SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

N.C., A.T., and J.P., suing under pseudonyms, on behalf of themselves and all others similarly situated, Plaintiffs, -against- THE CITY OF NEW YORK and JESSICA S. TISCH, New York City Police Department Commissioner, in her official capacity, Defendants.	Index No. 156188/2024 (Frank, J.) Mot. Seq. No. 002 IAS Pt. 11

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

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INTRODUCTION

Plaintiffs commenced this action on behalf of themselves and similarly situated individuals to end Defendants' unlawful practice of using sealed records in direct contravention of New York State Family Court Act ("FCA") Sections 375.1 and 375.2 (the "Youth Sealing Statutes"). When a child, age 7 through 17, is arrested for an act that might constitute a crime if committed by an adult, his or her case may be heard in civil proceedings in family court under the FCA. New York law provides that where (1) an arrest of a child as a juvenile delinquent terminates in the child's favor[1] or (2) a court issues an order directing sealing, all records and papers relating to the arrest and information contained therein ("Sealed Youth Records") "shall be sealed and not made available to **any person or public or private agency**." FCA §§ 375.1(1), 375.2 (emphasis added).

Nevertheless, Defendants access, use, and disclose Sealed Youth Records in plain violation of the law, harming Plaintiffs and thousands of others who were arrested as children and whose records are supposed to be inaccessible to Defendants. Accordingly, Plaintiffs respectfully submit this Memorandum of Law in Support of Plaintiffs' Motion for Class Certification for an order: (1) certifying this action, under Article 9 of the New York Civil Practice Law and Rules ("CPLR"), as a class action on behalf of "all persons whose youth arrest-related records are or will be in the possession of the NYPD and are or will be subject to sealing under the Youth Sealing Statutes"; (2) appointing N.C., A.T., and J.P. as class representatives; (3) appointing The Legal Aid Society and Milbank LLP to serve as co-class counsel in this action; and (4) granting such other and further relief as this Court deems just and proper.

[1] Favorable terminations include a decision not to prosecute, the dismissal or withdrawal of a petition, or an adjustment of the case.

BACKGROUND

I. Defendants' Access, Use, And Disclosure of Sealed Youth Records

All records relating to the arrest of a child that ends in a favorable termination of a delinquency proceeding ***must*** be sealed and not made available to ***any*** person or public or private agency. FCA § 375.1. In addition, a court may order that juvenile arrest records in other instances must be sealed "in the interest of justice." FCA § 375.2. As Defendants admitted in paragraph 82 of their Answer, the NYPD is a public agency. NYSCEF Doc. No. 20 ¶ 82. Despite the FCA's clear command that Sealed Youth Records cannot be made available to ***any*** public agency, the NYPD routinely accesses Sealed Youth Records, uses them for investigative and other purposes, and discloses them, including to prosecutors.

In particular, the NYPD routinely accesses and uses sealed arrest-related records, including Sealed Youth Records, maintained in a set of interconnected databases and systems. *See* NYSCEF Doc. No. 1 ("Compl.") ¶¶ 86-114 (describing databases and systems). These databases are designed to interface with one another and allow for sharing of information across systems. Compl. ¶ 90. The NYPD admits that each of these databases "can be used in investigations of alleged or potential criminal activity" and that some of these databases "may be accessed via smartphones, tablets, computer terminals and other devices connected to the NYPD's computer system." Compl. ¶ 110. NYPD policies and procedures permit, facilitate, and even train NYPD personnel to access, review, and use Sealed Youth Records through these systems. *See* Compl. ¶¶ 111-134.

In addition, NYPD personnel access, use, and disclose Sealed Youth Records through the Department's Juvenile Crime Desk. Compl. ¶ 135. NYPD officers are instructed to obtain all information available to the Juvenile Crime Desk—including Sealed Youth Records—before deciding whether to release a youth or take him or her into custody. Compl. ¶¶ 135-143. Similarly,

the NYPD has a policy and practice of permitting the Detective Bureau to access and review Sealed Youth Records. Compl. ¶¶ 144-152.

The NYPD also has a practice of disclosing Sealed Youth Records outside the Department—including to criminal and family court prosecutors. Compl. ¶¶ 153-160. Prosecutors, and in turn courts, may thereby improperly rely on Sealed Youth Records unlawfully obtained from the NYPD at arraignments and in other remand arguments before the court. Compl. ¶ 159. Finally, the NYPD discloses—and fails to contain leaks of—Sealed Youth Records to the press. Compl. ¶¶ 161-164.

Defendants' unlawful practices are reflected in the experiences of the named Plaintiffs. For example, when NYPD officers stopped Plaintiff N.C. and her friend on the subway platform in New York City in 2022, the two children provided their names and dates of birth to the officers. Affirmation of Lisa Freeman in Support of Plaintiffs' Motion for Class Certification ("Freeman Aff.") ¶ 6. After the officers entered this information into their mobile devices, one officer told N.C. that the search on his mobile device indicated that she had a prior juvenile arrest from November 2018, and he proceeded to question her about that arrest. Freeman Aff. ¶ 8. N.C.'s only prior arrest related to an altercation she had with her mother in November 2018. Freeman Aff. ¶ 11. She was never prosecuted as a result of the arrest (Freeman Aff. ¶ 12), so the Youth Sealing Statutes required the records of the arrest to be sealed. Nevertheless, the officer was able to—and did—access N.C.'s Sealed Youth Records, traumatizing N.C. at the press of a button.

As to named Plaintiffs A.T. and J.P., prosecutors were in possession of their Sealed Youth Records generated and disclosed by NYPD in violation of the law. In September 2022, when Plaintiff A.T. was 17 years old, the NYPD arrested him. Freeman Aff. ¶ 15. During discovery in the family court delinquency proceeding that followed, the prosecutor provided to A.T.'s counsel

documents from NYPD systems that included Sealed Youth Records. Freeman Aff. ¶ 16. Among the documents provided to A.T.'s counsel by the prosecutor was an NYPD "Entity Report" bearing the NYPD logo, stating that an NYPD officer generated the Entity Report, and indicating that A.T. had three prior arrests. Freeman Aff. ¶ 20. It clearly indicates that two of A.T.'s prior arrests are sealed, but nevertheless discloses Sealed Youth Records including A.T.'s name, date of birth, personal information, date of arrest, and the most serious crime charged for each prior arrest. Freeman Aff. ¶¶ 21-23. The prosecutor also received from the NYPD, and produced in discovery, NYPD-generated "Omniform System – Arrests" Reports, which disclosed Sealed Youth Records relating to A.T.'s two sealed arrests. Freeman Aff. ¶ 24.

Similarly, the prosecutor in J.P.'s family court proceeding also produced documents obtained from the NYPD to J.P.'s counsel and his co-defendant's counsel, which included Sealed Youth Records relating to J.P.'s arrest as a juvenile in January 2022 that had resulted in a favorable termination. Freeman Aff. ¶ 36. In J.P.'s case, as in A.T.'s case, the NYPD provided to the prosecutor, who in turn produced them in discovery, Sealed Youth Records in the form of an NYPD Entity Report disclosing J.P.'s prior juvenile arrest, name, date of birth, personal information, date of arrest, and most serious crime charged for the prior arrest. Freeman Aff. ¶¶ 35, 38, 42.

Plaintiffs allege that the access, use, and disclosure of their Sealed Youth Records is the result of the NYPD's unlawful policy and practice with regard to Sealed Youth Records. Compl. ¶¶ 73-164. Defendants' pervasive practice of accessing, using, and disclosing Sealed Youth Records is a systemic failure to abide by the Youth Sealing Statutes, subjecting every person who is or will be subject to the protections of the Youth Sealing Statues to substantial risk of harm by disclosure. Compl. ¶¶ 5-6.

II. Thousands of Putative Class Members

Plaintiffs seek certification of a class of individuals whose youth arrest-related records are or will be in the possession of the NYPD and are or will be subject to sealing under the Youth Sealing Statutes. The putative class includes thousands of individuals whose rights are violated by the NYPD's policies and practices and its routine access, use, and disclosure of their Sealed Youth Records, and is thus sufficiently numerous to warrant certification of the class.

In the period between 2019 and 2023 alone, the NYPD conducted more than 3,300 arrests of juveniles that resulted in favorable dispositions and are required to be sealed under FCA Section 375.1. Freeman Aff. ¶ 3. Although some individuals may have more than one sealed arrest during this time period, the sheer number of sealed arrests during this three-year period demonstrates that putative class members number in the thousands. This is especially true given that the 3,300 juvenile arrests referenced above do not include arrest records subject to sealing under FCA Section 375.2 nor does it reflect Sealed Youth Records related to any arrest from before 2019 or after 2023. Thus, it is fair to conclude that the number of class members is well in excess of two thousand.

PROCEDURAL HISTORY

On July 12, 2024, Plaintiffs filed the Complaint in this action seeking declaratory and injunctive relief for Defendants' violations of the Youth Sealing Statutes. On October 16, 2024, Defendants answered the Complaint. On November 14, 2024, Plaintiffs served initial requests for discovery on Defendants. Following service of the discovery requests on Defendants, the parties agreed to a stipulation to extend the time to file the motion for class certification while the parties engaged in settlement discussions. NYSCEF Doc. No. 21. The Court entered the stipulation on December 16, 2024. NYSCEF Doc. No. 22. Subsequently, the Court entered several further stipulations to extend the filing deadline through June 30, 2025. NYSCEF Doc. Nos. 24, 26, 28.

Settlement discussions were not productive, so Plaintiffs now file their motion for class certification.

ARGUMENT

I. CLASS CERTIFICATION IS APPROPRIATE.

Plaintiffs seek certification of a class defined as: "all persons whose youth arrest-related records are or will be in the possession of the NYPD and are or will be subject to sealing under the Youth Sealing Statutes." Under the CPLR, a class may be certified if the following statutory prerequisites are met:

> (1) . . . the class is so numerous that joinder of all members is impracticable (numerosity); (2) questions of law or fact common to the class predominate over questions of law or fact affecting individual class members (commonality); (3) the claims or defenses of the class representatives are typical of those in the class (typicality); (4) the class representatives will fairly and adequately protect the interests of the class; and (5) a class action represents the superior method of adjudicating the controversy (superiority).

Pludeman v. N. Leasing Sys., Inc., 74 A.D.3d 420, 421-422 (1st Dep't 2010) (citing *Weinberg v. Hertz Corp.*, 116 A.D.2d 1, 4 (1st Dep't 1986) and CPLR § 901(a)). The Court of Appeals has stated that "the criteria set forth in CPLR [Section] 901(a) should be broadly construed not only because of the general command for liberal construction of all CPLR sections, but also because it is apparent that the Legislature intended [A]rticle 9 to be a liberal substitute for the narrow class action legislation which preceded it." *City of New York v. Maul*, 14 N.Y.3d 499, 509 (2010) (citation omitted).

Once these criteria have been satisfied, the Court may consider the additional factors under CPLR Section 902, "such as the interest of individual class members in maintaining separate actions and the feasibility thereof; the existence of pending litigation regarding the same controversy; the desirability of the proposed class forum; and the difficulties likely to be

encountered in managing the class action." *Pludeman*, 74 A.D. 3d at 422 (citing CPLR § 902 and *Ackerman v. Price Waterhouse*, 252 A.D.2d 179, 191 (1st Dep't 1998)).

For the reasons set forth below, Plaintiffs meet the statutory requirements under CPLR Sections 901 and 902 and class certification is appropriate.

A. The Class is Sufficiently Numerous, Including Thousands of People.

There is no "set rule for the number of prospective class members which must exist before a class is certified." *Friar v. Vanguard Holding Corp.*, 78 A.D.2d 83, 96 (2d Dep't 1980). New York courts, however, generally accept 40 or more putative class members as sufficient to establish numerosity. *Borden v. 400 E. 55th Street Assocs., L.P.*, 24 N.Y.3d 382, 399 (2014) ("numerosity is presumed at a level of 40 members"); *Globe Surgical Supply v. GEICO Ins. Co.*, 59 A.D.3d 129, 137-138 (2d Dep't 2008) (finding that a proposed class of, "at a minimum, between 10 and 100" members satisfies numerosity).

As set forth above, there are at least two thousand putative class members in this case. Accordingly, the proposed class satisfies the numerosity requirement. *See Borden*, 24 N.Y.3d at 399.

B. Common Questions of Law and Fact Predominate.

The central questions in this case concern Defendants' policy and practice of unlawfully accessing, using, and disclosing Sealed Youth Records. These include, among others: (1) whether the NYPD's policy and practice of accessing Sealed Youth Records violates the Youth Sealing Statutes; (2) whether the NYPD's policy and practice of using Sealed Youth Records violates the Youth Sealing Statutes; and (3) whether the NYPD's policies and practices of disclosing, and failing to prevent disclosure, of Sealed Youth Records to people and entities outside the NYPD violate the Youth Sealing Statutes. These questions are common—the evidence that will prove Plaintiffs' allegations will not vary from class member to class member. *See Pludeman*, 74 A.D.3d

at 424 (certifying class in a case where "liability could turn on a single issue" that "does not require individualized proof"). Resolution of these questions, among other common questions, will drive resolution of the claims on a class-wide basis.

In addition, while members of the putative class may have had their Sealed Youth Records accessed, used, or disclosed under particular circumstances, the underlying issues of law and fact remain the same: Whether the NYPD's policies and practices violate the Youth Sealing Statutes. Indeed, the "rule requires predominance not identity or unanimity among class members." *Pludeman*, 74 A.D.3d at 423 (internal citations omitted) ("Class certification is appropriate even when there are questions of law or fact not common to the class."). Indeed, "the fact that questions peculiar to each individual may remain after resolution of the common questions is not fatal to the class action." *Maul*, 14 N.Y.3d at 514. Here, any individualized factual circumstances are minor, such that common questions predominate.

Each putative class member's claims against Defendants depend on resolution of the common questions discussed above, making class-wide resolution of the claims appropriate.

C. The Named Plaintiffs' Claims are Typical of Those of All Class Members.

Named Plaintiffs' claims are typical if they "derive from the same course of conduct that gives rise to the claims of the other class members and is based upon the same legal theory." *Hurrell-Harring v. State of New York*, 81 A.D.3d 69, 73 (3d Dep't 2011). Typicality "does not require identity of issues and the typicality requirement is met even if the claims asserted by class members differ from those asserted by other class members." *Pludeman*, 74 A.D.3d at 423.

In this case, N.C's, A.T.'s, and J.P.'s claims all: (1) derive from the same "course of conduct that gives rise to the claims of the other class members" and (2) are "based upon the same legal theory." *Hurrell-Harring*, 81 A.D.3d at 73. First, as with all class members, named Plaintiffs' claims all arise from the NYPD's policies and practices of accessing, using, and disclosing Sealed

Youth Records. Second, again as with all class members, named Plaintiffs assert a right to relief under the Youth Sealing Statutes. As named Plaintiffs seek relief from the same NYPD policies and practices on the same legal basis as all class members, their claims are typical.

D. The Named Plaintiffs Will Adequately Represent the Class.

The "three essential factors to consider in determining adequacy of representation" include, (1) potential conflicts of interest between the proposed class representatives and the class members; (2) personal characteristics of the proposed class representatives (specifically familiarity with the lawsuit and their financial resources); and (3) the quality of the class counsel. *GEICO*, 59 A.D.3d at 144.

1. There are no conflicts of interest between Plaintiffs and the putative class.

As to the first factor, as named Plaintiffs' claims are based on the same NYPD policies and practices as those giving rise to the claims of absent class members, their interests in litigating these claims are fully aligned with those of the proposed class. Named Plaintiffs also have no known conflicts with members of the proposed class.

2. Plaintiffs' characteristics demonstrate that they will adequately represent the class.

The second factor requires that named Plaintiffs possess "general awareness of the claims." *Stecko v. RLI Ins. Co.*, 121 A.D.3d 542, 542 (1st Dep't 2014). Plaintiffs' motivations for pursuing the litigation are also relevant. For example, where potential named plaintiffs "indicated that they joined in the lawsuit . . . to improve the indigent defense system," the court concluded that the termination of those named plaintiffs' criminal cases "does not . . . suggest that they will not adequately pursue the action." *Hurrell-Harring,* 81 A.D.3d at 73. Here, N.C., A.T., and J.P. are aware of the claims at issue in this case, understand that they are suing on behalf of a proposed class, and want to vindicate the rights of class members as well as their own. Finally, though

counsel will seek fees from Defendants under applicable fee shifting statutes, counsel will prosecute these claims at no cost to Plaintiffs and will "assume responsibility for litigation expenses," so Plaintiffs' "personal financial condition [is] irrelevant" to their ability to represent the class. *Wilder v. May Dep't Stores Co.*, 23 A.D.3d 646, 648-49 (2d Dep't 2005).

3. The Legal Aid Society and Milbank will adequately represent the class.

The third factor regarding the quality of class counsel is generally satisfied where class counsel has "some experience in prosecuting class actions." *GEICO*, 59 A.D.3d at 144. As discussed in Section II below, both The Legal Aid Society ("LAS") and Milbank have experience in prosecuting civil rights and class action lawsuits and intend to vigorously pursue vindication of the rights of all members of the putative class.

E. A Class Action is a Superior Vehicle for Adjudicating All Class Members' Claims.

The primary inquiry under the superiority requirement is whether class certification will better preserve judicial resources than adjudicating claims individually. *See Borden*, 24 N.Y.3d at 400. In assessing whether a class action is superior to individual actions, courts consider whether denying class certification will lead to duplicative lawsuits and risk inconsistent rulings in subsequent cases. *See Hurrell-Harring*, 81 A.D.3d at 74-76. Courts also consider whether denying certification would prevent individual cases from proceeding because of the limited recovery and high costs associated with bringing individual actions. *See id.*; *Stecko*, 121 A.D.3d at 543; *GEICO*, 59 A.D.3d at 145-146.

Allowing this matter to proceed as a class action would allow this court to decide the lawfulness of the NYPD's policies and practices with respect to Sealed Youth Records for all class members at once, avoiding the potential for inconsistent judgments. It would also lead to economies of scale insofar as many class members lack resources to bring claims individually and

their claims may not have sufficient economic value for them to retain counsel. Many low-income individuals who are arrested are indigent and cannot afford to pay for counsel. Moreover, many individual class members have no way of knowing whether the NYPD has accessed, used, or disclosed their Sealed Youth Records, as these violations may have occurred within the NYPD.

Certification is also appropriate because adjudicating violations of the Youth Sealing Statutes one by one would be insufficient to secure the important interests those statutes protect. The harms caused by the NYPD's policies and practices cannot be sufficiently redressed through individual post-violation remedies alone. *N.Y. Cty. Laws.' Ass'n v. State of New York*, 294 A.D.2d 69, 76 (1st Dep't 2002) (permitting class action).

Denying class certification would prevent numerous individuals from vindicating their rights under the Youth Sealing Statutes and give the NYPD a pass on its unlawful policies. A class action is thus a superior method of adjudication for class members' claims.

F. All CPLR Section 902 Factors Favor Certification.

The discretionary factors in CPLR Section 902 also weigh in favor of class certification. Under Section 902, a court shall consider:

(1) The interest of members of the class in individually controlling the prosecution or defense of separate actions;

(2) The impracticability or inefficiency of prosecuting or defending separate actions;

(3) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(4) The desirability or undesirability of concentrating the litigation of the claim in the particular forum;

(5) The difficulties likely to be encountered in management of a class action.

The first three of these factors are relevant to whether a class action is a superior vehicle for adjudicating the claims at issue. For the reasons stated in Section I.E *supra*, a class action is a superior vehicle for adjudicating all putative class members' claims here, and thus the first three

factors of CPLR Section 902 weigh heavily in favor of certification. *See GEICO*, 59 A.D.3d at 136. Prosecuting separate actions for the claims asserted here would be impractical and inefficient. Indeed, requiring class members to proceed individually would burden Defendants as well as class members, as Defendants would be required to litigate the validity of their policies in numerous separate lawsuits. Individual actions also would not address the NYPD's department-wide practice of violating the Youth Sealing Statutes. Class-wide relief is necessary to address the NYPD's misconduct because the misconduct is not limited to isolated violations of the Youth Sealing Statutes, but instead consists of a general policy and practice of violating the law.

The fourth factor—whether litigation of this claim should be concentrated in the New York County Supreme Court—also favors certification. As an initial matter, concentrating litigation concerning the NYPD's violations of the Youth Sealing Statutes in a single forum will prevent different courts from issuing inconsistent orders. The New York County Supreme Court is a reasonable forum for all such litigation to take place: the challenged policies apply throughout New York City, but, upon information and belief, they are developed by NYPD officials at NYPD headquarters in Manhattan. An action concerning the NYPD's violation of Criminal Procedure Law Sections 160.50 and 160.55—similar sealing statutes for adult records—is also pending before this Court, and it would serve judicial economy for both that action and this one to reach consistent resolutions.[2]

The final factor favors certification because managing this case as a class action is not likely to present specific difficulties. As Plaintiffs do not seek damages (whether on their own behalf or on behalf of the class), the burdens of proceeding as a class action will be limited.

[2] In *R.C. v. City of New York*, Index No. 153739/2018 (2018), the plaintiffs assert claims for violation of Criminal Procedure Law Sections 160.50 and 160.55, which govern sealing of arrest records for adults, just as the Youth Sealing Statutes govern sealing of arrest records for juveniles. This action and *R.C.* are related cases.

II. LAS AND MILBANK SHOULD BE APPOINTED CLASS COUNSEL FOR THE PROPOSED CLASS.

Named Plaintiffs' counsel should be appointed class counsel where they exhibit "competence, experience and vigor." *Pruitt v. Rockefeller Ctr. Props., Inc.*, 167 A.D.2d 14, 24 (1st Dep't 1991). LAS and Milbank have the experience and competence to provide capable representation to the class.

LAS is accomplished in representing children and youth prosecuted in New York City's family courts. Freeman Aff. ¶¶ 52-53. LAS has dedicated teams of lawyers, social workers, paralegals, and investigators devoted to serving the unique needs of children and youth charged as juvenile delinquents and subject to the Youth Sealing Statutes. Freeman Aff. ¶ 54. In addition to representing children in family court, LAS also pursues civil rights litigation to effect systemic change for its clients. Freeman Aff. ¶ 52.

Milbank litigators handle a wide range of litigation and arbitration matters in federal and state courts, including a broad range of complex commercial litigation cases and class actions on paid and *pro bono* bases. Freeman Aff. ¶ 56. Milbank has vigorously, competently, and successfully represented other plaintiffs *pro bono* in civil rights litigation, including class actions against government and state entities.[3] Freeman Aff. ¶ 58.

The interests of the putative class would be well served by appointing LAS and Milbank as co-class counsel.

[3] These cases include *Lovely H. v. Eggleston*, No. 1:05-cv-06920 (S.D.N.Y. 2005), a class action on behalf of low-income New Yorkers with disabilities who were being denied access to benefits by the New York City Human Resources Administration; *Garcia v. Los Angeles County Sheriff's Department,* No. 2:09-cv-08943 (C.D. Cal. 2009), a class action on behalf of students with disabilities in the Los Angeles County Jail who were denied access to special education services; and *A.O. v. Cuccinelli*, No. 5:19-cv-06151, (N.D. Cal. 2020), a class action on behalf of immigrant children in California who were unlawfully denied Special Immigrant Juvenile Status by the United States Citizenship and Immigration Services and were at risk of removal from the United States.

CONCLUSION

WHEREFORE Plaintiffs respectfully request that this Court enter an order: (i) certifying this action, pursuant to Article 9 of the CPLR, as a class action on behalf of "all persons whose youth arrest-related records are or will be in the possession of the NYPD and are or will be subject to sealing under the Youth Sealing Statutes"; (ii) appointing N.C., A.T., and J.P. as class representatives; (iii) appointing The Legal Aid Society and Milbank LLP to serve as co-class counsel in this action; and (iv) granting such further relief as this Court deems just and proper.

Dated: New York, New York
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