1:22-CV-7815 (HG)(RER)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT MALEK,

Plaintiff,

-against-

MARGARET INGOGLIA, *et al.*,

Defendants.

**CITY DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS**

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## PRELIMINARY STATEMENT

This memorandum of law is submitted on behalf of Defendants Detective Anderson Thimote, the New York City Administration for Children's Services ("ACS"), the New York City Police Department, the City of New York and the Kings County District Attorney's Office ("KCDA") (denominated the Brooklyn District Attorney's Office in the Complaint), hereinafter "the City Defendants." The Complaint alleges that Plaintiff was the subject of a malicious prosecution by Detective Thimote and the Kings County District Attorney's Office that was politically motivated, motivated by anti-Semitism and in retaliation for serving a federal complaint on Margaret Ingoglia, who is the mother and custodial parent of Plaintiff's daughter. Plaintiff also reiterates assertions made in his four prior lawsuits now pending before this Court concerning the N.Y. Family Court case in which custody of his daughter was awarded to Ms. Ingoglia and orders of protection were issued against Plaintiff. Plaintiff also asserts that he was denied a firearms permit because of the invalid order(s) of protection in the Family Court proceeding that he alleges were never served on him. Plaintiff sues pursuant to 42 U.S.C. §§ 1983, 1985, 1986 asserting that his rights were violated under the First, Second, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments, 42 U.S.C. § 2000-d and Presidential Executive Order 13899. He also cites two federal and one New York State criminal statutes. Plaintiff seeks two billion dollars in damages ($2,000,000,000), and preliminary and permanent injunctive relief barring his alleged prosecution.

Defendants now move to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted on the following grounds: (i) the Complaint does not state a claim for malicious prosecution; no actual prosecution is alleged to have been terminated (or even commenced); (ii) insofar as the Complaint is challenging any aspect of the Family Court proceedings in which orders of protection were issued against Plaintiff, the Complaint is barred by the domestic relations

exception and to the extent Plaintiff seeks declaratory and injunctive relief, dismissal is required based on the *Rooker-Feldman* doctrine; (iii) Plaintiff's claims against ("ACS") and the ("NYPD") fail as city agencies are non-suable entities; (iv) Plaintiff fails to state a claim for municipal liability; and (v) Plaintiff's claim that his firearms permit application was denied based on an invalid/void order of protection is barred by the domestic relations exemption and the Rooker-Feldman doctrine, and furthermore, Plaintiff had an adequate state court remedy to contest the denial.

## STATEMENT OF FACTS

This is the fifth case now on this Court's docket arising from the N.Y. Family Court proceeding that resulted, *inter alia*, in orders of protection that prohibited Plaintiff from contacting Ms. Ingoglia (the mother of Plaintiff's daughter who was awarded custody in the proceeding), and limited Plaintiff's contact with his daughter to supervised visits. In this case, as in his prior cases, Plaintiff asserts that orders of protection issued in the Family Court proceeding were not served on him and were therefore invalid. Plaintiff has acknowledged in prior Complaints in these related proceedings that he did not appeal from those orders protective orders which were part of the final determination in the Family Court proceeding.

The primary claim here concerns alleged malicious prosecution. The Complaint asserts that Detective Thimote, of the NYPD left a voice mail message for Plaintiff on November 18, 2022, stating that a complaint had been filed against Plaintiff and that this was about 30 days after Plaintiff had attempted to serve Margaret Ingoglia with process at the headquarters of ACS in one of the other *Malek* cases.[1] Plaintiff responded by text asking for further details and

[1] The New York City Office of the Corporation Counsel does not represent private citizens such as Margaret Ingoglia and Joseph Palomino Ingoglia in litigation. Further ACS is not an agent for service of process on private citizens. That a person who works for ACS may have taken

Detective Thimote in turn responded that Plaintiff was wanted and that his lawyer should contact the Detective to make arrangements, and that the Detective refused to provide additional information concerning what "arrangements" meant or anything else. Plaintiff then emailed Detective Thimote who did not respond. (Complaint ("C") ¶¶ 9-11, pp. 12-13).

There are no facts alleged concerning any further contact with Plaintiff or his then-attorney or actions taken concerning Plaintiff by the NYPD or the KCDA, nor by Detective Thimote, or any other individual employed by the NYPD or the KCDA. The Complaint does not state that Plaintiff was arrested, or received a summons or warrant or any other legal document compelling him to appear in court; it does not state that an actual criminal proceeding was filed in court against him and it does not state that an actual criminal proceeding against him was subsequently terminated. Indeed, based on the allegations in the Complaint, Plaintiff has not been arrested nor prosecuted. Plaintiff makes many of the same allegations here as in his prior cases now pending before this Court regarding the Family Court proceeding, and indeed references some of his allegations in this Complaint to allegations made in his prior cases which concern alleged improprieties in the Family Court proceeding.

## STANDARD OF REVIEW

### A. Dismissal under Rule 12(b)(1)

"A case is properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it." *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). In deciding a motion to dismiss under Rule 12(b)(1), a court "must accept as true all material factual allegations in the complaint."

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summonses and complaints that were marked for these individuals when brought to ACS headquarters, or sent to ACS headquarters by mail, does not make service of process effective.

*J.S. ex rel. N.S. v. Attica Cent. Schs.*, 386 F.3d 107, 110 (2d Cir. 2004). As the party invoking the court's jurisdiction, the plaintiff bears "the burden of showing by a preponderance of the evidence that subject matter jurisdiction exists." *Lunney v. United States*, 319 F.3d 550, 554 (2d Cir. 2003); *see also Dubin v. Cnty. of Nassau*, 277 F. Supp. 3d 366, 374 (E.D.N.Y. 2017). "'Jurisdiction must be shown affirmatively, and that showing is not made by drawing from the pleadings inferences favorable to the party asserting it.'" *APWU v. Potter*, 343 F.3d 619, 623 (2d Cir. 2003) (quoting *Shipping Fin. Servs. v. Drakos*, 140 F.3d 129, 131 (2d Cir. 1998)). Finally, in resolving a motion to dismiss for lack of subject matter jurisdiction, a district court may refer to "evidence outside the pleadings, such as affidavits." *APWU*, 343 F.3d at 627 (citing *LeBlanc v. Cleveland*, 198 F.3d 353, 356 (2d Cir. 1999)). "To that end, a complaint will be dismissed when it is clear that the Court lacks subject matter jurisdiction over the action." *Fleming ex rel. Fleming v. Grosvenor*, No. 08-CV-3074, 2008 U.S. Dist. LEXIS 63437, at *3–4 (E.D.N.Y. Aug. 15, 2008) (citations omitted).

**B. Dismissal Under Rule 12(b)(6)**

"To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "In applying the plausibility standard set forth in *Twombly* and *Iqbal*, a court assumes the veracity only of well-pleaded factual allegations and draws all reasonable inferences from such allegations in the plaintiff's favor." *McKnight v. Middleton*, 699 F. Supp. 2d 507, 514 (E.D.N.Y. 2010) (internal quotations omitted).

A court may not accept as true "conclusions of law or unwarranted deductions of fact." *First Nationwide Bank v. Gelt Funding Corp.*, 27 F.3d 763, 771 (2d Cir. 1994), *cert. denied*, 513 U.S. 1079 (1995). Rather, "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions." *Twombly*, 550 U.S. at 555 (internal quotations omitted). "[T]hreadbare recitals of the elements of a cause of action" supported by "conclusory" statements or mere speculation are inadequate and subject to dismissal. *Chavis v. Chappius*, 618 F.3d 162, 170 (2d Cir. 2010) (internal quotation and citation omitted).

Further, while *pro se* pleadings should be construed liberally and read to raise the strongest arguments that they suggest, this does not relieve *pro se* plaintiffs of the requirement to provide enough facts to "nudg[e] their claims across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570; *see Abbas v. Dixon*, 480 F.3d 636, 639 (2d Cir. 2007). Thus, dismissal of a *pro se* complaint is appropriate where the plaintiff has clearly failed to meet the pleading requirements under the Federal Rules of Civil Procedure. *See Fitzgerald v. First East Seventh Street Tenants Corp.*, 221 F.3d 362, 363–64 (2d Cir. 2000); *see also Fleming*, 2008 U.S. Dist. LEXIS 63437, at *3 (finding that a district court has the inherent power to dismiss a case, *sua sponte*, if it determines that the action, even where the plaintiff is proceeding *pro se*, is baseless).

Finally, a court may consider matters of which judicial notice may be taken under Fed. R. Evid. 201. *See Kramer v. Time Warner Inc.*, 937 F.2d 767, 773–75 (2d Cir. 1991); *Allah v. City of New York*, No. 15-6852, 2018 U.S. Dist. LEXIS 232869, at *25–26 (E.D.N.Y. Sept. 28, 2018) (taking judicial notice of state court proceedings and underlying family court orders).

## ARGUMENT

### POINT I

### THE COMPLAINT FAILS TO STATE A CLAIM FOR MALICIOUS PROSECUTION

The Complaint does not assert the elements required to state a claim for malicious prosecution. "[U]nder both Section 1983 and New York State law, a plaintiff is required to demonstrate: (i) the commencement or continuation of a criminal proceeding against him; (ii) the termination of the proceeding in his favor; (iii) that there was no probable cause for the proceeding; and (iv) that the proceeding was instituted with malice." *Mitchell v. City of New York*, 841 F.3d 72, 79 (2d Cir. 2016) (citations and quotation marks omitted); *see also McDonough v. Smith*, 898 F.3d 259, 268 n.10 (2d Cir. 2018) ("The elements of a malicious prosecution claim require a plaintiff to establish that (1) the defendant initiated a prosecution against [the] plaintiff, (2) without probable cause to believe the proceeding can succeed, (3) the proceeding was begun with malice and, (4) the matter terminated in plaintiff's favor.") (citation and quotation marks omitted) (alteration in original). Section 1983 additionally requires "a seizure or other perversion of proper legal procedures implicating the claimant's personal liberty and privacy interests under the Fourth Amendment." *Mitchell v. City of New York*, 841 F.3d 72, 79 (2d Cir. 2016) (citation and quotation marks omitted). The failure to establish any one of these elements is fatal to a malicious prosecution claim. *Angevin v. City of New York*, No. 10-CV-5327 (SLT)(SMG), 2016 U.S. Dist. LEXIS 120035, at *23-24 (E.D.N.Y. Sept. 6, 2016).

The Complaint here does not allege that a criminal proceeding actually has been initiated against Plaintiff in court, let alone that it has been terminated in his favor. The Complaint does not even allege that Plaintiff has been arrested. The only factual allegations concern communications between Plaintiff and Detective Thimote; there is no assertion that Plaintiff was subsequently arrested. (C ¶¶ 9-11, pp. 12-13). There are no factual allegations in the Complaint concerning the NYPD or KCDA or any of their employees (other than the Detective) concerning any actions taken regarding Plaintiff.

Insofar as there are any allegations that Plaintiff is being criminally prosecuted they are without any alleged factual basis and are wholly speculative. (C, pp.14-17, 19-23). These speculative assertions do not meet the *Iqbal-Twombly* standard to state a claim upon which relief can be granted discussed above in the Standard of Review section. *See also*, *Chavis,* 618 F.3d at 170. Accordingly, since there are no allegations that a criminal prosecution has been commenced and terminated against Plaintiff, the Complaint does not state a claim for malicious prosecution.

## POINT II

## PLAINTIFF'S CLAIMS ARE BARRED BY THE DOMESTIC RELATIONS EXCEPTION AND THE ROOKER-FELDMAN DOCTRINE

### A. The Court Lacks Subject Matter Jurisdiction and the Complaint is Barred by the Domestic Relations Exception

Insofar as the Complaint here is based on and reiterates Plaintiff's claims asserted in his prior four complaints, that the orders of protection issued in the New York Family Court proceeding were invalid because they were not served on him and/or for other reasons, and insofar as the Complaint here also cites or references other alleged improprieties in the Family Court proceeding (e.g., that false statements and documents were submitted in that proceeding), the claims are barred by the domestic relations exception, which deprives federal courts of the power "to issue divorce, alimony, or child custody decrees." *Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992). "At the heart of the domestic relations exception lies federal-court recognition that the whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States." *McKnight v. Middleton*, 699 F. Supp. 2d 507, 516 (E.D.N.Y. 2010) (internal quotations and citations omitted). Under the domestic relations exception, "[f]ederal courts have discretion to abstain from exercising jurisdiction over issues on the verge of being matrimonial in nature as long as full and fair adjudication is available

in state courts." *Id.* Federal courts typically "dismiss actions aimed at changing the results of domestic proceedings, including orders of child custody." *Rabinowitz v. New York*, 329 F. Supp. 2d 373, 376 (E.D.N.Y. 2004); *see also Abidekun v. New York City Bd. of Educ.*, No. 94-4308, 1995 U.S. Dist. LEXIS 22210, *3 (E.D.N.Y. Apr. 6, 1995) (denying parent's request to enjoin the removal of his children from plaintiff's custody because the court lacked jurisdiction to interfere with the ongoing state court proceedings concerning the custody and care of his children).

Here, Plaintiff's claims essentially arise out of orders of protection issued in the Family Court proceedings and the award of any relief here would impact the validity of the Family Court orders, such claims are barred. *See Graham v. Criminal Court of the City of N.Y.*, No. 15-337, 2015 U.S. Dist. LEXIS 18477, at *3 (E.D.N.Y. Feb. 2, 2015) (dismissing action under domestic relations exception where plaintiff sought to have the court "intervene and vacate various orders that were issued in her state child custody proceedings"). However these allegations are characterized, Plaintiff's claims must be dismissed as they fundamentally challenge state court orders regarding the removal, custody, and supervised visitation with his child. *See Kneitel v. Palos*, No. 15-2577, 2015 U.S. Dist. LEXIS 73783, at *10 (E.D.N.Y. June 4, 2015) (dismissing Plaintiff's claims invoking his constitutional rights because the claims were "directly related" to custody proceedings which concern state law domestic relations matters).

The allegations in this Complaint not only assert claims based on the Family Court proceeding and the allegedly invalid orders of protection issued in that proceeding, Plaintiff then asserts that the communications he had with Detective Thimote and the denial of a firearms permit were based on the invalid orders of protection that were issued in the Family Court proceeding. Those orders of protection, *inter alia,* prohibited Plaintiff from having contact with his daughter except during supervised visits, and prohibited contact with the daughter's mother.

Since these orders of protection were issued by the Family Court, which was plainly adjudicating a "domestic dispute" by the parents of the child concerning custody and visitation, this Court should adhere to the domestic relations exception even where, as here, a plaintiff also seeks monetary relief, as a "plaintiff cannot obtain federal jurisdiction merely by rewriting a domestic dispute as a tort claim for monetary damages." *Schottel v. Kutyba*, No. 06-1577, 2009 U.S. App. LEXIS 1916, *4 (2d Cir. Feb. 2, 2009) (affirming the dismissal of plaintiff-appellant's claim for monetary damages where her claim was "at heart, a dispute surrounding the custody of her child"). Even if a plaintiff were only seeking money damages, if the dispute "begin[s] and end[s] in a domestic dispute," federal courts lack subject matter jurisdiction. *Id.* at *3; *see also Brock El-Shabazz v. Henry*, No. 12-5044, 2012 U.S. Dist. LEXIS 154841, *8 (E.D.N.Y. Oct. 29, 2012) (inclusion of allegations styled as claims for money damages based on alleged constitutional violations "does not place this action outside of the domestic relations exception" to subject matter jurisdiction). Here, Plaintiff seeks monetary damages as well as injunctive relief; however, insofar as his claims are based, or arose from orders of protection that were issued in the Family Court proceeding, these orders are inextricably tied to the underlying domestic dispute.

To the extent Plaintiff seeks to demonstrate an obstacle preventing a full and fair determination of the pertinent issues in state court, there has been no such showing here. *See Bey v. La Casse*, No. 20-CV-09171, 2021 U.S. Dist. LEXIS 55651, at *4 (S.D.N.Y. Mar. 22, 2021) ("unless Plaintiff can show that there is an obstacle that prevents her from receiving a full and fair determination of the issues in the state courts, this Court must abstain from exercising its federal-question jurisdiction over her claims arising from family court's orders and their enforcement."). Plaintiff does not show, here or in his prior four federal cases, that he did not have such an opportunity. What was demonstrated here is that Plaintiff declined to attend or participate for

significant parts of the Family Court proceeding (although he was represented by an attorney who did attend) and that he chose not to appeal the final determination in the Family Court proceeding which included the orders of protection he challenges here.

Accordingly, this action should be dismissed for lack of subject matter jurisdiction under the domestic relations exception.

**B. The Court Lacks Subject-Matter Jurisdiction over Family Court Judgments and Issues Intertwined with those Judgments under the *Rooker-Feldman* Doctrine.**

The *Rooker-Feldman* doctrine provides that federal district courts have no authority to review the final judgments of state courts. *Morrison v City of N.Y.,* 591 F.3d 109, 112 (2d Cir. 2010). The *Rooker-Feldman* doctrine applies when "the losing party in state court file[s] suit in federal court after the state proceedings ended, complaining of an injury caused by the state-court judgment and seeking review and rejection of that judgment." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 291 (2005). A federal district court lacks subject-matter jurisdiction to review state court judgments because 28 U.S.C. § 1257 "vests authority to review a state court's judgment solely" in the Supreme Court. *Id.* at 292. "A plaintiff may not overcome the doctrine and seek a reversal of a state court judgment 'simply by casting his complaint in the form of a civil rights action". *DaCosta v Wilmington Trust, N.A.*, No. 3:19-CV-0913 (TJM/ML) 2019 U.S. Dist. LEXIS 147229, at *9-10 (N.D.N.Y. Aug. 29, 2019) (quoting Rabinowitz v. New York, 329 F. Supp. 2d 373, 376 (E.D.N.Y. 2004)). Federal courts generally cannot review state court proceedings since the federal courts are not a forum for appealing state court decisions. *Pitre v Shenandoah,* No. 5:14-CV-293, 2015 U.S. Dist. LEXIS 18604, at *8 (N.D.N.Y. Feb. 17, 2015) (district court lacked jurisdiction to hear a constitutional claim which essentially sought to reverse a state court's custody determination). Nor, under the *Rooker-Feldman* doctrine, may a federal

court decide federal issues that are raised in state proceedings and "inextricably intertwined" with the state court's judgment. *Kropelnicki v. Siegel,* 290 F.3d 118, 128 (2d Cir. 2002).

Accordingly, to the extent that Plaintiff seeks relief that would effectively overturn a portion of a prior judgment of the Family Court, and issues inextricably intertwined with that judgment, his claims are also barred under the *Rooker-Feldman* doctrine. *See Vossbrinck v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 426 (2d Cir. 2014) ("Under the Rooker-Feldman doctrine, federal district courts lack jurisdiction over cases that essentially amount to appeals of state court judgments.").

## POINT III

## PLAINTIFF'S CLAIMS AGAINST ACS AND THE NYPD SHOULD BE DISMISSED

### A. ACS and the NYPD are Agencies of the City of New York and are Thus Non-Suable Entities

ACS and the NYPD are agencies of the City of New York, and thus non-suable entities. *Nachmenson v. Admin. for Children's Servs.*, 17-CV-3633 (WFK) (LB), 2017 U.S. Dist. LEXIS 96618, 2017 WL 2711931 (E.D.N.Y. June 20, 2017) (dismissing pro se Plaintiff's claims against ACS). The New York City Charter provides that all suits must be brought against the City, not against individual agencies. *See* N.Y.C. Admin. Code & Charter Ch. 17 § 396. Accordingly, Plaintiff's claims against ACS and the NYPD should be dismissed for failure to state a claim upon which relief can be granted.

## POINT IV

## PLAINTIFF FAILS TO STATE A CLAIM FOR MUNICIPAL LIABILITY

Plaintiff did name the City of New York as a Defendant but the Complaint fails to plausibly allege any municipal policy, custom, or practice that proximately caused his purported

constitutional violations. *See Cotto v. City of New York*, 803 Fed. Appx. 500, 503 (2d Cir. 2020) ("Under *Monell v. Dept. of Social Services*, 436 U.S. 658, 694 (1978)], a city can be liable under § 1983 only when the alleged deprivation of rights occurs pursuant to a governmental policy, custom, or usage."). Here, other than conclusory allegations, Plaintiff does not allege the existence of any unconstitutional policy or practice by the City of New York. Accordingly, Plaintiff's Section 1983 claim should be dismissed for failure to state a claim.

**POINT V**

**INSOFAR AS THE COMPLAINT CHALLENGES THE DENIAL OF A FIREARM PERMIT TO PLAINTIFF BASED ON AN ORDER OF PROTECTION IN THE FAMILY COURT PROCEEDING, THE CLAIM IS BARRED BY THE DOMESTIC RELATIONS EXCEPTION AND THE ROOKER-FELDMAN DOCTRINE AS DISCUSSED ABOVE. FURTHERMORE, PLAINTIFF HAD AN ADEQUATE STATE REMEDY TO CHALLENGE THE DENIAL**

The Complaint asserts that Plaintiff applied for and was denied a firearm permit in approximately January 2021 based on an order of protection that was not served upon him. (C ¶ 1.1, p. 11). This reference to an order of protection issued in the Family Court proceeding is subject to the domestic relations exception and Rooker-Feldman doctrine bars discussed above.

In addition, Plaintiff had an adequate state court remedy to challenge the denial of a firearm permit. It has long been held that if there is an adequate state court remedy to challenge a state or local administrative agency's denial of an alleged property or liberty interest, than no claim for a due process violation can be stated. *McCluskey v. Comm'r of Nassau Cty. Dep't of Soc. Svcs.,* No. 12-CV-3852, 2013 U.S. Dist. LEXIS 127614, at *12 (E.D.N.Y. Sept. 5, 2013). The due process clause does not guarantee any particular form of procedure, it protects substantive rights. Id. As

long as plaintiffs have been afforded the opportunity to be heard at a meaningful time, and in a meaningful manner, their due process rights have not been violated. *Id.*

When an individual is denied a firearm permit, s/he may bring an Article 78 proceeding pursuant to New York Civil Practice Law and Rules Article 78. It is well-settled that this is an adequate state remedy for denial of a firearm permit that satisfies due process.

> The Court need not decide whether Sibley has a liberty or property interest protected by the Fourteenth Amendment because in any event, "[w]hatever level of process was due in this case, it was available in the form of an Article 78 proceeding before the New York State Supreme Court." *Montalbano v. Port Auth. of N.Y. & N.J.*, 843 F. Supp. 2d 473, 485 (S.D.N.Y. 2012). "It is settled law in this Circuit that '[a]n Article 78 proceeding provides the requisite post-deprivation process—even if [a plaintiff] failed to pursue it.'" *Id.* (quoting *Anemone v. Metropolitan Transp. Authority*, 629 F.3d 97, 121 (2d Cir. 2011)); *see also Osterweil v. Bartlett*, 819 F. Supp. 2d 72, 89 (N.D.N.Y. 2011) ("[B]ecause plaintiff was entitled to challenge the denial of his firearms license application in an Article 78 proceeding, plaintiff had available to him a meaningful post-deprivation remedy under state law."); *Aron*, 48 F. Supp. 3d at 370 ("An aggrieved pistol permit applicant has well-established appellate recourse under N.Y. CPLR Article 78."); *Corbett*, 2019 U.S. Dist. LEXIS 100657, at *20 n.3 ("Any due process issues would be protected by an Article 78 proceeding."); *DeProspo*, 2019 U.S. Dist. LEXIS 204672, at *10 (S.D.N.Y. Nov. 22, 2019) ("Courts have held that a proceeding under Article 78 of the New York Civil Practice Law and Rules is an adequate remedy to challenge decisions with respect to firearms licenses." ); *Torcivia v. Suffolk Cty.*, 409 F. Supp. 3d 19, 41 (E.D.N.Y. 2019) (holding that Article 78 proceeding afforded sufficient due process for pistol license revocation claims).

*Sibley v. Watches*, 460 F. Supp. 3d 302, 320 (W.D.N.Y. 2020)

## CONCLUSION

Based on the foregoing, City Defendants respectfully request that the Court grant their motion and dismiss the Complaint in its entirety, deny all the relief sought therein, and award City Defendants such other and further relief as the Court shall deem just and proper.

Dated: February 13, 2023
New York, New York

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