

**PLAN FOR CERTAIN § 1983 CASES AGAINST POLICE DEPARTMENTS
IN WESTCHESTER, ROCKLAND, PUTNAM, ORANGE,
DUTCHESS OR SULLIVAN COUNTIES.**

Unless otherwise ordered, in civil cases in the White Plains Courthouse filed by a represented plaintiff alleging the use of excessive force, false arrest, or malicious prosecution by police employees (“defendants”) in violation of 42 U.S.C. § 1983, the procedures set forth below shall apply, except that the procedures and Protective Order identified in paragraphs 3 through 12 shall not apply to class actions, actions brought by six or more plaintiffs, complaints requesting systemic equitable reform, or actions requesting immediate injunctive relief.

1. Service of Releases with Complaint

- a. At the same time that plaintiff serves the complaint, plaintiff must serve on the defendants the release annexed as Exhibit A (“§ 160.50 Release”) for sealed arrest records for the arrest that is the subject of the complaint, and for a list of all prior arrests. A separate release is required for each municipality identified in the complaint. In the case of class actions, plaintiff must serve § 160.50 Releases for the named putative class representatives.
- b. If plaintiff seeks compensation for any physical or mental injury caused by the conduct alleged in the complaint other than “garden variety” emotional distress, plaintiff must serve on the defendants the medical release annexed as Exhibit B (“Medical Release”) for all medical and psychological treatment records for those injuries at the same time that plaintiff serves the § 160.50 Release. Where plaintiff has a pre-existing physical or mental condition that reasonably appears to be related to the injury for which compensation is sought, plaintiff must at that same time serve Medical Releases on the defendants for all records of treatment for such pre-existing condition(s). Failure to so serve the above-described Medical Release(s) will constitute a waiver of plaintiff’s claims for compensation for that physical or mental injury.

2. Failure to Serve § 160.50 Release

If no § 160.50 Release is served on the defendants with the complaint, the defendants will promptly send a letter to plaintiff’s counsel requesting the § 160.50 Release and attaching a copy of this Plan.

3. Time to Answer

If the § 160.50 Release is served on the defendants at the time the complaint is first served, that defendant will have 80 days from the date of such service to answer the complaint. Any subsequently-served defendant will have the greater of (i) 60 days or (ii) the date by which the first-served defendant must answer, to answer the complaint. If the § 160.50 Release is served on the defendants after the complaint is first served, each defendant will have the greater

of (i) 60 days from the date the § 160.50 Release is served, or (ii) 60 days after that defendant is served, to answer the complaint. If any defendant moves to dismiss the entire complaint rather than filing an answer, the deadlines in this Rule shall be stayed unless the Court orders otherwise.

4. Rule 26(f) Conference, Initial Disclosures, and Applying for Exemption from the Plan

- a. Within 14 days after the first defendant files its answer, the parties shall meet and confer pursuant to Fed. R. Civ. P. 26(f). The parties shall also discuss whether to request that the court (i) refer the case for settlement purposes to a magistrate judge; or (ii) exempt the case from this Plan. Any such application by a party must be submitted to the presiding judge no later than 21 days after the first defendant files its answer. Absent any such application from a party, the case shall automatically proceed under the Plan and shall automatically be referred to a mediator selected from the Southern District Mediation Panel.
- b. Within 21 days after the first defendant files its answer, the parties shall exchange their initial disclosures.

5. Limited Discovery

Within 28 days after the first defendant files its answer, the parties must complete production of the following discovery. All other discovery is stayed. Unless otherwise ordered, the discovery stay shall expire at the conclusion of the mediation or settlement conference.

- a. The defendants shall serve on plaintiff:
 - i. Subject to any applicable privileges, any items on the list attached as Exhibit C that were not part of the defendants' initial disclosures; documents received from a District Attorney's office or a court.
 - ii. Any records or reports regarding the incident that forms the basis of the complaint. If the incident or the conduct of defendants involved in the incident is the subject of an ongoing investigation, internal police department investigation or disciplinary proceeding, criminal investigation or outstanding indictment or information, discovery under this paragraph shall be suspended, and the defendants will produce the investigative records 30 days after the investigation or proceeding has been terminated (whether by completion of the investigation without charges being brought or by disposition of such charges). This suspension shall not apply to documents related to any investigation or proceeding that has concluded.
 - iii. For each defendant, any records of complaints or incidents that are similar to the incident alleged in the complaint or that raise questions about the defendant's credibility. If the complaint alleges that a defendant officer used excessive force, the defendant will state whether that defendant officer has

been or is subject to any corrective action related to use of force.

- iv. For each officer named as a defendant, a list identifying all prior Section 1983 lawsuits filed against and served on the defendant.
- v. Any records obtained by the defendants pursuant to the Medical Releases and, within 7 days of receipt, any records obtained thereafter.
- vi. Transcripts or other information generated pursuant to hearings under General Municipal Law §50-h.

b. Plaintiff shall serve on the Defendants:

- i. Any documents identified in Exhibit C; documents received from a District Attorney's office or court; and documents obtained from the court file.
- ii. Any medical records for which plaintiff has served a Medical Release on the defendants.
- iii. Any video and photographs of the incident.

6. Amended Pleadings

The complaint may be amended to name additional defendants without leave of the presiding judge within six weeks after the first defendant files its answer. The filing of the amended complaint shall not affect any of the duties imposed by this plan.

7. Settlement Demand and Offer

Within six weeks after the first defendant files its answer, plaintiff must serve a written settlement demand. The defendants must respond in writing to plaintiff's demand within 14 days thereafter. The parties shall thereafter engage in settlement negotiations.

8. Mediation or Settlement Conference

Unless the presiding judge has referred the case to a magistrate judge to conduct a settlement conference, within 14 days after the first defendant files its answer, the Mediation Office will assign a mediator. The mediator shall promptly confer with counsel for the parties to schedule a mediation session to occur no later than 14 weeks after the first defendant files its answer. The mediator shall inform the Mediation Office no later than 60 days after the first defendant files its answer of the schedule for the mediation session. Unless the parties have filed a Stipulation of Dismissal with the Clerk of Court, the parties shall appear at the mediation session or at a settlement conference before a magistrate judge. The plaintiff shall attend the mediation or settlement conference. The defendants' representative must have full authority to settle the case; if the defendant requires additional approvals in order to settle, the defendant must have arranged for telephone access to such persons during the mediation or settlement conference. If any

defendant is insured, a fully authorized representative of the defendant's insurance company must attend where the decision to settle and/or the amount of settlement must be approved by the insurance company. Once mediation has concluded the Mediation Office will docket a docket a final report informing the presiding judge. In matters where the parties reach full agreement at mediation the report will recommend that the judge issue a 30-day order. To the extent, however, that parties need additional time for final approval of the settlement, they may request that the Mediation Office modify the final report accordingly.

9. Failure to Timely Comply with the Requirements of this Rule

If any party fails to comply with any requirement under this Rule, the other party shall promptly write to the presiding judge indicating the nature of the failure and requesting relief.

10. Request for Initial Pre-Trial Conference

Unless the presiding judge has already scheduled or held an initial pre-trial conference, if the mediation or settlement conference is unsuccessful, the parties shall promptly request that the presiding judge schedule an initial pre-trial conference.

11. Protective Order

The Protective Order attached as Exhibit D shall be deemed to have been issued in all cases governed by this Rule.

12. Preservation

This plan does not relieve any party of its obligation to preserve documents and to issue preservation instructions.

Dated: October 3, 2016

EXHIBIT A

§ 160.50 Release

**DESIGNATION OF AGENT FOR ACCESS TO SEALED
RECORDS PURSUANT TO NYCPL 160.50[1][d]**

I, _____, Date of Birth ____/____/____, SS# _____, pursuant to NYCPL § 160.50[1][d], hereby designate _____, or an authorized representative, as my agent to whom records of the criminal action terminated in my favor entitled People of the State of New York v. _____, Docket No. or Indictment No. _____, in _____ Court, County of _____, State of New York, relating to my arrest on or about _____, may be made available for use in Civil Action _____, _____ (S.D.N.Y.).

I understand that until now the aforesaid records have been sealed pursuant to CPL § 160.50, which permits those records to be made available only (1) to persons designated by me, or (2) to certain other parties specifically designated in that statute.

I further understand that the person designated by me above as a person to whom the records may be made available is not bound by the statutory sealing requirements of CPL § 160.50.

The records to be made available to the person designated above comprise all records and papers relating to my arrest and prosecution in the criminal action identified herein on file with any court, police agency, prosecutor's office or state or local agency that were ordered to be sealed under the provisions of CPL § 160.50.

I further authorize the release of a list from the applicable municipal, county or State police entities that identifies all my prior arrests by date of arrest, charge(s) and disposition, including all sealed arrests.

SIGNATURE

STATE OF NEW YORK)
 : SS.:
COUNTY OF)

On this _____ day of _____, 201_, before me personally came _____, to me known and known to me to be the individual described in and who executed the foregoing instrument, and ___ acknowledged to me that ___ executed the same.

NOTARY PUBLIC

EXHIBIT B

Medical Releases

UNITED STATES DISTRICT COURT
DISTRICT OF NEW YORK

-----X

,

Plaintiff,

**AUTHORIZATION TO
DISCLOSE MEDICAL
INFORMATION**

-against-

___ Civ. ___ () ()

Defendants.

-----X

TO: _____
NAME AND ADDRESS OF MEDICAL PROVIDER

I authorize the use and disclosure of _____ health information as described below.

YOU ARE HEREBY AUTHORIZED to furnish to _____, attorney for the defendants in the above-captioned case, or to his authorized representative, a certified copy of the entire medical or hospital record of _____ (Date of Birth: _____; SS #: _____) who was examined or treated in your hospital or by you on or about _____.

The medical record authorized for release includes any and all x-rays of said person and any and all diagnostic tests, studies, or reports of examinations relating to such person.

I understand that the information in my health record may include information relating to sexually transmitted disease, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV). It may also include information about behavioral or mental health services, and treatment for alcohol, and drug abuse. I only authorize the release of such information to the extent that I have initialed below:

Sexually transmitted diseases _____

AIDS/HIV _____

Behavioral or mental health service _____

Treatment for alcohol and drug abuse _____

**AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION PURSUANT TO HIPAA**

[This form has been approved by the New York State Department of Health]

Patient Name	Date of Birth	Social Security Number
Patient Address		

I, or my authorized representative, request that health information regarding my care and treatment be released as set forth on this form:

In accordance with New York State Law and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), I understand that:

1. This authorization may include disclosure of information relating to **ALCOHOL and DRUG ABUSE, MENTAL HEALTH TREATMENT**, except psychotherapy notes, and **CONFIDENTIAL HIV* RELATED INFORMATION** only if I place my initials on the appropriate line in Item 9(a). In the event the health information described below includes any of these types of information, and I initial the line on the box in Item 9(a), I specifically authorize release of such information to the person(s) indicated in Item 8.
2. If I am authorizing the release of HIV-related, alcohol or drug treatment, or mental health treatment information, the recipient is prohibited from redisclosing such information without my authorization unless permitted to do so under federal or state law. I understand that I have the right to request a list of people who may receive or use my HIV-related information without authorization. If I experience discrimination because of the release or disclosure of HIV-related information, I may contact the New York State Division of Human Rights at (212) 480-2493 or the New York City Commission of Human Rights at (212) 306-7450. These agencies are responsible for protecting my rights.
3. I have the right to revoke this authorization at any time by writing to the health care provider listed below. I understand that I may revoke this authorization except to the extent that action has already been taken based on this authorization.
4. I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.
5. Information disclosed under this authorization might be redisclosed by the recipient (except as noted above in Item 2), and this redisclosure may no longer be protected by federal or state law.
6. **THIS AUTHORIZATION DOES NOT AUTHORIZE YOU TO DISCUSS MY HEALTH INFORMATION OR MEDICAL CARE WITH ANYONE OTHER THAN THE ATTORNEY OR GOVERNMENTAL AGENCY SPECIFIED IN ITEM 9 (b).**

7. Name and address of health provider or entity to release this information:	
8. Name and address of person(s) or category of person to whom this information will be sent:	
9(a). Specific information to be released:	
<input type="checkbox"/> Medical Record from (insert date) _____ to (insert date) _____	
<input type="checkbox"/> Entire Medical Record, including patient histories, office notes (except psychotherapy notes), test results, radiology studies, films, referrals, consults, billing records, insurance records, and records sent to you by other health care providers.	
<input type="checkbox"/> Other: _____ Include: (Indicate by Initialing)	
_____ Alcohol/Drug Treatment	
_____ Mental Health Information	
_____ HIV-Related Information	
Authorization to Discuss Health Information	
(b) <input type="checkbox"/> By initialing here _____ I authorize _____	
Initials	Name of individual health care provider
to discuss my health information with my attorney, or a governmental agency, listed here:	

(Attorney/Firm Name or Governmental Agency Name)	
10. Reason for release of information:	11. Date or event on which this authorization will expire:
<input type="checkbox"/> At request of individual <input type="checkbox"/> Other: _____	
12. If not the patient, name of person signing form:	13. Authority to sign on behalf of patient:

All items on this form have been completed and my questions about this form have been answered. In addition, I have been provided a copy of the form.

Signature of patient or representative authorized by law.

Date: _____

* Human Immunodeficiency Virus that causes AIDS. The New York State Public Health Law protects information which reasonably could identify someone as having HIV symptoms or infection and information regarding a person's contacts.

Instructions for the Use
of the HIPAA-compliant Authorization Form to
Release Health Information Needed for Litigation

This form is a product of a collaborative process between New York State Office of Court Administration, representatives of the medical provider community in New York, and the bench and bar, designed to produce a standard official form that complies with the privacy requirements of the federal Health Insurance Portability and Accountability Act (“HIPAA”) and its implementing regulations, to be used to authorize the release of health information needed for litigation in New York State courts. It can, however, be used more broadly than this and be used before litigation has been commenced, or whenever counsel would find it useful.

The goal was to produce a standard HIPAA-compliant official form to obviate the current disputes which often take place as to whether health information requests made in the course of litigation meet the requirements of the HIPAA Privacy Rule. It should be noted, though, that the form is optional. This form may be filled out on line and downloaded to be signed by hand, or downloaded and filled out entirely on paper.

When filling out Item 11, which requests the date or event when the authorization will expire, the person filling out the form may designate an event such as “at the conclusion of my court case” or provide a specific date amount of time, such as “3 years from this date”.

If a patient seeks to authorize the release of his or her entire medical record, but only from a certain date, the first two boxes in section 9(a) should both be checked, and the relevant date inserted on the first line containing the first box.

EXHIBIT C
Police Department Disclosures

POLICE DEPARTMENT DISCLOSURES

Pursuant to this plan, the defendant police departments employing the officers whose actions form the basis of these claims shall provide to plaintiff(s) the following items. If any such items are maintained under other titles or in forms other than described below the police department will make every effort to produce the intended material.

- 1) Complaint reports
- 2) Use of Force reports
- 3) Defendant officer's memobook entries or daily activity report
- 4) 911 report, including any recordings (if available)
- 5) Radio run reports (audio and written) (if available)
- 6) Any video and photographs of the incident
- 7) Stop and frisk reports (e.g., UF250) (if accessible in database)
- 8) Aided reports (or any line-of-duty injury reports)
- 9) Property vouchers
- 10) Evidence vouchers
- 11) Arrest report
- 12) Mugshot (if available)
- 13) Reports of medical treatment for plaintiff while in custody
- 14) Desk Appearance Tickets (for arrests after January 2009) or other tickets
- 15) Summons (if in possession of defendants)
- 16) Handwritten On Line Booking System form (if in possession of defendants)

EXHIBIT D

Protective Order

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

IN RE Plan for Certain 1983 Cases

PROTECTIVE ORDER

----- X

WHEREAS, on October 3, 2016 the Court will institute this Plan for certain 1983 Cases; and

WHEREAS, parties in actions governed by this Plan will be required to produce certain documents and information that they may deem to be confidential or otherwise inappropriate for public disclosure; and

WHEREAS, the parties seek to ensure that the confidentiality of these documents and information remains protected; and

WHEREAS, good cause therefore exists for the entry of an order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure;

THE COURT HEREBY ORDERS THAT:

1. As used herein, "Action" shall mean any action that is governed by this Plan.

2. "Confidential Materials" shall mean (a) Police Department personnel and disciplinary-related records, and records of investigations regarding the conduct of Members of the Service of the police departments conducted by the police departments or other agencies, (b) plaintiff's medical records, (c) lists from the Police Departments that identify plaintiff's prior arrests by date of arrest, charge(s) and

disposition, including all sealed arrests, and (d) other documents and information that may in good faith, during the pendency of this litigation, be designated “Confidential Material” by the parties or the Court, except that such documents and information shall not be designated “Confidential Materials” to the extent that they relate to the incident(s) underlying the Complaint in the action, are obtained by the parties by subpoena or pursuant to the New York Freedom of Information Law (“FOIL”), or are otherwise publicly available.

3. As used herein, “Producing Party” shall mean the party requesting that a particular document or the information contained therein be deemed confidential, and “Receiving Party” shall mean any party who is not the “Producing Party,” as defined herein, for that document or information.

4. A Receiving Party and that party’s attorneys shall not use Confidential Materials produced in discovery in the Action for any purpose other than the evaluation, preparation, presentation or settlement of claims or defenses in the Action.

5. Attorneys for a Receiving Party shall not disclose the Confidential Materials to any person other than a party, an attorney of record for that party, or any member of the staff of that attorney’s office, except under the following conditions:

- a. Disclosure may be made for the purpose of preparing or presenting a party’s claims or defenses in the Action.
- b. Disclosure may also be made to an expert or consultant who has been retained or specially employed by a party’s attorneys in anticipation of litigation or preparation for trial of the Action, to a witness at a deposition or in preparation for testimony at a deposition or trial, or to the Court.
- c. Defendants’ attorneys may also disclose the Confidential Materials to the Police Department, the

Comptroller's Office, and any applicable legislative bodies or insurer, solely in connection with the defense or settlement of this Action.

- d. Before any disclosure is made to a person listed in subparagraph (b) above (other than to the Court or to a witness at a deposition), the Receiving Party's attorney shall provide each such person with a copy of this Protective Order, and such person shall consent in writing, in the form annexed hereto as Exhibit A, not to use the Confidential Materials for any purpose other than in connection with the prosecution, defense, or settlement of the Action and not to make further disclosure of the Confidential Materials, except in testimony taken in the Action. The attorneys for a Receiving Party making such disclosure shall retain the signed consent and furnish a copy to the Producing Party's attorney upon request at a deposition or immediately before trial, although the name of an expert that the Receiving Party does not intend to call as a trial witness may be redacted from such a consent before it is produced.
- e. Disclosure of medical records deemed "Confidential" under this Protective Order may also be made to any individual who provided the treatment described in the records or to a member of the staff of the hospital, doctor's office, or medical provider where the treatment was rendered.

6. The Producing Party or its counsel may designate deposition exhibits or portions of deposition transcripts as Confidential either by: (a) indicating on the record during the deposition that a question relates to Confidential Materials, in which event the reporter will bind the transcript of the designated testimony in a separate volume and mark it as "Confidential Information Governed by Protective Order;" or (b) notifying the reporter and all counsel of record, in writing, within 30 days after a deposition has concluded, of the specific pages and lines of the transcript that are to be designated "Confidential," in which event all counsel receiving the transcript will be

responsible for marking the copies of the designated transcript in their possession or under their control as directed by the Producing Party or that party's counsel.

7. If a Receiving Party objects to the designation of any Confidential Materials as confidential, he or she shall state such objection in writing to counsel for the Producing Party, and counsel shall in good faith attempt to resolve such conflict. If the conflict cannot be resolved among counsel, the objecting party shall, within 45 days of the initial objection, request the Court to remove the designation. Any such materials or information shall be treated as Confidential until the parties resolve the conflict or the Court issues its ruling regarding the conflict.

8. Any party seeking to file papers with the Court that incorporate Confidential Materials or reveal the contents thereof shall first make an application to the Court for permission to file under seal the specific portions of those papers disclosing Confidential Materials and shall indicate whether any other party objects to that request. No materials shall be filed under seal unless the Court has issued an order approving the filing, in which event the filing shall follow the District Court rules applicable to filing under seal.

9. Nothing in this Protective Order shall be construed to limit a Producing Party's use of its own Confidential Materials in any manner, or to limit the use of Confidential Materials or their contents to the extent that they are publicly available or have been provided to a party through other lawful means, such as a FOIL request.

10. This Protective Order will survive the termination of the litigation and will continue to be binding upon all persons to whom Confidential Materials are

produced or disclosed. All documents or information that have been deemed confidential pursuant to this order, including all copies and non-conforming copies thereof, shall remain confidential for all time. Once the Action has been resolved, including all appeals, the Confidential Materials, including all copies and non-conforming copies thereof, shall not be used by the Receiving Party for any purpose without prior Court approval.

11. The Court will retain jurisdiction over all persons subject to this Protective Order to the extent necessary to enforce any obligations arising hereunder or to impose sanctions for any contempt thereof. Additionally, the Court reserves the right, in its sole discretion, to modify this Protective Order at any time.

SO ORDERED:



Colleen McMahon
Chief United States District Judge

Dated: *27 August*, 2016
New York, New York

EXHIBIT A

The undersigned hereby acknowledges that (s)he has read the Protective Order issued in all cases that are governed by Local Civil Rule 83.10 , which includes the action entitled X v.Y, et. al., ## CV ##### (____) (____), and understands the terms thereof. The undersigned agrees not to use the Confidential Materials defined therein for any purpose other than as permitted by the Protective Order, and will not further disclose the Confidential Materials except in testimony taken in this case.

Date

Signature

Print Name