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 EDWARD A. CABAN, New York City Police Department Commissioner, in his official capacity, Defendants.	Index No. 156188/2024 **SUMMONS** Date Index No. Purchased: 7/9/2024

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action, and to serve a copy of your answer on the Plaintiffs' attorneys, The Legal Aid Society and Milbank LLP, within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York). In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Plaintiffs designate New York County as the place of trial. The basis of the venue is that this action involves the New York City Police Department, whose headquarters are located at One Police Plaza, in New York County.

Dated: July 9, 2024
New York, New York

Respectfully submitted,

By: /s/

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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 EDWARD A. CABAN, New York City Police Department Commissioner, in his official capacity, Defendants.	Index No. 156188/2024 **CLASS ACTION COMPLAINT**

NATURE OF THE CASE

1. When the New York City Police Department (the "NYPD" or the "Department") arrests a child, age 7 through 17, for an act that might constitute a crime if committed by an adult, his or her case may be heard in a civil proceeding in Family Court pursuant to the Family Court Act ("FCA"). The intent of the FCA, and New York's juvenile legal system more broadly, is to provide rehabilitative opportunities for children. Accordingly, the FCA provides robust privacy protections to children whose cases are heard in Family Court, including by providing for expansive confidentiality and sealing of juvenile records.

2. Section 375 of the FCA, in particular, provides that when a juvenile arrest results in a "favorable" termination—such as a decision not to prosecute, the dismissal or withdrawal of a petition, or an adjustment of the case—records and papers relating to the arrest and information contained therein ("Sealed Youth Records") ***must*** be sealed and not made available to ***any*** person

or public or private agency.[1] The FCA further specifies that even where the arrest leads to a finding of delinquency, the Family Court may nevertheless order sealing of the juvenile's arrest-related records, and the same protections apply. *See* FCA §§ 375.1, 375.2 (collectively, the "Youth Sealing Statutes").

3. The Youth Sealing Statutes give effect to the rehabilitative purpose of Family Court proceedings and protect young people from the prospect of perpetual punishment resulting from arrest record-based discrimination. Sealed Youth Records can be provided to the person arrested as a child and certain probation service records can be made available to a probation service for strictly limited purposes. Otherwise, no one may access them, for any purpose, without a court order. *See* FCA § 375.1 (Sealed Youth Records shall "not [be] made available to ***any*** person or public or private agency." (emphasis added)).

4. The law provides ***no*** exception for the NYPD to access, use, or disclose Sealed Youth Records—including records it created—for law enforcement purposes or for any other purpose absent a court order. Yet, the NYPD has engaged (and continues to engage) in a longstanding practice of illegally accessing, using, and disclosing Sealed Youth Records.

5. Indeed, notwithstanding the law's clear mandate, the NYPD accessed, used, and disclosed Sealed Youth Records of Plaintiffs N.C., A.T., and J.P., each arrested as a juvenile and the recipient of a favorable termination (*i.e.*, no charges against them were substantiated by a court of law). As a result of the NYPD's policy and practice of accessing, using, and disclosing Sealed

[1] A petition is the charging instrument in Family Court. Adjustment is a process run by the New York City Department of Probation whereby a juvenile must comply with certain rules, conditions, and service requirements. If the juvenile successfully completes services, the matter is dismissed and sealed without an adjudication or finding. *See* FCA § 308.1. In addition, the presentment agency—the prosecutor in Family Court—maintains the discretion to decline to prosecute a case or to proceed to file a petition in Family Court.

Youth Records, the Defendants have violated and continue to violate the statutory rights of the Plaintiffs and all others similarly situated, subjecting them to significant harm.

6. The NYPD's improper access, use, and disclosure of Sealed Youth Records mirrors its unlawful handling of sealed adult records. In 2018, three individuals filed a class action lawsuit on behalf of those arrested as adults whose arrest records must be sealed under New York Criminal Procedure Law ("CPL") Sections 160.50 and 160.55. These CPL provisions are nearly identical to, but less stringent than, the Youth Sealing Statutes. And in September 2021, the New York Supreme Court issued a preliminary injunction requiring the Department to cease its practice of unlawfully accessing sealed adult records.

7. Like that matter did for individuals protected by CPL provisions, this class action seeks to end Defendants' unlawful practice of accessing Sealed Youth Records and restore the privacy protections mandated by the FCA. The Defendants' illegal actions strip from Plaintiffs and those similarly situated the presumption of innocence that the Youth Sealing Statutes are designed to protect, and such actions must be enjoined.

PARTIES

Plaintiff N.C.

8. Plaintiff N.C. is a 19-year-old woman in foster care in New York City.

9. N.C. attends school, works, and is a parent. While N.C. was commuting last spring, she attempted to transfer from a New York City bus to the subway at the Broadway Junction stop in Brooklyn. Her transfer (which should have been free) did not register on the card reader when she attempted to enter the subway gate, so N.C. and a friend entered through the platform door.

10. Upon entering the subway platform, several NYPD officers stopped N.C. and her friend and demanded identification. N.C. and her friend each provided their names and dates of birth.

11. N.C. watched as the officers entered N.C.'s and her friend's information into their mobile devices. After doing so, the officers let N.C.'s friend proceed onto the subway platform.

12. The NYPD officers continued to hold and question N.C. An officer told N.C. that the search on his mobile device indicated that N.C. had a prior arrest. The officer then questioned N.C. about that arrest.

13. N.C.'s only prior arrest is sealed pursuant to the Youth Sealing Statutes.

14. Upon information and belief, the officer accessed N.C.'s Sealed Youth Records on his mobile device.

15. The officers subsequently permitted N.C. to proceed to the subway platform. She remained fearful and upset about her encounter with NYPD officers.

16. N.C.'s single prior arrest stemmed from an altercation with her mother in November 2018. After the altercation, New York City's Administration of Children's Services ("ACS") removed N.C. from her mother's custody and filed a petition against N.C.'s mother alleging abuse and neglect.

17. Prosecutors declined to prosecute N.C. after her arrest. As a result, the records of her arrest were sealed in December 2018.

18. Upon information and belief, the NYPD still maintains access to N.C.'s Sealed Youth Records and could again access, use, or disclose them in violation of the Youth Sealing Statutes at any time absent judicial intervention.

Plaintiff A.T.

19. Plaintiff A.T. is a 19-year-old Latinx young man who lives in New York City.

20. The NYPD arrested A.T. on September 9, 2022, at the age of 17.

21. During discovery in a Family Court delinquency proceeding resulting from this arrest, the prosecutor produced documents created by the NYPD to A.T.'s counsel. Those documents included Sealed Youth Records related to A.T.'s two sealed juvenile arrests, attached as Exhibit A. The documents produced by prosecutors only redacted information related to NYPD personnel. Exhibit A contains additional redactions (marked as "REDACTED FOR FILING") to protect A.T.'s personal information.

22. Specifically, the prosecutor produced an "Entity – Summary Report" ("Entity Report").

23. Upon information and belief, the NYPD provided the Entity Report to the prosecutor in connection with the prosecution of A.T.

24. The Entity Report bears the NYPD logo and states that an NYPD officer generated it on September 9, 2022.

25. The Entity Report states that A.T. had three prior arrests.

26. The Entity Report indicates that A.T. had two prior juvenile arrests that are sealed.[2]

27. Even though the records for two of A.T.'s prior arrests are sealed, the Entity Report discloses A.T.'s name, date of birth, the date of arrest, and the most serious, or "top," crime the NYPD charged for each prior arrest.

28. The Entity Report also states "Click here to generate the NYPD Detailed Report." Upon information and belief, this is a hyperlink that would allow the viewer to access Sealed Youth Records for A.T.

[2] The third arrest counted in A.T.'s "Number of Priors" was a voided arrest, and the State thus did not prosecute him.

29. The Entity Report also contains a profile of A.T., including his sex, race, date of birth, height, weight, hair and eye color, address, phone number, and any tattoos.

30. The prosecutor also produced an "Omniform System – Arrests" Report ("Omniform Report") generated around the time of the September 9, 2022 arrest.

31. The Omniform Report also refers to A.T.'s two sealed arrests, stating "Number of Priors: 3."

32. In connection with A.T's arrest, NYPD policy required the arresting officer to contact the Juvenile Crime Desk to obtain its recommendation on whether to take A.T. into custody or issue a desk appearance ticket. As set forth in paragraphs 135 through 143 below, the Juvenile Crime Desk considers information available to it, including Sealed Youth Records, in making such recommendations.

33. The Family Court prosecutor received A.T.'s Sealed Youth Records from the NYPD in violation of the Youth Sealing Statutes and was able to consider their contents in making decisions with respect to A.T.'s case.

34. After the September 9, 2022 arrest, A.T. successfully completed probation and participated in a gun violence prevention program. He lives with and helps support his family in Brooklyn.

35. Upon information and belief, the NYPD still maintains access to A.T.'s Sealed Youth Records and could access, use, or disclose them in violation of the Youth Sealing Statutes at any time absent judicial intervention.

36. On October 31, 2023, A.T. requested copies of all documents, records, and files that the NYPD possessed that pertain to each of his arrests.

37. In response, the NYPD provided printouts from certain databases, including Omniform Reports for three arrests, two of which are attached as Exhibit B.[3] The Omniform Reports produced by the NYPD redacted information related to the complaint, associated arrest, and "defendant calls"—phone calls A.T. was permitted to make following his arrests. Exhibit B contains additional redactions (marked as "REDACTED FOR FILING") to protect A.T.'s personal information.

38. Each Omniform Report for A.T's sealed arrests states at the top "This is a Juvenile Record" and "Record contains sealed information. This Record may not be made available to any person or public or private agency outside the police department." The Omniform Reports do not state any restriction on internal use of the report by NYPD personnel.

39. Each Omniform Report for A.T's sealed arrests also states that the "record status" is "sealed" and includes the arrest date and location, arrest charge, and a description of the incident that led to the arrest.

Plaintiff J.P.

40. Plaintiff J.P. is a 17-year-old young man who lives in New York City.

41. The NYPD arrested J.P. on May 10, 2023. During discovery in the Family Court proceeding resulting from this arrest, the prosecutor produced documents created by the NYPD to J.P.'s counsel and to his co-defendant's counsel.

42. Those documents, attached as Exhibit C, included Sealed Youth Records related to an instance on which J.P. was arrested as a juvenile on January 11, 2022.[4] The documents did not contain redactions of any information related to the sealed January 11, 2022 arrest. Exhibit C

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[3] The third Omniform Report was for A.T.'s voided arrest and is not included in Exhibit B.

[4] The second sealed arrest listed on the documents relates to the May 10, 2023 arrest discussed herein and was sealed under the CPL after J.P.'s case was removed from criminal court to Family Court.

contains redactions (marked as "REDACTED FOR FILING") to protect J.P.'s personal information.

43. Specifically, the prosecutor produced an Entity Report.

44. Upon information and belief, the NYPD provided the Entity Report to the prosecutor in connection with the prosecution of J.P.

45. The Entity Report bears the NYPD logo and states that it was generated by an NYPD officer on May 25, 2023.

46. The Entity Report states that J.P. had a prior juvenile arrest in January 2022, which is sealed pursuant to the Youth Sealing Statutes.

47. Even though the records for this prior arrest are sealed, the Entity Report discloses J.P.'s name, date of birth, the date of arrest, and the most serious, or "top," crime the NYPD charged for the prior arrest.

48. The Entity Report also states "Click here to generate the NYPD Detailed Report." Upon information and belief, this is a hyperlink that would allow the viewer to access Sealed Youth Records for J.P.

49. The Entity Report also includes information on "Patterns" and "Recidivist Lists" and states that J.P. was added to a recidivist list immediately following his May 10, 2023 arrest and remains on that list despite the fact that his prior arrest was sealed.

50. The Entity Report also contains a profile of J.P., including his sex, race, date of birth, height, weight, hair and eye color, address, phone number, and any tattoos.

51. In connection with J.P.'s arrest, NYPD policy required the arresting officer to contact the Juvenile Crime Desk to obtain its recommendation on whether to take J.P. into custody or issue a desk appearance ticket. As set forth in paragraphs 135 through 143 below, the Juvenile

Crime Desk considers information available to it, including Sealed Youth Records, in making such recommendations.

52. The prosecutor received J.P.'s Sealed Youth Records from the NYPD in violation of the Youth Sealing Statutes and was able to consider their contents in making decisions with respect to J.P.'s case.

53. After the May 10, 2023 arrest, J.P. completed his probationary term early based on positive progress reports and no new arrests.

54. Upon information and belief, the NYPD still maintains access to J.P.'s Sealed Youth Records and could access, use, or disclose them in violation of the Youth Sealing Statutes at any time absent judicial intervention.

Defendants

55. Defendant City of New York is a municipal corporation within the State of New York.

56. Defendant Edward A. Caban is the Commissioner of the NYPD, which is an agency of the City of New York. He is sued in his official capacity. The NYPD is headquartered at One Police Plaza in New York, New York.

JURISDICTION AND VENUE

57. This Court has personal jurisdiction over Defendants pursuant to Section 301 of the New York Civil Practice Law and Rules.

58. Venue is proper pursuant to Sections 503(a), 503(c), 504(3), and 505(a) of the New York Civil Practice Law and Rules.

STATEMENT OF FACTS

I. THE YOUTH SEALING STATUTES

59. With extremely limited exceptions, discussed below, all records relating to the arrest of a juvenile that ends in a favorable termination of a delinquency proceeding must be sealed and cannot be used by or shared with anyone. Specifically, the FCA requires that:

> [u]pon termination of a delinquency proceeding against a respondent in favor of such respondent . . . the records of such action or proceeding, other than those destroyed pursuant to section 354.1 of this act, ***shall*** be sealed. Upon receipt of such notification all official records and papers, including judgments and orders of the court, but not including public court decisions or opinions or records and briefs on appeal, relating to the arrest, the prosecution and the probation service proceedings, including all duplicates or copies thereof, on file with the court, police agency, probation service and presentment agency ***shall be sealed and not made available to any person or public or private agency***.

FCA § 375.1(1) (emphasis added).

60. FCA Section 375.1(2) provides that a delinquency proceeding terminates in favor of a respondent where the petition is withdrawn, the petition is dismissed, the probation department has adjusted the case or terminated the case without adjustment, or where the presentment agency chooses not to proceed to petition.

61. The FCA also provides for the sealing of records generated from juvenile delinquency proceedings upon motion. Section 375.2 provides that, "[i]f an action has resulted in a finding of delinquency pursuant to subdivision one of section 352.1 . . . the court may, in the interest of justice and upon motion of the respondent, order the sealing of appropriate records pursuant to subdivision one of section 375.1."

62. The Legislature included these provisions in the FCA because of the significant public policy interest in protecting children who are arrested, and they are in keeping with the

general confidentiality provisions and additional protections provided to young people through the FCA. *See, e.g.,* FCA §§ 166, 354.1, 306.1.

63. At the heart of the Youth Sealing Statutes is the intention to prevent the "devasting prejudice" that may arise from any person or agency accessing Sealed Youth Records. *Alonzo M. v. New York City Dep't of Probation*, 72 N.Y.2d 662, 668 (1988). Put simply, the Youth Sealing Statutes protect the rights of juveniles and give effect to the presumption of innocence. An arrested juvenile should not suffer stigma based on allegations that are not sustained in a court of law or where a court determines that records should be sealed.

64. As stated in a New York State legislative memorandum explaining the rationale for privacy protections in the FCA: "The need to keep records of juvenile misbehavior, both criminal and noncriminal in nature, confidential has long been a central feature of the juvenile justice system." Memorandum in Support, Laws of 2023, ch. 691, amending FCA § 783. Quoting former U.S. Supreme Court Chief Justice William Rehnquist, the memorandum continued, "It is a hallmark of our juvenile justice system in the United States that, virtually from its inception at the end of the last century, its proceedings have been conducted outside of the public's full gaze and the youths brought before our juvenile courts have been shielded from publicity." *Id.*

65. The "devasting prejudice" potentially suffered by a person whose Sealed Youth Records are accessed, used, or disclosed by the NYPD is multifaceted. There is the harm of disclosure itself, the harms arising from decisions actors within the legal system make based on the disclosure, such as detention and prosecution, and the harm individuals suffer when seeking educational, employment, professional, or licensing opportunities.

66. The Youth Sealing Statutes mirror CPL Section 160.50, which governs adult criminal proceedings and mandates the sealing of all records pertaining to a criminal prosecution where the accused individual is never convicted or is ultimately exonerated.

67. The NYPD's access and use of sealed adult arrest records in contravention of CPL Section 160.50 is the subject of a separate, ongoing litigation against the City of New York and the then-police commissioner. In that case, this Court issued a preliminary injunction barring defendants from providing NYPD personnel with access to adult sealed arrest-related records for law enforcement purposes. The injunction ordered the defendants to cease instructing NYPD personnel that they may access and use sealed arrest-related records without a court order and to issue a training message stating that NYPD personnel may not access or use sealed arrest information. Decision and Order, *R.C. v. City of New York*, Index No. 153739/2018 (Sup. Ct. N.Y. Cnty. Sept. 27, 2021), Dkt. No. 200.[5]

68. Although the language of the Youth Sealing Statutes generally parallels that of CPL Section 160.50, the Youth Sealing Statutes impose even more stringent restrictions, which the New York Court of Appeals has described as creating a "thicker cocoon of protection." *Alonzo M.*, 72 N.Y.2d at 666.

69. In fact, CPL Section 160.50 contains several exceptions to the prohibition on the access and use of sealed records that are not in the Youth Sealing Statutes. For example, pursuant to CPL Section 160.50(d), sealed records can be made available to "a law enforcement agency . . . if such agency demonstrates to the satisfaction of the court that justice requires that

[5] Following its issuance of a preliminary injunction, the Supreme Court issued an implementation order requiring the NYPD to take certain affirmative measures with respect to its recordkeeping systems. The NYPD appealed the implementation order, after which the case was stayed pending the appeal. The NYPD did not appeal the Court's grant of a preliminary injunction. On June 4, 2024, the First Department issued a decision vacating the implementation order. The action remains pending.

such records be made available to it." The FCA contains no exception permitting a law enforcement agency, such as the NYPD, to access, use, or disclose Sealed Youth Records.

70. Rather, records sealed under the Youth Sealing Statutes may only be made available "to the respondent or his designated agent and the records and papers of a probation service shall be available to any probation service for the purpose of complying with subdivision four of section 308.1."[6] FCA § 375.1(3).

71. Thus, the New York Court of Appeals has held that, as compared to sealed adult records, the reach of Family Court Act sealing provisions "is much broader and specific—to preclude access by those, especially in government and bureaucracy, who might otherwise prejudicially use rightfully protected information." *Alonzo M.*, 72 N.Y.2d at 666.

72. The Court of Appeals further recognized that FCA sealing provisions are violated "when a public agency, privy to and maintaining records and information concerning cases terminated in the juvenile's favor, divulges information resurrected from otherwise sealed records." *Id.*

II. THE NYPD HAS A PRACTICE OF UNLAWFULLY ACCESSING, USING, AND DISCLOSING SEALED YOUTH RECORDS

73. The NYPD generates records of every arrest it makes, including juvenile arrests, and these records contain detailed information about each person arrested. The personal data contained in an arrest record may include, but is not limited to, arrest charges, location of the arrest, detailed descriptions of the incident leading to the arrest, fingerprints, photographs, detailed physical descriptions, Social Security numbers, date and place of birth, residence and contact

[6] FCA Section 308.1(4) instructs the probation service not to adjust a case where a juvenile is alleged to have committed a crime on a statutorily enumerated list if the juvenile has previously had an adjustment in a case involving allegations that the juvenile committed a listed crime. The records and papers related to the previous case would have been sealed because of the adjustment.

information, license plate numbers, occupation, family status, known associates, and contact information of known family members and/or associates.

74. The NYPD unlawfully accesses, uses, and discloses this sealed arrest-related information, as detailed more fully in paragraphs 82 through 164 below.

75. Thousands of New Yorkers are entitled to protection against the NYPD's unlawful conduct. For example, according to New York's Division of Criminal Justice Services ("DCJS"), a considerable proportion of juvenile arrests from 2019 through 2022 did not result in adjudications of delinquency. Specifically, during that period, out of 1,219 misdemeanor juvenile delinquency petitions that were disposed of, ***925—more than 75%—***resulted in favorable dispositions. Each of these arrestees with a favorable disposition is entitled to have all of his or her arrest-related records sealed pursuant to the Youth Sealing Statutes.

76. In addition, out of 3,191 felony juvenile delinquency petitions that were disposed of during that period, ***1,610—more than half—***resulted in favorable dispositions. Each of these arrestees with a favorable disposition is entitled to have all of his or her arrest-related records sealed pursuant to the Youth Sealing Statutes.

77. In total, from 2019 through 2022 alone, the NYPD created and possessed records concerning at least 2,500 arrests that are required to be sealed.

78. Because of the NYPD's policy and practice of failing to comply with the Youth Sealing Statutes, thousands of New Yorkers have had their rights violated, in just these recent years.

79. What is more, the NYPD's practice of using and disclosing Sealed Youth Records exacerbates racial disparities. According to 2022 DCJS data, 92% of juvenile arrests, and 91% of juvenile delinquency petitions filed in court, involved Black and Hispanic youth.

80. Moreover, in 2022, 76% of juvenile delinquency petitions resulting in favorable dispositions involved Black or Hispanic youth, and Black and Hispanic youth made up 85% of cases adjusted by the probation department at intake in 2022. Accordingly, Black and Hispanic youth have a disproportionate share of juvenile sealed arrests.

81. Thus, the NYPD's improper practice of using and accessing Sealed Youth Records perpetuates a system in which Black and Hispanic people disproportionately face significant harm.

A. The NYPD Admits That it Uses and Accesses Sealed Arrest-Related Records for Law Enforcement Purposes

82. As the NYPD is a public agency, the Youth Sealing Statutes apply and prohibit the NYPD from accessing Sealed Youth Records.[7]

83. The City of New York has admitted that the NYPD accesses and uses sealed arrest-related records in previous litigation regarding sealed adult records, stating that "[t]he NYPD does indeed access sealed information for a variety of reasons," without court permission. *Stinson v. City of New York*, No. 10 Civ. 4288 (S.D.N.Y. Mar. 29, 2016), ECF No. 295. Specifically, regarding adult records, the NYPD has maintained that it "is permitted to access and/or use sealed information for a variety of reasons, including for the purposes of investigating crimes and/or apprehending suspects (law enforcement purposes)." *Id.*

84. In ongoing litigation involving sealed adult records pending before this Court, the City of New York has continued to maintain that the NYPD is not prohibited from accessing or using sealed arrest-related records. Mem. Supp. Defs,' Mot. to Dismiss, *R.C. v. City of New York*, Index No. 153739/2018 (Sup. Ct. N.Y. Cnty. July 23, 2018), Dkt. No. 38 at 12.

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[7] *See, e.g.*, *Powhida v. City of Albany*, 147 A.D.2d 236, 239 (3d Dep't 1989) (police department is "one of the most important public agencies").

85. As discussed below, the NYPD disregards the protections of the Youth Sealing Statutes in the same way it disregards adult sealing protections at issue in these cases.

B. The NYPD Accesses and Uses Sealed Arrest-Related Records in NYPD Databases

86. The NYPD routinely accesses and uses sealed arrest-related records, including Sealed Youth Records, maintained in a set of interconnected databases and systems.

87. Upon information and belief, these databases and systems include, without limitation, Crime Data Warehouse, Domain Awareness System ("DAS"), the Recidivist Tracking and Reporting Database ("RTRD"), the Real Time Crime Center ("RTCC"), Online Booking System, Omniform ("OMNI"), Enterprise Case Management System ("ECMS"), Booking Arraignment Disposition System ("BADS"), Transit Recidivist Database, Internal Case Management and Tracking System, Intelligence Data System, Domestic Violence Information Management System, and On Line Complaint System.

88. Reports generated by OMNI as well as "Entity Reports" contain Sealed Youth Records.

89. Moreover, as described below at paragraph 125, an internal NYPD training presentation states that the NYPD should "treat sealed juvenile records in the same manner as sealed adult records."

90. NYPD databases are designed to interface with one another and allow for sharing of information across systems.

91. The Crime Data Warehouse serves as the central information repository for NYPD arrest data. It contains, among other things, information concerning arrests, complaints, aided reports, summonses, accident reports, domestic incident reports, medical transfers, and force reports.

92. Information within the Crime Data Warehouse feeds into all other NYPD systems and databases.

93. NYPD personnel access information housed in the Crime Data Warehouse through search tools including, but not limited to, DAS (described below).

94. As of November 20, 2019, the Crime Data Warehouse contained 6,908,699 sealed arrest reports containing arrest information for 3,576,113 unique individuals.

95. OMNI is the system of record for NYPD arrest information. It contains, among other things, information concerning arrests and complaints.

96. OMNI contains a copy of each sealed arrest report—including Sealed Youth Records—that exists in the Crime Data Warehouse.

97. NYPD personnel have access to the OMNI system at their desks and on their government-issued handheld devices.

98. DAS allows for access to records and information contained in the Crime Data Warehouse. Through DAS, NYPD personnel can access a copy of each arrest report, including sealed arrest reports that exist in the Crime Data Warehouse, and can generate a report about a person called the "DAS snapshot," which contains sealed arrest-related information, including hyperlinks to sealed arrest reports.

99. The NYPD admits that "reports generated by DAS may contain information that is subject to sealing." *R.C. v. City of New York*, Index No. 153739/2018 (Sup. Ct. N.Y. Cnty. June 7, 2019), Dkt. No. 69 ¶ 41.

100. The NYPD deploys DAS across every police precinct in New York City, on all officers' smartphones, and on the tablets in all police vehicles. The mobile version of DAS allows NYPD personnel to remotely access NYPD databases.

101. As described in the NYPD Police Commissioner's Report for the year 2016, RTRD is a database that "provides a comprehensive snapshot of every previous perpetrator, including his vulnerabilities to arrest, parole violation, or other sanctions."

102. The NYPD admits that "reports generated by RTRD may contain information subject to sealing." *R.C. v. City of New York*, Index No. 153739/2018 (Sup. Ct. N.Y. Cnty. June 7, 2019), Dkt. No. 69 ¶¶ 44, 48.

103. RTCC provides 24-hour support to NYPD personnel and can access data from NYPD and other New York City and New York State systems.

104. The databases that RTCC members can access include the Crime Data Warehouse, OMNI, DAS, ECMS, RTRD, and others.

105. RTCC generates the "RTCC Snapshot," a report that automatically processes arrest information that is saved in OMNI.

106. The RTCC Snapshot contains sealed arrest-related information where OMNI includes such information, including hyperlinks to arrest reports.

107. An NYPD database also generates the "Entity – Extended Report," a report that contains Sealed Youth Records.

108. NYPD databases, including those listed in paragraph 87, contain records of over six million sealed arrests, and these records identify over 3.5 million unique individuals.

109. These databases retain personal data concerning persons whom the NYPD has arrested.

110. 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." *R.C. v. City of New York*, Index No. 153739/2018 (Sup. Ct. N.Y. Cnty. July 8, 2021), Dkt. No. 174 at 10.

111. As described in paragraphs 144 through 146 below, the NYPD Detective Guide permits Department personnel to access Sealed Youth Records through BADS, OMNI, ECMS, or any other Department system for investigative purposes.

112. The NYPD admits that it trains Department personnel in the use of these databases for criminal investigatory and law enforcement purposes. *R.C. v. City of New York*, Index No. 153739/2018 (Sup. Ct. N.Y. Cnty. June 7, 2019), Dkt. No. 69 ¶ 36.

113. The NYPD does not consistently restrict access to Sealed Youth Records in its databases. NYPD officers can and routinely do access Sealed Youth Records from the Department's databases.

114. The NYPD uses sealed arrest-related information, including Sealed Youth Records, to make a number of law enforcement decisions, including whether to arrest a person, and, upon information and belief, deciding whether to treat someone as a "recidivist," whether a person is affiliated with a gang, and whether someone is a potential suspect in a crime.

C. The NYPD Has Promulgated Procedures That Allow, or Do Not Adequately Protect, Access to and Use of Sealed Youth Records

115. NYPD policies and procedures permit, facilitate, and even train NYPD personnel to access, review, and use Sealed Youth Records.

1. NYPD Training

116. The NYPD fails to properly train or advise Department personnel about restrictions on the use of Sealed Youth Records and the requirements of the Youth Sealing Statutes.

117. One NYPD training presentation, last updated on February 8, 2019, states, "Police may statutorily use [sealed] records for legitimate law enforcement purposes" despite the lack of statutory basis for this assertion.

118. The presentation also instructs officers on how to access sealed records and describes "Permissible Uses of Sealed/Confidential Records." It states that sealed "[r]ecords should only be accessed in connection with the investigation of felonies and other serious crimes," and further states that officers are permitted to take notes when viewing sealed records.

119. Another NYPD training presentation titled "Guidelines for Utilization of Sealed/Confidential Records," updated August 2018, states that "[p]olice MAY use these records for legitimate law enforcement purposes provided that the records are not made available to anyone outside the department (including District Attorneys)."

120. A slide in the August 2018 presentation entitled "Prohibitions Regarding Sealed/Confidential Records" does not mention any prohibition or restriction on NYPD personnel's internal use of sealed records.

121. The presentation also states that records may be "accessed in connection with the investigation of felonies and other serious crimes." Whether an investigation involves a "serious crime" is determined by "the [Commanding Officer] of the unit seeking access to the record."

122. According to the presentation, although records may be viewed in read-only mode, "[n]otes may be taken from the sealed record (i.e. Addresses, phone numbers, names of associates, etc.)."

123. In an undated training presentation prepared by the NYPD Legal Bureau for Real Time Crime Center (the "RTCC Presentation"), the Department states that NYPD personnel may access sealed records in "furtherance of an investigation into a felony or other serious crime." It

also states that sealed records may only be made available to a prosecutor's office if permitted by a court order, but it states no such restriction on NYPD personnel's use of sealed records.

124. In an annotated version of the RTCC Presentation, instructor notes on one slide read, "there is no prohibition in the NYS Criminal Procedure Law or otherwise which prohibit the Department's internal access to sealed records for investigatory purposes." The notes go on to warn against what it characterizes as improper use of sealed records that could trigger the legislature's review and imposition of restrictions on Department access to sealed records.

125. This annotated version of the RTCC Presentation also states that the NYPD should "treat sealed juvenile records in the same manner as sealed adult records." The presentation does not address that the Youth Sealing Statutes do not provide the same exceptions to the use of sealed records provided by the CPL.

126. The NYPD's Patrol Guide, which lays out the essential instructions, rules, and guidelines for uniformed members of the NYPD, does not provide instruction to officers on how to handle Sealed Youth Records.

127. As of February 2020, the Department has not identified any "guidelines or factors used by commanding officers in determining whether to grant Personnel access to Sealed Arrest Information." *R.C. v. City of New York*, Index No. 153739/2018 (Sup. Ct. N.Y. Cnty. July 8, 2021), Dkt. No. 175 at 27-28.

128. The NYPD does not properly train Department personnel regarding internal use of Sealed Youth Records. But it also, as outlined below at paragraphs 153 through 164, fails to follow instructions in its own training materials prohibiting disclosure of Sealed Youth Records outside of the Department.

2. NYPD Sealing Manual

129. The NYPD's Sealing Manual details how the Department should handle records that have been sealed.[8] It provides that, upon request from a member of the Department for any arrest record, "the Identification Section shall ascertain whether such record is subject to a sealing order by checking the On-Line Booking System … [and] [i]f the arrest is sealed, a notation to that effect shall be made on all copies of the request and the subject records."

130. The Sealing Manual does not prohibit access, use, or disclosure of such records within the Department.

3. The Legal Bureau Bulletin

131. The NYPD Legal Bureau is charged with interpreting state laws and conducting legal trainings. The Legal Bureau provides bulletins providing important information to Department personnel.

132. The Legal Bureau Bulletin Vol. 48, No. 6, which covers Retention and Dissemination of Records, states that Sealed Youth Records must not be shared with anyone, including prosecuting agencies and other investigatory agencies.

133. The Bulletin is silent on NYPD internal personnel's access and use of sealed records.

134. As outlined at paragraphs 153 through 164, the NYPD fails to follow Legal Bureau guidance regarding disclosure outside of the Department.

[8] The Sealing Manual covers records sealed under the analogous CPL sealing provisions. However, as indicated in other NYPD material, the Department routinely treats Sealed Youth Records in the same manner as sealed adult records.

4. The Juvenile Crime Desk

135. NYPD personnel also unlawfully access, use, and disclose Sealed Youth Records through the Department's Juvenile Crime Desk.

136. According to the NYPD Police Student's Guide, the Juvenile Crime Desk is "a state of the art facility that is capable of providing immediate access to a wide variety of juvenile delinquent, juvenile offender and adolescent offender information resources."

137. After apprehending a youth suspect, NYPD officers must call the Juvenile Crime Desk to inquire about that young person's history of contact with law enforcement. The information available to the Juvenile Crime Desk includes Sealed Youth Records. Because officers are instructed to obtain all information available to the Juvenile Crime Desk before deciding whether to release the youth or to take him or her into custody, Sealed Youth Records become part of law enforcement decision making.

138. NYPD Patrol Guide 215-09, titled "Offense Committed by A Juvenile Under 18 Years of Age (other than Juvenile Offender or Adolescent Offender)," instructs NYPD officers to "[n]otify the Juvenile Desk" when "a juvenile less than 18 years of age commits an offense." This procedure states:

> [a]rresting officers must call the Juvenile Desk before beginning the arrest process to ensure that *any intelligence* regarding the juvenile is obtained before the decision whether to release the juvenile to a parent/guardian/adult relative is made. The Juvenile Desk has *specialized databases* that can provide *vital background information* on arrested/detained juveniles and those adults taking custody of a juvenile upon recognizance or release.

(emphasis added).

139. Upon information and belief, the referenced "intelligence" and "specialized databases" include Sealed Youth Records.

140. Patrol Guide 215-21—a related procedure entitled "Utilization of the Juvenile Desk"—provides identical instruction.

141. Patrol Guide 215-21 also describes how Juvenile Desk Analysts "perform relevant computer checks of the juvenile and the parent/guardian, and advise arresting officer of results" and "make recommendations to remand Juvenile or release on recognizance, as appropriate." Arresting officers will "be guided by responses from Juvenile Desk analyst."

142. Upon information and belief, these computer checks include review of the databases described herein, which include Sealed Youth Records.

143. The Juvenile Crime Desk's access, use, and disclosure of Sealed Youth Records violates the Youth Sealing Statutes.

5. NYPD Detective Guide

144. The NYPD has a written policy and procedure permitting Detective Bureau personnel to access and review Sealed Youth Records.

145. Specifically, the NYPD Detective Guide, section 512-05, titled "Revision to Detective Guide 512-05, 'Sealed Records Program,'" expressly permits and provides a mechanism for NYPD Detectives to access sealed records for law enforcement purposes. Sealed records, as the term is used in the Detective Guide, include Sealed Youth Records.

146. This provision "ensures authorized Detective Bureau personnel have access to Sealed Records." It further states that records sealed under FCA Sections 375.1 and 375.2

> may be viewed by Department personnel for investigative purposes… [a]ccessing, reading or utilizing sealed adult, juvenile offender and juvenile delinquent arrest records or confidential youthful offender arrest records … through BADS, OMNI, ECMS or any other Department system may only be done by a member of the service with an approved access code …[and] may be used in connection with a criminal investigation.

147. The NYPD issued an interim order in August 2021 ("Order 72") revising Detective Guide 512-05. Importantly, Order 72 continues to permit "Detective Bureau supervisors and a limited number of essential non-supervisory Detective Bureau personnel … access [to] Sealed Records."

148. Order 72 allows sealed records to be "accessed in read-only fashion" unless there is an "absolute need to print" in which case "printout should be destroyed immediately after review."

149. Order 72 also provides a step-by-step mechanism on how detectives can access sealed records.

150. To access sealed records, Order 72 requires NYPD personnel to sign a certification stating,

> Family Court Act sections 375.1 and 375.2 prohibit the dissemination of confidential and sealed records *to individuals outside of the Department*. … Under the law, these records may not be made available to any person, public or private agency without express statutory authority under very limited circumstances. *The records may not be disclosed outside the Department*, including to any other government agency, law enforcement agency, district attorney or other prosecutor. Under no circumstances should sealed records be disclosed to the press or news media.

(emphasis added).

151. As such, the Detective Guide expressly permits NYPD personnel to access Sealed Youth Records and interprets New York law to only prohibit dissemination of this information *outside* the Department.

152. In addition, although the Detective Guide states that information in sealed records should not be printed or recreated in any manner, as detailed in paragraphs 153 through 164 herein, Department personnel regularly recreate and disclose information in Sealed Youth Records externally.

D. The NYPD Has a Practice of Disclosing Sealed Youth Records Outside of the Department

153. The NYPD has a practice of disclosing Sealed Youth Records outside of the Department, including to criminal court and Family Court prosecutors, in violation of the law.

154. Upon information and belief, the NYPD provides prosecutors with printouts from its databases, including, without limitation, printouts from the NYPD Recidivist Tracking & Reporting Database and OMNI, which include Sealed Youth Records. As discussed *supra*, the information disclosed from Sealed Youth Records includes, without limitation, arrest charges, date and location of alleged offense, and narrative information describing the alleged offense and the arrestees' alleged participation in the offense.

155. For example, the NYPD disclosed Sealed Youth Records regarding Named Plaintiff A.T. to prosecutors. These records contained information about A.T.'s sealed arrests, including the dates and locations of the arrests, the arrest charges, and descriptions of the incidents that led to the arrests. The records also contain a profile of A.T., including a physical description and personal identifying information.

156. The NYPD discloses Sealed Youth Records even though its own training materials, Legal Bureau Bulletin, and policies and procedures prohibit disclosure of sealed records outside the Department.

157. As a result of the NYPD's disclosures, prosecutors have access to and use Sealed Youth Records during the pendency of juvenile delinquency and criminal proceedings when that access and use are prohibited by law.

158. Because remand,[9] bail, and removal arguments,[10] pleas, and other negotiations may happen early in a case, a defense attorney may not know that the prosecution is relying on Sealed Youth Records disclosed by the NYPD. In many cases, individuals may accept plea agreements without any knowledge that the prosecution's plea offer was shaped by the NYPD's unlawful disclosure of Sealed Youth Records.

159. Prosecutors, and in turn courts, also may rely on Sealed Youth Records unlawfully obtained from the NYPD at arraignments and in other remand arguments to the court, and in motions to prevent removal of a case from criminal court to Family Court.

160. As a result of these practices, the NYPD's unlawful disclosures of Sealed Youth Records restrict young people's freedom and unduly expose them to the adult criminal legal system.

E. The NYPD Discloses Sealed Youth Records to the Press

161. The NYPD discloses and fails to contain leaks of Sealed Youth Records to the press in violation of the law.

162. For example, on July 25, 2022, the *New York Post* reported on the arrest of a 16-year-old boy. The article's "police sources" noted that the suspect had previously been arrested on April 12, 2022, and on July 10, 2022, and "was released both times, with each case sealed."

163. On November 13, 2021, the *New York Post* reported on the arrest of a 17-year-old boy whose prior "gun cases from Family Court remain sealed."

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[9] Remand refers to court-ordered temporary removal of a youth from his or her home and placement in detention prior to disposition of the petition.

[10] Removal is the process by which a judge may transfer certain eligible cases from criminal court to Family Court.

164. The NYPD's failure to prohibit access to Sealed Youth Records creates an unreasonable and substantial risk of unlawful disclosure of Sealed Youth Records to officers within the Department and to others outside the Department.

CLASS ACTION ALLEGATIONS

165. Paragraphs 1 through 164 are incorporated by reference as if set forth fully herein.

166. Plaintiffs bring this class action pursuant to Article 9 of the New York Civil Practice Law and Rules 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.

167. The class is sufficiently numerous that joinder of all members is impractical. Pursuant to the NYPD's policies and practices described in this complaint, the NYPD is maintaining, accessing, using, and disclosing information from Sealed Youth Records related to thousands of arrests.

168. There are questions of law and fact common to the class that predominate over questions affecting only individual class members, including but not limited to whether the NYPD's policy and practice of accessing, using, and disclosing Sealed Youth Records violates the Youth Sealing Statutes.

169. The claims of the Named Plaintiffs are typical of the claims of the class members and, by pursuing their own interests, the Named Plaintiffs will advance the interests of the absent class members. Each class member has records that are or will be in the possession of the NYPD and are or will be subject to sealing under the Youth Sealing Statutes.

170. The Named Plaintiffs will fairly and adequately protect the interests of the class. There are no conflicts of interest between the Named Plaintiffs and the absent class members, and the Named Plaintiffs will vigorously prosecute this action on behalf of the class.

171. The Named Plaintiffs have retained counsel experienced and competent in juvenile delinquency litigation, class action litigation, and complex civil rights litigation. Counsel for Named Plaintiffs have identified and thoroughly investigated all claims in this action and have committed sufficient resources to represent the Plaintiff Class through trial and any appeals.

172. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Prosecution of separate actions would lead to duplicative lawsuits and the risk of inconsistent judgments and would unduly burden the courts.

173. Defendants have consistently acted and refused to act in ways generally applicable and common to the Plaintiff Class, necessitating class-wide declaratory and injunctive relief.

CAUSE OF ACTION

Violation of Family Court Act Sections 375.1 and 375.2

174. The foregoing paragraphs are incorporated by reference as if set forth fully herein.

175. Section 375.1 of the Family Court Act provides for the automatic sealing of all records and papers related to an arrest that results in a termination in favor of the respondent. Section 375.2 of the Family Court Act states that when a juvenile has been adjudicated delinquent, the court may, in its discretion and upon motion, order the records to be sealed pursuant to Section 375.1.

176. These provisions require the NYPD to seal all records and papers relating to qualifying arrests and prohibit the NYPD from making those Sealed Youth Records available to any person or public or private agency.

177. Plaintiffs, as well as members of the class, have arrests that are subject to sealing under the FCA.

178. Defendants have a policy and/or practice of accessing, using, and disclosing Sealed Youth Records in violation of the FCA.

179. Defendants have violated and continue to violate the FCA by disclosing or making Plaintiffs' and other class members' Sealed Youth Records available to persons or public or private agencies.

180. Plaintiffs and members of the class were injured or are at risk of injury as a result.

PRAYER FOR RELIEF

181. WHEREFORE, Plaintiffs request that this Court:

(1) Certify this action as a class action pursuant to Article 9 of the New York Civil Practice Law and Rules;

(2) Issue a declaration that the NYPD's policy and/or practice of accessing, using, and disclosing Sealed Youth Records violates FCA Sections 375.1 and 375.2;

(3) Issue an injunction prohibiting the NYPD from unlawfully accessing, using, and disclosing Sealed Youth Records in violation of FCA Sections 375.1 and 375.2, including accessing Sealed Youth Records for law enforcement purposes;

(4) Issue an injunction prohibiting the NYPD from utilizing protocols, trainings, and practices that allow improper access, use, or disclosure of Sealed Youth Records;

(5) Award attorneys' fees and costs; and

(6) Grant any and all other relief the Court deems just and appropriate.

Dated: July 9, 2024
New York, New York

Respectfully submitted,

By: /s/ _____

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