

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FIVE BOROUGH BICYCLE CLUB, et al.,

Plaintiffs,

**ANSWER TO AMENDED
COMPLAINT**

-against-

07 CV 2448 (LAK)

THE CITY OF NEW YORK, et al.,

Defendants.

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Defendants, the City of New York, Raymond Kelly, James Tuller, Thomas Graham, Daniel Albano and Stephen Paragallo, by their attorney, MICHAEL A. CARDOZO, Corporation Counsel of the City of New York, for their answer to the amended complaint, respectfully allege as follows:

1. Deny the allegations set forth in paragraph 1 of the amended complaint, except admit that plaintiffs purport to proceed as set forth therein.
2. Deny knowledge or information sufficient to form a belief of the truth of the allegations set forth in paragraphs 2 and 3 of the amended complaint.
3. Deny knowledge or information sufficient to form a belief of the truth of the allegations set forth in paragraph 4 of the amended complaint, except admit that for a number of years Critical Mass bicycle rides have been held in Manhattan on the last Friday of each month and that ride participants gather in Union Square Park before each such ride; further admit that for a number of years another Critical Mass bicycle ride has been held periodically in Brooklyn, often on the second Friday of the month.

4. Neither admit nor deny the allegations set forth in paragraph 5 of the amended complaint because they constitute legal argument to which no response is required; should a response be required, deny so much of said paragraph as alleges or purports to allege that the application of the permit requirement set forth in New York City Administrative Code (“Admin. Code”) § 10-110 and Title 38 of the Rules of the City of New York (“RCNY”) § 19-02(a) (“parade permit requirement”) to “any procession or race which consists of a recognizable group of 50 or more ... bicycles ... proceeding together upon any public street or roadway” (“bicycle processions”) violates the First Amendment rights of plaintiffs and other bicyclists.

5. Deny the allegations set forth in paragraph 6 of the amended complaint, except admit that with respect to the monthly Critical Mass bicycle rides in Manhattan during the cited time period, the Police Department took whatever actions it determined to be necessary to protect the public health, safety and welfare.

6. Deny the allegations set forth in paragraph 7 of the amended complaint, except admit that approximately 5,000 bicyclists participated in the Critical Mass ride on August 27, 2004, and that a number of participants were arrested for violating various provisions of law.

7. Deny the allegations set forth in paragraph 8 of the amended complaint, except admit that Critical Mass bicycle rides are bicycle processions which are subject to the parade permit requirement and that Critical Mass organizers have steadfastly refused to apply for a parade permit for the monthly rides.

8. Deny the allegations set forth in paragraph 9 of the amended complaint, except admit that applications for parade permits are governed by the procedures and criteria set forth in 38 RCNY §§ 19-03 and 19-04.

9. Deny the allegations set forth in paragraph 10 of the amended complaint, except admit that by Notice of Adoption published in the City Record on January 26, 2007, the Police Department amended the definition of “parade” set forth in 38 RCNY § 19-02(a).

10. Deny the allegations set forth in paragraphs 11, 12 and 13 of the amended complaint.

11. Deny the allegations set forth in paragraph 14 of the amended complaint, except admit that plaintiffs purport to proceed as set forth therein.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 15, 16, 17, 18, 19, 20 and 21 of the amended complaint.

13. Deny the allegations set forth in paragraph 22 of the amended complaint, except admit that the City of New York (“the City”) is a municipal corporation organized and existing under the laws of the State of New York, and that its Police Department is established by Chapter 18 of the New York City Charter and has the powers and duties set forth therein.

14. Deny the allegations set forth in paragraph 23 of the amended complaint, except admit that Raymond Kelly has been the City’s Police Commissioner since January 2002 and that he is sued herein in his official capacity.

15. Deny the allegations set forth in paragraph 24 of the amended complaint, except admit that in February 2007, Assistant Chief James Tuller became the Commanding Officer of Patrol Borough Manhattan South of the New York City Police Department and that he replaced Assistant Chief Bruce Smolka, who retired, and and that he is sued herein in his official capacity.

16. Deny the allegations set forth in paragraph 25 of the amended complaint, except admit that Thomas Graham is currently the commander of the Disorder Control Unit of the New York City Police Department, and that he is sued herein in his official capacity.

17. Deny the allegations set forth in paragraph 26 of the amended complaint, except admit that Lieutenant Daniel Albano is currently assigned to the Legal Bureau of the New York City Police Department, and that he is sued herein in his official capacity.

18. Deny the allegations set forth in paragraph 27 of the amended complaint, except admit that Stephen Paragallo is currently a Deputy Chief of Patrol Borough Manhattan South of the New York City Police Department, and that he is sued herein in his official capacity.

19. Deny the allegations set forth in paragraph 28 of the amended complaint.

20. Deny the allegations set forth in paragraph 29 of the amended complaint, except admit that plaintiffs purport to proceed as set forth therein.

21. Deny the allegations set forth in paragraph 30 of the amended complaint, except admit that this Court has jurisdiction over the subject matter of plaintiffs' claims and has the power to issue a judgment declaring the rights of the respective parties.

22. Deny the allegations set forth in paragraph 31 of the amended complaint, except admit that venue is proper pursuant to 28 U.S.C. § 1391(b).

23. Deny the allegations set forth in paragraph 32 of the amended complaint, except admit that Admin. Code § 10-110 provides that "[a] procession, parade or race shall be permitted upon any street or in any public place only after a written permit therefor has been obtained from the [P]olice [C]ommissioner."

24. Deny the allegations set forth in paragraph 33 of the amended complaint, except admit that, pursuant to its rulemaking authority, the Police Department adopted amendments to 38 RCNY § 19-02 which modified the definition of “parade” previously set forth in subdivision (a) and added new subdivisions (e) and (f) setting forth definitions of the terms “Fifth Avenue” and “applicant” respectively.

25. Deny the allegations set forth in paragraph 34 of the amended complaint, except admit that, pursuant to 38 RCNY § 19-02(a), a procession or race consisting of a recognizable group of 50 or more bicycles proceeding together on a public street or roadway is subject to the parade permit requirement set forth in Admin. Code § 10-110, and that pursuant to 28 RCNY § 19-04(d)(viii), an application for a parade permit will be denied if it seeks a permit to conduct a parade on Fifth Avenue in Manhattan between 15th and 114th Streets, unless the parade was held at that location prior to July 27, 2001.

26. Deny so much of the first sentence of paragraph 35 of the amended complaint as alleges that the term “recognizable group” as used in the amended definition of “parade” set forth 38 RCNY § 19-02(a) is impermissibly vague; deny so much of the second sentence of paragraph 32 as alleges that the term “ordinarily subject to great congestion or traffic” appears in 38 RCNY § 19-02, as amended.

27. Deny the allegations set forth in paragraph 36 of the amended complaint, except admit that applications for parade permits must be submitted in accordance with 38 RCNY § 19-03.

28. Deny the allegations set forth in paragraph 37 of the amended complaint, except admit that Admin. Code § 10-110(c) provides that any person participating in a parade for

which a permit has not been issued may be charged with a criminal offense punishable by a fine of up to \$25 and/or imprisonment of up to 10 days.

29. Deny the allegations set forth in paragraph 38 of the amended complaint, except admit that persons riding bicycles in the public streets are required by law to comply with applicable provisions of the New York State Vehicle and Traffic Law (“VTL”).

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 39, 40, 41 and 42 of the amended complaint.

31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 43 of the amended complaint, except deny so much of said paragraph as alleges or purports to allege that the application of the parade permit requirement to bicycle processions violates the First Amendment rights of plaintiffs and other bicyclists.

32. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 44 and 45 of the amended complaint.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 46 of the amended complaint, except deny so much of said paragraph as alleges or purports to allege that the application of the parade permit requirement to bicycle processions violates the First Amendment rights of plaintiffs and other bicyclists.

34. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 47 of the amended complaint.

35. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 48 of the amended complaint, except deny so much of said paragraph as alleges or purports to allege that the application of the parade permit requirement to bicycle processions violates the First Amendment rights of plaintiffs and other bicyclists.

36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 49, 50 and 51 of the amended complaint.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 52 of the amended complaint, except deny so much of said paragraph as alleges or purports to allege that the application of the parade permit requirement to bicycle processions violates the First Amendment rights of plaintiffs and other bicyclists.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 53 of the amended complaint, except deny so much of said paragraph as alleges or purports to allege that the monthly Critical Mass bicycle rides in Manhattan generally comply with applicable traffic laws, or that the parade permit requirement is unconstitutional because participants in some bicycle processions do comply with applicable traffic laws.

39. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 54, 55 and 56 of the amended complaint.

40. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 57 of the amended complaint, except admit that for a number of years Critical Mass bicycle rides have been held in Manhattan on the last Friday of each month and that ride participants gather in Union Square Park before each such ride; further admit that for a number of years another Critical Mass bicycle ride has been held periodically in Brooklyn, often on the second Friday of the month.

41. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 58 of the amended complaint, except admit that Critical Mass organizers have steadfastly refused to apply for a parade permit for the monthly rides, and

deny so much of said paragraph as alleges or purports to allege that the application of the parade permit requirement to Critical Mass bicycle rides violates the constitutional rights of ride participants.

42. Deny the allegations set forth in paragraph 59 of the amended complaint, except admit that with respect to the monthly Critical Mass bicycle rides in Manhattan during the cited time period, the Police Department took whatever actions it determined to be necessary to protect the public health, safety and welfare.

43. Deny the allegations set forth in paragraph 60 of the amended complaint, except admit that approximately 5,000 bicyclists participated in the Critical Mass ride on August 27, 2004, and that a number of participants were arrested for violating various provisions of law.

44. Deny the allegations set forth in paragraph 61 of the amended complaint, except admit that during the Critical Mass ride on September 24, 2004, the Police Department arrested a number of ride participants for violating various provisions of law, and that the Police Department seized a number of bicycles which had been left unattended on the City streets.

45. Deny the allegations set forth in paragraph 62 of the amended complaint, except admit that, during the cited time period, the Police Department arrested a number of Critical Mass bicycle ride participants for violating various provisions of law.

46. Deny the allegations set forth in paragraph 63 of the amended complaint, and aver that the Police Department's arrest procedures comply with applicable law.

47. Deny the allegations set forth in paragraph 64 of the amended complaint, except admit that with respect to the monthly Critical Mass bicycle rides in Manhattan, the Police Department has taken whatever actions it has determined to be necessary to protect the public health, safety and welfare.

48. Deny the allegations set forth in paragraph 65 of the amended complaint, except admit that the Police Department has conducted lawful surveillance at a number of Critical Mass bicycle rides.

49. Deny the allegations set forth in paragraph 66 of the amended complaint.

50. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 67 of the amended complaint, except deny so much of said paragraph as alleges or purports to allege that since February 2006, participants in the monthly Critical Mass bicycle rides have complied with all applicable provisions of law.

51. Deny the allegations set forth in paragraph 68 of the amended complaint, except admit that the Police Department has issued traffic citations to Critical Mass ride participants who have violated provisions of the VTL.

52. Deny the allegations set forth in paragraph 69 of the amended complaint, except admit that with respect to the monthly Critical Mass bicycle rides in Manhattan, the Police Department has taken whatever actions it has determined to be necessary to protect the public health, safety and welfare.

53. Deny knowledge or information sufficient to form a belief in the truth of the allegations set forth in paragraph 70 of the amended complaint, except deny so much of said paragraph as alleges or purports to allege that, during Critical Mass bicycle rides, the Police Department has not acted to protect the public health, safety and welfare, or that the application of the parade permit requirement to Critical Mass bicycle rides and other bicycle processions violates the constitutional rights of plaintiffs and other bicycle riders.

54. Deny the allegations set forth in paragraph 71 of the amended complaint, except admit that with respect to the monthly Critical Mass bicycle rides in Manhattan during the

cited time period, the Police Department took whatever actions it determined to be necessary to protect the public health, safety and welfare.

55. Deny knowledge or information sufficient to form a belief in the truth of the allegations set forth in paragraphs 72, 73, 74 and 75 of the amended complaint, except admit that with respect to the monthly Critical Mass bicycle rides in Manhattan at the cited times, the Police Department took whatever actions it determined to be necessary to protect the public health, safety and welfare.

56. Deny knowledge or information sufficient to form a belief in the truth of the allegations set forth in paragraph 76 of the amended complaint.

57. Deny knowledge or information sufficient to form a belief in the truth of the allegations set forth in paragraph 77 and 78 of the amended complaint, except admit that with respect to the monthly Critical Mass bicycle rides in Manhattan at the cited times , the Police Department took whatever actions it determined to be necessary to protect the public health, safety and welfare.

58. Deny the allegations set forth in paragraph 79 of the amended complaint.

59. Deny the allegations set forth in paragraph 80 and 81 of the amended complaint.

60. Deny the allegations set forth in paragraph 82 of the amended complaint; aver that with respect to Critical Mass bicycle rides in Manhattan and Brooklyn, the Police Department has taken whatever actions it has determined to be necessary to protect the public health, safety and welfare.

61. Deny the allegations set forth in paragraph 83 of the amended complaint.

62. Deny the allegations set forth in paragraphs 84, 85, 86, 87, 88 and 89 of the amended complaint, except admit that the parade permit requirement applies to bicycle processions as provided in Admin. Code § 10-110 and 38 RCNY § 19-02(a), and that applications for parade permits are governed by the procedures and criteria set forth in 38 RCNY §§ 19-03 and 19-04.

63. Deny the allegations set forth in paragraph 90 of the amended complaint.

64. Deny the allegations set forth in paragraph 91 of the amended complaint.

65. Deny the allegations set forth in paragraph 92 of the amended complaint, except admit that Five Borough Bicycle Club was required to obtain a permit for the 2007 Montauk Century ride.

66. Deny the allegations set forth in paragraphs 93, 94 and 95 of the amended complaint.

67. Deny the allegations set forth in paragraph 96 of the amended complaint; aver that applications for parade permits are governed by the procedures and criteria set forth in 38 RCNY § 19-03 and 19-04, which were adopted pursuant to the Police Department's authority to make rules that carry out the provisions of Admin. Code § 10-110, as interpreted by the Police Department.

68. Deny the allegations set forth in paragraph 97 of the amended complaint.

69. Deny the allegations set forth in paragraph 98 of the amended complaint, except admit that the Police Department issued Five Borough Bicycle Club a permit for a ride scheduled for November 14, 2007.

70. Deny the allegations set forth in paragraph 99 of the amended complaint.

71. In response to paragraph 100 of the amended complaint, repeat the responses to the paragraphs of the amended complaint incorporated by reference therein.

72. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 101 of the amended complaint, except deny so much of said paragraph as alleges or purports to allege that the application of the parade permit requirement to bicycle processions violates plaintiffs' right to travel and that of other bicyclists.

73. Deny the allegations set forth in paragraphs 102 and 103 of the amended complaint.

74. In response to paragraph 104 of the amended complaint, repeat the responses to the paragraphs of the amended complaint incorporated by reference therein.

75. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 105 of the amended complaint, except deny so much of said paragraph as alleges or purports to allege that the application of the parade permit requirement to bicycle processions violates the First Amendment rights of plaintiffs and other bicyclists.

76. Deny the allegations set forth in paragraphs 106 and 107 of the amended complaint.

77. In response to paragraph 108 of the amended complaint, repeat the responses to the paragraphs of the amended complaint incorporated by reference therein.

78. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 109 of the amended complaint, except deny so much of said paragraph as alleges or purports to allege that the application of the parade permit requirement to bicycle processions violates the First Amendment rights of plaintiffs and other bicyclists.

79. Deny the allegations set forth in paragraphs 110 and 111 of the amended complaint.

80. In response to paragraph 112 of the amended complaint, repeat the responses to the paragraphs of the amended complaint incorporated by reference therein.

81. Deny the allegations set forth in paragraphs 113, 114, 115 and 116 of the amended complaint.

82. In response to paragraph 117 of the amended complaint, repeat the responses to the paragraphs of the amended complaint incorporated by reference therein.

83. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 118 of the amended complaint, except deny so much of said paragraph as alleges or purports to allege that the application of the parade permit requirement to bicycle processions violates the First Amendment rights of plaintiffs and other bicyclists.

84. Deny the allegations set forth in paragraphs 119 and 120 of the amended complaint.

85. Deny the allegations set forth in paragraph 121 of the amended complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding plaintiffs' intention to participate in the future Critical Mass bicycle rides.

86. Deny the allegations set forth in paragraph 122 of the amended complaint.

87. In response to paragraph 123 of the amended complaint, repeat the responses to the paragraphs of the amended complaint incorporated by reference therein.

88. Deny the allegations set forth in paragraphs 124, 125 and 126 of the amended complaint.

89. In response to paragraph 127 of the amended complaint, repeat the responses to the paragraphs of the amended complaint incorporated by reference therein.

90. Neither admit nor deny the allegations set forth in paragraphs 128, 129, 130 and 131 of the amended complaint because they constitute legal argument to which no response is required; should a response be required, deny the allegations set forth in said paragraphs

91. Deny the allegations set forth in paragraphs 132, 133 and 134 of the amended complaint.

AS AND FOR A FIRST DEFENSE:

92. In amending the definition of “parade” set forth in 38 RCNY § 1-02(a) to clarify its application to bicycle processions, the Police Department did not violate any rights, privileges or immunities reserved to the plaintiffs by the Constitution or laws of the United States or the State of New York, nor has it violated any act of Congress providing for the protection of civil rights.

AS AND FOR A SECOND DEFENSE:

93. The application of the parade permit requirement to bicycle processions does not violate the constitutional rights of plaintiffs and other bicyclists. Plaintiffs are not entitled to a declaratory judgment or injunctive relief enjoining enforcement of the parade permit requirement against bicycle processions.

WHEREFORE, defendants demand judgment dismissing the amended complaint, awarding them costs and disbursements in this action, including reasonable attorneys' fees, and granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
December 6, 2007

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By: 

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