

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
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ROBERTO GARCIA,

Plaintiff(s),

- against -

NEW YORK CITY POLICE DEPARTMENT, THE CITY OF NEW YORK, P.P. "JOHN GAMBORIE (SHIELD NO. 9553), (FULL NAME UNKNOWN AND IS MORE FULLY DESCRIBED IN THE COMPLAINT); P.O. "JANE DOE" (SHIELD NO. AND NAME UNKNOWN),,

Defendant(s).

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DECISION AND ORDER

Index No: 305278/12

In this action for, *inter alia*, assault, battery, and excessive force, defendants THE CITY OF NEW YORK (the City) and NEW YORK CITY POLICE DEPARTMENT (the NYPD) move seeking an order (1) pursuant to CPLR § 3014 dismissing the complaint because the complaint does not contain numbered paragraphs; (2) pursuant to CPLR § 3211(a)(7) dismissing the instant action against the NYPD because the NYPD is not a suable legal entity, and thus, the complaint fails to state a cause of action against the NYPD; (3) pursuant to CPLR § 3211(a)(5) dismissing the fifth, sixth, seventh, ninth, and tenth causes of action because on insofar as those claims were commenced after the expiration of the statute of limitations prescribed by GML 50-i, they are time-barred; (4) pursuant to CPLR § 3211(a)(7) dismissing portions of the first and

second causes of action to the extent they allege violations of 42 USC §§ 1985 and 1988 because the complaint fails to state a cause of action thereunder; and (5) pursuant to CPLR § 3211(a)(7) dismissing the third and fourth causes of action for violations of 42 USC § 1983 because the complaint fails to state a cause of action. Alternatively, the City and the NYPD seek an order (1) bifurcating all claims for violations of 42 USC § 1983 against the City on grounds of prejudice; and (2) issuing a protective order pursuant to CPLR § 3103(b), thereby limiting the discovery ordered by this Court within the preliminary conference order dated May 14, 2013.

Plaintiff opposes the instant motion solely to the extent that the City seeks dismissal of his federal claims, bifurcation, and a protective order. Plaintiff avers that his federal law claims have been properly pleaded and that thus, his complaint with respect to the same, state a cause of action. Plaintiff offers no opposition to the portions of the City and the NYPD's motion seeking dismissal of his claims pursuant to state law and his claims against the NYPD. Plaintiff also cross-moves for an order granting him leave to amend his complaint so as to number the paragraphs therein.

For the reasons that follow hereinafter, the City and the NYPD's motion is granted, in part, and plaintiff's cross-motion is denied.

This is an action for alleged personal injuries resulting from

alleged assault, battery, and excessive force. Plaintiff's complaint, filed on June 15, 2012, and which recites all allegations without any numbered paragraphs, contains ten causes of action, and alleges the following. On June 15, 2010, plaintiff's family called 911 requesting emergency medical treatment for the plaintiff at his home, 1056 Boyton Avenue, Bronx, NY. An ambulance and defendants P.O. GAMBORIE (Gamborie) and P.O. DOE (Doe), both of whom were officers with the NYPD, reported to plaintiff's home. Once there, Gamborie and Doe disrupted and interfered with the administration of medical care to plaintiff and further assaulted and battered him. Specifically, plaintiff alleges that he was forcefully strapped to a wheelchair and repeatedly punched by Gamborie. Plaintiff's first cause of action alleges that defendants violated 42 USC §§ 1983 and 1988 insofar as they deprived him of his civil, constitutional, and statutory rights. Plaintiff's second cause of action alleges that the City and the NYPD violated 42 USC §§ 1983, 1985, and 1988 insofar as the City and the NYPD "developed and maintained policies and/or customs exhibiting deliberate indifference to the constitutional rights of persons . . .which policies and/or customs caused the violation of the Plaintiff's rights." With regard to this cause of action, the complaint further alleges that it was the custom of the City and the NYPD to inadequately and improperly investigate complaints of police misconduct and that the City and the NYPD further failed to

take steps to train, discipline, supervise and otherwise correct conduct such as that which caused plaintiff injury. The complaint also premises the City and the NYPD's liability under this second cause of action on a theory of *respondeat superior*. Plaintiff's third cause of action alleges that the City and NYPD violated 42 USC §1983 insofar as they, "under the color of law . . . [did] proscribe, construct, create, encourage, and enforce a policy whereby members of the public were targeted by its law enforcement employees." Specifically, plaintiff alleges that the forgoing policy was one where he and others were racially profiled. Plaintiff's fourth cause of action alleges that defendants violated 42 USC § 1983 insofar as they deprived plaintiff of medical treatment while he was in police custody. Plaintiff's fifth, sixth, seventh, ninth, and tenth, causes of action allege state law claims for negligence, excessive force, false arrest, and intentional and negligent infliction of emotional distress.

The City's motion seeking dismissal of this action pursuant to CPLR § 3014 is hereby denied.

CPLR § 3014 requires, *inter alia*, that "[e]very pleading shall consist of plain and concise statements in consecutively numbered paragraphs. Each paragraph shall contain, as far as practicable, a single allegation." Notwithstanding the foregoing, dismissal pursuant to CPLR § 3014 is warranted not merely because the complaint is bereft of paragraph numbers, but rather when it is a

"loosely drawn, verbose and poorly organized pleading" (*Aetna Cas. & Sur. Co. v Merchants Mut. Ins. Co.*, 84 AD2d 736, 736 [1st Dept 1981]; *Gerena v New York State Div. of Parole*, 266 AD2d 761 [3d Dept 1999] ["Consequently, where a party has failed to separately set forth and number allegations of a pleading as required by CPLR 3014, the appropriate remedy is dismissal of the pleading with leave to replead."]). Here, while plaintiff's complaint is bereft of paragraph numbers, and is less than concisely drafted, it nevertheless contains clear allegations and adheres to remainder of CPLR § 3014[1]. Accordingly, dismissal pursuant to CPLR § 3014 is unwarranted.

The City's motion seeking dismissal of plaintiff's claims premised on state law - the fifth, sixth, seventh, ninth, and tenth,causes of action - as time-barred is hereby granted.

A defendant seeking to dismissal of an action as barred by the applicable statute of limitations, bears the burden of establishing that the applicable statute of limitations expired prior to the

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[1] In its entirety, CPLR § 3014 states: "Every pleading shall consist of plain and concise statements in consecutively numbered paragraphs. Each paragraph shall contain, as far as practicable, a single allegation. Reference to and incorporation of allegations may subsequently be by number. Prior statements in a pleading shall be deemed repeated or adopted subsequently in the same pleading whenever express repetition or adoption is unnecessary for a clear presentation of the subsequent matters. Separate causes of action or defenses shall be separately stated and numbered and may be stated regardless of consistency. Causes of action or defenses may be stated alternatively or hypothetically. A copy of any writing which is attached to a pleading is a part thereof for all purposes."

commencement of the action (*Swift v New York Medical College*, 25 AD3d 686, 687 [2d Dept 2006]; *Gravel v Cicola*, 297 AD2d 620, 620 [2d Dept 2002]; *Duran v Mendez*, 277 AD2d 348, 348 [2d Dep 2000]). If defendant meets his burden, in order to avoid dismissal, it is incumbent upon the plaintiff to present evidence establishing that the cause of action falls within an exception to the statute of limitations (*Gravel* at 621). Here, the statute of limitations for any claims against the City and its employees premised on violations of State law is prescribed by GML 50-i, which states, in relevant part that any such action "shall be commenced within one year and ninety days after the happening of the event upon which the claim is based." Since pursuant to CPLR § 304, [a]n action is commenced by filing a summons and complaint or summons with notice," here, the action was commenced on June 15, 2012, the date plaintiff filed his summons and complaint. Insofar as the events upon which the action is premised occurred on June 15, 2010, this action was commenced two approximately two years after the state law causes of action accrued and approximately nine months after the expiration of the statute of limitations prescribed by GML 50-i. Accordingly, the City's motion to dismiss the fifth, sixth, seventh, ninth, and tenth causes of action is granted.

The City's motion seeking dismissal of all claims against the NYPD on grounds that insofar NYPD is not a suable entity the complaint fails to state a cause of action against the NYPD is

granted.

On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7) all allegations in the complaint are deemed to be true (*Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]; *Cron v Hargro Fabrics*, 91 NY2d 362, 366 [1998]). All reasonable inferences which can be drawn from the complaint and the allegations therein stated shall be resolved in favor of the plaintiff (*Cron* at 366. In opposition to such a motion a plaintiff may submit affidavits to remedy defects in the complaint (*id.*). If an affidavit is submitted for that purpose, it shall be given its most favorable intendment (*id.*) The court's role when analyzing the complaint in the context of a motion to dismiss, is to determine whether the facts as alleged fit within any cognizable legal theory (*Sokoloff v Harriman Estates Development Corp.*, 96 NY2d 409, 414 [2001]). In fact, the law mandates that the court's inquiry be not limited solely to deciding whether plaintiff has pled the cause of action intended, but instead, the court must determine whether the plaintiff has pled any cognizable cause of action (*Leon v Martinez*, 84 NY2d 83, 88 [1994] ["(T)he criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one."]).

CPLR § 3013, states that

> [s]tatements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or

> occurrences, intended to be proved and the material elements of each cause of action or defense.

As such, a complaint must contain facts essential to give notice of a claim or defense (*DiMauro v Metropolitan Suburban Bus Authority*, 105 AD2d 236, 239 [2d Dept 1984]). Vague and conclusory allegations will not suffice (*id.*); *Fowler v American Lawyer Media, Inc.*, 306 AD2d 113, 113 [1st Dept 2003]); *Shariff v Murray*, 33 AD3d 688 (2nd Dept. 2006); *Stoianoff v Gahona*, 248 AD2d 525, 526 [2d Dept 1998]). When the allegations in a complaint are vague or conclusory, dismissal for failure to state a cause of action is warranted (*Schuckman Realty, Inc. v Marine Midland Bank, N.A.*, 244 AD2d 400, 401 [2d Dept 1997]; *O'Riordan v Suffolk Chapter, Local No. 852, Civil Service Employees Association, Inc.*, 95 AD2d 800, 800 [2d Dept 1983]).

With regard to actions against municipal agencies, section 396 of the New York City Charter reads

> [a]ll actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the city of New York and not in that of any agency, except where otherwise provided by law.

Accordingly, it is well settled that "[t]he NYPD is an agency of the City of New York and is therefore a non-suable entity" (*Davis v City of New York*, 2000 WL 1877045, n 1 [SDNY 2000]; *Jenkins v City of New York*, 478 F3d 76, n 19 [2d Cir 2006]). Deeming all

allegations in the complaint against the NYPD as true, as the Court must, the complaint nevertheless fails to state a cause of action because as a non-suable entity, the NYPD cannot be sued.

The City's motion seeking dismissal of plaintiff's second third, and fourth cause of action for violations of 42 USC § 1983, is denied.

While it is often argued that in cases alleging violations of 42 USC § 1983 any motion to dismiss should be decided under the federal pleading standards, particularly those promulgated by *Ashcroft v Iqbal* (556 US 662, 678 [2009]), it is well settled that even after the decision in *Ashcroft*, this State's courts have consistently applied the standards promulgated by New York State case law when confronted with a motion seeking to dismiss a cause of action pursuant to 42 USC § 1983, on grounds that the complaint fails to state a cause of action (*Vargas v City of New York*, 105 AD3d 834, 834-837 [2d Dept. 2013] [In granting defendants' motion seeking to dismiss plaintiff's claim pursuant to 42 USC § 1983 for failure to state a cause of action, the court applied the standards promulgated by CPLR § 3211(a)(7) and the case law interpreting it.]; *Nasca v Sgro*, 101 AD3d 963, 963-965 [2d Dept 2012] [same]).

As established by *Monell v Department of Social Services of City of New York* (436 US 658 [1977]), a municipality bears liability under 42 USC § 1983 only where the action by its agent "is alleged to be unconstitutional implements or executes a policy

statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers" (*Monell* at 690).

> Moreover, although the touchstone of the § 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, local governments, like every other § 1983 person, by the very terms of the statute, may be sued for constitutional deprivations visited pursuant to governmental custom even though such a custom has not received formal approval through the body's official decision making channels

(*id.* [internal quotation marks omitted]). Accordingly, municipal liability under 42 USC § 1983 only lies if the municipal policy or custom actually caused the constitutional tort and not merely because the municipality employs a tortfeasor who perpetrated a constitutional tort (*id.* at 691). In other words, causation is an essential element to municipal liability and that is why no municipal liability will lie under 42 USC § 1983 solely on a theory of *respondeat superior* (*id.*). Moreover, since

> [a] cause of action under 42 USC § 1983 exists where the evidence demonstrates that an individual has suffered a deprivation of rights as a result of an official policy or custom, and must be pleaded with specific allegations of fact

Pang Hung Leung v City of New York, 216 AD2d 10, 11 [1st Dept 1995 (internal citations omitted)]), broad and conclusory statements, and the wholesale failure to allege facts of the offending conduct alleged, are insufficient to state a claim under section 1983

(*id.*). Accordingly, a motion to dismiss for failure to state a cause of action under 42 USC § 1983 should be granted where the complaint fails to plead the existence of an official policy or custom which deprived him of a constitutional right in violation of 42 USC § 1983 (*Liu v New York City Police Dept.*, 216 AD2d 67, 68 [1st Dept 1995]), or when the complaint fails to allege any facts from which it could be reasonably inferred that the defendants had a policy or custom of which caused the constitutional tort alleged (*Vargas* at 837; *Cozzani v County of Suffolk*, 84 AD3d 1147, 1147 (2d Dept 2011] ["Although the complaint alleged as a legal conclusion that the defendants engaged in conduct pursuant to a policy or custom which deprived the plaintiff of certain constitutional rights, it was wholly unsupported by any allegations of fact identifying the nature of that conduct or the policy or custom which the conduct purportedly advanced.]; *R.A.C. Group, Inc. v Board of Educ. of City of New York*, 295 AD2d 489, 490 [2d Dept 2002] ["because the plaintiffs failed to plead the existence of a specific policy or custom which deprived them of a constitutional right in violation of 42 USC § 1983, that cause of action must be dismissed as well."]; *Bryant v City of New York*, 188 AD2d 445, 446 [2d Dept 1992] ["Given the complete absence of any factual allegations in the complaint regarding the alleged "policies" of the municipal defendants which led to the officers' conduct, or evidencing their approval or "ratification" of this conduct, the

plaintiffs' causes of action against these defendants pursuant to 42 USC § 1983 were properly dismissed"]).

Here, contrary to the City's assertion, the complaint viewed in its entirety, and accepting all its allegations as true, not only alleges that plaintiff's injuries were caused by a municipal custom and practice, but it also pleads specific and concrete facts from which such custom and practice can be inferred (*Monell* at 690; *Elie v City of New York*, 92 AD3d 716, 717-718 [2d Dept 2012] ["Here, the allegations in the complaint sufficiently allege that the City of New York maintained a policy or custom that caused the plaintiff Evens Elie to be subjected to a denial of a constitutional right. Accordingly, the complaint states a cause of action to recover damages for civil rights violations and the Supreme Court properly denied that branch of the motion which was to dismiss that cause of action pursuant to CPLR 3211(a)(7) insofar as asserted against the City of New York." (Internal citations omitted)]). Specifically, as noted above, plaintiff alleges that the City and the NYPD "developed and maintained policies and/or customs exhibiting deliberate indifference to the constitutional rights of persons . . . which policies and/or customs caused the violation of the Plaintiff's rights." Plaintiff further pleads that it was the custom of the City and the NYPD to inadequately and improperly investigate complaints of police misconduct and that the City and the NYPD further failed to take steps to train,

discipline, supervise and otherwise correct conduct such as that which caused plaintiff injury. Accordingly, plaintiff properly pleads a *Monell* claim against the City in his second cause of action.

Based on the foregoing, the City's motion seeking dismissal of plaintiff's third cause of action for violations of 42 USC §1983 must also be denied. Moreover, denial is also warranted because as to his third cause of action, plaintiff pleads that the City and NYPD violated 42 USC §1983 insofar as they, "under the color of law . . . [did] proscribe, construct, create, encourage, and enforce a policy whereby members of the public were targeted by its law enforcement employees." Thus, with respect to his third cause of action plaintiff properly pleads a *Monell* claim against the City.

The City's motion seeking dismissal of plaintiff's fourth cause of action to the extent it pleads a violation of 42 USC 1983 on grounds that plaintiff was denied medical attention is also denied.

To the extent plaintiff incorporates by reference the allegations in the complaint, which allege a municipal custom and practice which violated plaintiff's constitutional rights and thus caused plaintiff harm, the complaint pleads a valid *Monell* claim against the City for the intentional denial of medical treatment while in police custody. While it is true that generally, there is no constitutional right to medical treatment (*Deshay v Winnebago*

County, 489 US 189, 196 [1989] ["Consistent with these principles, our cases have recognized that the Due Process Clauses generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual."]), in cases where someone is deprived of their liberty by the State, the State must then provide medical care because "because the prisoner is unable by reason of the deprivation of his liberty [to] care for himself" (*Estelle v Gamble*, 429 US 97, 97 [1976]). Here, the complaint alleges that plaintiff was arrested and/or detained by the NYPD, thereby deprived of his liberty, and, thus, requiring that he be provided with medical care.

The City's motion for an order dismissing plaintiff's claims pursuant to 42 USC §§ 1985, pled in his first and second causes of action is hereby granted.

In order to state a cause of action under 42 USC §1985(3), the complaint must allege that defendants (1) conspired or did go in disguise on the highway or on the premises of another; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; (3) that one or more of the conspirators did, or caused to be done, any act in furtherance of the object of the conspiracy; (4) whereby another was; (5) injured in his person or property or; (6) deprived of having and

exercising any right or privilege of a citizen of the United States (*Griffin v. Breckenridge*, 403 US 88, 102-103 [1971]).

Here, while plaintiff makes claims under 42 USC § 1985, the complaint is utterly bereft of any allegations stating a cause of action under this statute or of any facts from which such cause of action could be inferred.

The City's motion seeking dismissal of plaintiff's claim under 42 USC § 1988 in his first, second and third causes of action is granted.

42 USC §1988 provides for awards of attorney's fees to a prevailing party in any action "[i]n any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title" (42 USC § 1988[b]). However,

> attorney's fees [cannot] fairly be characterized as an element of relief indistinguishable from other elements . . . [because] [u]nlike other judicial relief, the attorney's fees allowed under § 1988 are not compensation for the injury giving rise to an action. Their award is uniquely separable from the cause of action to be proved at trial

(*White v New Hampshire Dept. of Employment Sec.*, 455 US 445, 451-452 [1982]). Accordingly, while plaintiff's claim under 42 USC § 1988 is incident to his claim under 42 USC § 1983 - provided he prevails at trial - a claim under 42 USC is not, in it if itself, a separate cause of action. Thus, a claim for legal fees under 42 USC § 1988 is not a cause of action.

The City's motion seeking an order bifurcating the *Monell* claims asserted against it and staying discovery with respect to those claims is granted.

CPLR § 603 states that "[i]n furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a separate trial of any claim, or of any separate issue." Whether to order bifurcation is of course left the sound discretion of the trial court (*Sommer v Pierre*, 51 AD3d 464, 464 [1st Dept 2008]; *Landsman v Village of Hancock*, 296 AD2d 728, 731 [3d Dept 2002]). With respect to bifurcation of *Monell* claims from civil rights claims asserted against individuals, bifurcation is often appropriate on grounds of judicial economy because if a jury finds no unconstitutional action by the officers, a trial of the *Monell* claims is often obviated (*Landsman* at 731; *Elie v City of New York*, 92 AD3d 716, 716 [2d 2012]). Moreover, bifurcation is also appropriate to ameliorate any possible prejudice to the individually named officers who could be tainted by the proof offered at trial with respect to the *Monell* claims, namely a custom and practice giving rise to the acts upon which the suit is premised (Landsman at 731; *Elie* at 716).

Accordingly, here, where plaintiff has asserted a *Monell* claim against the City and two police officers, judicial economy and potential prejudice warrant bifurcation of the *Monell* claim against the City, a stay of the discovery relevant to the *Monell* claim, a

trial against the individual defendants, and a trial of the *Monell* claims thereafter, if necessary.

The City's motion seeking a protective order limiting the disclosure ordered within the preliminary conference order dated May 14, 2013 is hereby denied insofar as the discovery ordered, namely CCRB, IAB, GO-15 tapes, performance evaluations, and command discipline records for the subject officers for a period of 10 years prior to, and including the date of the instant incident are not palpably irrelevant.

"The purpose of disclosure procedures is to advance the function of a trial to ascertain truth and to accelerate the disposition of suits" (*Rios v Donovan*, 21 AD 2d 409, 411 [1st Dept. 1964]). Accordingly, our courts possess wide discretion to decide whether information sought is "material and necessary" to the prosecution or defense of an action (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]). The terms

> material and necessary, are, in our view, to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason. CPLR 3101 (subd. [a]) should be construed, as the leading text on practice puts it, to permit discovery of testimony which is sufficiently related to the issues in litigation to make the effort to obtain it in preparation for trial reasonable

(*id.* at 406 [internal quotation marks omitted]). Accordingly,

whether information is discoverable does not hinge on whether the information sought is admissible and information is therefore discoverable if it "may lead to the disclosure of admissible proof" (*Twenty Four Hour Fuel Oil Corp. v Hunter Ambulance*, 226 AD2d 175, 175 [1st Dept 1996]).

Pursuant to CPLR §3103, a court can limit or preclude disclosure. CPLR §3103 reads, in pertinent part,

> [t]he court may at anytime on its own initiative, or on motion of any party or any person from whom discovery is sought, make a protective order denying, limiting, conditioning or regulating the use of any disclosure devise. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the court.

Thus, by issuing a protective order, a court can circumscribe the otherwise, liberal scope of discovery, and in the exercise of its discretion, regulate the discovery process (*Church & Dwight Co., Inc., v UDDO & Associates, Inc.*, 159 AD2d 275, 276 [1st Dept 1990]).

A motion for a protective order pursuant to CPLR § 3103 can be generally made at any time. However, pursuant to CPLR §3122, a motion for a protective order with respect to any discovery demands made pursuant to CPLR § 3120 or CPLR § 3121 must be made within ten days of receipt of the demands. Generally, a failure to adhere to the mandates of CPLR § 3122 constitutes a waiver and bars the movant from obtaining a protective order (*Coffey v Orbachs, Inc.*,

22 AD2d 317, 319-320 [1st Dept 1964]. The exception to this general rule only arises when the initial discovery demand is palpably improper (*2 Park Avenue Associates v Cross & Brown Company*, 60 AD2d 566, 566-567 [1st Dept 1977]; *Wood v Sardi's Restaurant Corp.*, 47 AD2d 870, 871 [1st Dept 1975]); *Zambelis v Nicholas*, 92 AD2d 936, 936-937 [2d Dept 1983]). Thus, when the demand for which a protective order is sought is palpably improper, failure to timely move for a protective order will not constitute a waiver of the right to make such a motion after the statutory time has expired.

Here, the Court notes that to the extent the City seeks a protective order with respect to the discovery ordered by the Court at the preliminary conference held on May 14, 2013, the instant motion seeking such relief, made on July 10, 2013, almost two months later, is untimely. Thus, the City's motion can only be granted if the discovery for which the protective order is sought is palpably irrelevant (*id.*). Here, notwithstanding that the Court has ordered bifurcation of plaintiff's *Monell* claim and has stayed discovery relative thereto, the discovery ordered at the preliminary conference is also material and necessary to plaintiff's claim that the City negligently hired and retained the police officers allegedly involved in this incident (*Blanco v County of Suffolk*, 51 AD3d 700, 701-702 [2d Dept 2008] ["The Supreme Court also improperly denied that branch of the plaintiffs'

motion which was to compel the production for an in camera inspection of the police officers' personnel records. The plaintiffs offered, in good faith, a factual predicate for obtaining access to the personnel records, which might contain information that is relevant and material to their causes of action to recover damages for negligent hiring, retention, and supervision." (internal citations omitted)]; *Pickering v State*, 30 AD3d 393, 394 [2d Dept 2006]). Accordingly, the City's motion for a protective order is denied.

Plaintiff's cross-motion seeking leave to amend his complaint to correct the deficiencies asserted by the City is denied as moot and on grounds that he failed to annex a copy of his proposed amended complaint (*Loehner v Simons*, 224 AD2d 591, 591 [2d Dept 1996]; *Goldner Trucking Corp. v Stoll Packing Corp.*, 12 AD2d 639, 640 [2d dept 1960]). It is hereby

ORDERED that plaintiff's fifth, sixth, seventh, ninth, and tenth causes of action be dismissed with prejudice. It is further

ORDERED that the complaint against the NYPD be dismissed with prejudice. It is further

ORDERED that plaintiff's causes of action pursuant to 42 USC §§ 1985 and 1988 be dismissed. It is further

ORDERED that plaintiff's second, third, and fourth causes of action (*Monell* claims) be bifurcated from the remaining causes of action against the individual defendants and that discovery as to

these causes of action be stayed until after a trial of all claims against the individual defendants. It is further

ORDERED that the City serve a copy of this Decision and Order with Notice of Entry upon plaintiff within thirty (30) days hereof.

This constitutes this Court's decision and Order.

Dated : April 3, 2014
Bronx, New York

MITCHELL J. DANZIGER, J.S.C.