

Index No. 153606/2021 IAS Part 52 (Sharpe, J.)

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

CHARLES DOUGLAS, JULIAN GILBERT, DEREK
BARON, EMILY MARTIN and NICHOLAS MOORE,

Plaintiffs,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

**MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY
JUDGMENT AND IN SUPPORT OF DEFENDANTS'
MOTION FOR PARTIAL SUMMARY JUDGMENT**

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PRELIMINARY STATEMENT

At times, what appears to be a simple matter on its surface actually masks a much more complex and nuanced issue. Such is the case here, which concerns the meaning of the word “arrest” as used in N.Y. Criminal Procedure Law §150.20. As amended in 2019, that statute provides that where the police are authorized to arrest an individual under the specified circumstances, they must “instead” issue an appearance ticket. In Counts One and Two of their Amended Complaint, Plaintiffs – participants in protests staged in the wake of the killing of George Floyd in Minneapolis – contend that although they were eligible to receive an appearance ticket, they were arrested in violation of CPL §150.20 and Article 1, Section 12 of the New York Constitution. Plaintiffs seek declaratory relief (Counts One and Two) and a permanent injunction (Count Two)

This memorandum of law is respectfully submitted by Defendants in opposition to Plaintiffs’ Motion for Partial Summary Judgment, and in support of Defendants’ Cross-Motion for Summary Judgment. As discussed more fully below, Plaintiffs’ claims are grounded entirely on the argument that they were “arrested” as that term is used in common law. However, Plaintiffs wholly ignore the indisputable fact that Defendants complied with CPL §150.20 in that each Plaintiff was issued an appearance ticket. Given that the statute requires an appearance ticket to be issued “instead” of an arrest, it is apparent that the word “arrest” must mean something other than what Plaintiffs experienced. In fact, CPL §150.20 was not designed to avoid common law arrests, which occur whenever an individual is not free to leave. Rather, as the language of the statute and its legislative history make clear, the Legislature intended that appearance tickets be issued to avoid prolonged detentions pending arraignment, a goal that was achieved in this case. Accordingly, Counts One and Two, both of which are premised on the alleged violation of CPL §150.20, fail.

As discussed more fully below, Plaintiffs' State Constitutional claim also fails because Plaintiffs have an available alternative remedy through their false arrest claim (Count Three). Plaintiffs claims also are barred by res judicata, as they are bound by the settlement agreement -- negotiated by their own attorneys -- in a related class action in federal court that expressly permits individuals engaged in demonstrations to be arrested, transported from the scene and detained. Additionally, Defendants are not entitled to the requested declaratory or injunctive relief, as any similar future violations to which they might be subject are entirely hypothetical.

Accordingly, Plaintiffs' motion for partial summary judgment should be denied, and Defendants' partial motion for summary judgment should be granted.

FACTS

The facts on which Defendants' opposition and cross-motion are based are straightforward and set forth in Defendants' accompanying Response to Plaintiffs' Statement of Material Facts Not in Dispute, dated June 13, 2025.

Criminal Procedure Law §150.20

Prior to its amendment in 2019, CPL §150.20 permitted, but did not require, the police to issue an appearance ticket where they were authorized to make arrests without a warrant, except in certain enumerated situations.¹ In 2019, however, the State Legislature enacted a set of criminal justice reforms including to CPL §150.20 which were designed specifically to "recue the time that individuals were held in custody while awaiting arraignment. Accordingly, effective

¹ Specifically, the statute provides "Whenever a police officer is authorized pursuant to section 140.10 to arrest a person without a warrant for an offense other than a class A, B, C or D felony or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19 or 215.56 of the penal law, he may, subject to the provisions of subdivisions three and four of section 150.40, instead issue to and serve upon such person an appearance ticket."

January 1, 2020, CPL §150.20 was amended to make the issuance of an appearance ticket mandatory for certain low-level offenses:

Whenever a police officer is authorized pursuant to section 140.10 of this title to arrest a person without a warrant for an offense other than a class A, B, C or D felony or a violation of section 130.25, former section 130.40, section 205.10, 205.17, 205.19 or 215.56 of the penal law, or other than where an arrest is required to be made pursuant to subdivision four of section 140.10 of this title, the officer shall, except as set out in paragraph (b) of this subdivision, subject to the provisions of subdivisions three and four of section 150.40 of this title, instead issue to and serve upon such person an appearance ticket.

Plaintiffs Were Issued Appearance Tickets

Each of the Plaintiffs were issued appearance tickets stemming from their attendance at a protest held in the wake of the killing of George Floyd in Minneapolis on May 25, 2020. Plaintiff Douglas attended a protest on May 31, 2020 near Union Square in Manhattan. His hands were restrained, and he was transported to One Police Plaza, detained in a holding cell and issued an appearance ticket for disorderly conduct. Plaintiff Gilbert attended a protest at McCarren Park in Brooklyn on June 4, 2020. He was handcuffed, transported to Brooklyn Central Booking, detained in a holding cell and issued an appearance ticket for violating a curfew imposed by the Mayor pursuant to NYC Admin. Code § 3-108.² Plaintiff Baron also attended the protest at McCarren Park on June 4, 2020, where he was transported from the scene, detained in a holding cell and issued an appearance ticket for violating the curfew imposed by NYC Admin. Code § 3-108. Plaintiff Martin attended a protest in Mott Haven in the Bronx on June 4, 2020. Her hands

² NYC Administrative Code § 3-108 provides “Any knowing violation of a provision of any emergency measure established pursuant to this chapter shall be a class B misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment for not more than three months, or both.”

were restrained, and she was transported from the scene, detained in a holding cell issued an appearance ticket for violating a curfew imposed by NYC Admin. Code § 3-108.

Plaintiffs Martin, Gilbert and Baron allege that they have attended protests after the events giving rise to their claims and plan to attend others. *See* Martin Aff. (NYSCEF No. 157) at ¶ 17; Gilbert Aff. (NYSCEF No. 158) at ¶ 18; Baron Aff. (NYSCEF No. 159) at ¶ 26. Plaintiff Douglas no longer lives in New York but alleges that he intends to attend future protests. Douglas Aff. (NYSCEF No. 160 at ¶¶ 12, 14). However, there is no evidence that Plaintiffs Baron, Gilbert and Martin were issued appearance tickets at those protests, let alone that they were handcuffed, transported to another location and detained in holding cells for hours.

The Federal Litigation

Multiple civil lawsuits were brought by individuals alleging that their rights under federal and state laws were violated by members of the New York City Police Department (“NYPD”) in connection with NYPD’s conduct at the protests held in Union Square on May 31, 2020, McCarren Park on June 4, 2020 and Mott Haven on June 4, 2020. *See* accompanying affirmation of Jeffrey S. Dantowitz dated June 13, 2025 at ¶ 7. Among these lawsuits were those initiated in the United States District Court for the Southern District of New York consolidated under the caption “In Re: New York City Policing During Summer 2020 Demonstration,” SDNY Case No. 20-8924, each of which included claims for false arrest. *Id.* at ¶ 8.

Following extensive negotiations, in September 2023, the parties in four of these cases agreed to a detailed settlement governing NYPD’s response to protests and demonstrations. One of these cases was *Payne, et al. v. Mayor Bill de Blasio et al.*, No. 20-cv-8924. That settlement agreement was adopted by the Court on April 14, 2024. *Id.* at ¶¶ 9, 11 and 12 and Exhibits C and D annexed thereto. Notably, that settlement specifically authorizes NYPD to arrest, transport from the scene and detain for 7.5 hours or more individuals who violate certain offenses including those

for which Plaintiffs' here were issued appearance tickets. Dantowitz Aff, Exh C, at ¶¶ 28-35. Significantly, The Legal Aid Society (by Corey Stoughton and Jennvine Wong) represented plaintiffs in the *Payne* case; Ms. Stoughton was a signatory to the settlement agreement, and Ms. Wong's name is also listed on the signature block. *Id.*, ¶ 13. Corey Stoughton and Jennvine Wong also represent Plaintiffs in the instant action. *Id.*, ¶¶ 15, 16.

POINT I

PLAINTIFFS' CLAIMS ARE BARRED BY RES JUDICATA

Plaintiffs' claims here are barred by the settlement agreement reached in "In Re: New York City Policing During Summer 2020 Demonstrations" in United District Court, SDNY Case No. 20-cv-8924, which were consolidated class actions brought by participants in the same protests in which Plaintiffs here attended, alleging, *inter alia*, they were falsely arrested in violation of the federal and State Constitutions and state law.

Res judicata "bars successive litigation based upon the same transaction or series of connected transactions if: (i) there is a judgment on the merits rendered by a court of competent jurisdiction, and (ii) the party against whom the doctrine is invoked was a party to the previous action, or in privity with a party who was." *People ex rel Spitzer v. Applied Card Sys., Inc.*, 11 N.Y.3d 105, 122 (2008) (cleaned up). Although privity has been described as an "amorphous term, (*id.* at 123), the court "must determine whether the severe consequences of preclusion flowing from a finding of privity strike a fair result," taking into account "the policies that res judicata is designed to protect." (*Id.*) That policy is "to provide finality in the resolution of disputes to assure that parties may not be vexed by further litigation." *Reilly v. Reid*, 45 N.Y.2d 24, 28 (1978).

Pursuant to the extensively negotiated and court-approved settlement agreement in the Consolidated Cases, the parties agreed to procedures governing NYPD's response to protests

and demonstrations. Under that agreement, offenses for violating emergency orders and for disorderly conduct – the offenses for which Plaintiffs here were issued appearance tickets -- are designated “Red Light” offenses, for which NYPD is expressly authorized to transport offenders from the scene to other locations, and to detain such offenders for 7.5 hours or more, under specified circumstances), making such conduct presumptively proper. *See Dantowitz Aff, Exh C*, at ¶¶ 28-35. Moreover, there is nothing in that settlement that requires the police to issue appearance tickets at the scene, or precludes them from issuing appearance tickets once transported to an NYPD facility.

Plaintiffs here are clearly in privity with the plaintiffs in the Consolidated Cases as they attended the very protests which are the subject of those Cases and were subjected to the same alleged police conduct. Notably, Plaintiffs here are represented by The Legal Aid Society (including Jennvine Wong and Corey Stoughton) who represented plaintiffs in the Consolidated Cases. Indeed, Ms. Stoughton was a signatory to the settlement agreement, on which Ms. Wong’s name is also listed on the signature block.

In *Applied Card Systems*, the Court of Appeals held that there was privity between plaintiff (the State Attorney General) and class members in a related class action brought in California state court. Plaintiff there also argued that he was seeking broader relief than that provided in the class action. Nonetheless, the Court of Appeals held that there was privity in that he was seeking the same type of relief (restitution) as provided in the California class action. *Applied Card Sys., Inc.*, 11 N.Y.3d at 124 *See Green v. Santa Fe Indus.*, 70 N.Y.2d 244, 253 (1987) (finding privity where there is a relationship between the litigant in the current suit and the party to the prior suit “such that the interests of the nonparty can be said to have been represented in the prior proceeding”) (cleaned up).

Here, too, Plaintiffs seek the same type of relief – declaratory and injunctive relief – as sought in the Consolidated Cases and for which injunctive relief was actually provided through the Settlement. As the Court of Appeals explained:

a core principle of res judicata [is] a party's right to rely upon the finality of the results of previous litigation (*see New York State Labor Relations Bd. v. Holland Laundry, Inc.*, 294 N.Y. 480, 493 (1945) (“the public tranquillity demands that, having been once . . . tried, all litigation of [a] question, and between [the] parties, should be closed forever”); *Reilly*, 45 N.Y.2d at 28 (“Res judicata is designed to provide finality in the resolution of disputes”).

Applied Card Sys., Inc., 11 N.Y.3d 105 at 124. As was true in *Applied Card Systems*, allowing Plaintiffs here to seek additional relief “would undoubtedly destroy or impair rights” conclusively established in the related class action. *Id.* at 125. And, as in *Applied Card Systems*, despite the purported importance of Plaintiffs’ desire to deter violations of CPL §150.20, the court “cannot allow [them] to do so at the expense of undermining a validly-entered judgment” *Id.* *See Bethea v. Scopetta*, 275 A.D.2d 651, 651 (1st Dep’t 2000) (affirming dismissal based on res judicata because “the issues petitioners would litigate, involving systemic and procedural inadequacies in the New York City foster care system, have been previously and conclusively litigated in” a federal class action).

Accordingly, Defendants are entitled to summary judgment dismissing Counts One and Two.

POINT II

DEFENDANTS' CONDUCT DID NOT VIOLATE CPL §150.20

Under the common law, an arrest occurs when an individual “is taken into custody or otherwise deprived of his freedom.” *See People v. Yukl*, 25 N.Y.2d 585, 588-589 (1969), *cert. den.*, 400 U.S. 851 (1970). *See also Broughton v. State of New York*, 37 N.Y.2d 451, 456 (1975) (claim of false imprisonment arises “[w]henver a person unlawfully obstructs or deprives another of his freedom to choose his own location”); *People v. Ruiz*, 136 A.D.2d 493, 496 (1st Dep’t 1988) (“The law is settled that an arrest occurs when an individual is not at liberty to walk away.”).

Significantly, an individual need not be handcuffed, transported or detained for hours in a holding cell in order to have been arrested. Indeed, “[e]ven without a technical formal arrest, a suspect's detention may in fact be the equivalent of an arrest” *People v. Hicks*, 68 N.Y.2d 234, 239 (1986). Thus, as an individual being issued an appearance ticket, even at the scene of the alleged offense, is not at liberty to walk away, the issuance of an appearance ticket would result in an arrest and potentially subject the police to a claim of false imprisonment.

As amended, CPL §150.20(1)(a) provides, “Whenever a police officer is authorized pursuant to section 140.10 of this title to arrest a person without a warrant . . . , he shall . . . instead issue to and serve upon such person an appearance ticket.” Plaintiffs allege that because they were handcuffed, transported from the scene, and detained in a holding cell for hours before being issued their appearance tickets, they were arrested in violation of CPL §150.20. Plaintiffs’ argument fails for several reasons.

First, Plaintiffs wholly ignore the fact that Defendants *complied* with CPL §150.20 in that Plaintiffs were, in fact, indisputably issued appearance tickets. The language of CPL §150.20, however, does not allow the possibility of an individual being both arrested and issued

an appearance ticket, as it requires police officers to issue an appearance ticket “instead” of being arrested. Thus, where, as here, Defendants issued appearance tickets, they could not have, by that same act, engaged in the very conduct it was meant to replace – *i.e.*, arresting the individual.

It is a basic tenet of statutory construction that statutory language “must be analyzed in context and in a manner that harmonizes the related provisions and renders them compatible.” *Matter of Mestecky v. City of New York*, 30 N.Y.3d 239, 243 (2017) (cleaned up). Thus, “meaning and effect should be given to every word of a statute” and “an interpretation that renders words or clauses superfluous should be rejected.” *Id.*

Thus, Plaintiffs’ construction of CPL §150.20 – which is wholly premised on the argument that they were arrested as defined by the common law – is incompatible with the language of the statute which allows only a single act – *either* the issuance of an appearance ticket *or* an arrest. As Plaintiffs were undeniably issued appearance tickets, the word “arrest” as used in CPL §150.20 must mean something other than what Plaintiffs experienced.

In determining the meaning of the statute, the Court should be guided by what the statute was trying to avoid when requiring the issuance of appearance tickets “instead” of arrests. *See Riley v. County of Broome*, 95 N.Y.2d 455, 464 (2000) (“the circumstances surrounding the statute's passage” are a useful aid in determining its meaning). Here, the answer can be discerned from the statute itself.

As expressly stated in CPL §150.20(1)(a), an appearance ticket may be mandated in certain cases where “a police officer is authorized pursuant to section 140.10 of this title to arrest a person without a warrant.” Clearly then, what the amendment to the statute sought to avoid are the consequences that previously would have resulted following an arrest pursuant to CPL §140.10. Those consequences are clearly described in CPL § 140.20:

Upon arresting a person without a warrant [pursuant to § 140.10], a police officer, after performing without unnecessary delay all recording, fingerprinting and other preliminary police duties required in the particular case, must except as otherwise provided in this section, without unnecessary delay bring the arrested person or cause him to be brought before a local criminal court and file therewith an appropriate accusatory instrument charging him with the offense or offenses in question.

CPL § 140.20 (emphasis added). Thus, it is apparent that what the Legislature sought to eliminate in amending CPL §150.20 are full custodial arrests, whereby individuals are detained through arraignment and an accusatory instrument filed.

Ample support for this construction is found in the legislative history of the amendment to CPL §150.20. *See People v. Iverson*, 37 N.Y.3d 98, 103 (2021) (“In a manner consistent with the statutory text, this Court, in interpreting a statute, may also look to the ‘purpose of the legislation, which requires examination of the statutory context of the provision as well as its legislative history.’”) (quoting *Town of Aurora v. Village of E. Aurora*, 32 N.Y.3d 366, 372 (2018)). As expressly described in the proposed legislative findings that were included in the executive budget proposal that directly preceded the adoption of the amendment to CPL §150.20(1)(a), that amendment “requires the police to issue appearance tickets in misdemeanor and class E felony cases, with enumerated exceptions, *so that fewer people spend time in jail before arraignment.*” FY 2020 New York State Executive Budget Public Protection and General Government Article VII Legislation, at 183 (emphasis added).³ *See* FY 2020 New York State Executive Budget, Public Protection and General Government Article VII Legislation,

³ Available at <https://www.budget.ny.gov/pubs/archive/fy20/exec/artvii/ppgg-artvii.pdf>

Memorandum in Support,” at 39 (“This bill would . . . mandate that police issue appearance tickets instead of making *custodial arrests* in low-level cases . . .”).

Other portions of the legislative history similarly emphasize the Legislature’s desire in amending CPL § 150(1)(a) to reduce the number of custodial arrests where arrestees remain incarcerated pending arraignment. For example, when asked whether “the majority of people arrested in the State of New York will now be issued in effect a desk appearance ticket and told to come back to court on another day,” a State Senator who sponsored the amendment responded, “[I]t would be a very large portion of those who are charged with misdemeanors or nonviolent low-level Class E felonies.” Bill Jacket Supp., 2019 Ch. 59, Part JJJ, at 307–08.⁴ *See id.* at 311 (“for most misdemeanors . . . there would be a desk appearance ticket issued and the accused would be expected to return to court on the court date.” *Id.* at 311; *see id.* at 312 (similar).

Thus, it was understood that the amendment to CPL § 150.20(1)(a) was designed to reduce the number of individuals detained through arraignment. As further explained:

As part of a groundbreaking plan to modernize New York’s bail system, cash bail will be eliminated for misdemeanors and non-violent felonies, alongside a new requirement that police officers must issue desk appearance tickets to most people charged with misdemeanors and Class E felonies, rather than making a custodial arrest. *Together, these reforms will ensure approximately 90 percent of people charged, but not yet convicted of a crime, are not sitting in jail awaiting trial solely because they do not have the economic resources to meet bail.*

Justice Agenda; No Time to Wait, *id.* at 390 (emphasis added). Similarly, in describing the situations set forth in CPL § 150(1)(b) which do not require the police to issue an appearance ticket, Michael Green, Executive Deputy Commissioner of the New York State Division of Criminal Justice Services, testified, “In those and other situations [], the officers can still make the

⁴ The entire Bill Jacket Supplement is annexed as Exhibit A to the accompanying Affirmation of Jeffrey S. Dantowitz, dated June 13, 2025.

full custodial arrest and put the person in jail until they are arraigned.” Bill Jacket Supp. at 127. Plaintiffs, in fact, concede this point in noting that the criminal justice reforms which included the amendment to CPL §150.20 were made to “reduce unnecessary pretrial incarceration.” (Pls. Memo at 2 (citing Facts ¶ 6)).

Thus, the legislative history also clearly acknowledges the continuing ability of police officers to issue appearance tickets at the precinct, notwithstanding the amendment to CPL §150.20(1)(a). For example, when asked whether CPL §150.20’s “desk appearance ticket requirement prevent[s] police officers from taking an individual to the precinct from the location of occurrence,” the State Assembly sponsor of the amendment replied, “No. I believe, you know, most respectfully, that’s where the desk is located.” Bill Jacket Supp. at 349. The cumulative result of analyzing this legislative history, together with the statutory text that includes a list of public safety-related exceptions, indicates that the City gave §150.20 a “sensible and practical over-all construction, which is consistent with and furthers its scheme and purpose and harmonizes all its interlocking provisions....” *People v. Iverson*, 37 N.Y.3d 98, 103-104 (2021) (quoting *Matter of Long v. Adirondack Park Agency*, 76 N.Y.2d 416, 420 (1990)).

This construction also is entirely consistent with the very purpose underlying appearance tickets.

Expanded utility of the appearance ticket should be of substantial assistance in the current attempts to find a way of reducing to a minimum that portion of our jail population consisting of unconvicted persons awaiting trial or other disposition of criminal charges. While the solution to that problem may lie largely in improved bail procedures, it is manifest that much is to be gained by a system which in many instances would eliminate the necessity of incarceration or bail in the initial stages of a criminal action.”

Denzer, Practice Commentary, McKinney’s Consol. Laws of NY, Book 11A, CPL §150.20, at pp. 560-561, *quoted in People v. Hazelwood*, 104 Misc. 2d 1121, 1124 n. 2 (Crim. Ct. Queens Co.

1980). *See People ex rel. Maxian on Behalf of Roundtree v. Brown*, 77 N.Y.2d 422, 427 (1991) (holding detentions of up to 24 hours prior to arraignment are presumptively reasonable).

Moreover, the Commission Staff Notes, cited by Plaintiffs, further supports this construction. In describing the alternatives which were intended to be avoided by the issuance of additional appearance tickets resulting from the amendment to CPL §150.20, the Commission explained:

Absent the appearance ticket device, two very awkward and unsatisfactory courses of action are available to the officer. Normal procedure requires him to arrest the defendant and, dropping his regular duties, take him to the station house to book him, and then to take him to a local criminal court where a formal information must be filed, the defendant arraigned, bail set, and so on. The even less appealing and equally time consuming alternative entails the officer first going to the court himself, filing an information against the defendant, obtaining a summons or a warrant of arrest and then returning to find the defendant and serve or execute such process;

See Exhibit 2 to Lopez Saff, (NYSCEF No. 163) at 3 (emphasis added).

Plaintiffs' citation to the legislative history is unavailing. Plaintiffs' reliance on authorities concerning traffic infractions is wholly inapposite as the issuance of a traffic ticket does not constitute an arrest and is not jailable, unlike offenses for which arrests can be made pursuant to CPL §140.10. *Robart v. Post-Standard*, 74 A.D.2d 963, 963 (3d Dep't 1980), *aff'd*, 52 N.Y.2d 843 (1981). Thus, traffic law offenders would not be subject to the same consequences as sought to be avoided by the amendment to the statute. *See Vargas v. City of New York*, 56 Misc. 3d 523, 532 (Sup. Ct. NY Cty. 2017 (explaining that traffic violations are punishable only by fine and are not jailable offense) (citing Vehicle and Traffic Law, § 1229-c(5)).

Plaintiffs' other authorities are equally unavailing as they merely use the phrase "arrest" or "custodial arrest" without providing any insight as to what constitutes an "arrest." Such use of undefined terms cannot withstand the precisely-worded history cited above which provides

specific context and meaning to the word “arrest” as used in the statute -- that is, the use of criminal process which results in incarceration pending arraignment.

Additionally, CPL §150.20 seeks to avoid a second consequence under CPL § 140.20 – that is, the filing of an accusatory instrument. As an appearance ticket is not an accusatory instrument, its issuance fits comfortably within the statute’s mandate that it be issued “instead” of an arrest. *See People v. Fredenburg*, 289 A.D.2d 868, 869 (3d Dep’t 2001) (“formal criminal proceedings are commenced by the filing of an accusatory instrument, which an appearance ticket is not.”)(cleaned up); *People v. Stirrup*, 239 A.D.2d 109, 112 (1st Dep’t 1997) (“An appearance ticket serves solely as a notice to appear: it does not commence a criminal action. The only document that can commence a criminal action is an accusatory instrument; and an appearance ticket is not an accusatory instrument”) (cleaned up). *See People v. Harper*, 37 N.Y.2d 96 (1975) (explaining that an appearance ticket is not itself a charging document and cannot be used as the basis for criminal prosecution without a valid accusatory instrument).

It thus becomes clear that Plaintiffs’ construction cannot be what the legislature intended, and that Defendants’ interpretation is the only one that gives meaning to all the words of the statute.

Finally, the Court can take judicial notice of the size of the mass and mobile protests at which Plaintiffs were present. For example, according to the article cited by Plaintiffs (Am. Cmplt. at ¶ 43 n.2), “about 300 people” participated in the Mott Haven on June 4, 2020. Some of the protests also involved violence and looting. Under these circumstances, it would have been impractical, if not unsafe, for police officers to attempt to issue appearance tickets at the scene.

In short, there simply is no basis for mandating that appearance tickets be issued at the scene of the offense. Thus, there was no legal impediment to Defendants transporting Plaintiffs

and issuing them appearance ticket at police precincts. At most, CPL §150.20(1)(a) simply requires that an appearance ticket be issued “instead” of an arrest being made where the individual is eligible, which is what occurred here.

While it was mandated that such a violation of the law mandated an “appearance ticket” pursuant to CPL §150.20, there is simply no indication that [the] appearance ticket was required to be given at the scene of the occurrence, nor that there was a time limit to the arrest of the plaintiff. As such, there was no legal impediment to the police officers giving the appearance ticket to the defendants at another location.

Welch v. City of New York, Index. No. 153648/21, 2021 N.Y. Misc. LEXIS 6195, *2-3 (Sup. Ct. NY Cty Nov. 30, 2021).

Accordingly, Plaintiffs’ motion should be denied, and Defendants’ cross-motion for summary judgment granted.

POINT III

PLAINTIFFS CLAIM UNDER ARTICLE 1, SECTION 12 OF THE NEW YORK STATE CONSTITUTION IS NOT COGNIZABLE

In Count Two, Plaintiffs assert that their rights under Article 1, Section 12 of the State Constitution were violated when they were allegedly arrested based on the same “police practices” giving rise to Count One – *i.e.*, Defendants’ failure to issue appearance tickets at the scene. As discussed above, however, Defendants’ conduct here was entirely consistent with CPL §150.20, thus warranting dismissal of Count Two as well.

Moreover, Plaintiffs’ claim is not cognizable. New York courts will imply a private right of action under the State Constitution only where a plaintiff has no available alternative remedy. *See Martinez v. City of Schenectady*, 97 N.Y.2d 78, 83 (2001) (indicating that state constitutional tort is a “narrow remedy” and is not available where the claimant has an alternate

“avenue of redress”); *Donas v. City of New York*, 2008 N.Y. Misc. LEXIS 8465, * 15-16 (Sup. Ct. NY Cty. Jan. 21, 2008), *aff’d*, 62 A.D.3d 504 (1st Dep’t 2009); *Townes v New York State Metropolitan Transp. Auth.*, 2011 N.Y. Misc. LEXIS 4507, * 14 (Sup. Ct. Nassau Cty. Sept. 14, 2011) (“Where there exist alternative statutory or common-law remedies, it has been held improper to find a State constitutional claim.”)

Here, Plaintiffs clearly have an alternative remedy and indeed, have asserted such an alternative claim through their tort claim for false arrest (Count Three). Accordingly, their State constitutional claim is not viable. *See Lyles v. State*, 2 A.D.3d 694, 695 (2d Dep’t 2003) (affirming dismissal of claim under Article 1, Section 12 where plaintiff had available tort remedy for false imprisonment), *aff’d*, 3 N.Y.3d 396 (2004); *Veras v City of New York*, 2018 N.Y. Misc. LEXIS 6815, * 6 (Sup. Ct. Bronx Cty. Dec. 13, 2018) (dismissing constitutional claim where plaintiff brought tort claim). *See also People v. Harris*, 77 N.Y.2d 434, 437 (1991) (“Because the language of the Fourth Amendment . . . and section 12 of article I . . . is identical, it may be assumed, as a general proposition, that the two provisions confer similar rights”).

Finally, even if the Court were to reject Defendants’ construction of CPL § 150.20, this would not warrant the award of summary judgment to Plaintiffs. As described, each of Plaintiffs’ claims arose in connection with mass protests. Under the circumstances, there is no evidence to support Plaintiffs’ allegation that they were detained longer than necessary. Accordingly, even if the Court were deny Defendants’ motion for summary judgment on Count Two, it should likewise deny Plaintiffs’ summary judgment on this Count.

POINT IV**PLAINTIFFS ARE NOT ENTITLED TO THE REQUESTED RELIEF**

In both Counts One and Two, Plaintiffs seek declaratory relief, while Count Two further seeks an injunction permanently enjoining Defendants from violating CPL §150.20 and ordering further measures to effectuate that injunction. Plaintiffs, however, are not entitled to either form of relief.

A. Declaratory Judgment

As set forth in CPLR 3001, the Court “may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy. . . .” “A justiciable controversy must involve a present, rather than hypothetical, contingent or remote, prejudice to the plaintiff. The dispute must be real, definite, substantial, and sufficiently matured so as to be ripe for judicial determination.” *Zwarycz v. Marnia Constr., Inc.*, 102 A.D.3d 774, 776 (2d Dep’t 2013).

Thus, a declaratory judgment action “requires an actual controversy between genuine disputants with a stake in the outcome, and may not be used as a vehicle for an advisory opinion.” *Long Is. Light. Co. v. Allianz Underwriters Ins. Co.*, 35 A.D.3d 253, 253 (1st Dep’t 2006) (cleaned up). Consistent with this principle, courts may not issue judicial decisions which “can have no immediate effect and may never resolve anything.” *New York Pub. Interest Research Group v. Carey*, 42 N.Y.2d 527, 531 (1977). In short, “courts will not entertain a declaratory judgment action when any decree that the court might issue will become effective only upon the occurrence of a future event that may or may not come to pass.” *Id.*

Here Plaintiffs’ claim for declaratory relief must fail as any declaration the Court might issue will impact them only if they were to ever again violate the law in such a manner as

to require the issuance of an appearance ticket, and then be handcuffed, transported to a precinct, detained in a holding cell for several hours and then issued an appearance ticket. Such events, which “may or may not come to pass” are too “hypothetical, contingent or remote” to support the issuance of a declaratory judgment and would result in the issuance of an improper advisory opinion.

Although Plaintiffs may argue that a declaration would impact police conduct generally vis-a-vis the public at large, this argument fails. CPLR 3001 is intended to declare the rights of the parties involved in the dispute; it is not an appropriate vehicle by which to address the rights of the public in general. Rather, such broad relief is properly obtained through a class action. Plaintiffs, however, brought this case in their individual capacities, not as a class action.⁵

Finally, declaratory judgments are “usually unnecessary where a full and adequate remedy is already provided by another well-known form of action. Thus, “[where there is no necessity for resorting to the declaratory judgment it should not be employed.” *James v. Alderton Dock Yards*, 256 N.Y. 298, 305 (1931). Accordingly, a declaratory judgment action is appropriate “only where a conventional form of remedy is not available.” *Bartley v. Walentas*, 78 A.D.2d 310, 312 (1st Dep’t 1980). *See Elkort v. 490 West End Ave. Co.*, 38 A.D.2d 1, 4 (1st Dep’t 1971) (“Where alternative conventional forms of remedy are available, resort to a formal action for declaratory relief is generally unnecessary and should not be encouraged.”); *Equitable Leasing, Inc. v Maguire*, 36 A.D. 2d 1020, 1020 (4th Dep’t 1971) (“The trial court properly exercised its discretion in declining to entertain this declaratory judgment action since the parties have other available relief by existing remedies at law.”)

⁵ As noted in Point I above, several other class actions encompassing Plaintiffs’ claims already were brought and resolved via the settlement in the Consolidated Cases.

Count Three in Plaintiffs' Amended Complaint is a claim for false arrest based on the same facts and circumstances giving rise to Counts One and Two. Given this available alternative remedy at law, their claim for a declaratory judgment should be dismissed as unnecessary and inappropriate. *See Apple Records, Inc. v. Capitol Records, Inc.*, 137 A.D.2d 50, 54 (1st Dep't 1988) (affirming dismissal of declaratory judgment claims where plaintiffs sought declaration of the same rights that could be determined under a breach of contract action).

B. Injunctive Relief

An injunction is an extraordinary remedy left to the sound discretion of the court. To obtain a permanent injunction, Plaintiffs must show that “(a) that there was a violation of a right presently occurring, or threatened and imminent; (b) that he or she has no adequate remedy at law; (c) that serious and irreparable harm will result absent the injunction; and (d) that the equities are balanced in his or her favor.” *Rockefeller v. Leon*, 233 A.D.3d 904, 905 (2d Dep't 2004). *See Mercy Abundance, LLC v. Chapman*, 2016 N.Y. Misc. LEXIS 2349, * 17 (Sup. Ct. NY Cty June 20, 2016); *Schwob v. Bakers Dozen Assoc., LLC*, 2014 N.Y. Misc. LEXIS 2, *7-8 (Sup. Ct. N.Y. Co. Jan. 6, 2014).

Crucially, injunctive relief “is not to be used to punish past wrongdoing, but as protection for the future.” *Nann v. Raimist*, 255 N.Y. 307, 315 (1931). Thus, as injunction is warranted ““only to give protection for the future . . . [t]o prevent repeated violations, threatened or probable,”” of plaintiff's rights. *Merkos L'Inyonei Chinuch, Inc. v. Sharf*, 59 A.D.3d 403, 408 (2d Dep't 2009) (quoting *Exchange Bakery & Rest. v. Rifkin*, 245 N.Y. 260, 264-265 (1927)). *See Allen v. Pollack*, 289 A.D.2d 426, 427 (2d Dep't 2001) (injunctive relief is designed to be prospective, and “ordinarily should not be granted to operate on acts already performed.”)

Here, however, Plaintiffs' claim is based entirely on past conduct. There is no evidence that Plaintiffs will be subjected to the same conduct giving rise to their claims, let alone

that there exists a “presently occurring, or threatened or imminent” violation of Plaintiffs’ rights. Indeed, while Plaintiffs Baron, Gilbert and Martin allege that they have attended protests after the events giving rise to their claims, there is no evidence whatsoever that they were issued appearance tickets at those protests, let alone that they were handcuffed, transported to another location and detained in holding cells for hours. Furthermore, although Plaintiff Douglas allege that he intends to attend future protests, he no longer lives in New York, making the prospects of his being subject to such conduct even more remote

Under such circumstances, Plaintiffs have not established their entitlement to the extraordinary relief they seek. *See Lex Tenants Corp. v. Gramercy N. Assocs.*, 288 A.D.2d 48, 49 (1st Dep’t 2001) (affirming dismissal of claim for injunctive relief where “it appearing to be undisputed that the misconduct alleged by Associates has not recurred for years, there does not appear to be a likelihood of future misconduct.”). *See Greenfield v. Schultz*, 173 Misc. 2d 31, 36 (Sup. Ct. N.Y. Cty. 1997) (“Absent any pending threat of such a violation or of a course of conduct making such a recurrence likely, the issuance of an injunction would be meaningless”), *aff’d in part*, 251 A.D.2d 67 (1st Dep’t 1998). *See also Matter of New York State Inspection, Sec. & Law Enforcement Empls., Dist. Council, 82, AFSCME, AFL-CIO v. Cuomo*, 64 N.Y.2d 233, 240 (1984) (“Where the harm sought to be enjoined is contingent upon events which may not come to pass, the claim to enjoin the purported hazard is nonjusticiable as wholly speculative and abstract”).

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court deny Plaintiffs' motion for summary judgment and grant Defendants' cross-motion for summary judgment dismiss Counts One and Two of the Amended Complaint in their entirety and denying the relief sought therein, and granting Defendants such other and further relief as the Court may deem just and proper.

Dated: New York, New York
June 13, 2025

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CERTIFICATE UNDER UNIFORM CIVIL RULE § 202.8-b

According to Microsoft Word 2010, the portion of the foregoing memorandum of law that must be included in the word count contains 6408 words, and comply with Uniform Civil Rule § 202.8-b.

Dated: New York, New York
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