

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
FIVE BOROUGH BICYCLE CLUB, SHARON BLYTHE,
JOSH GOSCIAK, KENNETH T. JACKSON, MADELINE
NELSON, ELIZABETH SHURA, LUKE SON,

Plaintiffs,

-against-

THE CITY OF NEW YORK, RAYMOND KELLY, Police
Commissioner of the New York City Police Department,
JAMES TULLER, Commanding Officer, Patrol Borough
Manhattan South, Lt. John Doe, and Captain Jane Doe, New
York City Police Department,

Defendants.
----- x

**DEFENDANTS' SECOND
SET OF
INTERROGATORIES AND
SECOND REQUEST FOR
DOCUMENTS**

07 Civ. 2448 (LAK)

PLEASE TAKE NOTICE that pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, defendants, by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, demand that plaintiffs serve upon the undersigned answers under oath to each of the following interrogatories and respond to the requests to produce documents for inspection and copying. Plaintiffs must serve their answers within thirty (30) days after service of these interrogatories and document requests.

INSTRUCTIONS FOR RESPONSES

A. Plaintiffs are to produce the documents requested, or a true, complete and legible copy thereof, at the office of the undersigned if the documents are in the possession, custody or control of plaintiffs or plaintiffs' attorneys. Plaintiffs are to provide the undersigned with an appropriate release if the documents requested are not in such possession, custody or control. The documents produced in response to this request shall be (1) organized and

designated to correspond to the categories in the requests, or (2) produced in a form that accurately reflects how they are maintained by plaintiffs in the normal course of business.

B. In addition to the definitions set forth in Local Rule 26.3, the following definitions shall apply:

1. "Plaintiffs" shall mean the plaintiffs in this action and their members, agents, employees, attorneys, representatives and all other persons under their authority or control, or acting or purporting to act on their behalf. Although Plaintiffs will be referred to collectively, each request applies to each plaintiff independent of others as well as collectively.

2. A "bike ride" or "bicycle ride" shall mean any 5BBC bicycle event, any Critical Mass event, Kenneth T. Jackson's nighttime bicycle tour of New York City, and any group of fifty or more bicyclists proceeding together in the City of New York from January 1, 2004 forward.

3. "Group bike ride" shall mean any one of the bike rides identified by plaintiffs in the Excel document plaintiffs provided to defendants on December 6, 2007.

4. A "document" shall mean all writings, personal notes, electronic mail or "email," text messages, cablegrams, telexes, electronically stored information, facsimiles, telegrams, hand held two-way radio or walky-talky transmissions, cellular phones transmissions, studies, calendars, day-timers, diaries, appointment books, agendas, minutes, notes, instructions, demands, schedules, data, notices, drafts, pamphlets, envelopes, voicemail messages, bulletins, photostats, graphs, maps, charts, sketches, drawings, plans, specifications, blueprints, forms, manuals, contracts,

agreements, appraisals, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries, records or minutes of meetings or conferences, lists, publications, journals, ledgers, memoranda, notepads, notebooks, post cards, "post-it" notes, tabulations, analyses, evaluations, opinions or report of consultants or experts, projections, work papers, summaries, reports, surveys, studies, logs, message slips, billing records, invoices, purchase orders, checks (front and back), confirmations, correspondence, letters, interoffice communications, brochures, advertising, packaging or promotional materials, financial or statistical statements or compilations, balance sheets, accounting entries, tax returns, loan documents, publications, articles, books, photographs, video recordings, audio recordings, speeches, transcripts, microfiche, microfilms, films, computer programs, printout, computer disks or diskettes, hard drives, software, and all recording made through data processing and/or computer techniques, and the written information necessary to understand and use such materials, and all other written or graphic material of any nature whatsoever, in Plaintiffs' possession or control. A draft or non-identical copy of a document is a separate document within the meaning of this term. A document includes all attachments, whether by staple, clip, rubber band or binding, and all appended or embedded links or files.

5. "Participate in" means organize, promote, lead, ride a bicycle, or have any involvement with the event(s) described in the Document Request, whether directly or indirectly.

6. "Communication" means every contact of any nature, whether made orally, in writing or otherwise, from one person to another, and any evidence of

such contact, including without limitation any correspondence, memoranda, notes, diaries, text messages, hand held two-way radio or walky-talky transmissions, cellular phone transmissions daily calendars, electronic mail messages, voicemail messages, “instant messages,” computer files, electronic or magnetic media, or other documents concerning such contacts.

7. “Amended Complaint” means the amended complaint in this action, dated November 16, 2007.

8. “Concerning” means referring to, reflecting, related to, describing, discussing, evidencing or constituting, in any way, directly or indirectly. Without limiting the scope of the foregoing definition, “documents concerning” a particular subject matter include all documents that comprise, record, memorialize, discuss, evaluate, report on, were reviewed in connection with, or were generated as a result of that subject matter.

9. “Application” means a written or oral request for approval, permission or a permit for a bike ride.

10. “Critical Mass” means any event or bicycle ride that has been identified by the participants in or advertiser of such event or bicycle ride, or that has been identified by the City of New York as a Critical Mass event or bicycle ride, including without limitation any event or bicycle ride occurring at or originating from one or more of the following locations at approximately 7 P.M. to 8:30 P.M. on a Friday: in Manhattan, Union Square Park, Madison Square Park, or Tompkins Square Park; in Brooklyn, Grand Army Plaza, or the entrance of the Williamsburg Bridge.

C. If you object to any interrogatory or document request or part thereof on any claim of privilege, provide the information required by Local Rule 26.2.

D. In the event that any document requested herein is not in your possession, custody or control, please specify what disposition was made of it and who has possession, custody or control of the document. In the event that any document requested herein has been destroyed, please specify the date of destruction, manner of destruction, the reason for destruction, the person authorizing destruction, person destroying the document, and the custodian of the document on the date and at the time of destruction.

E. These interrogatories and document requests shall be deemed to continue beyond the date the plaintiffs serve their responses upon the defendants' attorney. If any plaintiffs or anyone representing any plaintiffs in anyway receives or acquires information after plaintiffs have served their response, plaintiffs must add this information to their responses to these requests to produce documents by sending it to the defendants' attorney.

F. The documents and communications requested are those created during, or referring to or relating to, the period of January 1, 2004 through the date of production.

INTERROGATORIES

1. For each Group Bike Ride, please identify each individual plaintiff that participated in said Group Bike Ride.

2. For each Group Bike Ride, please identify every permit that was obtained from any agency of the City of New York.

3. For each Group Bike Ride, please state whether any person was arrested or issued a summons relating to that person's participation in said Group Bike Ride, and identify each person that was arrested or issued a summons.

4. For each Group Bike Ride, please state whether any participant in said Group Bike Ride attempted to (or did) bicycle on the Franklin Delano Roosevelt Drive (a/k/a FDR) Drive in Manhattan, or any other parkway, expressway, drive, highway, interstate route, thruway or roadway of a bridge as defined in 34 Rules of the City of New York § 4-07(i) during such Group Bike Ride, and identify each participant that attempted to or did enter such road.

5. Please identify the name, date and starting location of every bike ride that plaintiffs contend exceeded fifty persons as a result of the participation by NYPD agents in said bike ride, and identify each individual plaintiff that also participated in said bike ride.

6. Please identify the name, date and starting location of each event in which the plaintiffs contend the NYPD declined to enforce the Parade Rules (as defined in plaintiffs' May 4, 2007 First Request for Production of Documents) against processions of fifty or more pedestrians, in-line skaters and motorists.

7. Please identify each individual plaintiff that attended, participated or witnessed the event(s) described in paragraphs 72, 73, 74, 75, 77, and 78 of the Amended Complaint, and identify the event(s) that each individual plaintiff attended, participated or witnessed.

8. Please identify every witness to the events described paragraphs 72, 73, 74, 75, 77, and 78 of the Amended Complaint.

9. Please identify every person that communicated with anyone from the City of New York about the events and the permits described in paragraphs 92, 95 and 98 of the Amended Complaint.

DOCUMENT REQUESTS

1. Produce all documents and communications concerning each Group Bike Ride, including but not limited to documents concerning applications for permits and documents concerning those that were arrested or issued summonses in connection with said Group Bike Ride

2. Produce all documents and communications concerning any attempt by any participant in a Group Bike Ride to enter the Franklin Delano Roosevelt Drive (a/k/a FDR) Drive in Manhattan, or any other parkway, expressway, drive, highway, interstate route, thruway or roadway of a bridge as defined in 34 Rules of the City of New York § 4-07(i) during such Group Bike Ride.

3. Produce all documents and communications concerning every bike ride that plaintiffs contend exceeded fifty persons as a result of the participation by NYPD agents in said bike ride.

4. Produce all documents and communications concerning each event in which the plaintiffs contend the NYPD declined to enforce the Parade Rules (as defined in plaintiffs' May 4, 2007 First Request for Production of Documents) against processions of fifty or more pedestrians, in-line skaters and motorists.

5. Produce all documents and communications concerning the event(s) described in paragraphs 72, 73, 74, 75, 77, and 78 of the Amended Complaint.

6. Produce all documents and communications concerning the events and the permits described in paragraphs 92, 95 and 98 of the Amended Complaint.

7. Produce all documents and communications concerning events, including but limited to events at Union Square Park in Manhattan, organized or sponsored by Still We Stand or United We Stand.

8. Produce all documents and communications concerning the Amended Complaint's seventh cause of action.

Dated: New York, New York
January 10, 2008

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants
100 Church Street
New York, New York 10007

By: 

Mark W. Muschenheim (MM 0498)
Assistant Corporation Counsel
Tel: (212) 442 0573
Fax: (212) 791 9714