

**Unique Coleman v City of New York**

2013 NY Slip Op 31563(U)

July 9, 2013

Supreme Court, New York County

Docket Number: 116188/2010

Judge: Kathryn E. Freed

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

**PRESENT:** HON. KATHRYN FREED  
JUSTICE OF SUPREME COURT

**PART** 5

Index Number : 116188/2010  
COLEMAN, UNIQUE  
vs  
CITY OF NEW YORK  
Sequence Number : 003  
COMPEL DISCLOSURE

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

*CAL #17*

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	<b>No(s).</b> _____
Answering Affidavits — Exhibits _____	<b>No(s).</b> _____
Replying Affidavits _____	<b>No(s).</b> _____

Upon the foregoing papers, it is ordered that this motion is


MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER FILED**

JUL 17 2013

COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 7-9-13  
JUL 09 2013

  
\_\_\_\_\_, J.S.C.  
HON. KATHRYN FREED  
JUSTICE OF SUPREME COURT

1. CHECK ONE: .....  CASE DISPOSED
2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 5

-----X  
UNIQUE COLEMAN,

Plaintiff,

-against-

THE CITY OF NEW YORK, P.O. LYNN RUGER  
SHIELD # 26344, INDIVIDUALLY AND AS A  
POLICE OFFICER, P.O. ANDREW BURRAFATO  
SHIELD #21393, INDIVIDUALLY AND AS A  
POLICE OFFICER, AND POLICE OFFICER JOHN  
DOE, INDIVIDUALLY AND AS AN OFFICER,

Defendants.

-----X  
HON. KATHRYN E. FREED:

DECISION/ORDER

Index No. 116188/2010  
Seq. No. 003

PRESENT:  
Hon. Kathryn E. Freed  
J.S.C.

**FILED**

JUL 17 2013

COUNTY CLERK'S OFFICE  
NEW YORK

RECITATION, AS REQUIRED BY CPLR§2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF  
THIS MOTION.

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....	.....1-2.....
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....	.....
ANSWERING AFFIDAVITS.....	.....3.....
REPLYING AFFIDAVITS.....	.....4.....
EXHIBITS.....	.....
OTHER.....	.....

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

Plaintiff moves for an Order pursuant to CPLR §3124 compelling defendants to produce  
discovery/documents requested in her discovery demands dated October 17, 2011 and supplemental  
discovery demands dated June 6, 2012. Defendants the City of New York , P.O. Ruger, and P.O.  
Burrafato ( collectively referred to as “the City”), oppose.

After a review of the papers presented, all relevant statutes and case law, the Court **denies** the instant motion without prejudice.

Factual and procedural background:

The instant action is for injuries allegedly sustained by plaintiff during a street encounter with several police officers. According to plaintiff, on January 16, 2010, at approximately 1:00 am, she was walking in the vicinity of Lexington Avenue and 118<sup>th</sup> Street in the New York, with her brother and some friends. Without any provocation or apparent reason, her brother was stopped by defendant police officers, and frisked. When plaintiff pleaded with the officers to release her brother and attempted to report the incident via cell phone, she was assaulted and battered by said officers. Plaintiff was subsequently arrested by P.O. Lynn Ruger and charged with Assault in the Third Degree, Obstruction of Governmental Administration in the Second Degree, Resisting Arrest, and Unlawful Possession of Marijuana. She was then taken to the 25<sup>th</sup> precinct to be processed. Once there, she requested medical attention and was transported via ambulance to Bellevue Hospital where she was treated and released. She was then taken to Manhattan Central Booking.

Plaintiff alleges that she was arraigned and released sometime in the afternoon on Saturday, January 16, 2010, within 24 hours of arrest. She also alleges that she was compelled to appear at approximately seven court appearances in Criminal court, until the case against her was finally dismissed on September 8, 2010.

Subsequently, plaintiff served a Notice of Claim on the City on January 17, 2010 and a Supplemental Notice of Claim on October 26, 2010. Plaintiff commenced the instant action on December 15, 2010. She served her Summons and Verified Complaint on December 29, 2010 and the City served its Answer on January 10, 2011. Plaintiff then served an Amended Summons and

Complaint on September 23, 2011. Plaintiff filed a Demand for Discovery and Inspection dated October 17, 2011. After Corporation Counsel's assumption of the legal representation of Police Officers' Ruger and Burrafato, an amended Answer was served on December 28, 2011. Plaintiff's EBT was conducted on May 17, 2012.

It is important to note that on July 2, 2013, this Court rendered a written decision granting plaintiff's motion for leave to amend and supplement the pleadings in her Fifth Cause of Action and also granting defendants' cross-motion to the extent that plaintiff's Fourth Cause of Action was dismissed as against all defendants with the exception of Police Officer "John Doe" and defendants' Sixth Cause of Action was dismissed against all named defendants.

Positions of the parties:

Plaintiff asserts that among the discovery she sought were the identities of the officers who were present at the time of her arrest; the Supervisor who approved her arrest; the Desk Sergeant whom she appeared before and who recorded her arrest in the Command Log; the names of the Officers who witnessed how she sustained her injuries; and copies of various documents.

Said various documents included the polaroid photograph and arrest photograph taken of plaintiff; a copy of the aforementioned Command Log, the Aided Card/Request for Medical Attention of Prisoner; IAB and CCRB records of Patrol Borough Manhattan North Street Crime Unit of similar allegations as well as against the named Officer; copies of Notices of Claim and State and Federal lawsuits filed against the City alleging false arrest, excessive use of force, police cover-up etc. for a three year period pre-dating the instant incident; the complete employment file of P.O.s' Ruger and Burrafato for in camera inspection; P.O. Ruger and Burrafatos' CCRB and IAB files for *in camera* inspection; and copies of New York lawsuits filed against said officers in their capacity

as police officers.

Plaintiff alleges that the City never moved for a protective order in response to these demands, opting instead to serve a response at the compliance conference of June 12, 2012. Plaintiff also argues that said response failed to accommodate her demands for specific witness information, merely raising broad blanket objections to her demand for discovery. Plaintiff also argues that in cases wherein a plaintiff is seeking to establish a custom, practice or policy relating to search and seizure practices, "the only way to establish such a de facto policy or deliberate indifference is through an examination of records." (*Id.* ¶ 15).

Due to the fact that this Court in its prior decision of July 2, 2013, permitted plaintiff leave to amend and supplement the pleadings in her Fifth Cause of Action, ( a.k.a. her "Monell" claim), until this is done, her motion to amend is deemed premature.

Therefore, in accordance with the foregoing, it is hereby

ORDERED that plaintiff's motion to compel certain discovery is denied without prejudice; and it is further

ORDERED that this constitutes the decision and order of the Court.

**FILED**

JUL 17 2013

DATED: July 9, 2013

JUL 09 2013

ENTER COUNTY CLERK'S OFFICE  
NEW YORK



Hon. Kathryn E. Freed  
J.S.C.  
HON. KATHRYN E. FREED  
JUSTICE OF SUPREME COURT