FILED: NEW YORK COUNTY CLERK 0	5/ 30 7 2018 15 15 21 1 201
SUPREME COURT OF THE STATE ON NEW YORK COUNTY	
PRESENT: HON. ARLENE P. BLUTH Justice	PART 32
Index Number: 156520/2016 BRONX DEFENDER SERVICES vs. NEW YORK CITY POLICE DEPT. ET AL SEQUENCE NUMBER: 001 COMPEL	MOTION DATE
The following papers, numbered 1 to, were read on this motion to/for Notice of Motion/Order to Show Cause — Affidavits — Exhibits Answering Affidavits — Exhibits Replying Affidavits	No(s) No(s) No(s).
Upon the foregoing papers, it is ordered that this motion is	-107
(ase resolved probable for Ships lake) So ordered on 5/2	25/18
FOR THE FOLLOWING REASON(S):	
Dated: 5.29.18	
. CHECK ONE:	ON. ARKENE P. BLUTH
CHECK AS APPROPRIATE:MOTION IS: GRANTED DENIED	_
B. CHECK IF APPROPRIATE: SETTLE ORDER DO NOT POST FIDU	SUBMIT ORDER JCIARY APPOINTMENT REFERENCE
1 of 10	

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NYSCEF DOC. NO. 9.

Department,

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

In the Matter of the Application of THE BRONX DEFENDERS

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Petitioner,

The NEW YORK CITY POLICE DEPARTMENT, and WILLIAM BRATTON, in his official capacity as Commissioner of the New York City Police

Respondents.

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules.

PAOPUSED ORDER AND STIPULATION OF SETTLEMENT

Index No. 156520/2016 Part 32EFM (Bluth, J.)

HON. ARLENE P. BLUTH

WHEREAS, Petitioner commenced this proceeding seeking to obtain certain records from Respondents pursuant to the Freedom of Information Law (FOIL), N.Y. Public Officers Law § 84 et seq., by request dated July 29, 2014; and

WHEREAS, no party herein is an infant or incompetent for whom a committee has been appointed; and

WHEREAS, there is no person who has any interest in the subject matter of this proceeding that is not a party; and

WHEREAS, the parties now desire to resolve this Article 78 proceeding without further proceedings, on terms and conditions that are just and fair to the parties.

IT IS HEREBY STIPULATED AND AGREED, by and between the parties, as

I. Definitions

follows:

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defined as set forth below

For purposes of this stipulation, the parties agree that the following terms are $\overset{2}{\text{0.1}}$

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- "NYPD" shall refer to the New York City Police Department, the respondent in 1. this proceeding.
 - "The Bronx Defenders" shall refer to the petitioner in this proceeding. 2.
- 3. "PETS" shall refer to the Property Evidence Tracking System, a database that maintains inventories of the property seized or recovered by the NYPD's officers.
- A "property invoice" is a form document created by a NYPD police officer within 4. PETS when property is brought into NYPD's possession subject to an arrest or otherwise. Property invoices are maintained in PETS.
- 5. A Return to Owner "RTO cash-payment voucher" is a form document created by a NYPD police officer within PETS when currency is returned to an authorized person. RTO cash-payment vouchers are maintained in PETS.
- A "property return receipt" is a form document created by a NYPD police officer 6. within PETS when property is returned to an authorized person. Property return receipts are maintained in PETS.
- "Production Invoices" shall refer to the property invoices, associated RTO cash-7. payment vouchers, and related property return receipts maintained in PETS (i) that were created by NYPD and its officers between July 1, 2016 and June 30, 2017 and (ii) for which the property invoices are tagged with the following successive property types in the property type fields in PETS:

	Fields	Tagged Descriptions
(i)	Property Type 1:	Currency:
	Then Property Type 2:	USC Bill
(ii)	Property Type 1:	Vehicle/Boat:
	Then Property Type 2:	Vehicle:

NEW YORK COUNTY CLERK NYSCEF DOC. NO. 91 RECEIVED NYSCEF: 05/30/2018 Vehicle Then Property Type 3: General Property: (iii) Property Type 1: Electronic: Then Property Type 2: Cell Phone Then Property Type 3: **Production Terms** NYPD shall produce the Production Invoices to The Bronx Defenders' counsel as 8.

II.

- PDFs. The PDFs will be text searchable.
- In an effort to preserve the confidentiality of the individuals identified on the 9.
- Production Invoices, the following fields will be withheld on the Production Invoices that the

NYPD shall produce:

- ADA Name
- ADA Phone Additional Description
 - Aided/Accident No.(s) Alarm No.
 - Approved by: Rank, Name, Signature Arresting Officer: Rank, Name
 - Cert of Inspection Ser. No. Check No.
 - Check # Complainant: Name, Address, Phone No.
 - Complaint No.
 - CSU/ECT Run No.

Lia Diata State

- CSU/ECT Processing: Rank, Name
- Department Tow Operator
- Det Sqd. Case No.
- Det. Squad Supervisor: Rank, Name
- Entered by: Rank, Name
- Finder: Name, Address, Phone No. Inspection Details: Inspection performed by
- Investigating Officer: Rank, Name Invoicing Officer: Rank, Name, Signature Lic. Plate No.

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- Lien Holder owner: Name, Address, Phone No.
- Location Veh/Boat Obtained
- OCME, EU No.
- OCME FB No.
- Owner: Name, Address, Phone No.
- Owner Notified By: Rank, Name,
- Police Lab Evid. Crtl. No.
- Prisoner(s): Name, D.O.B., Address, Arrest No./Summons No., NYSID No.
- Property Returned to Owner: Name, Address, Phone No., Signature
- Registered Owner: Name, Address, Phone No.
- Related Comp. No.(s)
- Related Invoices
- Remarks
- Returning Officer: Name, Rank, Signature
- State
- Title Owner: Name, Address, Phone No.
- Truck No.

11.

- Updated Approved by: Rank, Name, Signature
- Veh.Ident. No.
- Vehicle Taken From: name, Address, Phone No.
- NYPD will produce the Production Invoices on or before May 11, 2018. 10.
- Protection of Information Contained in the Production Invoices All Production Invoices will be produced with the footer "Confidential - Subject to Confidentiality Agreement." The Production Invoices shall be considered confidential and shall not be reproduced, made public, or otherwise provided to anyone outside of The Bronx Defenders' offices other than experts and consultants retained by The Bronx Defenders who agree to treat the Production Invoices confidentially as described herein. The Bronx Defenders shall not use the Production Invoices for any purpose other than (a) in the normal course of its business in the representation of its clients; and (b) to gather data that can be derived from the Production Invoices. The Bronx Defenders is permitted to publish, share, or otherwise make public data derived from the Production Invoices as well as the methodology used to derive such data and the categories of information relied upon from the Production Invoices. Any such data published, shared, or

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otherwise made public by The Bronx Defenders that is derived from the Production Invoices shall exclude any personally identifying information, and such data must not be able to be used to derive any individual's personally identifying information without that individual's written consent.

- 12. Nothing in this stipulation shall be construed to limit NYPD's use of the Production Invoices in the ordinary course of its business.
 - 13. Clawback Provision
 - a. If NYPD identifies personally identifying information in any of the Production Invoices that have been produced to The Bronx Defenders, NYPD may notify The Bronx Defenders that a Production Invoice was produced with personally identifying information. Within ten (10) days following receipt of written notice from NYPD that a Production Invoice was produced with personally identifying information, The Bronx Defenders shall either return to NYPD or destroy all copies thereof and The Bronx Defenders shall not use the Production Invoice produced with personally identifying information until further order of the Court. The Bronx Defenders shall also attempt, in good faith, to retrieve and return or destroy all copies of the Production Invoice with personally identifying information in any format. If The Bronx Defenders destroys the Production Invoice containing personally identifying information, The Bronx Defenders shall provide written notice (by email or letter) to NYPD that such Production Invoice was destroyed within ten (10) days following receipt of written notice from NYPD that the Production Invoice was produced with personally identifying information

YORK COUNTY CLERK 05/30FX20018¹⁵15¹²212¹²1215AM NEW NYSCEF DOC. NO. 91 RECEIVED NYSCEF: 05/30/2018 b. Unless there is a dispute between the parties regarding the designation of the Production Invoice (see paragraph 13(c)), NYPD will re-produce such Production Invoice with appropriate redactions to all personally identifying information within twenty (20) days of initially sending The Bronx Defenders notice that the Production Invoice contains personally identifying information. The Bronx Defenders may contest NYPD's designation of a Production Invoice as containing personally identifying information within five (5) days of initial receipt of the notice from NYPD that the Production Invoice contains personally identifying information. To contest the designation, The Bronx Defenders shall give NYPD written notice of the disagreement within five (5) days of initial receipt of the notice from NYPD that the Production Invoice contains personally identifying information. The parties will meet and confer within ten (10) days of the initial receipt of the notice from NYPD that the Production Invoice contains personally identifying information. If the parties are unable to resolve the matter, The Bronx Defenders must, within twenty (20) days of initial receipt of the notice from NYPD that the Production

Invoice contains personally identifying information seek an order from the

Court compelling the production of the material.

14. NYPD's production of the Production Invoices is made pursuant to this agreement. Nothing in this agreement shall be construed as an admission by the parties that the

Production Invoices are being produced pursuant to New York's Freedom of Information Law.

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III. Settlement

- 15. The parties agree that the terms of this stipulation and order shall be binding upon the parties.
- 16. The above-referenced proceeding is hereby dismissed, with prejudice, and without costs, expenses, or fees in excess of the amount specified in paragraph 18.
- 17. NYPD agrees to produce the Production Invoices to The Bronx Defenders, pursuant to the terms set forth above in paragraphs 8-14, in full satisfaction of all of the claims asserted in this proceeding. In consideration for the production of the Production Invoices, pursuant to the terms set forth above in paragraphs 8-14, and the payment of the fees and expenses agreed upon in paragraph 18, The Bronx Defenders agrees to the dismissal of all claims with prejudice against Respondents, the City, their successors or assigns, and all present or former officials, employees, representatives, or agents of Respondents or of the City from any and all liability, claims, and/or rights of action, arising from any and all claims The Bronx Defenders asserted in the Verified Petition in this Special Proceeding, dated August 4, 2016, including fees, costs, and expenses.
- 18. The City of New York shall pay Petitioner attorneys \$97,000.00 in full satisfaction of all claims that were or could have been raised for costs, expenses, and attorneys' fees. Payment shall be made by a single check payable to The Bronx Defenders and delivered to Johanna Steinberg, General Counsel, The Bronx Defenders, 360 East 161st Street, Bronx, NY 10451. Counsel for Petitioner shall be responsible for making an appropriate division of these fees amongst themselves.
- 19. Petitioner shall execute and deliver to Respondents' undersigned attorney a Release based on the terms of paragraphs "17" and "18" above, along with an executed substitute

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W-9 form for The Bronx Defenders. All payments of the amounts described in paragraph "18" above are conditioned upon delivery of these documents to Respondents' undersigned attorney.

- 20. Nothing contained herein shall be deemed to be an admission by Respondents that they have in any manner or way violated The Bronx Defenders' rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules, or regulations of the United States, the State of New York, the City, or the NYPD, or any other rule, regulation, or bylaw of any department or subdivision of the City or the NYPD.
- 21. Nothing contained herein shall be deemed to constitute a policy or practice of the City or the NYPD.
- 22. This stipulation shall not be admissible in, nor is it related to, any other litigation, proceeding, or settlement negotiation, except as necessary to enforce its terms.
- 23. This stipulation contains all of the terms and conditions agreed upon by the parties, and no oral agreement entered into at any time, nor any written agreement entered into prior to the execution of this stipulation, regarding the subject matter of the instant proceeding shall be deemed to exist, to bind the parties, or to vary the terms and conditions contained herein. The terms of this stipulation may only be modified by a written agreement signed by the parties or upon an order of the Court.
- 24. The parties further agree that this stipulation may be executed in counterparts, and that a facsimile or photocopied signature shall be deemed valid for all purposes.

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This agreement is binding upon the parties upon the date it is fully executed but shall not be filed with the Court until the terms of production set forth in paragraphs 7-8 of this

Dated: May

Adam Shoop

stipulation have been fulfilled.

Niji Jain Johanna B. Steinberg 360 East 161st Street

Bronx, New York 10451 Tel: (718) 838-7839 adams@bronxdefenders.org nijij@bronxdefenders.org

johannas@bronxdefenders.org Counsel for Petitioner

DAVIS WRIGHT TREMAINE LLP

1251 Avenue of the Americas, 21st floor New York, New York 10020 Tel: (212) 489-8230 Counsel for Petitioner

So Ordered:

5-8-18 ZACHARY W. CARTER

Corporation Counsel of the City of New York By: Neil Giovanatti Senior Counsel 100 Church Street, Room 2-168 New York, New York 10007

Tel: (212) 356-0886 ngiovana@law.nyc.gov

Counsel for Respondents

HON. ARLENE P. BLUTH Justice of the Supreme Court

HON. ARIENE P. BLUTH