208. Officers Bercian, Rueda, and Acevedo made it clear to Ms. Maple that they arrested Ms. Maple on account of her reporting the excessive force, because they arrested her almost immediately after her report and because they told her that they were arresting her for violating 70-8, an unconstitutional and nearly limitless law.

209. Officers Bercian, Rueda, and Acevedo would not have arrested Ms. Maple but for her intention to report Sgt. Stella's excessive force.

210. Plaintiff had a First Amendment "right to petition the government for redress." *DeMartini v. Town of Gulf Stream*, 942 F.3d 1277, 1289 (11th Cir. 2019).

211. An arrest would likely deter a person of ordinary firmness from exercising First Amendment rights.

212. Officers Bercian, Rueda, and Acevedo, while acting under color of state law, deprived Ms. Maple of her First Amendment rights by arresting her and delaying her ability sue Sgt. Stella and collect evidence in support of her case.

213. Their conduct was motivated by evil intent to deprive Ms. Maple of her First Amendment rights or by callous or reckless indifference to those rights.

214. As a direct and proximate result of these unlawful acts, Ms. Maple has suffered various emotional and physical injuries, distress and pain, as described more fully herein.

215. Ms. Maple has been required to engage the services of the undersigned counsel. As such, Plaintiff is entitled to an award of reasonable attorney's fees and costs pursuant to 42 U.S.C. §§ 1983 and 1988.

WHEREFORE, Ms. Maple demands (a) judgment for compensatory and punitive damages against Officers Bercian, Rueda, and Acevedo; (b) alternatively, to the extent that any of the above wrongful acts are deemed not to have caused a "more than de minimis" physical injury, nominal and punitive damages against those defendants; and (c) an order awarding Ms. Maple reasonable attorneys' fees, litigation expenses, and costs pursuant to 42 U.S.C. § 1988 and any other applicable law.

**COUNT 4 - VIOLATION OF 42 U.S.C. § 1983 FOR FALSE ARREST
(AGAINST OFFICERS BERCIAN, RUEDA, AND ACEVEDO)**

Plaintiff repeats and re-alleges paragraphs 1 through 185 above, as if fully set forth herein and further alleges:

216. On July 25, 2021, Officers Bercian, Rueda, and Acevedo unlawfully detained and arrested Ms. Maple without arguable probable cause, thereby depriving Ms. Maple of the rights and privileges secured to her by the Fourth and Fourteenth Amendments to the United States Constitution and by other laws of the United States to be free from illegal and unreasonable seizures. They arrested her for allegedly violating 70-8 by restraining her, handcuffing her, telling her she was under arrest, and walking her to a cage in a police van.

217. Ordinance 70-8 is so grossly and flagrantly unconstitutional that any person of reasonable prudence would be bound to see its flaws. Also, as Ordinance 70-8 is a municipal ordinance, Officers Bercian, Rueda, and Acevedo knew that they could not arrest her for violating it because the arrest did not occur immediately or in fresh pursuit after the incident.

218. All criminal charges resulting from the illegal arrests were nolle prossed by the prosecuting authority.

219. As a direct and proximate result of Officers Bercian, Rueda, and Acevedo's unlawful arrest, Ms. Maple suffered serious bodily injury, loss of liberty, and emotional damage which is permanent and/or will continue into the future.

220. Plaintiff has been required to engage the services of the undersigned counsel. As such, Plaintiff is entitled to an award of reasonable attorney's fees and costs pursuant to 42 U.S.C. §§ 1983 and 1988.

221. WHEREFORE, Ms. Maple demands (a) judgment for compensatory and punitive damages against Officers Bercian, Rueda, and Acevedo; (b) alternatively, to the extent that any of the above wrongful acts are deemed not to have caused a "more than de minimis" physical injury, nominal and punitive damages against those defendants; and (c) an order awarding Ms. Maple reasonable attorneys' fees, litigation expenses, and costs pursuant to 42 U.S.C. § 1988 and any

other applicable law.

**COUNT 5 - VIOLATION OF 42 U.S.C. § 1983 FOR FIRST AMENDMENT
RETALIATION BY MALICIOUS PROSECUTION FOR REPORTING
EXCESSIVE FORCE (AGAINST OFFICERS BERCIAN, RUEDA,
ACEVEDO, SGT. PEREZ, AND SGT. STELLA)**

Plaintiff repeats and re-alleges paragraphs 1 through 185 above, as if fully set forth herein and further alleges:

222. On or about July 25, 2021, Ms. Maple, her mother, and her friend reported to Officer Bercian that Sgt. Stella had unlawfully hit Ms. Maple with his bicycle and pepper-sprayed her.

223. As retaliation for Plaintiff's desire to exercise her First Amendment rights to report police misconduct, Officers Bercian, Rueda, Acevedo and Sgts. Perez and Stella prosecuted Ms. Maple for allegedly violating 70-8, maliciously and sadistically without arguable probable cause or for any other good faith reason.

224. Ordinance 70-8 is so grossly and flagrantly unconstitutional that any person of reasonable prudence would be bound to see its flaws.

225. Officers Bercian, Rueda, Acevedo and Sgts. Perez and Stella would not have prosecuted Ms. Maple but for her intention to report Sgt. Stella's excessive force. It would be objectively unreasonable for them to press charges against Ms. Maple.

226. Officers Bercian, Rueda, Acevedo and Sgts. Perez and Stella made it clear to Ms. Maple that they prosecuted her on account of her reporting the excessive

force, because they prosecuted her almost immediately after her report and because they prosecuted her under a clearly unconstitutional law.

227. Plaintiff had a First Amendment “right to petition the government for redress.” *DeMartini v. Town of Gulf Stream*, 942 F.3d 1277, 1289 (11th Cir. 2019).

228. A criminal prosecution would likely deter a person of ordinary firmness from the exercise of First Amendment rights.

229. Officers Bercian, Rueda, Acevedo and Sgts. Perez and Stella, while acting under color of state law, deprived Ms. Maple of her First Amendment rights by prosecuting her and delaying her ability sue Sgt. Stella and collect evidence in support of her case.

230. Their conduct was motivated by evil intent to deprive Ms. Maple of her First Amendment rights or by callous or reckless indifference to those rights.

231. All criminal charges resulting from the malicious prosecutions were nolle prossed by the prosecuting authority.

232. As a direct and proximate result of these unlawful acts, Ms. Maple has suffered various emotional and physical injuries, distress and pain, as described more fully herein.

233. Ms. Maple has been required to engage the services of the undersigned counsel. As such, Plaintiff is entitled to an award of reasonable attorney’s fees and costs pursuant to 42 U.S.C. §§ 1983 and 1988.

WHEREFORE, Ms. Maple demands (a) judgment for compensatory and punitive damages against Officers Bercian, Rueda, Acevedo and Sgts. Perez and Stella; (b) alternatively, to the extent that any of the above wrongful acts are deemed not to have caused a “more than de minimis” physical injury, nominal and punitive damages against those defendants; and (c) an order awarding Ms. Maple reasonable attorneys’ fees, litigation expenses, and costs pursuant to 42 U.S.C. § 1988 and any other applicable law.

COUNT 6 - VIOLATION OF 42 U.S.C. § 1983 FOR MALICIOUS PROSECUTION (AGAINST OFFICERS BERCIAN, RUEDA, ACEVEDO, SGT. PEREZ, AND SGT. STELLA)

Plaintiff repeats and re-alleges paragraphs 1 through 185 above, as if fully set forth herein and further alleges:

234. On July 25, 2021, Officers Bercian, Rueda, Acevedo, Sgt. Perez, and Sgt. Stella instituted criminal proceedings against Ms. Maple for allegedly violating 70-8 by effecting false arrest, executing affidavits wherein they knowingly provided false information intended to establish probable cause, and delivering the Plaintiff to the county jail for prosecution. Ms. Maple was incarcerated for more than twelve hours and this violated her Fourth Amendment rights.

235. Ordinance 70-8 is so grossly and flagrantly unconstitutional that any person of reasonable prudence would be bound to see its flaws.

236. All criminal charges resulting from the malicious prosecutions were nolle prossed by the prosecuting authority.

237. Officers Bercian, Rueda, Acevedo and Sgts. Perez and Stella prosecuted Ms. Maple, maliciously and sadistically without arguable probable cause or for any other good faith reason.

238. As a direct and proximate result of Officers Bercian, Rueda, Acevedo, Sgt. Perez, and Sgt. Stella's malicious prosecution, Ms. Maple suffered serious bodily injury, loss of liberty, and emotional damage which is permanent and/or will continue into the future.

239. Plaintiff has been required to engage the services of the undersigned counsel. As such, Plaintiff is entitled to an award of reasonable attorney's fees and costs pursuant to 42 U.S.C. §§ 1983 and 1988.

WHEREFORE, Ms. Maple demands (a) judgment for compensatory and punitive damages against Officers Bercian, Rueda, Acevedo and Sgts. Perez and Stella; (b) alternatively, to the extent that any of the above wrongful acts are deemed not to have caused a "more than de minimis" physical injury, nominal and punitive damages against those defendants; and (c) an order awarding Ms. Maple reasonable attorneys' fees, litigation expenses, and costs pursuant to 42 U.S.C. § 1988 and any other applicable law.

**COUNT 7 - VIOLATION OF 42 U.S.C. § 1983 FOR SUPERVISOR
LIABILITY FOR DIRECTING RETALIATION, FALSE ARREST, AND**

**MALICIOUS PROSECUTION (AGAINST SGT. STELLA, SGT. PEREZ,
AND MAJOR DOCE)**

Plaintiff repeats and re-alleges paragraphs 1 through 185 above, as if fully set forth herein and further alleges:

240. At all times relevant, Sgt. Stella, Sgt. Perez, and Major Doce maintained a senior rank and supervisory authority over Officers Bercian, Rueda, and Acevedo.

241. Sgt. Stella, Sgt. Perez, and Major Doce ordered and directed Officers Bercian, Rueda, and Acevedo, their subordinates, to act unlawfully.

242. Specifically, Sgt. Stella, Sgt. Perez, and Major Doce ordered Bercian, Rueda, and Acevedo to retaliate, falsely arrest and maliciously prosecute Plaintiff in violation of the First and Fourth Amendments and clearly established law and set an example by participating in the false arrest and malicious prosecution.

243. Officers Bercian, Rueda, and Acevedo followed Sgt. Stella, Sgt. Perez, and Major Doce's unconstitutional directive by retaliating against, falsely arresting, and maliciously prosecuting Plaintiff.

244. Sgt. Stella, Sgt. Perez, and Major Doce's unconstitutional orders were motivated by evil intent to harm Ms. Maple for her desire to lawfully exercise her First Amendment rights or by callous or reckless indifference to her right to be free from unlawful search and seizure.

245. As a direct and proximate result of Sgt. Stella, Sgt. Perez, and Major Doce's unlawful directives, Plaintiff has suffered various emotional and physical injuries, distress and pain, as described more fully herein.

246. Plaintiff has been required to engage the services of the undersigned counsel. As such, Plaintiff is entitled to an award of reasonable attorney's fees and costs pursuant to 42 U.S.C. §§ 1983 and 1988.

WHEREFORE, Plaintiff demands (a) judgment for compensatory and punitive damages against Sgt. Stella, Sgt. Perez, and Major Doce; (b) alternatively, to the extent that any of the above wrongful acts are deemed not to have caused a "more than de minimis" physical injury, nominal and punitive damages against those defendants; and (c) an order awarding Plaintiff's reasonable attorneys' fees, litigation expenses, and costs pursuant to 42 U.S.C. § 1988 and any other applicable law.

**COUNT 8 - VIOLATION OF 42 U.S.C. § 1983 FOR SUPERVISOR
LIABILITY FOR FAILING TO INTERVENE TO PREVENT
RETALIATION, FALSE ARREST, AND MALICIOUS PROSECUTION
(AGAINST SGT. STELLA, SGT. PEREZ, LT. DIAZ, CPT. FELDMAN,
AND MAJOR DOCE)**

Plaintiff repeats and re-alleges paragraphs 1 through 185 above, as if fully set forth herein and further alleges:

247. Major Doce, Cpt. Feldman, Lt. Diaz, Sgt. Perez, and Sgt. Stella observed Officers Bercian, Rueda, and Acevedo commit, while acting under color

of state law, retaliation, false arrest and malicious prosecution in violation of the First and Fourth Amendments to the U.S. Constitution.

248. Major Doce, Cpt. Feldman, Lt. Diaz, Sgt. Stella, Sgt. Perez had the authority within the Miami Beach Police Department's chain of command to stop these unconstitutional acts.

249. Major Doce, Cpt. Feldman, Lt. Diaz, Sgt. Stella, Sgt. Perez had opportunities to stop these unconstitutional acts.

250. Despite witnessing clearly unlawful retaliation, false arrest, and malicious prosecution committed against Ms. Maple, Major Doce, Cpt. Feldman, Lt. Diaz, Sgt. Stella, Sgt. Perez failed to take any action to intervene and stop the gratuitous constitutional violations.

251. Their failure to intervene violated Plaintiff's First and Fourth Amendment Rights.

252. Their failure to act demonstrated callous or reckless indifference to Plaintiff's right to free expression and to be free from unreasonable searches and seizures.

253. As a direct and proximate result of their failure to intervene to stop the other Defendants' unlawful violence, Plaintiff has suffered various emotional and physical injuries, distress and pain, as described more fully herein.

254. Plaintiff has been required to engage the services of the undersigned counsel. As such, Plaintiff is entitled to an award of reasonable attorney's fees and costs pursuant to 42 U.S.C. §§ 1983 and 1988.

WHEREFORE, Plaintiff demands (a) judgment for compensatory and punitive damages against Major Doce, Cpt. Feldman, Lt. Diaz, Sgt. Stella, and Sgt. Perez; (b) alternatively, to the extent that any of the above wrongful acts are deemed not to have caused a "more than de minimis" physical injury, nominal and punitive damages against those defendants; and (c) an order awarding Plaintiff's reasonable attorneys' fees, litigation expenses, and costs pursuant to 42 U.S.C. § 1988 and any other applicable law.

COUNT 9 - CONSPIRACY TO VIOLATE CIVIL RIGHTS UNDER 42 U.S.C. § 1985(2) AND 42 U.S.C. § 1983 (AGAINST ALL INDIVIDUAL DEFENDANTS)

Plaintiff repeats and re-alleges paragraphs 1 through 185 above, as if fully set forth herein and further alleges:

255. Officers Bercian, Rueda, Acevedo, Campos, Major Doce, Cpt. Feldman, Lt. Diaz, Sgt. Stella, and Sgt. Perez, all while acting under color of state law, conspired to deprive Ms. Maple of her right to report excessive force.

256. Officers Bercian, Rueda, Acevedo, Major Doce, Cpt. Feldman, Lt. Diaz, Sgt. Stella, and Sgt. Perez mutually agreed or understood that their conduct in arresting and prosecuting Plaintiff would violate, impede, hinder, obstruct, or

defeat her from enforcing or attempting to enforce her constitutional right to file a lawsuit or provide testimony.

257. Furthermore, Officer Bercian, Officer Campos, Major Doce, Cpt. Feldman, Lt. Diaz, Sgt. Stella, and Sgt. Perez mutually agreed or understood that their conduct in falsifying official documents about Plaintiff would violate, impede, hinder, obstruct, or defeat her from enforcing or attempting to enforce her constitutional right to file a lawsuit or provide testimony.

258. Each of the individual Defendants had an independent personal stake in depriving Ms. Maple of her First Amendment rights and acted on their interest of self-preservation because Ms. Maple intended to report their misconduct and this could have jeopardized the individual Defendants' employment status.

259. Furthermore, as explained above, each of the individual Defendants broke federal and state criminal law by participating in this conspiracy.

260. Defendants' respective conduct was motivated by evil intent to deprive Plaintiff of her First Amendment rights or by callous or reckless indifference to those rights.

261. As a direct and proximate result of the individual Defendants' conspiracy, Ms. Maple has suffered various emotional and physical injuries, distress and pain, as described more fully herein.

262. Plaintiff has been required to engage the services of the undersigned

counsel. As such, Plaintiff is entitled to an award of reasonable attorney's fees and costs pursuant to 42 U.S.C. §§ 1983 and 1988.

263. WHEREFORE, Plaintiff demands (a) judgment for compensatory and punitive damages against Officers Bercian, Rueda, Acevedo, Campos, Major Doce, Cpt. Feldman, Lt. Diaz, Sgt. Stella, Sgt. Perez; (b) alternatively, to the extent that any of the above wrongful acts are deemed not to have caused a "more than de minimis" physical injury, nominal and punitive damages against those defendants; and (c) an order awarding Plaintiff's reasonable attorneys' fees, litigation expenses, and costs pursuant to 42 U.S.C. § 1988 and any other applicable law.

COUNT 10 - VIOLATION OF 42 U.S.C. § 1983 UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION WITH AN OFFICIAL POLICY: *MONELL* CLAIM (AGAINST CITY OF MIAMI BEACH)

Plaintiff repeats and re-alleges paragraphs 1 through 185 above, as if fully set forth herein and further alleges:

264. Plaintiff was unconstitutionally hit with a bicycle, pepper-sprayed, arrested, and prosecuted, beginning on July 25, 2021, for an alleged violation of City of Miami Beach Ordinance Section 70-8 - Approaching a law enforcement officer, after warning, with intent to impede, provoke or harass.

265. City of Miami Beach Ordinance Section 70-8 is unconstitutional on its face and as applied under the First Amendment to the United States Constitution for each of the following reasons:

- a. The ordinance is unconstitutionally overbroad because no limiting construction could be placed on the ordinance and because it attaches sanctions to substantially more speech, like Ms. Maple's, than the First Amendment allows, including constitutionally protected expressions of speech that "interrupt" "disrupt," "interfere," "provoke," and "directly or indirectly harass a law enforcement officer;"
- b. The ordinance is an example of unconstitutional content-based discrimination because it punishes and applies only to speech about law enforcement officers, like Ms. Maple's, and not other government employees, such as firefighters, building inspectors, or teachers;
- c. The ordinance is an example of unconstitutional viewpoint discrimination because it punishes only speech, like Ms. Maple's, perceived to be critical of law enforcement officers, such as speech that "indirectly harass[es]" the officers, and because the co-sponsors intended to discriminate against this viewpoint;
- d. The ordinance does not further any governmental interest and is not narrowly tailored to further any such interest. Indeed, it serves no legitimate purpose because existing laws, *see, e.g.*, Fla. Stat. §§ 843.02, 784.048, already prohibit conduct that harasses people or obstructs law enforcement officers and lacks First Amendment protections.

Furthermore, the restriction is not a reasonable time, manner, and place restriction on protected activity.

266. The City of Miami Beach Ordinance Section 70-8 is an official policy of the municipality, and, with at least deliberate indifference, it deprived Plaintiff of her rights secured by the First Amendment of the U.S. Constitution to engage in protected expressive activity. This ordinance, as the justification for her being hit with a bicycle, pepper-sprayed, arrested and prosecuted, proximately caused irreparable harm to Plaintiff.

267. Plaintiff is therefore entitled to a declaration that the ordinance is unconstitutional on its face and as applied and the City of Miami Beach is liable for the damages proximately caused by its official policy.

WHEREFORE, Plaintiff prays this Court as follows: awarding Plaintiff compensatory damages in a full and fair sum as determined by a jury; awarding reasonable attorneys' fees pursuant to 42 U.S. Code § 1988; a declaration that City of Miami Beach Ordinance Section 70-8 is unconstitutional; and granting such other relief as this Court deems proper.

**COUNT 11 - VIOLATION OF 42 U.S.C. § 1983 UNDER THE DUE
PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE
UNITED STATES CONSTITUTION WITH AN OFFICIAL POLICY:
MONELL CLAIM (AGAINST CITY OF MIAMI BEACH)**

Plaintiff repeats and re-alleges paragraphs 1 through 185 above, as if fully set forth herein and further alleges:

268. Plaintiff was unconstitutionally hit with a bicycle, pepper-sprayed, arrested, and prosecuted, beginning on July 25, 2021, for an alleged violation of City of Miami Beach Ordinance Section 70-8 - Approaching a law enforcement officer, after warning, with intent to impede, provoke or harass.

269. City of Miami Beach Ordinance Section 70-8 is unconstitutional on its face and as applied under the Fourteenth Amendment to the United States Constitution for the following reasons:

a. The ordinance is unconstitutionally vague because it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits and because it authorizes arbitrary and discriminatory enforcement, like that against Ms. Maple, by prohibiting the intent to “interrupt” “disrupt,” “interfere,” provoke,” and “directly or indirectly harass a law enforcement officer,” without defining those terms, providing examples of prohibited conduct, or creating instructive context;

b. The ordinance does not further any substantial governmental interest and is not narrowly tailored to further any such interest. Indeed, it serves no legitimate purpose because existing laws, *see, e.g.*, Fla. Stat. §§ 843.02, 784.048, already prohibit conduct that harasses people or

obstructs law enforcement officers and lacks First Amendment protections. Furthermore, no constitutional interpretation is possible.

270. The City of Miami Beach Ordinance Section 70-8 is an official policy of the municipality and, with at least deliberate indifference, it deprived Plaintiff of her rights secured by the Fourteenth Amendment to the U.S. Constitution to be free from vague laws. This ordinance, as the justification for her being pepper-sprayed, arrested and prosecuted, proximately caused irreparable harm to Plaintiff.

271. Plaintiff is therefore entitled to a declaration that the ordinance is unconstitutional on its face and as applied and the City of Miami Beach is liable for the damages proximately caused by its official policy.

WHEREFORE, Plaintiff prays this Court as follows: awarding Plaintiff compensatory damages in a full and fair sum as determined by a jury; awarding reasonable attorneys' fees pursuant to 42 U.S. Code § 1988; a declaration that City of Miami Beach Ordinance Section 70-8 is unconstitutional; and granting such other relief as this Court deems proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all issues triable.

Date: December 5, 2022, Respectfully submitted,



Sam Thypin-Bermeo, Esq.

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Attorneys for Mariyah Maple

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that all counsel of record were served with the above pleading, Plaintiff's Third Amended Complaint and Demand for Jury Trial, through the Court's electronic filing system.



Sam Thypin-Bermeo, Esq.

Signature of Clerk or Deputy Clerk

Civil Action No. 21-cv-23960-BB

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* Kathleen Acevedo (#2047)
was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk

Civil Action No. 21-cv-23960-BB

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* Officer Brandon Campos (#2054)
was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk

Civil Action No. 21-cv-23960-BB

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* Lieutenant Raymond Diaz (#988)
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk

Civil Action No. 21-cv-23960-BB

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* Major Enrique Doce (#449)
was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk

Civil Action No. 21-cv-23960-BB

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* Captain Steven Feldman (#694)
was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk

Civil Action No. 21-cv-23960-BB

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* Officer Jose Daniel Perez (#1088)
was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk

Civil Action No. 21-cv-23960-BB

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* Officer Diego Rueda (#2075)
was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: