

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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	:	
IAN ZOLITOR, ERIN ZEGAR,	:	
and PATRICK BOYHAN II,	:	
	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	NO. _____
	:	
	:	
THE CITY OF PHILADELPHIA and	:	
OFFICERS JOHN DOES #1-#100,	:	
	:	
Defendants.	:	
	-----X	

COMPLAINT

1. Plaintiffs Ian Zolitor, Erin Zegar, and Patrick Boyhan II (“Plaintiffs”) bring this action against The City of Philadelphia and unnamed Philadelphia Police Officers, John Does #1-#100 (“Defendants”), for violations of their rights under the Constitution of the United States and state law.

INTRODUCTION

2. In the wake of the killing of George Floyd by Minneapolis policemen in May of 2020, demonstrators gathered across the country to protest racial inequality and injustice. Despite the generally peaceful nature of these protests nationwide, a growing number of police responses to the protests grew violent, including in Philadelphia.

3. On June 1, 2020, peaceful and non-threatening demonstrators in Philadelphia marched to protest the death of George Floyd and other African Americans by police. Some of

these demonstrators were on the Vine Street Expressway (I-676), walking peacefully down the highway.

4. Rather than using appropriate methods to direct the marchers away from the roadway, including simple verbal requests to leave the area, the Philadelphia Police (among them armed SWAT team members) subjected the demonstrators to violent, excessive, and unreasonable force at the direction or authorization of Police Commissioner Danielle M. Outlaw (“Commissioner Outlaw”) and Deputy Commissioner of Special Operations Dennis Wilson (“Deputy Commissioner Wilson), and with the authorization or ratification of Philadelphia Mayor James F. Kenney (“Mayor Kenney”).

5. Confronting the peaceful demonstrators on both sides of the sunken road, the Philadelphia Police forced them inside a tunnel and attacked them with pepper spray. The police then deployed tear gas, oleoresin capsicum (“OC” or “pepper spray”) pellets, and other projectiles called “bean bags” into the crowd, forcing frightened protesters outside the tunnel to climb a steep embankment, where they were ultimately trapped in front of a wall and fence.

6. Despite having corralled and contained the protesters, who were visibly panicking and attempting to escape by climbing the wall and fence, the police continued bombarding them with tear gas and pepper spray, eventually dragging many protesters down the embankment where arrests ensued.

7. Furthermore, even after the protesters escaped from I-676, police officers continued to pursue and attack them as they dispersed, indiscriminately launching gas and pepper spray at them from moving police vehicles without regard to whether any of them were doing anything illegal.

8. Plaintiffs and many of the other demonstrators suffered physical injuries, including acute respiratory distress, as well as emotional trauma, as a direct result of the policy and decisions of Commissioner Outlaw, Deputy Commissioner Wilson, and Mayor Kenney to use “less-lethal” weapons against peaceful protestors on June 1, 2020.

9. In a summary of the actions the police took that day, Commissioner Outlaw stated:

[At] approximately, 5:05 p.m., SWAT Team 2 deployed FN OC spray pellets, OC spray, and bean bags in the direction of the crowd. SWAT Team 1 deployed FN OC pellets and bean bags.

Afterward, SWAT officers simultaneously deployed non-chemical white smoke and CS gas (tear gas). This simultaneous deployment allows the officers to use less CS gas, while maintaining a deterrent visual effect.¹

10. Much of this police violence was captured on film and portrayed in a graphic visualization on the New York Times website on June 25, 2020, garnering national attention and outcry.²

11. After defending the use of the tactics described above for weeks, on June 25, 2020, the day the New York Times published its article about the protest, Mayor Kenney and Commissioner Outlaw held a press conference, admitting that the police had violated internal Philadelphia Police Department directives by using unjustifiable, unreasonable, and excessive force in light of the peaceful and non-threatening nature of the protest.

¹ Mayor’s Office Press Release, *Mayor Kenney and Police Commissioner Danielle Outlaw Issue Statements on the Use of Tear Gas*, (June 1, 2020), available at, <https://www.phila.gov/2020-06-01-mayor-kenney-and-police-commissioner-danielle-outlaw-issue-statements-on-the-use-of-tear-gas/>.

² Christopher Koettl et al., *How the Philadelphia Police Tear-Gassed a Group of Trapped Protesters*, New York Times (June 25, 2020), available at, <https://www.nytimes.com/video/us/100000007174941/philadelphia-tear-gas-george-floyd-protests.html>

12. Plaintiffs and their fellow peaceful demonstrators were exercising their constitutional rights as Americans, in solidarity with a movement that seeks justice and safety for African Americans. They posed no threat of harm and were attacked viciously by police, in a show of violence that illustrated the need for the protest in the first place.

13. Plaintiffs seek money damages for Defendants' violations of their constitutional rights during the peaceful protest on the Vine Street Expressway and environs in the City of Philadelphia on June 1, 2020, and for violations of Pennsylvania law.

JURISDICTION AND VENUE

14. The Court has jurisdiction over the Plaintiffs' claims under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1343 (civil rights), and 42 U.S.C. §§ 1983 and 1988.

15. The Court has supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. § 1367.

16. Venue is proper in this judicial district under 28 U.S.C. § 1391(b), because the Doe Defendants reside in this district, and the acts and occurrences giving rise to the claims took place in this district.

PARTIES

17. Plaintiff Ian Zolitor is a resident of Pennsylvania.

18. Plaintiff Erin Zegar is a resident of Pennsylvania.

19. Plaintiff Patrick Boyhan II is a resident of Pennsylvania.

20. Defendant the City of Philadelphia ("Philadelphia" or the "City") is a Pennsylvania municipal entity.

21. Defendant Philadelphia operates the Philadelphia Police Department, a law enforcement agency, and is a municipality capable of being sued under Pennsylvania law.

Philadelphia is the legal entity responsible for the Philadelphia Police Department. The Philadelphia Police Department is the fourth largest in the country, with over 6,300 officers. With respect to the policy and events described in this Complaint, Philadelphia acted by and through its duly authorized agents and employees acting within the scope and course of their employment and under the color of state law.

22. Defendants John Does 1-100 were, at all times relevant, officers employed by the City on June 1, 2020 who participated in the brutal suppression of the demonstration and demonstrators in Philadelphia on that day. The identities of these Defendants will be obtained via preliminary discovery, and Plaintiffs will amend this Complaint accordingly.

23. At all times relevant to the Complaint, the Defendant John Does who subjected Plaintiffs to excessive, unnecessary, and unjustifiable force, were acting under color of state law and within the scope of their official duties and employment.

24. The actions of the Defendant John Does alleged in this Complaint were directed, authorized or ratified by Mayor Kenney, Commissioner Outlaw, and Deputy Commissioner Wilson under color of state law and in their official capacities as policymakers for Defendant Philadelphia with respect to police matters. To the extent any of these or other officials is not deemed a policymaker under relevant law, each had the authority to make policy delegated to them with respect to the matters alleged in this Complaint.

FACTS

I. The Unjustified Police Attack on Demonstrators Using Excessive Force

25. As confirmed by witness accounts and video footage of the June 1, 2020 protest, during which some demonstrators marched onto on I-676, Plaintiffs and their fellow demonstrators were peaceful and posed no threat to any police officer, or anyone else.

Regardless, the Philadelphia Police failed to use simple and non-violent methods to disperse the protest, including simple verbal commands, choosing instead to attack protestors with so-called “less lethal” munitions, including tear gas, pepper spray and projectiles in violation of Philadelphia Police Policy, as well as the Plaintiffs’ and other protestors’ constitutional rights and state law.

26. On June 1, 2020, Philadelphia issued statements from Commissioner Outlaw and Mayor Kenney. In describing the events on the Expressway, Commissioner Outlaw stated that “the crowd surrounded a State Trooper, who was alone and seated in his vehicle, and began rocking the vehicle, with the trooper having no safe means of egress.”³ This never happened. Commissioner Outlaw then stated that after two SWAT teams arrived on the scene, “members of the crowd began throwing rocks at the officers from the north and south sides, and from the bridges above the officers. The crowd also began rushing toward the officers.” This, too, was a complete fabrication. Outlaw then stated that the crowd did not comply with directions from SWAT to disperse. People at the scene have stated that there was no direction to disperse given to the demonstrators. To the extent this may have been a truthful statement, it was materially incomplete and misleading because Commissioner Outlaw omitted the facts that (a) the crowd initially could not disperse because the protesters were caught in a tunnel between two SWAT teams on a sunken highway, and (b) once freed from the tunnel the crowd desperately tried to disperse but to do so its members had to clamber up an embankment where they were then set upon by police firing “less lethal” munitions into the crowd.

³ Ryan Briggs, *‘They’re peaceful’: Pa. State Police release dashcam video from I-676 protest tear-gassing*, WHYY (June 23, 2020), available at <https://whyy.org/articles/theyre-peaceful-pa-state-police-release-dashcam-video-from-i-676-protest-tear-gassing/>.

27. In his June 1, 2020 statement, Mayor Kenney added insult to injury, acknowledging that police “made the decision to deploy tear gas *to encourage the crowd to disperse.*”⁴ (Emphasis added). He then said that he was “disturbed by the footage” that he saw, referring to news video of panicking protesters trying to leave the Expressway while being fired upon by the Mayor’s own police department.⁵

28. Tear gas causes the eyes to burn and water and can create a burning sensation in the nose along with swelling. Upon inhalation, it irritates the lungs and upper airways, causing wheezing, coughing, and choking. It can make it hard for a person to catch his or her breath. Pepper spray creates a burning sensation in the eyes and on the skin. Both agents can create serious and even life-threatening complications for people with other medical problems, such as those who have underlying heart or lung conditions. Inaptly named, “bean bags” are small fabric pillows filled, not with beans, but lead shot, fired from a shotgun. These rounds can cause traumatic injuries.

29. On June 2, 2020, Mayor Kenney and Commissioner Outlaw continued to articulate the City’s position. Mayor Kenney falsely stated that SWAT officers only deployed tear gas “when it became evident at that time other options were not effective,” and that the SWAT teams only began to deploy weapons after issuing “numerous warnings” to the protesters.⁶

⁴ Brian X. McCrone, *Top City Officials Signed Off on Use of Tear Gas During Protests*, NBC Philadelphia (June 10, 2020), available at <https://www.nbcphiladelphia.com/news/local/kenney-outlaw-signed-off-on-use-of-tear-gas-during-protests-city-official-says/2426510/>.

⁵ *Id.*

⁶ Michael Tanenbaum, *Philly officials apologize for 'unjustifiable' use of tear gas during I-676 protest*, Philly Voice (June 25, 2020), available at, <https://www.phillyvoice.com/philly-police-tear-gas-unjustified-i-676-protest-protesters/>.

30. Commissioner Outlaw candidly stated that the “purpose” of deploying tear gas was both to cause the protesters to disperse and “then also to make arrests after[,]” because “when folks run up on a freeway at that point it’s not deemed peaceful.”⁷ She further stated that police acted out of concern that angry drivers stuck in a traffic jam during the protest “might take action upon themselves because they’re frustrated against the protesters....” Mayor Kenney then added, “[y]ou have people stopped in traffic who may be angry [or] who may be scared [,]” and that “in order for us to get this group somewhere else other than where they were[,] [less lethal munitions] w[ere] employed and they moved.”⁸ In other words, Philadelphia used chemical agents and projectiles on peaceful protesters to clear a traffic jam.

31. None of Philadelphia’s stated purposes for using “less lethal munitions” were legitimate or authorized by Philadelphia’s police directives. In fact, they were expressly prohibited.

32. A Philadelphia Police directive restricts, and in many circumstances prohibits, the use of so-called “less lethal force,” including tear gas, pepper spray and projectiles, only to situations where police officers are faced with violent persons presenting an imminent risk of harm to themselves or others.⁹

⁷ *Philly Police Commissioner Changes Use of Force Policy After Tear Gas Is Used on Protesters*, NBC Philadelphia (June 2, 2020), available at, <https://www.nbcphiladelphia.com/news/local/philly-police-commissioner-changes-use-of-force-policy-after-tear-gas-is-used-on-protesters/2417705/>.

⁸ *Kenney, Police Commissioner Outlaw defend use of tear gas against protesters on I-676*, The Philadelphia Inquirer (June 2, 2020), available at <https://www.inquirer.com/news/live/philadelphia-protest-curfew-news-live-george-floyd-minneapolis-looting-stores-police-20200602.html>.

⁹ Philadelphia Police Department, Directive 10.2, available at <https://www.phillypolice.com/assets/directives/D10.2-UseOfModerateLimitedForce.pdf>.

33. The use of “less lethal force” is strictly limited to stopping violent activity and is prohibited as a means of crowd control during a peaceful demonstration, even if the protesters are not complying with instructions to disperse. In situations where police confront peaceful protesters, the directive provides that the use of these weapons constitutes excessive force and violates the clearly established constitutional rights of the targets of such force. As set out in the directive, the decision to use unreasonable and excessive force on and adjacent to the Vine Street Expressway in response to a non-violent demonstration was in derogation of Plaintiffs’ clearly established constitutional rights.

34. Despite the Department’s directives about handling non-violent demonstrators (Philadelphia Police Department Directives 10.2 and 10.3), Mayor Kenney, Commissioner Outlaw, and Deputy Commissioner Wilson ordered, authorized, or ratified the use of excessive force by the Philadelphia Police, thereby demonstrating a deliberate indifference to the rights of Plaintiffs and other peaceful demonstrators.

35. The Defendants and the people who authorized, ordered, ratified, and defended for weeks the use of tear gas, pepper spray, and projectiles knew or reasonably should have known the danger they placed Plaintiffs in by assaulting them with “less lethal” force.

II. Violations of Plaintiffs’ Rights

36. Plaintiff Ian Zolitor was peacefully demonstrating on I-676 when the police attack occurred. He escaped the panicked crowd by scrambling up the embankment and climbing the fence onto the Benjamin Franklin Parkway. But, as he stood on the sidewalk attempting to catch his breath, an armored police vehicle drove past him, and an officer standing in the truck’s open turret directed pepper spray at him and others on the sidewalk without warning and with no order

to disperse. Defendants' use of tear gas and pepper spray caused him to experience respiratory distress and a burning sensation in his eyes, as well as emotional harm.

37. At the same time the police were attacking peaceful protesters on I-676, Plaintiffs Erin Zegar and Patrick Boyhan II peacefully marched with protestors on 22nd Street, near the overpass over I-676. Without any warning to disperse, police deployed tear gas on them and other protestors. Plaintiffs Zegar and Boyhan suffered respiratory distress and emotional harm from the gassing.

38. On June 26, 2020, after a video report was published by the New York Times, city officials, including Mayor Kenney and Commissioner Outlaw, offered a belated *mea culpa*, admitting that the city's narrative of the events of June 1 was false and that the use of less lethal weapons on the peaceful protesters was "unjustifiable." Commissioner Outlaw said that the incontrovertible video evidence published by the New York Times caused her to become "extremely disturbed and quite frankly sickened beyond description."¹⁰ Mayor Kenney referred to "the terrifying incident on I 676," and admitted that he "never believed tear gas was an effective tool . . . [and that] [i]t always seemed to me to make situations worse...."¹¹

39. Neither Mayor Kenney nor Commissioner Outlaw explained why none of the video footage of the police assault, which had at all times been available to them, had been shown on local television stations until the New York Times publication had sufficiently moved them to correct the public record.

¹⁰ Nilo Tabrizy et. al., *I Humbly Apologize': Philadelphia Officials Announce Changes After Protest Response*, New York Times (June 25, 2020), available at <https://www.nytimes.com/2020/06/25/video/philadelphia-police-tear-gas.html>.

¹¹ *Id.*

COUNT I
(On Behalf of All Plaintiffs)
Violation of the Fourth Amendment and Fourteenth Amendment
42 U.S.C. § 1983

40. Plaintiffs incorporate paragraphs 1 through 39 as though fully set forth herein.

41. The Fourth and Fourteenth Amendments to the Constitution protect Plaintiffs' rights to be free from unreasonable, excessive force.

42. Defendant John Does, whose actions were authorized, ordered, or ratified by Mayor Kenney, Commissioner Outlaw, and Deputy Commissioner Wilson, viciously, unreasonably, and brutally attacked Plaintiffs and other peaceful demonstrators on I-676 and its environs on June 1, 2020, causing physical injuries and emotional harm.

43. Specifically, Defendant John Does willfully subjected peaceful protesters to pepper spray, tear gas, and projectiles, despite not having directed protesters to disperse verbally or attempting to disperse them using any other reasonable, non-violent means.

44. As has been true for some time, Defendant Philadelphia further failed to properly train, supervise, or discipline any such John Doe Defendant who acted against Plaintiffs in violation of the United States Constitution.

COUNT II
(On Behalf of All Plaintiffs)
Assault

45. Plaintiffs incorporate paragraphs 1 through 44 as though fully set forth herein.

46. John Doe Defendants, members of the Philadelphia Police Department, as peace officers owed a duty of care to Plaintiffs, whom they were required to protect and serve, committed the acts described above with the intent to cause a harmful or offensive contact with the Plaintiffs, or with the intent to put Plaintiffs in reasonable apprehension of harm.

47. Defendant Philadelphia is liable for the actions of the John Doe Defendant members of the Philadelphia Police Department.

48. As a direct and proximate result of Defendants' conduct, Plaintiffs suffered physical and emotional harm.

COUNT III
(On Behalf of All Plaintiffs)
Battery

49. Plaintiffs incorporate paragraphs 1 through 48 as though fully set forth herein.

50. John Doe Defendants, members of the Philadelphia Police Department, as peace officers owed a duty of care to Plaintiffs, whom they were required to protect and serve.

51. These Defendants committed the acts described above with the intent to cause a harmful or offensive contact with Plaintiffs and, in fact, made that contact and caused physical harm.

52. As a direct and proximate result of the John Doe Defendants' conduct, Plaintiffs suffered physical and emotional harm.

COUNT III
(On Behalf of All Plaintiffs)
First Amendment Retaliation
42 U.S.C. § 1983

53. Plaintiffs incorporate paragraphs 1 through 52 as though fully set forth herein.

54. Plaintiffs engaged in constitutionally protected speech by peacefully demonstrating on June 1, 2020.

55. The Defendants' use of force against Plaintiffs constituted unlawful retaliation against Plaintiffs by Defendants for engaging in activity that is protected by the First Amendment to the United States Constitution.

56. The Defendant John Does, whose actions were authorized, ordered, or ratified by Mayor Kenney, Commissioner Outlaw, and Deputy Commissioner Wilson, indiscriminately used pepper spray, tear gas, and projectiles on Plaintiffs and other protesters, without verbal warnings, orders to disperse, or otherwise attempting to disperse them using any other reasonable non-violent means, in retaliation against Plaintiffs and other protestors for exercising their First Amendment rights.

57. Defendant Philadelphia further failed to properly train, supervise, or discipline any such John Doe Defendant who acted against Plaintiffs in violation of the United States Constitution.

JURY TRIAL DEMAND

58. Plaintiffs demand a trial by jury of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, for the reasons set forth above, Plaintiffs respectfully seek relief in the form of:

- A. compensatory damages;
- B. punitive damages;
- C. attorneys' fees and costs against the Defendants and in

favor of the Plaintiffs;

- D. any further or other relief that the Court deems just and appropriate.

Dated: July 23, 2020

/s/ William E. Hoese

William E. Hoese
Neil L. Glazer
Craig W. Hillwig
Aarthi Manohar
Zahra R. Dean

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Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS</p> <p>(b) County of Residence of First Listed Plaintiff _____ <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i></p>	<p style="text-align: center;">DEFENDANTS</p> <p style="text-align: center;">County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p style="text-align: center;">Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated <i>or</i> Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated <i>and</i> Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)* Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	
<p style="text-align: center;">REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p style="text-align: center;">CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p style="text-align: center;">PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty	<p style="text-align: center;">LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p style="text-align: center;">PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<p style="text-align: center;">SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<p style="text-align: center;">FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District *(specify)*
 6 Multidistrict Litigation - Transfer
 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Ian Zolitor, Erin Zegar, and Patrick Boyhan II	:	CIVIL ACTION
	:	
v.	:	
	:	
City of Philadelphia	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks.

July 23, 2020	William Hoese, Neil Glazer	Plaintiffs
Date	Attorney-at-law	Attorney for
215-238-1700	215-238-1968	whoese@koh Swift.com; nglazer@koh Swift.com
Telephone	FAX Number	E-Mail Address

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: _____

Address of Defendant: _____

Place of Accident, Incident or Transaction: _____

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes No
- 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes No
- 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? Yes No
- 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes No

I certify that, to my knowledge, the within case is / is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: _____ William E. Hoer _____
Attorney-at-Law / Pro Se Plaintiff Attorney I.D. # (if applicable)

CIVIL: (Place a \checkmark in one category only)

A. Federal Question Cases:

- 1. Indemnity Contract, Marine Contract, and All Other Contracts
- 2. FEELA
- 3. Jones Act-Personal Injury
- 4. Antitrust
- 5. Patent
- 6. Labor-Management Relations
- 7. Civil Rights
- 8. Habeas Corpus
- 9. Securities Act(s) Cases
- 10. Social Security Review Cases
- 11. All other Federal Question Cases
(Please specify): _____

B. Diversity Jurisdiction Cases:

- 1. Insurance Contract and Other Contracts
- 2. Airplane Personal Injury
- 3. Assault, Defamation
- 4. Marine Personal Injury
- 5. Motor Vehicle Personal Injury
- 6. Other Personal Injury (Please specify): _____
- 7. Products Liability
- 8. Products Liability – Asbestos
- 9. All other Diversity Cases
(Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, _____, counsel of record or pro se plaintiff, do hereby certify:

- Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:
- Relief other than monetary damages is sought.

DATE: _____ William E. Hoer _____
Attorney-at-Law / Pro Se Plaintiff Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.