

NEW YORK STATE SUPREME COURT
QUEENS COUNTY

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CORRECTION OFFICERS' BENEVOLENT
ASSOCIATION, INC., CORRECTION CAPTAINS'
ASSOCIATION, and ASSISTANT DEPUTY
WARDENS/DEPUTY WARDENS ASSOCIATION

SUMMONS

Plaintiff,

Index No. /20
Date Purchased: April 23, 2020

- against -

CITY OF NEW YORK,

Plaintiff designates Queens County
as the place of trial.

Defendant.

Venue is based on NY CPLR §
504(3).

-----X
TO THE FOLLOWING DEFENDANT:

THE CITY OF NEW YORK
Corporation Counsel of
the City of New York
100 Church Street
New York, NY 10013

YOU ARE HEREBY SUMMONED to answer the Verified Complaint in this action and to serve a copy of your answer on the plaintiff's attorneys within 20 days after the service of this Summons, exclusive of the day of service, or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Verified Complaint.

Dated: April 23, 2020
New York, NY

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Notice: The nature of this action is based upon a violation of Constitutional and Common Law prohibitions on government infringement on Plaintiffs' union members bodily integrity.

The relief sought is (1) a declaration that the City's practice of requiring Correction Officers work in excess of double tours of duty violates the common law and constitutional rights to bodily integrity; (2) a declaration that the City's failure to require Uniformed Staff to have negative findings on a COVID-19 medical test as a condition of returning to active duty violates the common law and constitutional rights to bodily integrity; (3) an order that the Defendant cease and desist from so assigning Uniformed Staff; (4) attorneys' fees and costs, and (5) any other relief as this Court deems just and proper.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

CORRECTION OFFICERS' BENEVOLENT
ASSOCIATION, INC., CORRECTION
CAPTAINS' ASSOCIATION, and ASSISTANT
DEPUTY WARDENS/DEPUTY WARDENS
ASSOCIATION

VERIFIED COMPLAINT

Plaintiffs,

Index No.

- against -

CITY OF NEW YORK,

Defendant.

The CORRECTION OFFICERS BENEVOLENT ASSOCIATION, INC. ("COBA"), CORRECTION CAPTAINS' ASSOCIATION ("CCA") and the ASSISTANT DEPUTY WARDENS/DEPUTY WARDENS ASSOCIATION ("ADW/DWA") (collectively, "Plaintiffs"), by their respective attorneys, Koehler & Isaacs LLP, Pitta, LLP, and Certilman Balin Adler & Hyman, LLP, complaining of the CITY OF NEW YORK ("City" or "Defendant"), respectfully alleges the truth of the following except as to those allegations made on information and belief, and as to those believe them to be true:

INTRODUCTION

1. This civil action is brought to protect the approximately 10,000 Correction Officers ("COs"), Correction Captains, ("Captains"), Assistant Deputy Wardens ("ADWs"), and Deputy Wardens ("DWs") (collectively ("Uniformed Staff") for the New York City Department of Correction ("DOC") from the wholly irresponsible conduct of the City with respect to the novel Coronavirus ("COVID-19") pandemic. Working as Uniformed Staff in the DOC is a dangerous job. They understand when they accept the position that there is a world of foreseeable dangers

such as inmate assault and the risks that are posed by an inherently physical position. But, the danger of employer neglect in the face of a health crisis is simply not on an employee's thought horizon in accepting a position with the DOC. During the health crisis, moreover, the Uniformed Staff, as essential employees, are forced to keep working until government authorities with conflicting motives and agendas finally deign to take their health and safety into account. This action addresses two areas where the City's action and inaction have affirmatively placed Uniformed Staff in such a heightened state of the threat of illness so as to, in essence, order them to get sick, infect their loved ones and run the risk of death.

2. This action challenges one act and one omission by the City. The act is the requirement that Correction Officers work extended hours during the health crisis, including, but not limited to, the requirement that they work triple shifts, a solid twenty-four hours at work without sleep or significant rest. This act, COBA alleges, violates the common law and constitutional protection for the officer's bodily integrity. The challenged omission is the failure to require COVID-19 testing and a negative finding on such test as a condition of Uniformed Staff resuming active duty following a positive finding. This omission exponentially heightens the exposure of healthy or recovered to known positive Uniformed Staff without any assurance that they staff members are truly recovered and virus free. This omission also violates the bodily integrity of officers in violation of constitutional and common law precepts.

JURISDICTION

3. Jurisdiction in this action is proper pursuant to New York Civil Practice Law and Rules ("CPLR") § 301.

VENUE

4. The venue of this action is proper pursuant to CPLR § 504(3) as this action is brought in the City of New York.

PARTIES

5. Since this Complaint is verified, for the sake of brevity, the following factual allegations are sworn to by Plaintiffs and therefore this Complaint is also an affidavit as indicated in the Verification which is attached hereto.

6. COBA is an incorporated labor union for, and the certified bargaining representative of, almost 9,000 uniformed COs who are employed by the DOC.

7. CCA is an incorporated labor union for, and the certified bargaining representative of, almost 900 uniformed Captains who are employed by the DOC.

8. ADW/DWA is an incorporated labor union for, and the certified bargaining representative of, almost 200 uniformed ADWs and DWs who are employed by the DOC.

9. The City is a municipal corporation duly organized and doing business under the laws of the State of New York.

FACTS

10. There is now a worldwide pandemic caused by COVID-19. On March 11, 2020, the World Health Organization rang the alarm bell loud and clear calling for all countries “to activate and scale up [their] emergency response mechanisms.” Since then, States of Emergency have been declared in both New York and the federal government. Other states have enacted the same protocols. Gatherings of more than just a few people are now banned, and non-essential business are shuttered. All schools in New York are closed. Travel is now restricted, and the daily business and social lives of Americans fundamentally altered.

11. The COVID-19 pandemic presents an unreasonably hazardous work environment and imminent threat to the Uniformed Staff working at the DOC's facilities, both on Riker's Island and in borough jails, so much so that the Mayor of the City recently released hundreds of inmates. The dangers of exposure to COVID-19 in particular in a jail setting is evident. Maintaining care, custody, and control of inmates requires a level of closed, crowded, and intimate space that creates a uniquely vulnerable work environment. Many people flow in and out of the jails and even if certain screening questions are put in place, a visitor could be a carrier but asymptomatic. Thus pre-screening and current protocols cannot completely identify and stop the threat posed. Consequently, DOC facilities are a breeding ground for COVID-19 and the risk of exposure is an absolute certainty.

12. Recognizing the extremely high and unique risks jails and prisons present, Governor Andrew Cuomo recently cancelled person-to-person inmate visits in the State correctional system. Defendant did the same, as have other jails, like those in Nassau, Westchester, Dutchess, Putnam, and Ulster Counties. This was all done to curtail gatherings and exposure, and safeguard lives.

13. According to the Centers for Disease Control ("CDC"), as many as 25% of people infected with COVID-19 may not show symptoms. "This helps explain how rapidly this virus continues to spread across the country," the director, Dr. Robert Redfield stated. <https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-transmission.html> (last visited April 15, 2020).

14. Thus, whether one is symptomatic, or not, COVID-19 will spread rapidly. Indeed, since the onset of the deadly COVID-19 pandemic, 587 staff member and 323 inmates have been

infected in the City jails with the disease tragically felling nine staff members and at least one inmate.

15. Despite the clear risks to staff, as late as April 3, 2020, the City had not with any regularity provided masks of any sort to Uniformed Staff.

16. The situation became so dire that COBA was compelled to, and did secure about 25,000 N95 masks from a supplier to provide to COs.

17. Likewise, Defendant had not with any regularity sanitized Uniformed Staff's workplaces. Nor had they provided them with personal use hand sanitizers.

18. The conditions in the DOC were so grave that on April 3, 2020, Queens Supreme Court Justice Pamela B. Jackman Brown issued a temporary restraining order requiring the City to distribute masks, to conduct enhanced sanitizing of facilities and to perform enhanced medical testing on officers. COBA v. City, Index No. 701499/2020, NYSCEF Doc. No. 15. This action settled after the City made certain commitments to sanitizing, hand sanitizer, and masks. Also contained in the settlement was the commitment by the City to obtain a provider to establish a large number of medical testing facilities in and around New York City where officers may be evaluated and tested for COVID-19.

19. The City's original policy for providing masks was to provide them only to employees sick with the virus or caring for someone with the virus. This was consistent with general CDC guidelines and did not take into account the unique circumstances of a jail, much less a jail in the largest city in the nation, which had become the epicenter of the COVID-19 pandemic in the United States. Indeed, the City should have relied on the specific CDC guidance for all types of correctional facilities including "local jails," such as Rikers, in which it recommended that jail administrators "[e]nsure that sufficient stocks of hygiene supplies, *cleaning supplies, PPE ... are*

on hand and available, and have a plan in place to restock as needed if COVID-19 transmission occurs within the facility.” See <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (emphasis supplied). Later the City provided N95 masks to officers in housing areas where diagnosed or symptomatic inmates were housed and to officers responsible for transporting symptomatic inmates. The City did not provide wider distribution of masks because CDC and the City’s Department of Health and Mental Hygiene (“DOHMH”) guidelines did not call for such distribution to healthy employees not in contact with inmates known to be symptomatic. Those local guidelines, again, failed to take into account the unique situation in DOC facilities and as affirmatively addressed by the specific federal recommendations.

20. Similarly, cleaning protocols adopted by the City for DOC facilities mirrored CDC and the DOHMH requirements, requirements generally in effect and not taking into account the particular circumstances in DOC facilities.

21. The City has not made hand sanitizer universally available. It did not do so because hand sanitizer was deemed to be secondary precaution after soap and water hand washing in guidance received by the City and DOC. Again, the guidance did not address jails, generally, nor DOC facilities in particular.

22. As essential employees for whom telecommuting is unrealistic, the DOC has instructed that symptomatic Uniformed Staff must stay at home. See Teletype HQ-1049, annexed hereto as Exhibit A, at Section III(3). Mere exposure to ill employees, however, does not excuse Uniformed Staff from work. *Id.*, at Section III(4). If symptomatic, the officer is expected to provide medical documentation of the symptoms and diagnosis after which further instructions are provided by the DOC’s Health Management Division (“HMD”). Those instructions “may

include not reporting for work for seven days after the symptoms started or for three days after the fever has stopped, whichever is longer not exceeding two work weeks.” *Id.*, at Section III(5) and IV(2). The officer may also be granted up to two weeks’ leave in the event of a government or health care provider quarantine order. *Id.*, at Section IV(3). The policy in which these rules are contained provide no instructions and, certainly, no requirement of return to work testing for symptomatic and diagnosed employees after either of leaves set forth above. The return to duty is solely at HMD’s discretion. HMD doctors, notably, are not treating physicians, yet, have the authority to order Uniformed Staff to return to duty from illness or injury even where such order conflicts with the recommendation of treating physicians. Further, the seven days since symptoms/three days without fever rule is straight from the CDC *general* recommendations for all employees outside health care and, again, not taking into account jails, generally, nor DOC facilities in particular. *See* <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html>.

23 Consistent with its ill-advised practices with respect to masks, hand sanitizer and facility cleanliness, in adopting these rules, the City put into place the absolute *minimum* protection¹ recommended by the CDC, DOHMH and under the recently enacted New York State Paid Sick Leave Law. Additionally, the City utterly failed to take into account the fact that DOC was operating jails, operating under a unique DOC specific environment instead adopting rules applicable to run of the mill workplaces or jails and prisons, generally.

24. Specifically, the New York State Paid Sick Leave Law provides benefits, generally, for private and public sector employees. *See* Exhibit B, annexed hereto. Under section 1(d) of that law, the City must provide at least 14 days of paid leave if the employee is subject to a

¹ The wording of the Teletype *caps* leave at fourteen days rather than creating a fourteen-day *minimum*. Thus, the Teletype seems to not even provide for the minimum leave under the recently enacted state law discussed below.

mandatory or precautionary order of quarantine/isolation issued by the state, Department of Health, local Board of Health or any authorized governmental entity. Id.

25. According to the New York State’s guidance on COVID-19 quarantine or isolation,

“Status for Required Mandatory Isolation – Person has tested positive for COVID-19, whether or not displaying symptoms for COVID-19. [The Local Health Department must immediately issue an order for Mandatory Quarantine or Isolation once notified, which shall be served on the person impacted.]”

Exhibit C.

26. Thus, once a person has tested positive for COVID-19, state law requires that the local health department must isolate that person. Reading that guidance along with the New York State Paid Sick Leave Law, an employee, that is, *any* employee of *any* employer covered by the law, who tests positive must be isolated for at least 14 days. Consequently, in issuing a policy granting Uniformed Staff 14 days leave when exhibiting COVID-19 symptoms or pursuant to a quarantine order, the DOC has only provided for minimum, generally applicable leave availability.

27. It is into this cesspool of illness and this environment of managerial minimalism that the City has mandated COs for an abusive level of mandatory overtime including requiring them to three consecutive tours of duty in excess of eight hours each. The risks of working such triple tours are manifold including the heightened risk of contracting communicable diseases such as COVID-19.

28. It is simple logic to conclude that triple tours of duty increase sleep deprivation. Basic restfulness requires seven to eight hours of sleep during each twenty-four hour cycle. *See* <https://www.correctionsone.com/officer-safety/articles/mandatory-overtime-and-partial-chronic->

[sleep-deprivationpart-1-apZHCJhDY3KHrWdQ/](#). Insufficient sleep negatively impacts brain function and both mental and physical health. Examples include:

1. **Cognitive impairments:** including a decline in alertness, attention, concentration, reaction time, reasoning and problem solving, and working memory, possibly resulting in errors, declined productivity and accidents.
2. **Mood disturbances:** irritability, poor tolerance of frustration, anxiety, depression; and
3. **Physical symptoms and disease:** increased inflammation (associated with obesity, diabetes, high blood pressure, irregular heartbeat, stroke, cardiovascular disease, some cancers, elevated mortality risk); low energy; Alzheimer-like neuron changes.

Id.

29. The CDC and the National Institute of Occupational Safety and Health (“NIOSH”) have determined that overtime and extended work shifts have a direct correlation with deteriorating physical and mental health of workers. DHHS (NIOSH) Publication No. 2004-143. This included a decrease in overall physical health and increase in illness of all sorts including “sick building syndrome” of particular concern in the close confines of a jail. Id., at pp. 27-29.

30. In fact, the effects of sleep deprivation closely mirror the effects of alcohol. Specifically, studies show that for *each additional night* of insufficient sleep:

- Risk for depressed mood was increased by 21%;
- Risk for hopelessness and anger was increased by 24%;
- Risk for anxiety and desire to self-harm was increased by 25%;
- Risk of functional problems was increased by 28%;
- Risk for thoughts of suicide was increased by 28%

See <https://www.correctionsone.com/officer-safety/articles/mandatory-overtime-and-partial-chronic-sleep-deprivationpart-2-ClktmKZPAjYpLx03/>.

31. The Occupational Safety and Health Administration (“OSHA”) has issued specific warnings about the consequences of “worker fatigue” noting that “worker fatigue increases the risk for illness and injury” and noting:

Long work hours and extended and irregular shifts may lead to fatigue and to physical and mental stress. Working extended shifts may also involve prolonged exposure to potential health hazards such as noise, chemicals, and others. These exposures could exceed established permissible exposure limits (PELs) or violate other health standards.

Fatigue can cause weariness, sleepiness, irritability, reduced alertness, impaired decision making, and lack of motivation, concentration and memory. Studies have shown that fatigue is linked to health problems such as:

- Heart disease
- Stomach and digestive problems
- Musculoskeletal disorders
- Reproductive problems
- Depression
- Some cancers (breast and prostate)
- Sleep disorders
- Poor eating habits/obesity
- Worsening of existing chronic diseases such as diabetes and epilepsy

See <https://www.osha.gov/SLTC/workerfatigue/hazards.html>. Similarly, as noted by the National Institute of Justice:

Sleep deprivation is dangerous. Researchers have shown that being awake for 19 hours produces impairments that are comparable to having a blood alcohol concentration (BAC) of .05 percent. Being awake for 24 hours is comparable to having a BAC of roughly .10 percent. This means that in just five hours — the difference between going without sleep for 19 hours versus 24 hours — the impact essentially doubles. (It should be noted that, in all 50 states and the District of Columbia, it is a crime to drive with a BAC of .08 or above.)

See <https://www.ncjrs.gov/pdffiles1/nij/225762.pdf>

32. Sleep deprivation has a direct impact on the immune system and the body's ability to prevent and recover from infection. As one study explained:

[S]leep ... affects the innate and adaptive arm of our body's defense system ... Enhancement of sleep during an infection is

assumed to feedback to the immune system to promote host defense. Indeed, sleep affects various immune parameters, *is associated with a reduced infection risk*, and can improve infection outcome and vaccination responses.

See <https://journals.physiology.org/doi/full/10.1152/physrev.00010.2018> (emphasis added).

Thus the inability to sleep for a solid day as is the case with triple shifts is a direct invitation to infection and disease. In the age of COVID-19, triple shifts may be a death sentence.

33. Notably, the federal government, although relaxing restrictions on motor carriers and drivers by long distance under the Federal Motor Carrier Safety Regulations, 49 CFR, parts 390 through 399, as a result of the current health crisis, still requires, upon request, motor carriers to grant drivers ten consecutive off duty hours. Clearly, even in a crisis, rest is an essential bodily need and the federal government, if not the City, has recognized this reality. See <https://www.fmcsa.dot.gov/emergency/emergency-declaration-under-49-cfr-ss-39023-no-2020-002>.

34. The requirement of triple tours of duty is particularly galling as the DOC has a cadre of COs, believed to be in the hundreds, who are placed on modified duty and restricted from direct inmate contact. These COs, many with many years of experience, have disciplinary charges or an investigation pending but proof of disciplinary infractions has not yet been presented to any judicial or quasi-judicial disciplinary body. The charges for many of these COs are not directly related to their ability to provide effective care, custody, and control of inmates. In this crisis, therefore, it would be logical for the DOC to relax its restrictions on these COs being prevented from active inmate contact and their being deployed to relieve COs being assigned to triple shifts. Yet, the DOC, it is believed, has not considered this option, opting instead to jeopardize the health and lives of COs through excessive overwork.

AS AND FOR A FIRST CAUSE OF ACTION
(Bodily Integrity Under the NYS Constitution – Forced Triple Tours of Duty)²

35. Plaintiff repeats and re-alleges as if stated in full herein the allegations contained in paragraphs “1” through “34” above.

36. Article 1, Section 6 of the New York State Constitution recognizes that “No person shall be deprived of life, liberty or property without due process of law.” This liberty interest guarantees certain inalienable rights including the right to bodily integrity. That is the right to be secure in one’s person and be free from damage to one’s person or from unwanted bodily intrusions.

37. Constitutional limits on governmental interference with individual liberty have long included protection of the fundamental right to bodily integrity. Rivers v. Katz, 67 N.Y.2d 485, 492 (1986); Bezio v. Dorsey, 21 N.Y.3d 93, 119 (2013); Washington v. Glucksberg, 521 U.S. 702, 720 (1997); Vacco v. Quill, 521 U.S. 793, 807 (1997). Courts have recognized that decisions about what may or may not be done to one's body are “central to personal dignity and autonomy” and so are subject to heightened scrutiny. Planned Parenthood v. Casey, 505 U.S. 833, 851 (1992); Cruzan v. Director, Mo. Dept. of Health, 497 U.S. 261, 278 (1990).

38. Although it has not defined the outer limit of this right, the Court of Appeals “has repeatedly construed the State Constitution’s Due Process Clause to provide *greater* protection than its federal counterpart as construed by the Supreme Court.” People v. LaValle, 3 N.Y.3d

² It must be noted at this time that the First Cause of Action and the Third Cause of Action, which both address the assigning and working of inordinate and unhealthy amounts of overtime, are currently only being pursued by the COBA. However, the CCA and ADW/DWA reserve their respective right to supplement the foregoing and to raise such claims, as well as any other causes of action, in conformance with CPLR § 3025, in the event the DOC requires members of the CCA and ADW/DWA to perform “triples,” as it has in the past, or makes further unconstitutional demands on Uniformed Staff.

88, 127 (2004); *see also* People v. Scott, 79 N.Y.2d 474, 496 (1992); Myers v. Schneiderman, 30 N.Y.3d 1, 20–21 (2017). As “the notion of bodily integrity ... has been clearly recognized as protected by both state and federal constitutions” this willingness to provide greater protection means there is no obstacle to applying that right in this context Matter of St. Luke’s–Roosevelt Hosp. Cntr., 159 Misc.2d 932, 937 (1993) *citing* Rivers, *supra*; In re: Zhuo, 53 Misc. 3d 1121, 1127–28 (N.Y. Sur. 2016).

39. The DOC’s policy, custom, and practice is to force correction officers to work multiple, consecutive overtime shifts in DOC facilities. This practice has been rampant since the onset of the deadly COVID-19 pandemic which has taken root in DOC facilities, infected at least 587 staff members, and tragically felled 9 staff members.

40. Despite the ramifications of this pandemic and the dangers it presents in a jail setting, the DOC has, with callous disregard to the welfare of COs, routinely forced them to work three or more consecutive overtime shifts without adequate rest in between. This means COs are working at minimum 24 hours straight, if not more.

41. Forcing COs to work triple shifts adversely impacts their health and creates a risk of substantial bodily harm and, especially during the ongoing COVID-19 pandemic, risk of possible death. Forcing triple shifts on COs is not narrowly tailored to the governmental goal of staffing jails in light of available alternatives, including deploying COs on modified duty whose basis for modification is not inmate care related.

42. As result, DOC’s triple overtime practice violates COs’ constitutional right to preserve their bodily integrity.

AS AND FOR A SECOND CAUSE OF ACTION
**(Bodily Integrity Under the NYS Constitution – Failure to
require return to work COVID-19 testing)**

43. Plaintiff repeats and re-alleges as if stated in full herein the allegations contained in paragraphs “1” through “42” above.

42. The City’s failure to require return to work COVID-19 testing with a negative finding for the virus as a condition of returning to active duty for Uniformed Staff previously diagnosed with that illness exposes Uniformed Staff to an unacceptable risk of infection or reinfection and a concurrent exponential increase of the risk of illness or death. In adopting solely those policies that echo guidance for other locations and failing to address the specific needs of DOC facilities, the City has failed to narrowly tailor its means of meeting its governmental purpose of keeping jails operational. Return to duty testing, moreover, does not burden the City at all in light of its recent commitment to make facilities available for Uniformed Staff COVID-19 evaluation and testing.

45. As noted above, the government cannot, consistent with due process, act in a manner which violates a person’s bodily integrity. In exposing Uniformed Staff to this heightened risk of illness or death the City has violated Uniformed Staff’s constitutional right to be free from government interference with their bodily integrity.

AS AND FOR A THIRD CAUSE OF ACTION
(Bodily Integrity Under NYS Common Law - Forced Triple Tours of Duty)

46. Plaintiff repeats and re-alleges as if stated in full herein the allegations contained in paragraphs “1” through “45” above.

47. New York state common law recognizes the right of an individual to control his or her own body. In re Zhuo, 53 Misc. 3d 1121, 1127–28 (N.Y. Sur. 2016).

48. State courts have echoed the Supreme Court’s dictates recognizing that “No right is held more sacred or is more carefully guarded by the common law than the right of every individual to the possession and control of his own person, free from all restraint or interference of others

unless by clear and unquestionable authority of law.” Saunders v. State, 129 Misc. 2d 45, 50, 492 N.Y.S.2d 510, 514 (Sup. Ct. 1985) *quoting* Union Pac. Ry. Co. v. Botsford, 141 U.S. 250, 251 (1891).

49. Indeed, the Court of Appeals has also recognized that every individual “of adult years and sound mind has a right to determine what shall be done with his own body.” Rivers v. Katz, 67 N.Y.2d 485, 492 (1986).

50. Although this recognition was made in the context of cases debating an individual’s right to make medical decisions, these long standing, well established principles are applicable here and especially in light of the deadly COVID-19 pandemic where decisions one makes regarding his or her own health are crucial and can mean the difference between life and death.

51. DOC’s policy, custom and practice of forcing COs to work multiple, consecutive overtime shifts without adequate rest in between is an egregious violation of these common law principles.

52. Routinely forcing COs to work three or more consecutive overtime shifts adversely impacts and interferes with the sanctity of COs’ health which is already compromised given the fact that COVID-19 is currently permeating DOC facilities with nearly 600 staff member infections and at nine deaths. Forcing triple shifts on COs is not narrowly tailored to the governmental goal of staffing jails in light of available alternatives, including deploying COs on modified duty whose basis for modification is not inmate care related.

53. The City’s triple overtime policy deprives COs of their fundamental right to make decisions regarding their health and determine what shall be done with his or her own body. This policy exposes COs to substantial bodily harm and, especially during the ongoing COVID-

19 pandemic, risk of possible death as COs will now be made more vulnerable or susceptible to the disease without adequate rest in between shifts.

54. Accordingly, DOC has violated COs' common law right to control their bodies as well as their right to make decisions regarding their health.

AS AND FOR A FOURTH CAUSE OF ACTION
**(Bodily Integrity Under the NYS Common Law – Failure to
require return to work COVID-19 testing)**

55. Plaintiff repeats and re-alleges as if stated in full herein the allegations contained in paragraphs "1" through "54" above.

56. The City's failure to require return to work COVID-19 testing with a negative finding for the virus as a condition of returning to active duty for employees previously diagnosed with that illness exposes Uniformed Staff to an unacceptable risk of infection or reinfection and a concurrent exponential increase of the risk of illness or death. In adopting solely those policies that echo guidance for other locations and failing to address the specific needs of DOC facilities, the City has failed to narrowly tailor its means of meeting its governmental purpose of keeping jails operational. Return to duty testing, moreover, does not burden the City at all in light of its recent commitment to make facilities available for Uniformed Staff COVID-19 evaluation and testing.

57. As noted above, the government cannot, consistent state common law precepts, act in a manner which violates a person's bodily integrity. In exposing Uniformed Staff to this heightened risk of illness or death the City has violated Uniformed Staff's constitutional right to be free from government interference with their bodily integrity.

56. No previous applications have been made to any Court or Judge for the relief sought herein.

WHEREFORE, plaintiff respectfully requests that this Court issue:

- (1) a declaration that the City's practice of requiring Correction Officers work in excess of double tours of duty violates the common law and constitutional rights to bodily integrity; and
- (2) a declaration that the City's failure to require Uniformed Staff to have negative findings on a COVID-19 medical test as a condition of returning to active duty violates the common law and constitutional rights to bodily integrity;
- (3) an order that the Defendant cease and desist from so assigning Uniformed Staff;
- (3) attorneys' fees and costs; and
- (4) any other relief as this Court deems just and proper.

Dated: April 23, 2020
New York, NY

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By: _____/s/
Paul S. Linzer, Esq.
Stephen Mc Quade, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

CORRECTION OFFICERS' BENEVOLENT
ASSOCIATION, INC., CORRECTION
CAPTAINS' ASSOCIATION, and ASSISTANT
DEPUTY WARDENS/DEPUTY
WARDENS ASSOCIATION

**PLAINTIFF COBA
VERIFICATION**

Plaintiffs,

Index No.

- against -

CITY OF NEW YORK,

Defendant.

Howard Wien, being duly sworn, deposes and says:

that he is an attorney in the above captioned civil action with offices located at 61 Broadway – 25th Floor, New York, New York 10006; that he has read the foregoing complaint and knows the contents thereof; that the same is true to his knowledge, except as to the matters stated to be alleged upon information and belief, and that as to those matters he believes them to be true; that the reason this verification is made by deponent instead of Plaintiff is because counsel for Plaintiff COBA is not within the County of New York, which is the County where deponent has his office. Deponent further says that the grounds for his belief as to all matters in the Complaint not stated to be upon his knowledge are based on conversations with Plaintiff, and a review of the documentary evidence and other correspondence between the parties, and other writings relevant to this action.

/s/

Howard Wien

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

CORRECTION OFFICERS' BENEVOLENT
ASSOCIATION, INC., CORRECTION
CAPTAINS' ASSOCIATION, and ASSISTANT
DEPUTY WARDENS/DEPUTY
WARDENS ASSOCIATION

**PLAINTIFF CCA
VERIFICATION**

Plaintiffs,

Index No.

- against -

CITY OF NEW YORK,

Defendant.

Bruce Cooper, being duly sworn, deposes and says:

that he is an attorney in the above captioned civil action with offices located at 120 Broadway – 28th Floor, New York, New York 10271; that he has read the foregoing complaint and knows the contents thereof; that the same is true to his knowledge, except as to the matters stated to be alleged upon information and belief, and that as to those matters he believes them to be true; that the reason this verification is made by deponent instead of Plaintiff is because counsel for Plaintiff CCA is not within the County of New York, which is the County where deponent has his office. Deponent further says that the grounds for his belief as to all matters in the Complaint not stated to be upon his knowledge are based on conversations with Plaintiff, and a review of the documentary evidence and other correspondence between the parties, and other writings relevant to this action.

/s/

Bruce Cooper

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

CORRECTION OFFICERS' BENEVOLENT
ASSOCIATION, INC., CORRECTION
CAPTAINS' ASSOCIATION, and ASSISTANT
DEPUTY WARDENS/DEPUTY
WARDENS ASSOCIATION

**PLAINTIFF ADW/DWA
VERIFICATION**

Plaintiffs,

Index No.

- against -

CITY OF NEW YORK,

Defendant.

Stephen Mc Quade, being duly sworn, deposes and says:

that he is an attorney in the above captioned civil action with offices located at 90 Merrick Avenue, 9th Floor, East Meadow, New York 11554; that he has read the foregoing complaint and knows the contents thereof; that the same is true to his knowledge, except as to the matters stated to be alleged upon information and belief, and that as to those matters he believes them to be true; that the reason this verification is made by deponent instead of Plaintiff is because counsel for Plaintiff ADW/DWA is not within the County of New York, which is the County where deponent has his office. Deponent further says that the grounds for his belief as to all matters in the Complaint not stated to be upon his knowledge are based on conversations with Plaintiff, and a review of the documentary evidence and other correspondence between the parties, and other writings relevant to this action.

/s/

Stephen Mc Quade