

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PEOPLE OF THE STATE OF NEW YORK,
by ELIOT SPITZER, ATTORNEY GENERAL
OF THE STATE OF NEW YORK,

Plaintiffs,

01-Civ-_____

--against--

THE TOWN OF WALLKILL,

COMPLAINT
& JURY DEMAND

Defendant.

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The People of the State of New York, by and through their attorney, Eliot Spitzer, Attorney General of the State of New York, as and for their complaint, allege, upon information and belief, as follows:

PRELIMINARY STATEMENT

1. The police department in the Town of Walkill poses a serious and continuing danger to both the citizens of Walkill and to all other New Yorkers who travel through the jurisdiction. This danger is not only to these New Yorkers' constitutional right to be free of unreasonable searches and seizures, but, increasingly, to their right to be free of physical menace and harm at the hands of certain officers of the Walkill Police Department. Therefore, Plaintiffs, the People of the State of New York, by the Attorney General of the State of New York, bring this action to seek redress against the Town of Walkill ("Defendant"), including injunctive relief sufficient to safeguard the rights and safety of all New Yorkers.

2. Defendant maintains a police force of untrained and unsupervised men and women armed with guns and the authority of police officers. In recent years, certain members of the Wallkill Police Department have systematically abused their authority by stopping women drivers for the purpose of soliciting dates, by pulling over motorists simply for sport, by engaging in a host of additional illegalities, large and small – and by retaliating against those who have tried to bring these and other police-related problems to light. Such illegal activity is a direct result of Defendant's repeated failure to take steps to create a responsible, professionally managed force and to punish such behavior.
3. As demonstrated below, Defendant has violated numerous federal and state laws. To begin, Defendant has knowingly permitted sworn police officers employed by Defendant to stop or arrest female motorists for non-law enforcement purposes, including explicitly or implicitly soliciting dates and/or sexual favors in violation of their Fourth and Fourteenth Amendment rights under the United States Constitution and New York State law.
4. Further, Defendant has knowingly permitted sworn law officers employed by Defendant to harass and intimidate those citizens who have publicly criticized the Wallkill Police Department, including by subjecting those citizens to physically menacing situations and to traffic stops without reasonable, articulable suspicion, in violation of their First and Fourth Amendment rights under the United States Constitution and New York State law.
5. Defendant has knowingly tolerated this conduct by its agents and employees through its failure to supervise and monitor those employees, its failure to

investigate allegations of misconduct, and its failure to discipline officers who are guilty of misconduct. Indeed, Defendant has attempted to orchestrate a cover-up of these illegal activities.

6. Finally, Defendant, acting directly through the Walkkill Town Board, has retaliated against citizens of Walkkill, including members of the Town of Walkkill Police Commission, because of those citizens' speech, in violation of both the First Amendment to the United States Constitution and New York State law.
7. This action is being brought to protect both citizens of the State of New York who are or will be driving on roads (or otherwise will be within a jurisdiction) patrolled by the Walkkill Police Department as well as residents of Walkkill who have spoken out, or in the future will speak out, on subjects of public concern, including the proper running of the Walkkill Police Department.
8. Plaintiffs' federal claims arise under the First, Fourth, and Fourteenth Amendments to the United States Constitution as well as 42 U.S.C. §§1983 and 1988. Plaintiffs' New York State claims arise under the New York State Constitution, New York State G.B.L. §§ 70 et seq. and New York Civil Service Law § 75-b.

JURISDICTION AND VENUE

9. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 & 1343 and 42 U.S.C. § 1983 for claims brought under the United States Constitution and 28 U.S.C. § 1367 for Plaintiffs' state law claims.
10. Venue lies in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

11. Plaintiffs, the People of the State of New York, are represented by their chief legal officer, Eliot Spitzer, Attorney General of the State of New York. Where, as here, the interests and well being of the people of the State of New York as a whole are implicated, the Attorney General possesses *parens patriae* authority to commence legal actions in federal court for violations of federal and state laws.
12. The State of New York has a quasi-sovereign interest in upholding the rule of law and ensuring that local police agencies operate within the bounds of the law and do not violate the constitutional rights of the citizens they are sworn to protect.
13. *Parens patriae* authority authorizes the Attorney General to protect residents of the State of New York who currently drive, or will drive, on roads patrolled by the Wallkill Police and thus are at risk of being illegally stopped and/or harassed; *parens patriae* authority further authorizes the Attorney General to protect residents of Wallkill who have spoken out, or will speak out, on issues of public concern and are at risk of being harassed or retaliated against by Defendant for their speech. Some of these persons -- who comprise a significant number of citizens of the State of New York -- will be unable to vindicate their rights absent action by the Attorney General, and will, collectively, suffer irreparable harm. While individual motorists may seek to vindicate their rights after they have been stopped, harassed, and/or retaliated against, such post-hoc vindication is not a sufficient remedy for the constitutional violations that have occurred and that, upon information and belief, will continue to occur in the future. Additionally, some motorists are either unaware of the legal remedies available to them or are unable to secure representation to enforce their legal rights. For these reasons

and more, complete relief cannot be obtained by the People of the State of New York through a private lawsuit by individual plaintiffs.

14. Defendant Town of Walkill is a municipality located within Orange County in the State of New York. Its primary office is located at 600 Route 211 East, P.O. Box 398, Middletown, New York 10940. It is governed by a five-member Town Board, composed of the Town Supervisor, Thomas Nosworthy, and four councilpersons, Joan Wolfe, David Furlin, James McCarey, and Eric Valentin.

FACTUAL ALLEGATIONS

A. A Pattern and Practice of Car Stops Violative of First, Fourth, and Fourteenth Amendments

15. The Fourth Amendment of the United States Constitution prohibits police officers from detaining civilians without a reasonable, articulable suspicion that a crime or violation has occurred, or from using excessive force in the course of policing activities. Additionally, the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution prohibits police officers from targeting individuals for stops on the basis of gender.
16. Members of the Walkill Police Department have engaged in a pattern and practice of improperly stopping cars without reasonable suspicion that a crime or violation has occurred and/or arresting motorists without probable cause to believe that a crime has occurred. Instead, these stops and/or arrests have been effected for impermissible, non-law enforcement purposes, including, but

not limited to, explicitly or implicitly soliciting dates and/or sexual favors in violation of the Fourth and Fourteenth Amendments to the United States Constitution and New York State law and harassing persons who have taken actions or positions not favored by members of the Wallkill Police Department.

17. This unconstitutional conduct is a direct and proximate result of Defendant's policies, practices and/or customs. These policies, practices and/or customs include (a) the failure to adequately and properly supervise, monitor and discipline Wallkill police officers, (b) the failure to investigate allegations of misconduct, and (c) the sanctioning, ratification and failure to rectify the officers' unconstitutional practices.

**1. Stops and/or Arrests of Females without
Reasonable Suspicion and/or Probable Cause**

18. Female motorists have been targeted by members of the Wallkill Police Department. In violation of these women's rights to equal protection of the law as well as freedom from unreasonable search and seizure, members of the Wallkill Police Department have engaged in a pattern of traffic stops and other improper actions that seek women as their victims for a variety of reasons, including explicitly or implicitly soliciting dates and/or sexual favors in violation of the Fourth and Fourteenth Amendments to the United States Constitution and New York State law.
19. Examples of this conduct by Wallkill Police Department officers include:
 - Stopping women drivers, without reasonable, articulable suspicion "just to see who they are and what they look like" as one Town official described

it. The officers further subjected some of these women to sexually predatory conduct including: soliciting the women for dates and offering to drop falsified charges in return; handing the women baseball cards with the officer's picture and biography on them; suggesting that women drivers from out-of-town might be more comfortable staying the night in a nearby motel; and shining flashlights at the women's breasts.

- Harassing still other women at their places of employment, including one officer, while in uniform, repeatedly grabbing a 16-year-old female around the waist and hips and making sexually suggestive comments.
- Stopping women motorists at a much greater rate than men and targeting certain women motorists for repeated, suspicionless stops, often multiple times in a single week.

20. The following are detailed examples of the above-described unconstitutional behavior. These examples are not unique, but are provided for illustrative purposes.

21. In spring of this past year, a 23-year-old female ("W-1")¹, alone in her car, was stopped by a member of the Wallkill Police Department, allegedly for "driving while intoxicated," or "DWI." In fact, she was not intoxicated. A videotape of the stop demonstrates that W-1 passed the field sobriety test. Under appropriate police procedure, absent further evidence, passing the field sobriety test would entitle her to return to her car and drive away. In this instance, however, the

¹ To protect their identity, "W-__" has been used herein to denote various witnesses who have been victims of the illegal activities of the Wallkill Police Department.

Wallkill officer, who was patrolling in his car alone, took W-1 into custody and drove her back to the station house.

22. While at the station house, the arresting officer confronted W-1 with a series of questions and comments, including “Do you have a boyfriend?,” “If you saw me at a bar, would you talk to me? If I saw you, I’d buy you a soda,” and finally, “These are the bars I hang out in.” W-1 rebuffed these advances and, having been charged with DWI, was released.
23. The next week, the solicitations continued and became more explicit. At that time, the same officer approached W-1 at a local bar and offered to get her DWI charge dismissed. He explained that if he was pulled over for DWI, he would not be charged: “That’s the advantage of being a cop, or dating one.” He then told her that he would call her at home to talk further. Ultimately, a judge dismissed the DWI charges.
24. By stopping and arresting W-1 without reasonable suspicion or probable cause after she passed the field sobriety test, the police officer violated her Fourth Amendment and State Constitutional right to be free of unreasonable search and seizure. His suggestion that she could get her DWI arrest dismissed if she agreed to go on a date, violates W-1’s right to equal protection of the laws.
25. In other instances, young women have been stopped without reasonable, articulable suspicion by members of the Wallkill Police Department driving a vehicle known, within the Department, as the “stealth car.” The front of this car bears no decal or signifier that would identify it as a Town of Wallkill police car.
26. For example, in the summer of 1999, the “stealth car” began closely following an

- 18-year-old woman (“W-2”) driving alone on her way to her parents’ home from her job at the local movie theater. Although the officer in the “stealth car” would later claim that she was speeding, in fact, the car had a faulty catalytic converter and could not go faster than 40 m.p.h.
27. W-2, driving at 2 a.m. on a dark road not well traveled, saw a car with flashing headlights behind her; not seeing any police marks on the car, she became afraid for her safety and continued driving.
 28. W-2 pulled into her driveway and used the car’s horn to alert her parents to come out of the house. The “stealth car” followed her into the driveway, whereupon the officer exited from his car, directed his spotlight on her, ordered her out of her car with her hands on her head, pushed the barrel of his firearm into her back, and rear handcuffed her.
 29. W-2’s mother came out of the house and, in an attempt to comfort her daughter, began to walk towards the young woman, who was crying. The officer then pointed his weapon at the mother and stated “get the fuck back!” He then ordered W-2 into his squad car. During the course of these events, two other Wallkill Police Department vehicles pulled in front of the house as well as two patrol cars from the nearby town of Crawford. One officer asked the Wallkill officer with the weapon drawn, “You’re not really going to arrest her are you?”
 30. In fact, W-2 was arrested and taken by the Wallkill officer to the Wallkill station house, where she spent two and a half hours before being released on \$500 bail.
 31. The officer issued W-2 summonses for various offenses, including speeding.

However, as noted above, the vehicle W-2 was operating had a faulty catalytic converter preventing it from accelerating.

32. The arrest, the use of deadly force, and two and a half hours of detention, amounted to an unreasonable search and seizure, violative of the Fourth Amendment and the New York State Constitution.
33. In another example of constitutionally inappropriate behavior, in fall 2000, a Wallkill officer pulled over a woman ("W-3") driving home from her job. Prior to this vehicular stop, W-3 had, over the course of a two-year period, been followed by a different Wallkill police officer who, at the time, had been working for a neighboring police department. At locations frequented by W-3, the same officer would appear unannounced. On one occasion, the officer recounted to her each item she had purchased at the grocery store on the previous day. Based on the frequency of these chance "meetings," W-3 believed that the officer was intentionally following her. These occurrences made her feel frightened and unsafe.
34. On the day that she was stopped by a Wallkill officer in fall 2000, instead of informing the woman as to why he stopped her, the officer questioned her as to her destination. W-3 responded that she had just finished work and was going home. The officer continued to ask questions of a personal nature rather than questions directed towards any potential traffic infraction. He then asked suggestively "What do you have at home?" W-3 responded that she had a bathroom there and wanted to use it. The officer, thus rebuffed, allowed her to go on her way without ever stating any basis for the stop.

35. The stop, without any justification, violated W-3's Fourth Amendment and State Constitutional right to be free of unreasonable search and seizures and her right to equal protection under the law.
36. The harassment of women was not limited exclusively to motorists. Women were also harassed -- and in certain instances sexually touched -- at their places of employment as well. In one instance, an officer while in uniform made a practice, over a four-month period, of visiting a local food establishment and sexually touching several 16-year-old females employed there ("Ws-4&5"). This touching included standing right behind W-4 as she bent over to clean tables and grabbing her around the waist and hips. The officer would also make sexually suggestive comments about what W-4 would look like without her shirt on.
37. In one instance, this same officer followed W-5 to another establishment, sat next to her and put his hand on her thigh.
38. The women were frightened by the officer's actions and repeatedly asked him to stop. Ultimately, several of the women would hide in the back of the store whenever this officer entered the premises.
39. Upon information and belief, one 16-year-old female's parents complained to the Police Department about this officer's behavior but no action was ever taken.
40. This sexual touching violated Ws-4&5's Equal Protection rights under the Fourteenth Amendment to the United States Constitution and the New York State Constitution.
41. In another incident, W-6, a 20 year old female, was arrested on a charge of petit larceny by a male Wallkill police officer. The officer took W-6 back to the police

station and placed her in a holding cell. Having thus placed W-6 in a secure location, the officer nevertheless then ordered W-6 to pull down her pants so that he could check to see if she was concealing any merchandise. W-6, who was in custody and had been told she was under arrest, complied with this order.

Before releasing W-6, the same officer then informed her that if she would call him the next day, he would try to help her get the criminal charges against her reduced.

42. W-6 did call the officer the next day and he instructed her to meet him not at the police station but at the parking lot of a local dining establishment. When W-6 arrived, the officer asked her a series of questions about her boyfriend and about her own sexual history, including asking her whether she had ever been molested, or touched, or made to do things she did not want to do. At this point, W-6 left the parking lot. However, several days later, in the evening, the officer in question arrived at W-6's home and began shining a police light into her front yard. When a neighbor came out to see what was going on, the officer left.
43. By interrogating W-6 about her past sexual history, despite the fact that such inquiry was not relevant to the charges against her, that officer violated W-6's right to be free of unreasonable searches and subjected her to unequal protection of the law in violation of W-6's rights under the Fourth and Fourteenth Amendments to the United States Constitution and the New York State Constitution.

2. Wallkill Officers Have Abused Their Power in Effecting Other Impermissible Stops

44. In other instances, Wallkill police officers have used the power of their badges to pull over motorists -- men and women alike -- not for any lawful purpose, but, instead, to retaliate against them for actions taken that individual officers have not liked -- in essence, to "settle a score." Like the stops of young women described above, these stops violate the Fourth Amendment rights of motorists traveling on roads policed by Defendant, as well as the First Amendment rights of these citizens where the stops were intended to retaliate against news gathering and reporting.
45. For example, a local bar owner ("W-7") was targeted by Wallkill police officers after he disciplined and then fired the girlfriend of one member of the Wallkill Police Department.
46. Subsequently, the police officer, using a marked Town of Wallkill police vehicle, followed the bar owner home, out of the Wallkill jurisdiction and, in violation of the Fourth Amendment, stopped him just a block from his home without reasonable, articulable suspicion that a crime or violation had occurred. Indeed, when officers from the Middletown Police, in whose jurisdiction the stop occurred, arrived on the scene at the behest of the Wallkill police officer, they declined to charge the bar owner with any crime or violation.
47. This was not the first incident of harassment experienced by W-7. Six months earlier -- after W-7 had first disciplined the officer's girlfriend -- the same police officer stopped W-7 and issued a ticket for running a stop sign, despite the fact that there was no stop sign in between where W-7 exited and where the officer's car was sitting. When W-7 appeared in court to contest the ticket, the officer

threatened him, stating “I could walk into your tavern at any time and take your liquor license off the wall.”

48. By stopping W-7 for non-law enforcement reasons, and without reasonable, articulable suspicion that a crime or violation had occurred, the officer involved violated the bar owner’s Fourth Amendment and New York State Constitutional right to be free of unreasonable search and seizures.
49. Another example occurred in 1999 a local newspaper, the Times Herald Record, published a series of articles over a three-month period asserting that members of the Walkkill Police Department were double-billing various towns while on duty. These articles listed names of officers and angered certain Walkkill police officers.
50. Shortly after the articles appeared, in retaliation for the newspaper’s publication of the stories, Walkkill police officers stopped and issued tickets to eight Times Herald Record drivers, during November 1999. One Walkkill police officer stopped seven Times Herald Record trucks on their normal routes in the span of one evening. Moreover, several of the tickets were issued less than 250 yards from the Times Herald Record plant by a police car waiting just outside the plant parking lot. Upon information and belief, all of the tickets issued by Walkkill officers were dismissed by a judge.
51. The road on which the trucks were driving is little traveled and used primarily for its access to the Times Herald Record plant. There would be, therefore, no law enforcement reason for intensive commercial vehicle enforcement on the road, nor had any such intensive enforcement ever occurred previously. Given these

facts, and given the fact that all of the tickets were ultimately dismissed, the only explanation for this mass ticketing of trucks is an attempt to retaliate against the Times Herald Record for publishing the articles and to intimidate the newspaper, or anyone else, from speaking critically on issues relating to the Wallkill Police Department. Such actions violate both the First and Fourth Amendments as well as the New York State Constitution.

52. The mass ticketing of the Times Herald Record trucks was widely known throughout the Wallkill Police Department and by supervisory personnel within the Department including, at least, the Chief of Police and members of the Town of Wallkill Police Commission. Indeed, Defendant had notice of the mass ticketing through legal papers contesting the tickets filed by the attorney for the Times Herald Record. These legal papers explicitly stated that the tickets were issued in retaliation for earlier Times Herald Record reporting. Nevertheless, Defendant failed to investigate this incident or to reprimand the officers involved. As a consequence of such inaction, the retaliatory practices and intimidation tactics of the Wallkill Police continued.

B. Failure To Supervise, Monitor And Discipline Police Officers

53. The above incidents, along with many others, constitute a pattern of misconduct directly attributable to Defendant's failure, when informed of and confronted with such illegal acts, to supervise, monitor and take decisive steps to discipline the officers involved. As described below, Defendant has had ample notice of these problems and yet has failed to act. Moreover, this failure to take any action --

which rises to the level of a policy, practice or custom of tolerating and acquiescing in illegal stops and other federal and state constitutional violations -- has only emboldened certain officers to escalate their illegal conduct.

**1. Defendant's Ample Notice Of, And
Deliberate Indifference To, The Officer's
Illegal Conduct**

54. Over a period of years, Defendant has been informed of and confronted with the illegal conduct of its police officers. In each instance, and over the course of years, Defendant's posture toward such misconduct has been one of deliberate indifference.
55. The Wallkill Police Department is managed by a police chief and, prior to January 4, 2001, a four-member police commission (the "Police Commission" or "Commission").² The Police Commission was appointed by, and derived its authority from, the Wallkill Town Board. The Town Board, the Police Commission, and the Chief of Police all possessed (and, from January 4, 2001 going forward the Town Board and Chief of Police continue to possess), jointly and severally, supervisory authority over the Police Department. All three were involved in, and shared (and the Town Board and Chief of Police continue to be involved in and share) ultimate managerial and decision making responsibility for, policing, personnel, and disciplinary decisions. Both the Chief of Police and the Police Commission issued (and the Chief of Police continues to issue) written directives on various police procedures and conduct -- including the types of conduct at issue here -- that are binding upon all members of the police force.

² On January 4, 2001, 14 days before Plaintiffs commenced this lawsuit, Defendant, acting through the Town Board, purported to abolish the Police Commission. The Town Board then purported to assume all of the powers and responsibilities of the Commission.

Both were empowered (and the Chief continues to be empowered) to investigate and resolve allegations of misconduct.

56. Defendant is charged with notice of the illegal conduct of its officers through the knowledge of the Wallkill Town Board, the Police Commission, and/or its Chief of Police. Upon information and belief, Defendant has obtained such notice by a variety of avenues, including, but not limited to, the following:

- Letters of complaint detailing misconduct of certain Wallkill police officers (including misconduct either described above or similar to that described above);
- Direct notification by the parent of a child who worked in the food establishment described in paragraphs 36 to 39 above;
- The close social and professional relationships maintained by the former Chief of Police with some of the officers engaged in the illegal behavior described in paragraphs 15 to 52 above and the preferential treatment given such officers by the former Chief;
- Complaints by other public officials with knowledge of operations of the Wallkill Police Department, including notification of harassment of female motorists; and
- Legal claims and other court papers filed against the Department stemming from several of the above-described acts of misconduct.

57. Notwithstanding notice of all of these actions, Defendant failed to investigate the allegations or rectify the illegal behavior; indeed, Defendant thereby tacitly encouraged such misconduct, by not subjecting such behavior to any form of

discipline or punishment.

58. In addition, in 1998, Defendant was named as a defendant in a lawsuit filed by a Wallkill police officer against Defendant, the Wallkill Police, the Town Supervisor, and the Town Board, alleging retaliation for the exercise of the officer's right of free speech, selective prosecution, and discrimination on the basis of military status.
59. In January 2000, at the conclusion of a jury trial, the jury returned a verdict in favor of plaintiff on the First Amendment and military discrimination claims. The jury found Defendant liable for \$125,000 in compensatory damages and awarded the plaintiff \$75,000 in punitive damages against the then Chief of Police.
60. Over the course of the two-year lawsuit, Defendant, a party to that lawsuit, was aware of all of the many allegations against the Town, the Police Department and the Chief. These allegations included the following: (1) that one Wallkill police officer prevented the plaintiff officer in that case from arresting a suspect who was friends with another Wallkill police officer, (2) that the plaintiff was being pressured to drop charges against a suspect as a courtesy to another police officer, (3) that one Wallkill police officer was "double-dipping" -- i.e., collecting salaries from two police departments simultaneously, (4) that off-duty Wallkill police officers were allowed to work at private businesses "off the books," in uniform and carrying duty weapons, (5) that an apparent suicide was mishandled by a Wallkill dispatcher, and (6) that one Wallkill police officer was not certified to carry a firearm.

61. Most importantly, the plaintiff officer alleged -- and a jury found -- that various officers, and the Chief of Police in particular, retaliated against him when he attempted to speak out about these problems. Such allegations, particularly where they implicated the Town of Wallkill's Chief of Police, should have alerted Defendant to investigate immediately after receiving the complaint initiating the action.
62. But even after having been found liable some two years later, Defendant still failed to investigate these allegations, including the allegations of First Amendment violations at issue here as well.³ Had they done so, they would have uncovered many other specific instances of misconduct or illegal behavior, including the illegal stops described above. Indeed, many of the persons involved in the private action also possessed, and have freely volunteered, information about the illegal stops. Moreover, Defendant was placed on notice of a pattern of retaliatory action taken by officers and the Chief of Police himself.
63. Beyond ignoring the clear warnings raised by this lawsuit, Defendant's deliberate indifference in the face of these allegations sent a clear message to Wallkill police officers that improper, even illegal, conduct could go unpunished, thereby giving a license to Wallkill officers to continue engaging in such misconduct.
64. While Defendant knew of or was deliberately indifferent with respect to the illegal

³ The Police Commission did look into some of the allegations in this case. However, as discussed below, the Town Board declined to follow up on the Commission's findings and, indeed, attempted to cover up the Commission's report. Further, while the then Chief of Police was suspended following the trial, the suspension did not stem from -- and thus he was not disciplined for -- countenancing the unconstitutional behavior complained of herein.

actions of members of the Wallkill Police Department that had been ongoing for some time, Defendant was also placed on notice of Wallkill police misconduct and illegal actions through an investigation conducted, and a report issued, by the Town of Wallkill Police Commission.

65. In November 1999, the Commission received a complaint from the Orange County District Attorney's office regarding the refusal of officers from the Wallkill Police Department to cooperate with other law enforcement agencies. The Commission commenced an investigation of the Wallkill Police Department in early 2000, and issued a Report in July 2000 (the "Report"). The Report is attached as Exhibit A.
66. While the investigation was initiated by a complaint from a law enforcement agency concerning the issues of professionalism and inter-departmental cooperation, the Commission reviewed a wider array of issues as well. As set forth in the Report, the Commission specifically found that police officers were engaged in the "solicit[ation] of dates from members of the public during the course of performing their police duties." See Exhibit A at 6. The Report also described the "ticket blanketing" of Times Herald Record truck drivers described in paragraphs 49 through 52 above. See Exhibit A at 6.
67. Defendant failed to investigate or act upon the Commission's finding that women were solicited for dates and/or sexual favors. Instead, acting through the Town Board, Defendant attempted to cover up the findings and silence the Commission's members. (See infra paragraphs 98 through 136 for a detailed description of the Commission's investigation and Report and the Wallkill Town

Board's attempted cover-up.)

68. Likewise, following the issuance of the Report, Defendant has taken no steps to investigate or discipline officers responsible for the retaliatory "ticket blanketing" of Times Herald Record trucks.
69. Finally, not long after the publication of the Report, a newspaper article entitled "Police Dept.'s Dirty Laundry Aired" appeared in the Times Herald Record along with a photograph of two of the Police Commissioners, Oscar Dino and George Green. The following day the newspaper photograph was found posted in a place in the Wallkill police station house not accessible to the public. A noose had been drawn around the necks of the two Commissioners. A copy of the drawn-upon newspaper photograph is attached as Exhibit B.
70. Despite the threatening nature of the drawing, particularly in the context of other threats made to Commission members, see infra paragraphs 104 through 118, Defendant took no steps to investigate or discipline officers who may have been involved in its creation.
71. Beyond the above-described direct knowledge of illegal behavior, other acts by Wallkill police officers, upon information and belief, alerted Defendant that there were systemic problems at the Wallkill Police Department -- problems that indicated that Wallkill police officers were not obeying various police procedures and legal requirements. These include:
 - Wallkill police officers' failure to cooperate with other law enforcement entities;
 - Wallkill police officers' improper handling of crime scenes;

- Wallkill police officers' exclusion of State Police and District Attorney's personnel from participation in major felony cases;
- An incident in August 2000 in which all on duty patrol cars were located at the former Chief of Police's house for no stated reason, a fact which not only left the rest of the Town without police coverage but, because of the way in which the cars were parked, made it impossible for other emergency vehicles from other jurisdictions to pass through on official business; and
- Wallkill police officers' failure to appear in court and to produce paperwork to support criminal cases.

72. Here again, notwithstanding numerous complaints about these matters, prior to January 2000, Defendant did not take any steps to investigate these complaints.

73. Had Defendant timely investigated any of the allegations lodged against the Wallkill Police Department, it would rapidly have learned about the unconstitutional stops described in paragraphs 15 through 52. Moreover, by failing to discipline police officers for these non-constitutional infractions, Defendant tacitly encouraged further rule-breaking including, ultimately, the unconstitutional behavior described above.

74. In sum, over the course of the past three years, Defendant has been on notice of the constitutional violations and other misconduct described in Part A above. Defendant has been deliberately indifferent to these illegalities by failing to investigate such allegations and discipline the officers responsible.

2. Failure to Supervise, Monitor, and Discipline

Defendant Walkkill Police Officers

75. Defendant's failure to supervise, monitor, and discipline its police force has created a condition of pervasive disregard for constitutional rights that endangers New York State citizens. Such failure is a direct and proximate cause of the unconstitutional behavior of the Walkkill police. In light of its officers' conduct, Defendant knew or was deliberately indifferent to the fact that these illegalities would result in continued violations of citizens' First, Fourth and Fourteenth Amendment rights as well rights under the New York State Constitution.
76. The Walkkill Police Department was created in 1989 when it became apparent that the population of the town required a full-time police presence. Upon information and belief, the initial size of the force was six. Over the 11 years since its establishment, the force has grown to a full-time level of 25 officers and a number of part-time officers. Despite its enormous growth, Defendant has never instituted a supervision scheme, monitoring or any effective system of discipline commensurate with the force's increased size.

(a) Failure to Supervise

77. Defendant has maintained a custom, policy and practice of failing to supervise Walkkill police officers adequately so as to prevent the occurrence of misconduct, including misconduct of a constitutional nature.
78. For example, the Walkkill Police Department has three shifts each day, with four officers on a shift, each of whom patrols one of the four sectors of the town of Walkkill in his or her patrol car. Each Walkkill police officer normally drives alone. There are many shifts that have no supervisor on duty. Thus, Walkkill police

officers often are on the job completely alone, with no supervision of their activities at all.

79. Further, Defendant does not require Wallkill police officers to keep any form of log of their daily activities, nor does Defendant require, more narrowly, that police officers in Wallkill complete any kind of log documenting stops of motor vehicles.
80. Thus, there is no way for supervisors, and ultimately, Defendant, to determine whether Wallkill police officers are making traffic stops that comport with the constitutional requirements of the First, Fourth, and Fourteenth Amendments and the New York State Constitution.
81. By maintaining this policy and practice of not supervising Wallkill police officers, even after receiving notice of the illegal stops that have been an ongoing practice among members of the Wallkill Police Department, Defendant was and is deliberately indifferent to the potential harm to citizens' constitutional rights.
82. Virtually all of the unconstitutional stops described above occurred when the officers were patrolling alone and at night, when no supervisor was on duty, even at the station house.
83. The failure to properly supervise police officers is a proximate cause of the constitutional violations described above and will lead to further violations in the future.

(b) Lack of Complaint Mechanism

84. The Wallkill Police Department's lack of a complaint review mechanism prevents Defendant from assessing officer performance and gauging whether there are

problems with respect to any of the officers.

85. Receiving and adjudicating complaints is a component of personnel management and supervision of officers. The process provides an important mechanism by which to evaluate the need for discipline, training or other employment decisions and the identity of instances of misconduct.
86. In the Town of Wallkill, should a citizen decide to make a complaint about the conduct of Wallkill police officers, there is not now, and has never been, an established mechanism to allow a citizen to do so.
87. Thus, if a citizen goes to the Wallkill station house to lodge a complaint, he or she is routinely told to wait until a supervisor is on duty, even though that time may be days away. Even then, there is no standard procedure in place to ensure that the complaint is investigated and resolved.
88. Upon information and belief, Defendant does not maintain a log book of complaints nor does it maintain any central file for complaints.
89. Further, Defendants do not provide any mechanism for the making of a complaint without having to confront the officer who is the subject of the complaint -- a factor which discourages citizens from making legitimate complaints.
90. Defendant's failure to institute an adequate system to receive, investigate and resolve complaints against police officers demonstrates a policy of deliberate indifference to the need for police supervision and to the constitutional rights of citizens.
91. This deliberate indifference to officer misconduct is a proximate cause of the

illegal acts of Wallkill officers because these officers believe they will not be held accountable by the public for their actions. This deliberate indifference, if not remedied, will lead to similar illegal actions in the future.

(c) Failure to Discipline

92. As set forth in paragraphs 54 through 74 above, Defendant has had knowledge of the unconstitutional acts of its police officers. Even when Defendant has had notice of the unconstitutional and otherwise illegal acts of its police officers, however, Defendant has failed to discipline the offending officers for such misconduct.⁴
93. In each instance that Defendant was placed upon actual or constructive notice of unconstitutional behavior of its police officers, Defendant failed to investigate and/or discipline those individuals. Indeed, on many occasions, such behavior was condoned.
94. Further, Defendant, in light of the illegal behavior, never instituted a system, as it should have, to more closely supervise and monitor its police officers. Defendant, instead, has maintained a policy of not supervising or monitoring its police officers.
95. Defendant's failure to supervise, monitor and discipline Wallkill police officers violates basic standards of good practice and has created a situation that has led individual officers to engage in acts of misconduct, including the misconduct

⁴ Defendant has, belatedly and after this office commenced the investigation leading to this action, disciplined several officers for actions other than the constitutional violations described above.

described in paragraphs 15 through 52 above.

96. By maintaining this policy and practice of not disciplining its police officers even after receiving notice of the illegal stops and retaliatory actions that have been an ongoing practice among certain members of the Wallkill Police Department, Defendant was deliberately indifferent to the damage to citizens' constitutional rights.
97. The failure to discipline police officers is a proximate cause of the constitutional violations described above, and if not remedied, will lead to further violations in the future.

**C. The Police Commission's Investigation
And Report, And The Retaliation
That Followed**

1. The Investigation And Report

98. Acting on a complaint from the Orange County District Attorney's office regarding the Wallkill Police Department's refusal to cooperate with District Attorney prosecutions, on January 27, 2000, the Town of Wallkill Police Commission publicly announced at a televised Town Board meeting the commencement of an investigation of the Wallkill Police Department.⁵ At the meeting, the Commission promised that the results of the investigation would be released publicly.
99. The Commission investigated the outstanding allegations by interviewing members of the Wallkill Police Department, including the Chief of Police, three sergeants and eight officers. Members of the Commission also interviewed representatives of the District Attorney's office, the State Police and other local police departments. Ultimately, the Commission issued its detailed findings in a written report dated July 17, 2000. (Exhibit A hereto.)
100. In addition to reviewing Wallkill Police Department's persistent refusal to cooperate with other law enforcement agencies, the Commission investigated other irregularities in the functioning of the Wallkill Police Department, including, but not limited to, the creation of special units not authorized by the Commission and with no purpose or function other than providing a steady and consistent

⁵ The Town Board's public meetings are televised on Wallkill's local cable channel, channel 8.

work schedule and overtime to certain favored officers; favoritism in distribution of overtime; unlawful employment of a group of officers as security guards; the distribution of cash payments to officers at the station house for private security work; and the solicitation of dates by certain officers in the context of carrying out their official duties. All of these are detailed in the Report.

101. One of the most significant problems that the Commission found through its investigation was the pervasive lack of proper management and supervision of the Police Department.
102. For example, under the Police Chief at the time, an "anti-crime" unit within the Police Department was created, comprising a group of officers with no special training or qualifications -- other than their friendship with the Chief. Walkkill Police Department's exclusion of the State Police and other law enforcement agencies from crime scenes was based on the notion that this "special" "anti-crime" unit could handle complex crime scenes.
103. These and other findings were set forth in the Commission's Report, which was issued on July 17, 2000, and made public two days later.

2. Walkkill Police Officers Retaliate Against Commission Members, their Families and their Associates

104. In response to the investigation and the issuance of the Report, members of Walkkill Police Department have retaliated against Commission members, their families or associates. Those retaliatory actions violate these individuals' First Amendment rights and rights under the New York State Constitution.

105. In the wake of public statements made by Commission members during the course of the investigation that were critical of Wallkill officers, members of the Wallkill Police Department commenced a pattern and practice of retaliation and intimidation tactics aimed at preventing as well as punishing public airing of criticism of the Department. This retaliation and intimidation included frequent tailgating and following of at least one Commission member and his wife; frequent drive-bys of that member's house; and other acts of intimidation against Commission members and persons associated with Commission members.
106. The following are examples of the acts of retaliation and intimidation directed against the Chair of the Commission, Oscar Dino: on May 10, 2000, Mr. Dino's wife was driving home from her job and was followed by a Wallkill Police Department patrol car for approximately two miles until she reached her residence. When the Mrs. Dino turned into the driveway, the patrol car slowed down and the officer in the car glared at her as she got out of her car. Her home is one of four homes located on a little traveled, "U"-shaped, cul-de-sac in Wallkill that is only approximately three quarters of a mile long. Absent a call to the police reporting a specific incident, there is no reason to have routine patrols of this street.
107. A few weeks later, in late May, 2000, two Wallkill patrol cars established speed radar checks on that same street for a half-hour period. This placement of speed radar on this little traveled street, and the placement of two officers -- fully one-half of all patrol units routinely on duty -- on this street clearly evidenced an attempt by the Wallkill Police Department to intimidate Mr. Dino and his family.

108. Less than a month later, in June 2000, a Wallkill patrol car drove slowly back and forth in front of Mr. Dino's home in the early evening. When Mr. Dino called the Wallkill Police Department dispatcher to report the incident, the dispatcher responded, in a sarcastic voice, that the officer "must be lost!"
109. In the conversation, the dispatcher did ultimately identify the officer in the car, which made this drive-by particularly intimidating since some of the allegations that the Commission was investigating involved that officer.
110. Two weeks after this incident, in early July 2000, Mr. Dino was followed by a Wallkill Police Department patrol car at approximately 11 a.m. on Wallkill's central road, Route 211. When Mr. Dino made a right turn on Bert Crawford Road, the patrol car followed behind, close to the bumper, for approximately two miles, creating a dangerous condition.
111. After the issuance of the Report on July 17, 2000 and its public release on July 19, 2000, the intimidation and harassment accelerated: as noted above, the day the Report was publicly released, the Times Herald Record ran a story that referred to the Wallkill Police Department as "out of control." Next to the story was a picture of some of the Commission members and the acting Chief of the Police Department.
112. Days later, the cut-out newspaper clipping was found posted on a wall in the station house in an area not accessible to the general public; nooses had been drawn around two Commissioners' necks. (As noted above, a copy of the picture is attached as Exhibit B.)
113. Within two weeks of the Report's release, in early August 2000, a Wallkill Police

Department patrol car once again drove past Mr. Dino's home at approximately 2 m.p.h. two times within the span of approximately four minutes. As noted previously, given the size and limited traffic flow of the "U-shaped" street, there would be no need for this type of patrolling at that location.

114. A little more than one month later, in mid-September, 2000, the owner of a local restaurant in Wallkill ("W-8") and a friend of Mr. Dino was ticketed by a Wallkill officer for carrying an "unsecured load" after a branch had flown off his truck and hit a nearby car also traveling on the road. The truck is readily identifiable because it is red and has the name of W-8's eating establishment painted in large yellow letters. The two drivers involved had been resolving the situation amicably when the Wallkill officer, seeing the truck with the restaurant's name, pulled over, ticketed W-8 and told him to "Say hello to Oscar" - - referring to Oscar Dino.
115. Later that same day, Mr. Dino had his car washed at a car wash on Route 211 in Wallkill. A Wallkill police patrol car containing a single officer followed him at his bumper and turned as he entered into the car wash. The officer used his radio and, within minutes, another Wallkill police car, containing one officer, arrived. The first officer sent his car through the car wash; the other did not. The officers, upon getting out of their cars, stood next to Oscar Dino, four feet away on either side, blocking his ability to walk away, and maintained silence.
116. In late September, one of the tires on the vehicle owned by Mr. Dino was punctured. It was clear that the puncture was not one that could have happened accidentally. Approximately two weeks later, Mr. Dino found a two-inch gash in

the sidewall of one of the tires on his wife's vehicle.

117. The Wallkill Police Department was notified after each retaliatory act, as was the Town Board at meetings between the Town Board and the Commission that took place over the course of the investigation. At least four such meetings took place between January and June 2000.
118. Upon information and belief, Defendant failed to properly investigate these incidents and failed to discipline any of the officers engaged in such misconduct. As a consequence, these practices persisted. Further, as detailed infra, paragraphs 119 through 136, the Town Board's own retaliatory acts against the Commission served to embolden police officers to engage in additional retaliatory actions against Commission members and their families and to legitimate such actions.

3. The Town Board Retaliates Against the Commission

119. Also in violation of the First Amendment and the New York State Constitution, Defendant retaliated against members of the Police Commission for speaking publicly about illegalities and misconduct committed by members of Wallkill Police Department.
120. As the Commission's investigation reached its conclusion, Town Board members became worried about the public release of the Report. At working sessions attended by both the Commission and the Town Board, prior to the publication of the Report, certain members of the Town Board stated that they wanted to suppress the Report and prevent its release to the public.

121. On the night of July 17, 2000, the Commission met with the Town Board to present the Report. After hearing the extent of the problems documented in the Report, certain members of the Town Board demanded that the Commission not release its Report publicly. The Commission, having already committed publicly to release the Report, expressed its view that the Report dealt with matters of public concern and, as such, was public information. In response, Town Supervisor Thomas Nosworthy firmly stated, "I'm telling you not to go public with this information."
122. The Town Supervisor's statement reiterated what had previously been voiced in other Board working sessions. In those meetings, at least three Board Members recommended that if the Commission's public criticism of the Walkkill Police Department continued, the Board should act to halt the Commission from releasing information publicly.
123. There was no valid reason nor any compelling or legitimate governmental purpose for restricting publication of the Report, nor did the Town Board ever assert any. The Report did not include personnel information or other confidential matters. Nor did the Report reveal police tactics or investigations, or in any other way compromise effective policing or public safety.
124. At the meeting of July 17, 2000, the Commission was given a clear message: If the Commission were to disobey Supervisor Nosworthy's instruction "not to go public with this information," the Town Board would intervene and stop dissemination of criticism of the Walkkill Police Department.
125. The Report became public within two days of the evening meeting of July 17,

2000. Soon thereafter, the Board and the Commission met to go over any questions or comments the Board had with respect to the findings in the Report. At that meeting, members of the Board thanked the Commission for its work and praised the Report as well-written. No Board member took issue with any of the findings in the Report. At this meeting, certain Board members reiterated that the Commission should never have allowed the Report to be made public.

126. At no point since the Report's release has any member of the Town Board, in his or her official capacity, or the full Board, taken issue with the Commission's findings in its Report or suggested any facts that contradict those findings, including the finding that women were being stopped and solicited for dates. Nor has any Board member suggested that release of the Report compromised any governmental or public safety interest.
127. In late summer, the Board received a letter from the Police Commission, dated August 31, 2000 recommending that the Wallkill Police Department be disbanded. The letter ("Letter") is attached as Exhibit C. The Letter detailed the urgent reasons for this proposed remedy, including a "slow down" instituted by Wallkill Police Department officers in which, for example, 52% fewer tickets were issued for the six week period since the Report was issued than for the same period last year. The Letter also asserted that two evenings before, all on-duty Wallkill Police Department cars were located at the former chief's house for no reason related to police business - - "leaving the entire rest of the Town without police coverage." See Letter at 2.
128. In reaction to the Letter, Supervisor Nosworthy called a meeting on September

11, 2000, to discuss the Commission and the Walkkill Police Department. At the commencement of the meeting, the Town Supervisor moved to convene a closed executive session, which motion was approved, allegedly to look into “personnel matters.”

129. In fact, the Board did not look into individual personnel matters that evening. Instead, in reaction to the Letter issued by the Police Commission to the Board, the Board discussed disbanding the Commission that was uncovering the unlawful conduct of the Walkkill Police Department.
130. The Board voted on a motion to disband the Commission. The motion failed by one vote. After the vote, the session became open to the public. The Board discussed putting into place new rules to prohibit the Commission from disseminating information publicly and from taking any actions with respect to the Walkkill Police Department without prior approval from the Board. No action was taken on this proposal at that meeting.
131. Instead, on September 14, 2000, the Town Board passed a resolution requiring that the Commission receive prior Board approval for all Commission expenditures. The resolution is attached as Exhibit D. Never having criticized the Commission for its expenditures or budget decisions in the past, the Board passed this measure as punishment for the dissemination of the Report. As a result of the resolution’s passage, the Commission could no longer institute changes in the Police Department through budgetary means.
132. As set forth above, the Town Board has never officially disputed any of the findings contained in the Report. Nonetheless, at the same time that the Board

was considering a reduction in the Commission's powers, it failed even to consider a plan of action for reforming the problems documented by the Commission.

133. Despite its lack of a plan, on September 28, 2000, the Board convened its usual Thursday public meeting and voted to approve a resolution that would institute new regulations (attached hereto as Exhibit E) essentially stripping the Commission of all its powers. The Board took this action in the face of earlier advice by the Town Attorney that such an action was not legally permissible. (attached hereto as Exhibit F).
134. There was no valid reason nor any compelling or legitimate governmental purpose for stripping the Commission of its powers, nor did the Town Board ever assert any. Rather, the Commission's failing was to have shared its revelations regarding the Wallkill Police Department with the general public.
135. The Wallkill Town Board had instructed the Commission "not to go public" with its Report. The Commission had issued the Report publicly nonetheless and had recommended that the Wallkill Police Department be disbanded. The Town Board, shortly following these two events, passed two separate resolutions - - one on September 14, 2000 and the other on September 28, 2000 - - that together stripped the Commission of many, if not all, of the Commission's powers and specifically forbade the Commission members from speaking with the press about matters relating to the Wallkill Police Department. The Town Board's actions violate the Commission members' First Amendment rights under the United States Constitution and Article 1, § 8 of the New York State

Constitution.

136. The Town Board, by resolution dated December 14, 2000, rescinded the resolutions passed in September 2000. Upon information and belief, the Town Board took this action believing that it would avoid the initiation of this lawsuit. Upon information and belief, despite its rescission of the resolutions, the Town Board planned to implement the same set of restrictions through different means. Indeed, days later, on January 4, 2001, the Board, again by resolution, abolished the Police Commission outright.

D. Failure To File Proper Registrations for Police Officers Working As Security Guards

137. For a number of years, the Wallkill Police Department has engaged in the practice of providing, for additional pay, security services that are outside the regular scope of the Department's responsibilities. Clients have included shopping centers, sporting events, and other private companies.
138. Most of these arrangements have been coordinated by the Chief of Police. Typically, the Chief notifies police officers, by posting at the station, email, and word of mouth, that shifts on such security jobs need filling. Officers may then sign up for such shifts. The vast majority, close to an estimated 90% of Wallkill police officers, have undertaken and continue to undertake such work.
139. Ordinarily, the clients pay the Wallkill Police Department at a rate based on the costs of officer overtime, insurance, and vehicle use. The Department then pays the officers who worked on the job, at their overtime rate. In some instances, payment is made through the Town of Wallkill payroll system. In other

instances, payment has been made in cash.

140. At the request of the client, police officers working outside security jobs taken by the Wallkill Police Department may be in official uniform, may carry Police Department firearms, and may use Police Department vehicles.
141. The Wallkill Police Department has not notified the New York State Department of State that it is conducting such outside security work, nor has it obtained security guard registration for any of those of the police officers whom it employs in outside security work, as required by state law.
142. Additionally, it is a well-known and longstanding practice for Wallkill police officers to work for private security guard companies in order to supplement their income. By contract, all officers must report all such outside employment directly to the Chief, who therefore knows, or should know, of all such work undertaken by his employees. However, the Department has not obtained security guard registration for any officers known to work as private security guards, as required by state law.

**FIRST CAUSE OF ACTION -- FOURTH AMENDMENT OF
UNITED STATES CONSTITUTION**

143. Plaintiffs repeat and reallege paragraphs 1 through 142, as if set forth fully herein.
144. Individual officers of the Wallkill Police Department, under color of law, have engaged in a pattern or practice of stopping motorists without the reasonable, articulable suspicion of criminality and/or arrested motorists without the probable cause required by the Fourth Amendment of the United States Constitution.

145. These constitutional abuses and violations were and are directly and proximately caused by policies, practices and/or customs devised implemented, enforced, encouraged and sanctioned by Defendant Town of Walkill, including (1) the failure to adequately and properly supervise Walkill police officers; (2) the failure to properly and adequately monitor and discipline Walkill police officers; and (3) the failure to prevent the Walkill Police Department's suspicionless stop practices. By Defendant Town of Walkill's deliberate indifference and inaction when confronted with the pattern of unlawful conduct committed by members of the Walkill Police Department, Defendant Town of Walkill directly and proximately caused the violation of the laws to citizens of New York State, in further violation of the Fourth Amendment to the Constitution of the United States and 42 U.S.C. § 1983.
146. As a result of Defendant's conduct, Plaintiffs have suffered cognizable injury, including but not limited to the violation of their constitutional rights and are therefore entitled to compensatory damages in an amount to be determined at trial. Further, absent injunctive relief from this Court, Plaintiffs will continue to suffer harm by Defendant's ongoing illegal conduct.

**SECOND CAUSE OF ACTION -- ARTICLE 1, § 12 OF
NEW YORK STATE CONSTITUTION**

147. Plaintiffs repeat and reallege paragraphs 1 through 146, as if set forth fully herein.
148. Individual officers of the Walkill Police Department, under color of law, have engaged in a pattern or practice of stopping motorists without the reasonable,

articulable suspicion of criminality and/or arrested motorists without the probable cause required by the Article 1, § 12 of the New York State Constitution.

149. These constitutional abuses and violations were and are directly and proximately caused by policies, practices and/or customs devised implemented, enforced, encouraged and sanctioned by Defendant Town of Walkkill, including (1) the failure to adequately and properly supervise Walkkill police officers; (2) the failure to properly and adequately monitor and discipline Walkkill police officers; and (3) the failure to prevent the Walkkill Police Department's suspicionless stop practices. By Defendant Town of Walkkill's deliberate indifference and inaction when confronted with the pattern of unlawful conduct committed by members of the Walkkill Police Department, Defendant Town of Walkkill directly and proximately caused the violation of the laws to citizens of New York State, in further violation of the New York State Constitution.

150. As a result of Defendant's conduct, Plaintiffs have suffered cognizable injury, including but not limited to the violation of their constitutional rights and are therefore entitled to compensatory damages in an amount to be determined at trial. Further, absent injunctive relief from this Court, Plaintiffs will continue to suffer harm by Defendant's ongoing illegal conduct.

**THIRD CAUSE OF ACTION - FOURTEENTH AMENDMENT OF
UNITED STATES CONSTITUTION**

151. Plaintiffs repeat and reallege paragraphs 1 through 150, as if set forth fully herein.

152. Members of the Walkkill Police Department, under color of law, have engaged in

a continuing pattern and practice of intentional sex discrimination in carrying out their official duties. In so doing, these officers have caused citizens of the State of New York to suffer deprivation of their fundamental rights to liberty and to be free from unlawful seizures and detentions on account of their gender. These actions violated these citizens' rights to equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. § 1983.

153. These constitutional abuses and violations were and are directly and proximately caused by policies, practices and/or customs devised implemented, enforced, encouraged and sanctioned by Defendant Town of Walkill, including (1) the failure to properly and adequately supervise Walkill police officers; (2) the failure to properly and adequately monitor and discipline Walkill police officers; and (3) the failure to prevent the Walkill Police Department's discriminatory stop practices. By Defendant Town of Walkill's deliberate indifference and inaction when confronted with the pattern of unlawful conduct committed by members of the Walkill Police Department, Defendant Town of Walkill directly and proximately caused the violation of the laws to citizens of New York State, in further violation of the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. § 1983.

154. As a result of Defendant's conduct, Plaintiffs have suffered cognizable injury, including but not limited to the violation of their constitutional rights and are therefore entitled to compensatory damages in an amount to be determined at trial. Further, absent injunctive relief from this Court, Plaintiffs will continue to

suffer harm by Defendant's ongoing illegal conduct.

**FOURTH CAUSE OF ACTION - ARTICLE 1, § 11 OF
NEW YORK STATE CONSTITUTION**

155. Plaintiffs repeat and reallege paragraphs 1 through 154, as if set forth fully herein.
156. Members of the Walkill Police Department, under color of law, have engaged in a continuing pattern and practice of intentional sex discrimination in carrying out their official duties. In so doing, these officers have caused citizens of the State of New York to suffer deprivation of their fundamental rights to liberty and to be free from unlawful seizures and detentions on account of their gender. These actions violated these citizens' rights to equal protection of the laws in contravention of Article 1, § 11 of the New York State Constitution.
157. These constitutional abuses and violations were and are directly and proximately caused by policies, practices and/or customs devised implemented, enforced, encouraged and sanctioned by Defendant Town of Walkill, including (1) the failure to properly and adequately supervise Walkill police officers; (2) the failure to properly and adequately monitor and discipline Walkill police officers; and (3) the failure to prevent the Walkill Police Department's discriminatory stop practices. By Defendant Town of Walkill's deliberate indifference and inaction when confronted with the pattern of unlawful conduct committed by members of the Walkill Police Department, Defendant Town of Walkill directly and proximately caused the violation of the laws to citizens of New York State, in further violation of Article 1, § 11 of the New York State Constitution.

158. As a result of Defendant's conduct, Plaintiffs have suffered cognizable injury, including but not limited to the violation of their constitutional rights and are therefore entitled to compensatory damages in an amount to be determined at trial. Further, absent injunctive relief from this Court, Plaintiffs will continue to suffer harm by Defendant's ongoing illegal conduct.

**FIFTH CAUSE OF ACTION – FIRST AMENDMENT OF
UNITED STATES CONSTITUTION**

159. Plaintiffs repeat and reallege paragraphs 1 through 158, as if set forth fully herein.
160. The Commission Members' speech regarding the Walkill Police Department -- their investigation, the issuance of their Report, and their recommendation that the Walkill Police Department be disbanded -- relates to matters of public concern, namely, the proper functioning of a municipal police department, and as such, is protected by the First Amendment to the United States Constitution.
161. The Walkill Town Board, by resolution dated September 28, 2000, explicitly prohibits members of the Commission from speaking to the press on any Commission matters. Such prohibition violates the First Amendment to the United States Constitution and 42 U.S.C. § 1983.
162. As a result of Defendant's conduct, Plaintiffs have suffered cognizable injury, including but not limited to the violation of their constitutional rights and are therefore entitled to compensatory damages in an amount to be determined at trial. Further, absent injunctive relief from this Court, Plaintiffs will continue to suffer harm by Defendant's ongoing illegal conduct.

**SIXTH CAUSE OF ACTION – FIRST AMENDMENT OF
UNITED STATES CONSTITUTION**

163. Plaintiffs repeat and reallege paragraphs 1 through 162, as if set forth fully herein.
164. The Commission Members' speech regarding the Walkill Police Department --

their investigation, the issuance of their Report, and their recommendation that the Wallkill Police Department be disbanded -- relates to matters of public concern, namely, the proper functioning of a municipal police department, and as such, is protected by the First Amendment to the United States Constitution.

165. In passing two resolutions that significantly curtailed, if not eliminated, the Commission's powers, the Wallkill Town Board retaliated against the Commission members for their speech. Such retaliation violated, and continues to violate, the First Amendment to the United States Constitution and 42 U.S.C. § 1983.
166. As a result of Defendant's conduct, Plaintiffs have suffered cognizable injury, including but not limited to the violation of their constitutional rights and are therefore entitled to compensatory damages in an amount to be determined at trial. Further, absent injunctive relief from this Court, Plaintiffs will continue to suffer harm by Defendant's ongoing illegal conduct.

**SEVENTH CAUSE OF ACTION – FIRST AMENDMENT OF
UNITED STATES CONSTITUTION**

167. Plaintiffs repeat and reallege paragraphs 1 through 166, as if set forth fully herein.
168. The Commission members' speech regarding the Wallkill Police Department -- their investigation, the issuance of their Report, and their recommendation that the Wallkill Police Department be disbanded -- relates to matters of public concern, namely, the proper functioning of a municipal police department, and as such, is protected by the First Amendment to the United States Constitution.

169. Members of the Walkill Police Department have engaged and participated, and continue to engage and participate, in various actions against Commission members, their families and associates to retaliate against them for publicly criticizing Walkill Police Department and to intimidate them from continuing to speak critically. These officers have taken similar retaliatory action against other citizens who have publicly criticized the Walkill Police Department. Such actions violate the First Amendment to the United States Constitution and 42 U.S.C. § 1983.
170. These constitutional abuses and violations were and are directly and proximately caused by policies, practices and/or customs devised implemented, enforced, encouraged and sanctioned by Defendant Town of Walkill, including (1) the failure to properly and adequately supervise Walkill police officers; (2) the failure to properly and adequately monitor and discipline Walkill police officers; and (3) the failure to rectify Walkill Police Department's practice of retaliatory actions. By Defendant Town of Walkill's deliberate indifference and inaction when confronted with the pattern of unlawful conduct committed by members of the Walkill Police Department, Defendant Town of Walkill directly and proximately caused the violation of the laws to citizens of New York State, in further violation of the First Amendment to the Constitution of the United States and 42 U.S.C. § 1983.
171. As a result of Defendant's conduct, Plaintiffs have suffered cognizable injury, including but not limited to the violation of their constitutional rights and are therefore entitled to compensatory damages in an amount to be determined at

trial. Further, absent injunctive relief from this Court, Plaintiffs will continue to suffer harm by Defendant's ongoing illegal conduct.

**EIGHTH CAUSE OF ACTION – ARTICLE 1, § 8 OF
NEW YORK STATE CONSTITUTION**

172. Plaintiffs repeat and reallege paragraphs 1 through 171, as if set forth fully herein.
173. The Commission Members' speech regarding the Walkkill Police Department -- their investigation, the issuance of their Report, and their recommendation that the Walkkill Police Department be disbanded -- relates to matters of public concern, namely, the proper functioning of a municipal police department, and as such, is protected by the Article 1, § 8 of the New York State Constitution.
174. The Walkkill Town Board, by resolution dated September 28, 2000, explicitly prohibited members of the Commission from speaking to the press on any Commission matters. The Town Board passed that resolution in combination with the resolution of September 14, 2000 so as to strip Commission of its powers in retaliation for the Commission's public issuance of the Report. Finally, members of the Walkkill Police Department -- with Defendant's knowledge and deliberate indifference -- have retaliated against members of the Commission for publicly criticizing the Department. All of these actions violate the Article 1, § 8 of the New York State Constitution.
175. As a result of Defendant's conduct, Plaintiffs have suffered cognizable injury, including but not limited to the violation of their constitutional rights and are therefore entitled to compensatory damages in an amount to be determined at

trial. Further, absent injunctive relief from this Court, Plaintiffs will continue to suffer harm by Defendant's ongoing illegal conduct.

NINTH CAUSE OF ACTION -- G.B.L. §§ 70 et seq.

176. Plaintiffs repeat and reallege paragraphs 1 through 175, as if set forth fully herein.
177. Defendant's Police Department, though generally exempt from the licensing requirements of G.B.L. §§ 70 et seq. ("Private Investigators and Watch, Guard, and Patrol Services"), must nevertheless register all employees who provide security guard services. 19 NYCRR § 174.2.
178. Defendant's Police Department routinely provides private guard services for pay, beyond its service to the Town of Wallkill, using Wallkill police officers.
179. Further, Defendant's Police Department is required to have, and does have, notice of its officers' other outside employment involving security work.
180. The Defendant's Police Department has failed to register those of its officers who perform guard services, a number which constitutes the vast majority of its officers, with the New York State Department of State. It has thus violated 19 NYCRR § 174.2.
181. As a result of Defendant's conduct, Plaintiffs have suffered cognizable injury, including, but not limited, to the violation of their legal rights and are therefore entitled to compensatory damages in an amount to be determined at trial.

Further, absent injunctive relief from this Court, Plaintiffs will continue to suffer harm by Defendant's ongoing illegal conduct.

TENTH CAUSE OF ACTION -- STATE WHISTLE BLOWER PROTECTION ACT

182. Plaintiffs repeat and reallege paragraphs 1 through 181, as if set forth fully herein.
183. The Commission Members disclosed to the Town Board information regarding the Wallkill Police Department practices and conduct that constituted protected speech under the State Whistleblower Protection Act, Civil Service Law § 75-b.
184. In response, the Town Board retaliated against the Commission Members by stripping the Commission of its powers. The Board thus violated the State Whistleblower Protection Act.
185. As a result of Defendant's conduct, Plaintiffs have suffered cognizable injury, including but not limited to the violation of their legal rights and are therefore entitled to compensatory damages in an amount to be determined at trial. Further, absent injunctive relief from this Court, Plaintiffs will continue to suffer harm by Defendant's ongoing illegal conduct.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs request that this Court:

- a) Declare, pursuant to 28 U.S.C. § 2201 and 2202, that Defendants' policy, practice and/or custom of permitting officers to stop citizens without reasonable, articulable suspicion is unconstitutional in that it violates the Fourth and Fourteenth Amendments to the United States Constitution and that its implementation, enforcement and sanctioning by officers of the Wallkill Police Department is a direct and proximate result of the policies, practices and/or customs of Defendant Town of Wallkill;
- b) Enjoin Defendant's unconstitutional policy, practice and custom of allowing officers

of the Wallkill Police Department to detain motorists without reasonable, articulable suspicion of criminal activity and order Defendant to implement policy and procedure sufficient to prevent such unconstitutional behavior in the future;

c) Enjoin Defendant's unconstitutional policy, practice and custom of gender-based discrimination, and order Defendant to implement policies and procedures sufficient to ensure that such discrimination does not continue in the future;

d) Enjoin Defendant's unconstitutional policy, practice and custom of retaliation against citizens of Wallkill for speaking out critically against the Wallkill Police Department and order Defendant to implement policies and procedures sufficient to ensure that such discrimination does not continue in the future;

e) Appoint a receiver to oversee Wallkill Police Department operations and authorize such receiver to establish police rules and regulations, and to make employment decisions concerning hiring, firing and maintaining discipline at the Department;

f) Award Plaintiffs damages in an amount to be determined at trial;

g) Award Plaintiffs reasonable attorneys' fees and costs; and

h) Award such other and further relief as this Court may deem appropriate and equitable, including injunctive and declaratory relief as may be required in the interests of justice.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

Dated: New York, New York
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