

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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Thomas Hamm,

Plaintiff,

**FIRST AMENDED COMPLAINT
AND DEMAND FOR A JURY
TRIAL**

-v-

15-CV-06238 (JPO)

The City of New York; New York City Department of Correction Officer Ronnie Mack (Shield No. 8093); New York City Department of Correction Officer Shaquana Gatling (Shield No. 7190); New York City Department of Correction Captain Adolpho Flores (Shield No. 31405); New York City Department of Correction Assistant Deputy Warden Raymond A. Beltz; former New York City Department of Correction Chief of Department William Clemons; New York City Department of Correction Officer John Doe (the name "John Doe" being fictitious as the true name and rank are not known to Plaintiff), in their individual capacities,

Defendants.

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Plaintiff Thomas Hamm, by and through his attorneys David B. Rankin and Robert M. Quackenbush of Rankin & Taylor, PLLC, and Susan L. Sommer and Omar Gonzalez-Pagan of Lambda Legal Defense and Education Fund, Inc., as and for his first amended complaint, hereby states and alleges:

PRELIMINARY STATEMENT

1. On Friday, May 9, 2014, Thomas Hamm, a gay man, was brutally beaten in an unprovoked attack by Defendant corrections officers after visiting his partner, P.F., who was incarcerated at a men's correctional facility at Rikers Island, Bronx County known as the Eric M. Taylor Center ("EMTC"). Mr. Hamm was called ugly anti-gay slurs by his corrections officer assailants, and was abused after displaying the kind of ordinary affection that other

visiting different-sex couples around them were freely permitted. Defendants ordered Mr. Hamm and his partner, to whom he is engaged to be married, not to give each other greeting or parting embraces or to hold hands, in violation of the facility's policies. When Mr. Hamm was departing the EMTC, Defendant corrections officers stopped him in an area allegedly without video surveillance. Mr. Hamm, who is about 5'6", uses a cane when he walks. Without provocation, two of the corrections officers punched him in the face. After he fell to the ground, three officers kicked him on his head and body as Mr. Hamm bled profusely and pleaded with them to stop. A supervising officer witnessed at least some of this brutal attack. Mr. Hamm, in severe pain, ultimately was taken by ambulance to Elmhurst Hospital Center, where he was diagnosed with facial fractures and other injuries and held overnight.

2. Rather than attempt to make amends for the grievous wrong committed against him, in an apparent effort to justify their own use of force, Defendants fabricated the implausible accusation that Mr. Hamm provoked the attack. Instead of charging the assailant corrections officers with the hate crime they committed against Mr. Hamm, Defendants arrested Mr. Hamm and falsely charged him with attacking a corrections officer, for which he was prosecuted. He was also denied visiting privileges with P.F.

3. Mr. Hamm was a victim of the notoriously rampant culture of violence—and cover-up—Defendants fostered and tolerated at Rikers, and was singled out for abuse as a gay man and for his apparent same-sex relationship. This pattern and practice of unconstitutional and tortious conduct was so entrenched at Rikers that Defendant William Clemons, who as Assistant Chief of Department specifically authorized Mr. Hamm's arrest, was promoted soon after to Chief of Department, the highest-ranking Rikers uniformed position, despite having been accused in repeated government investigative reports, lawsuits, and press accounts of blatant supervisory

failures and complicity in the systemic pattern and practice of excessive force, false reporting, inadequate investigations, and false accusations rampant among Rikers' corrections officers.

4. Defendants' abuse of Mr. Hamm is yet another manifestation of generations' old law-enforcement practices targeting gay people for violence, stigma, and deprivation of civil rights. This history and pattern of discrimination at the hands of government officers was so widely acknowledged by the time of Mr. Hamm's attack that the Second Circuit ruled in 2012 in *Windsor v. United States*, 699 F.3d 169, 182, that it warrants heightened judicial scrutiny of governmental conduct discriminating against gay people.

5. Mr. Hamm now brings this civil rights action for violations of his constitutional, statutory, and common law rights and for injuries caused by Department of Correction ("DOC") officers and by the municipal policies, practices, and customs of their employer, Defendant City of New York.

6. As a result, Mr. Hamm seeks compensatory damages, punitive damages, injunctive relief, and attorneys' fees and costs.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over federal claims pursuant to 28 U.S.C. §§ 1331, 1343(a)(3)-(4). This action is brought pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983, for violations of the First, Fourth, and Fourteenth Amendments to the Constitution of the United States.

8. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1)-(2) in that Defendant City of New York resides in this venue and Mr. Hamm's claims arose within the confines of this judicial district.

9. An award of costs and attorneys' fees is authorized pursuant to 42 U.S.C. § 1988.

10. On or about August 5, 2014, and within ninety (90) days after the claims herein accrued, Mr. Hamm served and filed a timely Notice of Claim, setting forth all facts and information required under General Municipal Law § 50-e, with the City of New York, a municipal corporation and the entity that employs or employed all named Defendants herein, by personal delivery of the notice, to the New York City Comptroller.

11. At least thirty (30) days have elapsed since the service of the Notice of Claim, and adjustment or payment of the claim has been neglected or refused.

12. This action has been commenced within one year and ninety days of the incident upon which the claims are based.

13. Accordingly, this Court has supplemental jurisdiction over Mr. Hamm's claims against Defendants under the Constitution and laws of the State of New York because they are so related to the within federal claims that they form part of the same case or controversy pursuant to 28 U.S.C. § 1367(a).

PARTIES

14. Plaintiff Thomas Hamm was at all times relevant to this action a resident of Kings County in the State of New York. For nearly eight years, Mr. Hamm has been in a loving, committed relationship with P.F., who at the time of the incidents referenced herein was incarcerated at EMTC. Mr. Hamm and P.F. are engaged to marry. In May 2014, Mr. Hamm was 39 years old.

15. Defendant City of New York is a municipal corporation. Through its agency, the DOC is authorized under the laws of the State of New York to maintain correctional facilities, including the EMTC facility at Rikers Island, which acts as its agent and for which it is ultimately responsible. The DOC, through its senior officials, promulgates and implements policies,

including policies with respect to the use, reporting, and investigation of force by uniformed staff, the rights and privileges of visitors to DOC facilities, and the rights of lesbian, gay, bisexual, and transgender (“LGBT”) inmates and their visitors. The practice of using unconstitutional force at DOC facilities, and of covering up that unconstitutional force by fabricating false charges against the victims, at all relevant times was known to and perpetuated, permitted, encouraged, and institutionalized by DOC supervisors, including high-ranking DOC personnel. Because the practice of using unconstitutional force and making false charges against victims, and of discriminating against LGBT individuals, has been widespread, longstanding, and deeply embedded in DOC culture, it constitutes an unwritten municipal policy or custom of the City. The DOC is also responsible for the appointment, training, supervision, and conduct of all DOC personnel, including the individual named Defendants.

16. Defendants Corrections Officer (“C.O.”) Ronnie Mack (Shield No. 8093), C.O. Shaquana Gatling (Shield No. 7190), and C.O. John Doe (the name “John Doe” being fictitious as the true name and rank are not known to Plaintiff) were at all times referred to in this Complaint, and upon information and belief still are, uniformed corrections officers employed by the DOC and assigned to DOC jails. These Defendants are sued in their individual capacities. As uniformed corrections officers, these Defendants have direct contact with inmates and visitors whom they are supposed to protect. Their responsibilities are required to be carried out in a manner consistent with the legal mandates that govern the operation of the DOC and its jails, including written DOC directives and orders governing inmate visiting procedures, use of force, and reporting of use of force.

17. The true name, rank, and shield number of Defendant C.O. John Doe are not currently known to Mr. Hamm. However, C.O. Doe was an employee or agent of the DOC on May 9,

2014. Accordingly, he may be entitled to representation in this action by the New York City Law Department (“Law Department”) upon his request, pursuant to New York State General Municipal Law § 50-k. The Law Department is hereby put on notice (a) that Mr. Hamm intends to name C.O. Doe as a Defendant in an amended pleading once the true name and shield number of C.O. Doe become known and (b) that the Law Department should immediately begin preparing his defenses, if any, in this action.

18. Corrections Captain (“Capt.”) Adolpho Flores (Shield No. 31405) was at all times referred to in this Complaint, and upon information and belief still is, a captain employed by the DOC and assigned to DOC jails. He had direct, first-line supervisory responsibilities over the corrections officers assigned to EMTC, including for taking appropriate measures for the personal safety and civil rights of visitors to EMTC. These responsibilities are required to be carried out in a manner consistent with the legal mandates that govern the operation of the DOC and its jails. Capt. Flores was directly involved in the attack on Mr. Hamm and subsequent cover-up and false charges against Mr. Hamm.

19. Assistant Deputy Warden Raymond A. Beltz was at all times referred to in this Complaint, and upon information and belief still is, employed by the DOC, and was and is responsible for supervision of corrections officers, captains, and other supervisors with respect to the treatment of visitors to Rikers Island. These responsibilities were and are required to be carried out in a manner consistent with the legal mandates that govern the operation of the DOC and its jails. As Assistant Deputy Warden, Defendant Beltz was responsible for and was directly involved in investigating and making false reports regarding the attack on Mr. Hamm and in Mr. Hamm’s false arrest and denial of visiting privileges.

20. Former Chief of Department William Clemons was at the times referred to in this Complaint, until some point in 2014, first the Assistant Chief of Department and then the Chief of Department. In these capacities, Defendant Clemons was responsible for supervision, oversight, and discipline of the uniformed security staff, including the supervisory security staff, of the DOC Rikers Island facilities. He was responsible for the safety and treatment of visitors to EMTC. Defendant Clemons was provided with reports of application of force and other violent incidents in DOC jails. He received information about the incident involving Mr. Hamm and specifically authorized Mr. Hamm's arrest and the false and implausible charges brought against Mr. Hamm.

21. At all times relevant herein, the Individual corrections officer Defendants were acting under color of state law in the course and scope of their duties and functions as agents, servants, employees, and officers of the City of New York and/or DOC, and otherwise performed and engaged in conduct incidental to the performance of their lawful functions in the course of their respective duties. They were acting for and on behalf of the City of New York and/or DOC at all times relevant herein, with the power and authority vested in them as officers, agents, and employees of the City of New York and/or DOC and incidental to the lawful pursuit of their duties as officers, employees, and agents of the City of New York and/or DOC.

STATEMENT OF FACTS

Defendants' discrimination, use of excessive force, and false arrest of Thomas Hamm.

22. On the afternoon of May 9, 2014, upon arriving at EMTC, Mr. Hamm identified himself and disclosed he was there to visit P.F. Mr. Hamm waited at EMTC's visitors' waiting area, a place of public accommodation where beverages are sold from a vending machine.

23. While Mr. Hamm waited for his visit to begin, C.O. Gatling, C.O. Mack, and C.O. Doe stared at him. C.O. Gatling was laughing at Mr. Hamm, and she referred to him as a “fucking faggot.”

24. Mr. Hamm was then escorted into EMTC’s visiting area, where other visitors and inmates were meeting at tables. Defendants C.O. Gatling, C.O. Mack, and C.O. Doe were present in the visiting area and continued to watch Mr. Hamm during his time there.

25. While Mr. Hamm was in the visiting area, he observed different-sex visitor-inmate couples affectionately hugging and kissing in greeting and leave-taking, as well as holding hands during the course of their visits, without interference by corrections officers.

26. When P.F. arrived for their visit, the couple likewise hugged and kissed in greeting. C.O. Gatling ordered Mr. Hamm and P.F. not to embrace.

27. Although they had been singled out as a same-sex couple for differential treatment, Mr. Hamm and P.F. complied. They sat down at a table across from each other and began their visit.

28. While speaking with each other, Mr. Hamm and P.F. held hands above the table. Other couples, with different-sex partners, were also holding hands while seated across from each other.

29. In response, the three Defendant corrections officers ordered P.F. to stand up and approach them. They told P.F., in sum and substance, “We don’t want that faggot, gay shit in here,” and told P.F. that the couple could not hold hands. Apparently trying to provoke a violent confrontation, one of the male corrections officers—on information and belief C.O. Mack—then dared P.F. to hit C.O. Gatling, which P.F. would not do.

30. Instead, P.F. and Mr. Hamm resumed their visit without holding hands.

31. Shortly after, the three Defendant corrections officers told Mr. Hamm and P.F. to end their visit. Mr. Hamm asked why their visit was being ended early, but did not receive an explanation.

32. Defendant corrections officers apparently terminated the visit due to their bias against gay men and in an effort to prevent Mr. Hamm and P.F. from associating as a same-sex couple.

33. As Mr. Hamm tried to say goodbye and give a farewell embrace to P.F., Defendant corrections officers told him to stop and forcibly pulled P.F. away.

34. In tears, Mr. Hamm left the visiting area as directed and proceeded towards the EMTC exit.

35. When Mr. Hamm attempted to retrieve his security slip from C.O. Gatling, in an area apparently without video surveillance, she insulted him, calling him a “fucking faggot” and saying, in sum and substance, “fucking homosexual, who the fuck do you think you are?,” “you’ll burn in hell,” and “you people should be killed.”

36. C.O. Mack then dared Mr. Hamm to hit C.O. Gatling, again in an apparent effort to provoke a violent confrontation with Mr. Hamm. Mr. Hamm responded that he did not want to hit her, and tried to proceed to the exit and a waiting shuttle bus.

37. One of Defendant corrections officers grabbed Mr. Hamm from behind, and C.O. Gatling and C.O. Mack punched him in the head.

38. Mr. Hamm fell to the floor, and C.O. Mack, C.O. Gatling, and C.O. Doe kicked Mr. Hamm and/or refused to intervene to prevent the others from beating Mr. Hamm. During this beating, Defendant corrections officers continued to use epithets like “fucking faggot.”

39. As he bled, Mr. Hamm begged Defendant corrections officers to stop beating him.

40. In response to seeing the blood, one of Defendant corrections officers stated, in sum and substance, “Don’t touch him. He might have AIDS.”

41. Upon information and belief, Capt. Flores observed at least some of the beating. He ordered that Mr. Hamm be taken into custody.

42. While Mr. Hamm was bleeding and crying, corrections officers took him into custody, placing him in a room by himself inside EMTC.

43. Paramedics arrived, and Mr. Hamm was handcuffed to a stretcher.

44. Mr. Hamm was taken to Elmhurst Hospital Center and held in custody there overnight. He was shackled to his hospital bed.

45. At the hospital, Mr. Hamm was diagnosed with, *inter alia*, an orbital bone fracture consistent with a punch to the eye, a nasal bone fracture, and head trauma.

46. Upon his discharge from the hospital, Mr. Hamm was taken in custody back to Rikers Island, where he was given an order signed by Defendant Beltz banning him from Rikers Island for 180 days. The order did not include the names and statements of the charging parties.

47. Mr. Hamm was then taken to Bronx Central Booking.

48. Based on false allegations, Mr. Hamm was charged with assault in the third degree and harassment in the second degree. The criminal court complaint alleged that Mr. Hamm assaulted C.O. Mack – who on information and belief is significantly larger than the 5’6” Mr. Hamm – with the cane Mr. Hamm uses to assist him to walk.

49. Despite the fact that the criminal court complaint alleged that Mr. Hamm assaulted C.O. Mack with his cane, and far more than 24 hours after Mr. Hamm’s arrest, the arraignment judge released Mr. Hamm on his own recognizance.

50. The criminal charges ultimately were adjourned in contemplation of dismissal.

51. Following the use of force and subsequent arrest, Defendants individually and collectively falsified incident reports in order to cover up their own misdeeds and the unlawful beating and arrest of Mr. Hamm. Reports by C.O. Mack and C.O. Gatling included false and implausible allegations that Mr. Hamm screamed and cursed at Defendant corrections officers and instigated an assault on C.O. Mack with other corrections officers present.

52. Capt. Flores also is noted in and submitted reports repeating false and implausible allegations relating to the incident.

53. Defendant Beltz is likewise noted in and submitted false and implausible reports of the incident, participating in the arrest and complaint against Mr. Hamm and signing the order denying Mr. Hamm visiting privileges.

54. Defendant Clemons was noted to have personally authorized Mr. Hamm's arrest.

55. Rather than meaningfully investigate and determine that these implausible reports were false and were an attempt to cover-up and excuse a vicious and unprovoked assault on a visitor to the EMTC, Defendants Flores, Beltz, Clemons, and the City took no steps to vindicate Mr. Hamm, bring the perpetrators to justice, and remove them from service as corrections officers.

56. Indeed, weeks after the attack and false reports, P.F. again encountered C.O. Gatling in EMTC. She called P.F. a "faggot." On another occasion, C.O. Gatling and C.O. Mack saw P.F. in a corridor and stared P.F. down in a menacing manner.

57. Mr. Hamm did not assault or attempt to assault any officer, nor did he present a threat to the personal safety of any officer or the security of Rikers Island. Mr. Hamm did not provoke the assault, nor did he conduct himself in any manner that would warrant any use of force, much less the force actually used. The conduct of C.O. Gatling, C.O. Mack, and C.O. Doe was malicious, sadistic, and homophobic. It was intended to cause harm and physical injury to Mr.

Hamm. It was also intended to deter Mr. Hamm from maintaining and expressing his relationship with P.F. and from being an openly gay man. It manifested deliberate indifference to Mr. Hamm's rights and physical safety.

58. As a result of the Individual Defendants' actions, Mr. Hamm was denied access to public accommodations and services on the basis of perceived or actual sex and/or sexual orientation, suffered serious physical injuries, and was deprived of his liberty and right to equal protection.

Defendants violated DOC's policies and directives.

59. Section 1-09(h)(1) of Title 40 of the Rules of the City of New York states that "Visiting rights shall not be denied, revoked, limited or interfered with based upon a prisoner's or prospective visitor's ... (ii) sexual orientation[.]"

60. At the time of the visit and incidents at issue in this complaint, the DOC's Inmate Visit Procedures Directive stated that "Inmates and visitors are permitted to kiss, embrace and hold hands."

61. Likewise, Section 1-09(f) of Title 40 of the Rules of the City of New York states that "Physical contact shall be permitted between every prisoner and all of his or her visitors throughout the visiting period, including holding hands, ... and kissing."

62. In addition, Section 1-09(h)(2) of Title 40 of the Rules of the City of New York states that prior to the revocation of visitation rights, "the visitor must be provided with written notification of the specific charges and the names and statements of the charging parties, and be afforded an opportunity to respond."

63. The DOC's Use of Force Directive states that a written report regarding a use of force incident must include a "complete account of the events leading to the use of force," a "precise

description of the incident,” “the specific reasons” force was necessary, “the type of force” used, and a “description of any injuries sustained.”

64. Defendants failed to adhere to these policies, consistent with the City’s pattern, practice, and custom at Rikers Island of condoning violations of civil rights, condoning the use of excessive force, and failing to take appropriate investigative and remedial steps to end and prevent these violations.

There is a longstanding pattern and practice of similar abuses at Rikers Island, of which Defendant City and supervisory staff have been on notice.

65. The violence, deprivation of civil rights, anti-gay animus, and cover-up that occurred in this case were not isolated events. Instead, they are yet another manifestation of a pattern and practice of misconduct of which New York City policymakers have had actual and constructive notice, and yet have not prevented.

66. The City of New York, senior supervisors—including Defendants Clemons and Flores—and corrections officers have been repeatedly sued over the past two decades for using and condoning excessive force at Rikers Island, failing to investigate those violations, covering up those violations, and bringing false charges against the victims in an effort to mask the misconduct of the officers. Many of these cases alleged similar beatings and “headshots” like those inflicted on Mr. Hamm, similar resulting injuries, similar false accusations that the victim provoked the corrections officers, similar cover-ups, and similar failures on the part of Defendant City to take appropriate steps to end this culture of violence. Several involved anti-gay conduct or abusive conduct towards visitors of inmates. Many resulted in substantial awards to the plaintiffs and injunctive relief against the government defendants. *See, e.g., Rivera v. City of New York*, 12-cv-08398 (S.D.N.Y.) (naming Clemons among defendants); *Schuler v. City of New York*, 14-cv-04906 (E.D.N.Y.) (naming Clemons among defendants); *Stanford v. City of New*

York, 13-cv-01736 (S.D.N.Y.) (naming Clemons among defendants); *Khapesi v. City of New York*, 13-cv-04391 (S.D.N.Y.) (alleging sexual abuse and violation of rights of gay inmate, noting use of epithets like “faggot” by corrections officers, and naming Clemons among defendants); *Daniels v. City of New York*, 13-cv-06286 (S.D.N.Y.); *Nunez v. City of New York*, 11-cv-05845 (S.D.N.Y.) (class action, joined by intervenor United States, including allegations of unprovoked use of force in visitation area and arrest of visitor without probable cause); *Reynolds v. City of New York*, 11-cv-00621 (S.D.N.Y.); *Lebron v. City of New York*, 10-cv-06921 (S.D.N.Y.) (naming Flores among defendants and including allegations of use of excessive force and filing of false charges against visitor); *Shuford v. City of New York*, 09-cv-00945 (S.D.N.Y.); *Belvett v. City of New York*, 09-cv-08090 (S.D.N.Y.); *Williams v. City of New York*, 09-cv-05734 (S.D.N.Y.); *Lee v. Perez*, 09-cv-03134 (S.D.N.Y.); *Mull v. City of New York*, 08-cv-08854 (S.D.N.Y.); *Lugo v. City of New York*, 08-cv-02931 (S.D.N.Y.); *Cuadrado v. City of New York*, 07-cv-01447 (S.D.N.Y.); *Williams v. City of New York*, 07-cv-11055 (S.D.N.Y.); *Diaz v. City of New York*, 08-cv-04391 (S.D.N.Y.); *Scott v. City of New York*, 07-cv-03691 (S.D.N.Y.); *Ingles v. Toro*, 01-cv-08279 (S.D.N.Y.) (class action resulting in injunctive relief); *Fischer v. Koehler*, 83-cv-02128 (S.D.N.Y.) (class action focused on, *inter alia*, EMTC, resulting in court-ordered injunctive relief); *Crawford v. City of New York*, No. 303800/2011 (Sup. Ct. Bronx Cnty.) (alleging use of excessive force against visitor and resulting in settlement).

67. In a “findings letter” sent on August 4, 2014 to Defendant City and the DOC, the U.S. Attorney for the Southern District of New York reported on the results of a multi-year investigation into the notorious use of excessive force at the DOC against adolescent inmates, and noted that its investigation suggested that the systemic deficiencies identified in the report

apply to adults as well. *See* Report from United States Attorney Preet Bharara to New York City Mayor Bill de Blasio (Aug. 4, 2014) (“U.S. Attorney Report”), at 3, *available at* <http://www.justice.gov/usao/nys/pressreleases/August14/RikersReportPR/SDNY%20Rikers%20Report.pdf>.¹

68. According to the findings, there was, and is, a “deep-seated culture of violence” “pervasive” across the various facilities on Rikers Island, and “DOC staff routinely utilize force not as a last resort, but instead as a means” of “control” and to “punish disorderly or disrespectful behavior.” *Id.* at 3.

69. According to the U.S. Attorney Report, at all times material to this complaint, there was a pattern, practice, and custom by DOC staff routinely to use unnecessary force to control and punish those perceived to be disobedient or disrespectful. *Id.* at 3, 11. Even when some level of force was necessary, the force used was often disproportionate to the risk posed. *Id.* at 11.

70. At all times material to this complaint, there was a pattern, practice, and custom of “correction officers resort[ing] to ‘headshots,’ or blows” to the “head or facial area.” *Id.* at 4. These headshots were used where no officer or other individual was at imminent risk of serious bodily injury and more reasonable methods of control could have been used. *Id.* at 12.

71. The U.S. Attorney Report found that DOC staff reported “using only limited physical force, such as control holds to subdue the inmate or ‘guide’ him to the floor, while the inmate’s injuries suggest a much greater level of force was used.” *Id.* at 26. The U.S. Attorney Report found that such a pattern strongly suggests that DOC staff routinely submit false reports, including, for example, when an inmate’s injuries indicate that “blows to the head” were used. *Id.*

¹ Mr. Hamm hereby incorporates the U.S. Attorney Report by reference herein.

72. Notwithstanding their awareness of the serious risk of harm that headshots presented, DOC management failed to adequately address the long-standing problem through improved training, supervision, and staff disciplinary measures. *Id.* at 4.

73. According to the U.S. Attorney Report, at all times material to this complaint, there was a pattern and practice of using force “in response to [] verbal altercations with officers.” *Id.* The U.S. Attorney Report found that DOC staff “too often resort to abusive physical force when confronted with verbal taunts and insults, noncompliant inmates, and complaints, even though no safety or security threat exists.” *Id.* at 17. Due to their poor training and inexperience, corrections officers lacked adequate conflict resolution and de-escalation skills. *Id.* at 18.

74. The U.S. Attorney Report also found that, at all times material to this complaint, there was also a pattern, practice, and custom by DOC staff of preparing false or inadequate incident reports involving the use of force, in order to justify the use of such force. *Id.* at 25. For example, DOC staff routinely failed properly to document incident reports involving the use of force, including failing to include “why force was necessary and what injuries resulted.” *Id.* DOC staff routinely falsely reported that a subject instigated an altercation in order to justify the use of force. *Id.* DOC staff also routinely reported limited use of physical force, even though the injuries suggested a greater level of force was used. *Id.* at 26. Likewise, DOC staff routinely engaged in collusion with other officers in order to tell a particular story or cover up the actual facts of a particular incident. *Id.*

75. Anti-gay animus experienced in prison settings is also longstanding and well-known. Despite being prohibited by DOC policy, a pattern and practice among DOC staff of using anti-gay slurs and disparate treatment persists.

76. In acknowledgment of this anti-gay animus, a DOC Chief's Order dated August 19, 2011 (No. HQ-00937-0) prohibits physical or verbal abuse, taunts, and denial of services to an inmate based on sexual orientation, and orders staff to prevent others from engaging in such misconduct. Defendants flouted this Order.

77. A federal Bureau of Justice Statistics ("BJS") study undertaken pursuant to the Prison Rape Elimination Act, 42 U.S.C. § 15601, reported that gay inmates are particularly vulnerable to sexual abuse in prison settings, including by staff. *See* BJS, U.S. Dep't of Justice, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09* (Aug. 2010), at 14, available at <http://www.prearesourcecenter.org/sites/default/files/library/80-sexualvictimizationinprisonsandjailsreportedbyinmatesaugust2010.pdf>. Indeed, according to the National Inmate Survey conducted by BJS during 2008-09, 1.7% of inmates at EMTC had been subjected to sexual misconduct by EMTC staff. *Id.* at 70.

78. Federal regulations pursuant to PREA that took effect in 2012 specifically require municipal correctional facilities like Rikers Island and EMTC to train employees "[h]ow to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates." 28 C.F.R. 115.31(a)(9). Yet, Defendant corrections officers used anti-gay taunts in their interactions with Mr. Hamm and P.F., and escalated their harassment to brutal violence and further deprivations of Mr. Hamm's civil rights.

79. The City of New York, City policymakers, and DOC senior officials have also been aware of "ongoing reports of violence against LGBTQ [lesbian, gay, bisexual, transgender, queer] individuals in DOC custody." Columbia Law School, Center for Gender & Sexuality Law, *Our Fair City: A Comprehensive Blueprint for Gender and Sexual Justice in New York City*

(June 2014), at 4, *available at*, http://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/our_fair_city.pdf. DOC officials and advocates have met over the course of several years to develop new policies to meet the needs of LGBT people in DOC custody. *Id.* Yet, the DOC has issued few updates about the adoption or implementation of new policies regarding the treatment of LGBT people by DOC officials and those under their supervision. *Id.*

FIRST CLAIM FOR RELIEF
VIOLATION OF THE FOURTH AMENDMENT
42 U.S.C. § 1983
(Against All Defendants)

80. Mr. Hamm incorporates by reference and realleges all of the preceding paragraphs of this complaint as though fully set forth herein.

81. The Fourth Amendment of the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides in part that, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. Const. amend. IV.

82. By reason of the foregoing paragraphs, and by assaulting, battering, and using unnecessary, excessive, and unconscionable force, or failing to prevent others from doing so, the Individual Defendants deprived Mr. Hamm of rights, remedies, privileges, and immunities guaranteed to every person, secured by 42 U.S.C. § 1983, including, but not limited to, rights guaranteed by the Fourth Amendment to the United States Constitution to be free from unreasonable seizure of his person, the use of excessive force, false arrest and false imprisonment, abuse of criminal process, and from fabrication of criminal charges against him. The Individual Defendants acted under pretense and color of state law and within the scope of their employment as DOC officers and employees.

83. As a direct and proximate result of the misconduct and abuse of authority detailed above, Mr. Hamm sustained the damages alleged, including but not limited to conscious pain and suffering, injury, and deprivation of his liberty.

84. Defendant City of New York, through DOC, and acting under the pretense and color of law, permitted, tolerated, and was deliberately indifferent to a pattern and practice of staff brutality and retaliation by DOC staff at the time of Mr. Hamm's beating. This widespread tolerance of corrections officer abuse constituted a municipal policy, practice, or custom and led to the assault. By permitting, tolerating, and sanctioning a persistent and widespread policy, practice, and custom pursuant to which Mr. Hamm was subjected to a brutal beating and false criminal charges, Defendant City has deprived Mr. Hamm of rights, remedies, privileges, and immunities guaranteed to every person in the United States, secured by 42 U.S.C. § 1983, including, but not limited to rights guaranteed under the Fourth Amendment to be free from unreasonable seizure of his person, the use of excessive force, false arrest and false imprisonment, abuse of criminal process, and fabrication of criminal charges against him.

85. At all times material to this complaint, Defendant City failed to properly train, screen, supervise, or discipline employees including the Individual Defendants, and failed to inform supervisors of their need to train, screen, supervise, or discipline DOC employees such as the Individual Defendants regarding the limits on using force and interacting with LGBT people.

86. Further, the "DOC's hiring process has failed to recruit sufficient talented [corrections officers] and has failed, in some instances, to weed out those who would abuse their position." See New York City Department of Investigation Report on the Recruiting and Hiring Process of New York City Correction Officers (Jan. 2015) ("DOI Report"), at 2, *available at*

<https://s3.amazonaws.com/s3.documentcloud.org/documents/1502553/report-on-the-recruiting-and-hiring-process-for.pdf>.²

87. As a direct and proximate result of Defendant City's and the DOC's policies, practices, customs, and usages, and the above-described failure to properly hire, train, screen, supervise, or discipline, Mr. Hamm sustained the damages alleged, including but not limited to conscious pain and suffering, injury, and deprivation of his liberty.

SECOND CLAIM FOR RELIEF
VIOLATION OF THE FOURTEENTH AMENDMENT: DUE PROCESS
42 U.S.C. § 1983
(Against All Defendants)

88. Mr. Hamm incorporates by reference and realleges all of the preceding paragraphs of this complaint as though fully set forth herein.

89. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, bars Defendants from depriving any person of life, liberty, or property without due process of law (the "Due Process Clause").

90. By reason of the foregoing paragraphs, and by assaulting, battering, and using unnecessary, excessive, and unconscionable force, or failing to prevent other Individual Defendants from doing so, Defendants Gatling, Mack, Flores, and Doe deprived Mr. Hamm of rights, remedies, privileges, and immunities guaranteed to every person, secured by 42 U.S.C. § 1983, including, but not limited to, rights guaranteed by the Fourteenth Amendment to the United States Constitution to be free from unreasonable seizure of his person, the use of excessive force, false arrest and false imprisonment, abuse of criminal process, fabrication of criminal charges against him, deprivation of his right to visit his inmate partner at a New York City corrections facility, and deprivation of his right as a gay man to maintain and engage in a

² Mr. Hamm hereby incorporates the DOI Report by reference herein.

committed relationship. The Individual Defendants acted under pretense and color of state law and within the scope of their employment as DOC officers and employees.

91. As a direct and proximate result of the misconduct and abuse of authority detailed above, Mr. Hamm sustained the damages alleged, including, but not limited to, conscious pain and suffering, injury, and deprivation of his liberty and due process rights.

92. Defendant City of New York, through DOC, and acting under the pretense and color of law, permitted, tolerated and was deliberately indifferent to a pattern and practice of staff brutality and retaliation by DOC staff at the time of Mr. Hamm's beating. This widespread tolerance of corrections officer abuse constituted a municipal policy, practice, or custom and led to the assault. By permitting, tolerating, and sanctioning a persistent and widespread policy, practice, and custom pursuant to which Mr. Hamm was subjected to a brutal beating, Defendant City has deprived Mr. Hamm of rights, remedies, privileges, and immunities guaranteed to every person in the United States, secured by 42 U.S.C. § 1983, including but not limited to rights guaranteed under the Fourteenth Amendment to be free from unreasonable seizure of his person, the use of excessive force, false arrest and false imprisonment, abuse of criminal process, fabrication of criminal charges against him, deprivation of his right to visit his inmate partner at a New York City corrections facility, and deprivation of his right as a gay man to maintain and engage in a committed relationship.

93. At all times material to this complaint, Defendant City failed to properly train, screen, supervise, or discipline employees, including the Individual Defendants, and failed to inform supervisors of their need to train, screen, supervise, or discipline DOC employees such as the Individual Defendants regarding limits on use of force.

94. As a direct and proximate result of Defendant City's and the DOC's policies, practices, customs, and usages, and the above-described failure to properly hire, train, screen, supervise, or discipline, Mr. Hamm sustained the damages alleged, including, but not limited to, conscious pain and suffering, injury, and deprivation of his liberty and due process rights.

THIRD CLAIM FOR RELIEF
VIOLATION OF THE FOURTEENTH AMENDMENT: EQUAL PROTECTION
42 U.S.C. § 1983
(Against all Defendants)

95. Mr. Hamm incorporates by reference and realleges all of the preceding paragraphs of this complaint as though fully set forth herein.

96. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall "deny to any person the equal protection of the laws." U.S. Const. amend. XIV, § 1.

97. Lesbians, gay men, and bisexual (LGB) people "compose a class that is subject to heightened scrutiny." *Windsor v. United States*, 699 F.3d 169, 185 (2d Cir. 2012).

98. By reason of the foregoing paragraphs, Defendants discriminated against Mr. Hamm, a gay man with an apparent same-sex partner, in the terms and conditions of visitation at EMTC in relation to similarly situated visitors with different-sex partners, and by assaulting, battering, and using unnecessary, excessive, and unconscionable force against Mr. Hamm, or failing to prevent others from doing so, because of Mr. Hamm's perceived or actual sex and/or sexual orientation. Defendants deprived Mr. Hamm of rights, remedies, privileges, and immunities guaranteed to every person, secured by 42 U.S.C. § 1983, including, but not limited to, the right guaranteed by the Fourteenth Amendment to the United States Constitution to the equal protection of the laws.

99. The Individual Defendants acted under pretense and color of state law and within the scope of their employment as DOC officers and employees.

100. Defendant City of New York, through DOC, and acting under the pretense and color of law, permitted, tolerated, and was deliberately indifferent to a pattern, practice, or custom by DOC staff of discriminating against LGB people.

101. Defendants' actions, practices, and customs permit and tolerate discrimination on the basis of sex and/or sexual orientation. Visitors with different-sex partners may display affection and engage in contact visits, be free from derogatory and insulting remarks about their sexual orientation, and be free from physical brutality at the hands of anti-gay DOC staff. Because Mr. Hamm is a gay man, he was prevented from displaying affection during visitation or even from having further visits with his partner, subjected to derogatory and insulting remarks about his sexual orientation, physically brutalized, arrested, and subjected to false criminal charges. Defendants' actions, practices, and customs send a message of second-class status and cause dignitary and actual harms to Mr. Hamm as well as other LGB people.

102. As a direct and proximate result of Defendants' conduct, policies, practices, customs, and usages, Mr. Hamm sustained the damages alleged, including, but not limited to, deprivation of his right to equal protection and equal dignity.

**FOURTH CLAIM FOR RELIEF
VIOLATION OF THE FIRST AMENDMENT:
RIGHTS OF ASSOCIATION AND EXPRESSION**

42 U.S.C. § 1983

(Against all Defendants)

103. Mr. Hamm incorporates by reference and realleges all of the preceding paragraphs of this complaint as though fully set forth herein.

104. The First Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, protects choices to enter into and maintain intimate personal relationships,

such as that of Mr. Hamm and P.F., and to expression of one's identity as a gay person and relationship with a same-sex partner. U.S. Const. amend. I.

105. By reason of the foregoing paragraphs, Defendants denied and infringed upon Mr. Hamm's rights to association and expression, penalizing him for associating with his partner and expressing himself as a gay man.

106. The Individual Defendants acted under pretense and color of state law and within the scope of their employment as DOC officers and employees.

107. Defendant City of New York, through DOC, and acting under the pretense and color of law, permitted, tolerated, and was deliberately indifferent to a pattern, practice, or custom by DOC staff depriving LGB people of rights of association and expression.

108. As a direct and proximate result of Defendants' conduct, policies, practices, customs, and usages, Mr. Hamm sustained the damages alleged, including but not limited to the deprivation of his rights to association and expression.

FIFTH CLAIM FOR RELIEF
VIOLATION OF ARTICLE I, § 6 OF THE NEW YORK CONSTITUTION
(Against all Defendants)

109. Mr. Hamm incorporates by reference and realleges all of the preceding paragraphs of this complaint as though fully set forth herein.

110. Article I, § 6 of the New York Constitution provides that, "[n]o person shall be deprived of life, liberty or property without due process of law."

111. Those within the custody of the state have a fundamental right protected under this due process guarantee to maintain relationships with family and friends.

112. All persons in New York have a correlative fundamental right to visit family and friends in the custody of the state. *See* Rules of the City of New York Board of Correction [40

RCNY] § 1-09 (“any properly identified person *shall*, with the prisoner’s consent, be permitted to visit the prisoner” (emphasis added)).

113. By reason of the foregoing paragraphs, Defendants Gatling, Mack, Flores, and Doe deprived Mr. Hamm of rights, remedies, privileges, and immunities guaranteed to every person in New York, including but not limited to rights guaranteed by article I, § 6 of the New York Constitution to visit his inmate partner at a New York City corrections facility and maintain and engage in a committed same-sex relationship. The Individual Defendants acted under pretense and color of state law and within the scope of their employment as DOC officers and employees.

114. As a direct and proximate result of the misconduct and abuse of authority detailed above, Mr. Hamm sustained the damages alleged, including but not limited to conscious pain and suffering, injury, and deprivation of his liberty and due process rights.

115. Defendant City of New York, through DOC, and acting under the pretense and color of law, permitted, tolerated, and was deliberately indifferent to a pattern, practice, or custom of restricting visitors’ rights to visit inmate partners and maintain and engage in committed same-sex relationships.

116. As a direct and proximate result of Defendant City’s and the DOC’s policies, practices, customs, and usages, and the above-described failure to properly hire, train, screen, supervise, or discipline, Mr. Hamm sustained the damages alleged, including but not limited to conscious pain and suffering, injury, and deprivation of his liberty and due process rights.

SIXTH CLAIM FOR RELIEF
VIOLATION OF ARTICLE I, § 11 OF THE NEW YORK CONSTITUTION
(Against all Defendants)

117. Mr. Hamm incorporates by reference and realleges all of the preceding paragraphs of this complaint as though fully set forth herein.

118. Article I, § 11 of the New York Constitution provides that, “[n]o person shall be denied the equal protection of the laws of this state or any subdivision thereof.”

119. LGB people “compose a class that is subject to heightened scrutiny.” *Windsor*, 699 F.3d at 185.

120. By reason of the foregoing paragraphs, by discriminating against Mr. Hamm, a gay man with an apparent same-sex partner, in the terms and conditions of visitation at EMTC in relation to similarly situated visitors with different-sex partners, and by assaulting, battering, and using unnecessary, excessive, and unconscionable force against Mr. Hamm, or failing to prevent other Defendants from doing so, because of Mr. Hamm’s perceived or actual sex and/or sexual orientation, Defendants deprived Mr. Hamm of rights, remedies, privileges, and immunities guaranteed to every person, including, but not limited to the right guaranteed by Article I, § 11 of the New York Constitution to the equal protection of the laws.

121. The Individual Defendants acted under pretense and color of state law and within the scope of their employment as DOC officers and employees.

122. Defendant City of New York, through DOC, and acting under the pretense and color of law, permitted, tolerated, and was deliberately indifferent to a pattern, practice, or custom by DOC staff of discriminating against LGB people.

123. Defendants’ actions, practices, and customs permit and tolerate discrimination on the basis of sex and/or sexual orientation. Visitors with different-sex partners may display

affection and engage in contact visits, be free from derogatory and insulting remarks about their sexual orientation, and be free from physical brutality at the hands of anti-gay DOC staff. Because Mr. Hamm is a gay man, he was prevented from displaying affection during visitation or even from having further visits with his partner, subjected to derogatory and insulting remarks about his sexual orientation, physically brutalized, arrested, and subjected to false criminal charges. Defendants' actions, practices, and customs send a message of second-class status and cause dignitary and actual harms to Mr. Hamm as well as other LGB people.

124. As a direct and proximate result of Defendants' conduct, policies, practices, customs, and usages, Mr. Hamm sustained the damages alleged, including but not limited to the deprivation of his right to equal protection and equal dignity.

SEVENTH CLAIM FOR RELIEF
DISCRIMINATION IN VIOLATION OF N.Y. CIVIL RIGHTS LAW § 40-C
(Against all Defendants)

125. Mr. Hamm incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.

126. Section 40-c of the New York Civil Rights Law provides that, “[n]o person shall, because of ... sexual orientation ..., be subjected to any discrimination in his or her civil rights, or to any harassment, as defined in section 240.25 of the penal law, in the exercise thereof, by any other person or by any firm, corporation or institution, or by the state or any agency or subdivision of the state.”

127. By the conduct and actions described above, Defendants denied and/or aided, abetted, incited, compelled, or coerced the denial to Mr. Hamm of his civil rights on the basis of his sexual orientation.

128. As a result, Mr. Hamm suffered conscious pain and suffering, damage, injury, and deprivation of his civil rights and liberty.

129. Plaintiff, simultaneous with the filing of this complaint, serves notice of his claim pursuant to N.Y. CLS Civ. R. § 40-c on the Attorney General of the State of New York.

EIGHTH CLAIM FOR RELIEF
DISCRIMINATION IN VIOLATION OF N.Y. HUMAN RIGHTS LAW § 296
(Against all Defendants)

130. Mr. Hamm incorporates by reference and realleges all of the preceding paragraphs of this complaint as though fully set forth herein.

131. Section 296 of the New York Human Rights Law provides that “[i]t shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of ... sexual orientation ..., directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof.” N.Y. CLS Exec. § 296(2)(a).

132. By the conduct and actions described above, Defendants denied and/or aided, abetted, incited, compelled, or coerced the denial to Mr. Hamm of the advantages, facilities, or privileges of a place of public accommodation on the basis of Mr. Hamm’s sexual orientation.

133. As a result, Mr. Hamm suffered conscious pain and suffering, damage, injury, and deprivation of his civil rights and liberty.

NINTH CLAIM FOR RELIEF
DISCRIMINATION IN VIOLATION OF N.Y.C. HUMAN RIGHTS LAW § 8-107
(Against all Defendants)

134. Mr. Hamm incorporates by reference and realleges all of the preceding paragraphs of this complaint as though fully set forth herein.

135. Section 8-107 of the New York City Administrative Code provides that “[i]t shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation, because of the actual or perceived ... sexual orientation ..., directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof.” NY City Admin. Code § 8-107.

136. By the conduct and actions described above, Defendants denied and/or aided, abetted, incited, compelled, or coerced the denial to Mr. Hamm of the advantages, facilities, or privileges of a place of public accommodation on the basis of Mr. Hamm’s sexual orientation.

137. As a result, Mr. Hamm suffered conscious pain and suffering, damage, injury, and deprivation of his civil rights and liberty.

**TENTH CLAIM FOR RELIEF
ASSAULT AND BATTERY
UNDER THE LAWS OF THE STATE OF NEW YORK
(*Against Defendants Gatling, Mack, Flores, Doe, and the City of New York*)**

138. Mr. Hamm incorporates by reference and realleges all of the preceding paragraphs of this complaint as though fully set forth herein.

139. By the actions described above, in assaulting, battering, and threatening Mr. Hamm, or standing by and failing to intervene when Mr. Hamm was assaulted, Defendants Gatling, Mack, Flores, and Doe, acting in their capacities as DOC officers and within the scope of their employment, committed a willful, unlawful, unwarranted, and intentional assault and battery upon Mr. Hamm. The acts and conduct of these Defendants were the direct and proximate cause of injury and damage to Mr. Hamm and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

140. The conduct of Defendants Gatling, Mack, Flores, and Doe alleged herein occurred while they were on duty and in uniform, and/or in and during the course and scope of their duties and functions as DOC officials, and/or while they were acting as agents and employees of Defendant City of New York, clothed with and/or invoking state power and/or authority, and, as a result, Defendant City of New York is liable to Mr. Hamm pursuant to the state common law doctrine of *respondeat superior*.

141. As a result, Mr. Hamm suffered conscious pain and suffering, damage, injury, and was deprivation of his liberty.

ELEVENTH CLAIM FOR RELIEF
FALSE ARREST AND FALSE IMPRISONMENT
UNDER THE LAWS OF THE STATE OF NEW YORK
(Against all Defendants)

142. Mr. Hamm incorporates by reference and realleges all of the preceding paragraphs of this complaint as though fully set forth herein.

143. By the actions described above, the Individual Defendants caused to be falsely arrested or falsely arrested Mr. Hamm, without reasonable or probable cause, illegally and without a warrant, and without any right or authority to do so. The acts and conduct of the Individual Defendants were the direct and proximate cause of injury and damage to Mr. Hamm and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

144. The conduct of the Individual Defendants alleged herein occurred while they were on duty and in uniform, and/or in and during the course and scope of their duties and functions as DOC officials, and/or while they were acting as agents and employees of Defendant City of New York, clothed with and/or invoking state power and/or authority, and, as a result, Defendant City

of New York is liable to Mr. Hamm pursuant to the state common law doctrine of *respondeat superior*.

145. As a result, Mr. Hamm suffered conscious pain and suffering, damage, injury, and was deprived of his liberty.

**TWELFTH CLAIM FOR RELIEF
ABUSE OF PROCESS
UNDER THE LAWS OF THE STATE OF NEW YORK
(Against all Defendants)**

146. Mr. Hamm incorporates by reference and realleges all of the preceding paragraphs of this complaint as though fully set forth herein.

147. By the conduct and actions described above, Defendants employed regularly issued process against Mr. Hamm compelling the performance or forbearance of prescribed acts. The purpose of activating the process was intent to harm Mr. Hamm without justification, and Defendants were seeking a collateral advantage (including but not limited to covering for their own misdeeds described above) or corresponding detriment to Mr. Hamm, which was outside the legitimate ends of the process. The acts and conduct of Defendants were the direct and proximate cause of injury and damage to Mr. Hamm and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

148. As a result, Mr. Hamm suffered conscious pain and suffering, damage, injury, and deprivation of his liberty.

**THIRTEENTH CLAIM FOR RELIEF
NEGLIGENT HIRING, SCREENING, RETENTION,
SUPERVISION, AND TRAINING
UNDER THE LAWS OF THE STATE OF NEW YORK
(Against Defendant City of New York)**

149. Mr. Hamm incorporates by reference and realleges all of the preceding paragraphs of this complaint as though fully set forth herein.

150. As demonstrated by the facts alleged herein, Defendant City of New York negligently hired, screened, retained, supervised, and trained the Individual Defendants. The acts and conduct of the Individual Defendants were the direct and proximate cause of injury and damage to Mr. Hamm and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

151. As a result, Mr. Hamm suffered conscious pain and suffering, damage, injury, and deprivation of his civil rights and liberty.

JURY DEMAND

152. Mr. Hamm demands a trial by jury in this action on each and every one of his damage claims.

PRAYERS FOR RELIEF

WHEREFORE, Mr. Hamm demands judgment against Defendants jointly and severally and prays for relief as follows:

- a. Declare that the conduct of Defendants, as described above, violates the rights of Mr. Hamm under the First, Fourth, and Fourteenth Amendments of the United States Constitution and under New York State Law;
- b. Enjoin Defendants, their successors, agents, servants, employees, and all those in active concert or participation with them, from subjecting all persons who use facilities in DOC jails and come into contact with DOC staff to discriminatory treatment on the basis of sexual orientation, unlawful physical abuse, and the threat of unlawful physical abuse, and require these Defendants to formulate and effectuate a remedy, subject to the Court's approval and modification, if necessary, to end the practices and policies challenged in this lawsuit, including the discriminatory treatment of same-sex couples during visitation at the DOC's jails and the unconstitutional use of force against visitors, inmates, and all others who use facilities in DOC jails. Such a remedy should include measures which address continuing deficiencies in selection, training, evaluation, supervision, promotion, and command of the uniformed corrections staff, in the DOC's investigatory and disciplinary practices, and in the institution and adherence to nondiscriminatory policies, in particular as they relate to LGBT people;

- c. Award Plaintiff compensatory damages in an amount to be determined at trial against Defendants Gatling, Mack, Flores, Beltz, Clemons, Doe, and the City of New York, jointly and severally, and punitive damages individually against each of Defendants Gatling, Mack, Flores, Beltz, Clemons, and Doe for violation of his federal constitutional rights, New York state law rights, discriminatory treatment, deprivation of liberty, physical injuries, pain, suffering, mental anguish, and humiliation;
- d. Award Plaintiff the costs and disbursements of this action, including reasonable attorneys' fees; and
- e. Grant such other and further relief in favor of Plaintiff this Court deems just and proper.

Dated: New York, New York
October 29, 2015

Respectfully submitted,

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