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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ZACHARY GALICKI, JOY GALICKI, ELI GALICKI, ROBERT ARNOLD, KIM JOSCELYN, ELIZABETH PSALTOS, MADELINE LOBUE, HONG LEE, MARK KATZ, LIBERTY NEWS, INC., DOG ON IT DOGGIE DAYCARE, APPLE CORRUGATED BOX LTD., individually and on behalf of all others similarly situated, **Plaintiffs,** vs. STATE OF NEW JERSEY, GOVERNOR CHRISTOPHER JAMES CHRISTIE, BRIDGET ANNE KELLY, Individually and as an Agent, Servant and Employee of the State of New Jersey, BILL STEPIEN, Individually and as an Agent, Servant and Employee of GOVERNOR CHRISTOPHER JAMES CHRISTIE, PORT AUTHORITY OF NEW YORK & NEW JERSEY, BILL BARONI, Individually and as an Agent, Servant and Employee of the Port Authority of New York & New	CIVIL ACTION NO.2:14-cv-00169-KM-MCA **CLASS ACTION** **JURY TRIAL DEMANDED**

Jersey, DAVID WILDSTEIN, Individually and as an Agent, Servant And Employee of the Port Authority of New York & New Jersey, ABC CORP 1-10 and JOHN DOE 1-10 (the last two being fictitious designations) **Defendants.**	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

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I. INTRODUCTION

Plaintiffs, Zachary Galicki, Joy Galicki, Eli Galicki, Robert Arnold, Kim Joscelyn, Elizabeth Psaltos, Madeline Lobue, Hong Lee, Mark Katz, Liberty News, Inc., Dog on It Doggie Daycare, Apple Corrugated Box Ltd., individually and on behalf of all others similarly situated (referred herein collectively as "Plaintiffs"), by way of Complaint against the Defendants, allege that they were damaged as the result of the actions and/or inactions of the Defendants, and bring this Motion for Class Certification and for the appointment of Class Counsel pursuant to Rule 23 of the Federal Rules of Civil Procedure.

II. THE PARTIES

Briefly, for reference, the Parties to this Class Action are as follows:

1. Plaintiff Zachary Galicki, is a resident of Fort Lee, New Jersey (hereinafter, "Fort Lee"), who commutes daily via the George Washington Bridge (hereinafter, "GWB") to his job in the City and State of New York.

2. Plaintiff Joy Galicki, is a resident of Fort Lee, who commutes daily via the GWB to her job in the City and State of New York.

3. Plaintiff Eli Galicki, is a resident of Fort Lee, who commutes daily via the GWB to his job in the City and State of New York. (Hereinafter, Plaintiffs Eli, Joy and Zachary Galicki will be referred to collectively as "The Galickis").

4. Plaintiff Robert Arnold (hereinafter, "Arnold"), is a resident of Leonia, New Jersey, who commutes daily via the GWB to his job in City and State of New York

5. Plaintiff Kim Joscelyn (hereinafter, "Joscelyn"), is a resident of Edgewater, New Jersey, who was an hourly employee of the Law Offices Rosemarie Arnold, a Fort Lee New Jersey business.

6. Plaintiff Elizabeth Psaltos (hereinafter, "Psaltos"), is a resident of Fort Lee, who was an hourly employee of the Law Offices Rosemarie Arnold, a Fort Lee New Jersey business.

7. Plaintiff Madeline Lobue (hereinafter, "Lobue"), is a resident of Cresskill, New Jersey, who commutes daily via the GWB to her job as a School Administrator in Hewlett, New York.

8. Plaintiff Hong Lee (hereinafter, "Lee"), is a resident of Astoria, Queens, and is a student at Bergen Community College who commutes daily to school via the GWB.

9. Plaintiff Mark Katz (hereinafter, "Katz"), is a resident of Rocky Tavern, New York, who worked as a tractor trailer driver for Hudson News.

10. Plaintiff Liberty News, Inc. (hereinafter, "Liberty News") is a corporation registered and doing business in the State of New Jersey, whose business is to deliver newspapers such as New York Times and the New York Post to residents

and businesses in Northern New Jersey, including Fort Lee and its neighboring towns.

11. Plaintiff Dog On It Doggie Daycare (hereinafter, "Doggie Daycare"), is a company registered and doing business in the State of New Jersey, and located in Fort Lee, whose business is to provide daycare and boarding for dogs.

12. Plaintiff Apple Corrugated Box, Ltd. (hereinafter, "Apple"), is a company registered and doing business in the State of New Jersey, and located in East Rutherford, New Jersey, whose business is to distribute corrugated boxes and packaging supplies to businesses in Northern New Jersey, including Fort Lee and its neighboring towns.

13. The Plaintiffs are all citizens of the United States of America.

14. Defendant the State of New Jersey (hereinafter, the "State") is a duly constituted governmental entity organized in accordance with and under the Constitution of the United States of America and its laws.

15. Defendant, Port Authority of New York and New Jersey (hereinafter, the "Port Authority") is an independent and duly constituted entity created in accordance with a bi-state compact entered into between the States of New York and New Jersey which was in sole and exclusive control of the toll plaza and toll booths and lanes heading to New York City, located on the New Jersey side of the GWB.

16. Defendant Governor Christopher James Christie (hereinafter "Governor Christie"), is the Governor of Defendant the State.

17. Defendant Bridget Anne Kelly (hereinafter, "Kelly") was the Deputy Chief of Staff to Defendant Governor Christie's office, and upon information and belief, was a childhood friend and is a close personal friend of Defendant Governor Christie.

18. Defendant Bill Stepien (hereinafter, "Stepien") was Defendant Governor Christie's campaign manager and political advisor, and upon information and belief, was a personal friend of Defendant Kelly.

19. Defendant David Wildstein (hereinafter, "Wildstein") was an official and/or namely the Director of Interstate Capital Projects for Defendant the Port Authority, and upon information and belief, was a childhood friend and is a close personal friend of Defendant Governor Christie and appointed to his position by Defendant Governor Christie.

20. Defendant Bill Baroni (hereinafter, "Baroni") was an official and/or namely the Deputy Director of the Defendant the Port Authority, and upon information and belief, was a close personal friend of Defendant Governor Christie.

III. FACTS AND PROCEDURAL HISTORY

On or about the early morning hours of September 9, 2013, and continuing through September 13, 2013, two out of the three dedicated lanes leading to the toll

booths to the GWB in Fort Lee (hereinafter, the "dedicated lanes") were unexpectedly closed, causing traffic to gridlock, local roads to be clogged, and heavy, extreme, and unusually severe traffic delays for a considerable amount of time, resulting in undue hardship to the commuters, residents and businesses in Fort Lee. The unplanned lane closures were implemented by Defendant Wildstein, in his capacity as the Director of Interstate Capital Projects for Defendant Port Authority and other officials of Defendant Port Authority. See Exhibit A, Documents Produced by Darcy Licorish in Response to a Subpoena by the Assembly Transportation, Public Works and Independent Authorities Committee (hereinafter, the "Committee"). The unplanned lane closures and resulting gridlocked traffic jam sparked speculation that the action was taken in retribution and/or retaliation against Democratic Mayor of Fort Lee, Mark Sokolich, (hereinafter, "Sokolich") for failing to endorse Defendant Governor Christie's 2013 re-election bid. On or about October 2, 2013, an investigation was launched by the Committee in this matter. Thereafter, on November 25, 2013, Defendant Baroni, the Deputy Executive Director of Defendant Port Authority, testified before the Committee, without a subpoena and not under oath, that the lane closures were part of a "traffic study".

On January 8, 2014, roughly 3,000 pages were provided to the Committee as a result of subpoenas to five Port Authority officials and released to the media.

These pages included e-mails and text messages exchanged between top members of Defendant Governor Christie's administration, including top aide Defendant Kelly, Defendant Stepien, as well as officials of the Defendant Port Authority, including but not limited to Defendant Weinstein and Defendant Baroni. These e-mails and text messages evidenced the fact that Defendant Governor Christie's administration and officials of the Defendant Port Authority willfully, wantonly, recklessly, and/or with "callous indifference" conspired, orchestrated and implemented a nefarious scheme which was designed to cause extreme and/or heavy traffic delays in Fort Lee, along with substantial hardship and injury to its citizens.

Specifically, in an e-mail sent on August 13, 2013 to Defendant Wildstein, Defendant Kelly wrote: "**Time for some traffic problems in Fort Lee.**" See Exhibit B, E-mail from Kelly to Wildstein (Aug. 13, 2013, 7:34 A.M.). Defendant Wildstein e-mailed back: "**Got it.**" Id., E-mail from Wildstein to Kelly (Aug. 13, 2013, 7:35 A.M.).

On September 9, 2013, the first day of school for students, Matthew Bell (hereinafter, "Bell"), a special assistant to Defendant Baroni of the Defendant Port Authority e-mailed his boss at 9:29 A.M. in the morning: "**Phone call: Mayor [Mark] Sokolich . . . urgent matter of public safety in Fort Lee.**" See Exhibit C, E-mail from Bell to Baroni (Sep. 9, 2013, 9:29:02 AM EDT). Defendant Baroni

forwarded this e-mail to Defendant Wildstein who then forwarded it to Defendant Kelly, who responded: "**Did he call him back**?" Id., E-mail from Kelly to Wildstein (Sep. 9, 2013, 10:06 A.M.). Defendant Wildstein responded: "**Radio silence. His name comes right after Mayor Fulop.**"[1] Id., E-mail from Wildstein to Kelly (Sep. 9, 2013, 10:13 A.M.).

On September 10, 2013, Sokolich texted Defendant Baroni: "**Presently we have four very busy traffic lanes merging into only one toll booth. . . . The bigger problem is getting kids to school. Help please. It's maddening.**" Exhibit E, Text Message from Sokolich to Baroni (Sep. 10, 2013, 7:53 A.M.). Defendant Wildstein forwarded this message to an unknown official[2] who responded: "**Is it wrong that I am smiling? I feel badly about the kids I guess.**" Id., Text Message from an Unknown Official to Wildstein (Sep. 10, 2013, 8:05 A.M.) Defendant Wildstein replied: "**They are the children of Buono voters**", referencing Defendant Governor Christie's 2013 election opponent, Democrat

[1] Steven Fulop (hereinafter, "Fulop"), the mayor of Jersey City, New Jersey has alleged that he was the subject of political retribution by the Christie administration . Fulop reported that for weeks after July 18, 2013, when he communicated his decision not to endorse Defendant Governor Christie in the upcoming election, multiple meetings he had with Defendant Governor Christie's officials regarding Jersey City issues were abruptly cancelled. See Exhibit D, Kate Zernike, *Another Mayor Felt Christie-Tied Reprisal*, THE NEW YORK TIMES, Jan. 13, 2013.

[2] This official has yet to be identified because the documents produced by Defendant Wildstein were heavily redacted for reasons unknown at this time.

Barbara Buono. Id., Text Message from Wildstein to an Unknown Official (Sep. 10, 2013, 8:11 A.M.).

On September 12, 2013, Defendant Baroni forwarded a text message to Defendant Wildstein, stating: "**From Serbia: My frustration is now trying to figure out who is mad at me.**" Exhibit F, Text Message from Baroni to Wildstein (Sep. 12. 2013, 6:03 P.M.). Upon information and belief, "Serbia" is the offensive name that the Defendants used to refer to Sokolich, an individual of Croatian descent.

At approximately 7:44 A.M. on September 13, 2013, Patrick Foye, Executive Director of Defendant Port Authority (hereinafter, "Foye") e-mailed various Port Authority officials including Defendant Baroni, David Samson (hereinafter, "Samson") and Robert Durando, a GWB manager, (hereinafter, "Durando") reversing the decision to close the dedicated lanes. In his e-mail, Foye indicated that he had "**made inquiries and received calls on this matter which is very troubling.**" Exhibit G, E-mail from Foye to, *inter alia*, Durando, Baroni, and Samson (Sep. 13, 2013, 7:44 A.M.). Foye explained he learned that "**reversing over 25 years of PA GWB operations, the three lanes in Fort Lee eastbound to the GWB were reduced to one lane on Monday of this week without notifying Fort Lee, the commuting public we serve, the ED or Media.**" Id. Foye further wrote:

> **. . . 1. This hasty and ill-advised decision has resulted in delays to emergency vehicles. I pray that no life has been lost or trip of a hospital- or hospice-bound patient delayed.**
> **2. This hasty and ill-advised decision has undoubtedly had an adverse effect on economic activity in both states. That is contrary to the directive we have from our Governors to do everything possible to create jobs in both States.**
> **3. I will not allow this hasty and ill-advised decision to delay the travels of those observing Yom Kippur tonight or the holidays to follow.**
> **4. I believe this hasty and ill-advised decision violates Federal Law and the laws of both States. . . .**
>
> [Id.]

After the lanes were opened, Defendant Wildstein e-mailed Defendant Kelly at 11:44 a.m. on the morning of September 13, 2013: "**The New York side gave Fort Lee back all three lanes this morning. We are appropriately going nuts. Samson helping us to retaliate.**" See Exhibit H, E-mail from Wildstein to Kelly (Sep. 13, 2013, 11:44 A.M.). Defendant Kelly responded: "**What??**". Id., E-mail from Kelly to Wildstein (Sep. 13, 2013, 11:47 A.M.) to which Defendant Wildstein replied: "**Yes, unreal. Fixed now.**" Id. E-mail from Wildstein to Kelly (Sep. 13, 2013, 12:07 P.M.)

On September 17, 2013, Sokolich texted Defendant Baroni inquiring whether the lane closures were "**punitive.**" See Exhibit E, Text Message from Sokolich to Baroni (Sep. 17, 2013, 1:34 P.M.) ("**We should talk. Someone needs to tell me that the recent traffic debacle was not punitive in nature. The last four reporters that contacted me suggest that the people they are speaking**

with absolutely believe it to be punishment. Try as I may to dispel these rumors I am having a tough time.").

On September 18, 2013, Defendant Wildstein e-mailed a *Wall Street Journal* news article regarding the lane closures to Defendant Stepien. See Exhibit I, E-mail from Wildstein to Stepien (Sep. 18, 2013, 4:54 A.M.) Defendant Stepien responded: "**It's fine. The mayor is an idiot, though. When [sic] some, lose some**." Id. E-mail from Stepien to Wildstein (Sep. 18, 2013, 5:16 A.M.) Defendant Wildstein e-mailed back: "**I had empty boxes ready to take to work today, just in case. It will be a tough November for this little Serbian**." Id. E-mail from Wildstein to Stepien (Sep. 18, 2013, 5:30 A.M.).

The aforementioned e-mails and text messages exchanged between the Defendants provide clear and convincing evidence that the September 9, 2013 - September 13, 2013 lane closures were unlawfully designed and orchestrated for political purposes, probably against Democratic Fort Lee Mayor Sokolich. These communications also evidenced the fact that the Defendants, knowing of their unlawful actions, then conspired to cover them up by blaming a fictional "traffic study" for the dedicated lane closures.

On January 8, 2014, after the aforementioned e-mails and text messages made national headlines, Defendant Governor Christie held a press conference wherein he, *inter alia*, declared that he was unaware of the reprehensible scheme

aforementioned, announced that he had fired Defendant Kelly, asked Defendant Stepien to withdraw his name as the leader of the State Republican Party and to resign from his position at the Republican Governors Association. Defendant Governor Christie took responsibility for the actions of top members of his administration and the Defendant Port Authority for the lane closures. See Exhibit J, Christopher Baxter, *Chris Christie bridge scandal: Full remarks from the governor's news conference*, THE STAR LEDGER, Jan. 9, 2014. He referred to their behavior as constituting "callous indifference." Id.

The Defendants' nefarious political actions of closing the dedicated lanes resulted in widespread, substantial, and significant injury to the proposed Class from September 9 – 13, 2013. Due to the massive traffic that gridlocked roads in Fort Lee, hundreds of thousands of commuters were late for and/or missed scheduled appointments related to work and school on September 9, 2013 through September 13, 2013, causing economic damages.[3] Other individuals, including school children, were late to classes on the first day of school. Some individuals suffered emotional distress and anxiety/panic attacks as a result of being trapped in their vehicles for a prolonged period of time. Many Bergen County businesses

[3] See Exhibit K, E-mail from Lisa Herrera to Durando (Sep. 9, 2013, 12:09 P.M.) ("Subject: Angry Patron. Hi Bob: I just got another call from a patron… she says that the Port Authority 'doesn't care about their customers and they are playing God with people's jobs.' Her husband was 40 minutes late to a job that he just got after being out of work for over a year. . . .").

were unable to timely serve their customers. The harm caused by the political scheme perpetrated by the Defendants was immense and is expected to have affected hundreds of thousands of people.[4]

On January 9, 2014, the Law Offices Rosemarie Arnold (hereinafter, the "Firm"), on behalf of the named Plaintiffs the Galickis, Arnold, Joseclyn, Psaltos, individually and on behalf of others similarly situated and injured as a result of Defendants' unlawful actions, filed a Class Action Complaint in the United States District Court, District of New Jersey, bearing the docket no. 2:14-cv-00169-KM-MCA, against Defendants the State, Governor Christie, Kelly, the Port Authority, Baroni, and Wildstein. See Exhibit L, Class Action Complaint. The Class Action Complaint alleged the following causes of action: (Count 1) § 1983 deprivations of Plaintiffs' constitutional rights to the due process of laws in violation of the Fourteenth Amendment to the U.S. Constitution; (Count 2) § 1983 deprivations of Plaintiffs' constitutional rights to the freedom of movement in violation of the Privileges and Immunities Clause in the Fourteenth Amendment to the U.S. Constitution; (Count 3) hiring, training and/or supervision; and (Count 4) official misconduct. Id.

[4] See Exhibit G, E-mail from Foye to, *inter alia*, Durando, Baroni, and Samson (Sep. 13, 2013, 7:44 A.M.) ("This hasty and ill-advised decision has undoubtedly had an adverse effect on economic activity in both states.").

On January 14, 2014, the Firm filed a First-Amended Class Action Complaint adding Lobue, Lee, Katz, and Liberty News as Plaintiffs, and the following counts: (Count 5) civil conspiracy; (Count 6) intentional infliction of emotional distress. See Exhibit M, First-Amended Class Action Complaint.

On January 16, 2014, the Firm filed a Second Amended Class Action Complaint adding Doggie Daycare as a Plaintiff. See Exhibit N, Second-Amended Class Action Complaint.

On January 20, 2014, the Firm filed a Third Amended Class Action Complaint adding Apple as a Plaintiff and proposed Class representative, Stepien as a Defendant, and the following counts: (Count 5) 42 U.S.C. § 1985 civil conspiracy; (Count 6) 42 U.S.C. § 1986 failure to prevent or aid in preventing the commission of civil conspiracy; (Count 7) false imprisonment; (Count 8) public nuisance; and (Count 9) prima facie tort. See Exhibit O, Third-Amended Class Action Complaint.[5]

IV. LEGAL ARGUMENT

Class certification is appropriate when "the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23 are met." In re Hydrogen Peroxide Antitrust Litig., 552 F.3d 305, 309 (3d Cir. 2008) (quoting Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 161 (1982)).

[5] As of February 19, 2014, all Defendants except for Kelly were duly served with the Complaint.

Rule 23(c)(1)(A) provides: "At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action." FED. R. CIV. P. 23(c)(1)(A). "An order that certifies the class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g)." FED. R. CIV. P. 23(c)(1)(B).

A. THE COURT SHOULD CERTIFY THIS ACTION AS A CLASS ACTION AS THE PREREQUISITES OF RULE 23(a) FOR CLASS CERTIFICATION HAVE BEEN SATISFIED

A party bringing a motion for class certification must as a threshold demonstrate that all of the requirements of Rule 23 of the Federal Rules of Civil Procedure are met. Baby Neal for and by Kanter v. Casey, 43 F.3d 48, 55 (3d Cir. 1994).

Rule 23(a) of the Federal Rules of Civil Procedure sets forth four prerequisites of class certification; it provides, in full:

> One or more members of a class may sue or be sued as representative parties on behalf of all members only if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.
>
> [FED. R. CIV. P. 23(a).]

In the instant case, the named Plaintiffs and the proposed Plaintiff Class have satisfied each of the four prerequisites to class certification set forth in Rule 23(a) of the Federal Rules of Civil Procedure in the following ways:

1. The Class is So Numerous that Joinder of All Members is Impracticable

"Impracticability does not mean impossibility, but rather that the difficulty or inconvenience of joining all members of the class calls for class certification." Lerch v. Citizens First Bancorp, Inc., 144 F.R.D. 247, 250 (D.N.J. 1992). The Third Circuit has held that "if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met." Stewart v. Abraham, 275 F.3d 220, 226-27 (3d Cir. 2001).

The "Plaintiff Class" in this matter is defined as all residents and businesses of Bergen County, as well as all commuters who do business in or attend school in Bergen County, who were late for and/or missed work or school or were delayed and/or prevented from serving their customers, as a result of the gridlocked traffic in Fort Lee, New Jersey, and its bordering towns from September 9, 2013 – September 13, 2013, which traffic was intentionally orchestrated by the Defendants for improper political purposes.[6] Plaintiffs and the Class members seek economic and non-economic damages for the same.

[6] See footnote 7 for a discussion on dividing the Class into Subclasses and narrowing the scope of the Class definition.

According to the United States Census Bureau Report, as of 2012, approximately 35,732 individuals resided in the Borough of Fort Lee, New Jersey, and as of 2007, approximately 6,135 businesses were located in Fort Lee. See Exhibit P, U.S. Census Reports, http://quickfacts.census.gov/qfd/index.html (last visited Jan. 29, 2014). In the neighboring Borough of Edgewater, as of 2012, there were an estimated 11,972 individuals residing there, and as of 2007, approximately 1,521 businesses were located there. Id. In the neighboring Borough of Leonia, as of 2012, approximately 9,018 individuals resided there, and as of 2007, there were approximately 1,272 businesses. Id. In Bergen County, New Jersey, as of 2012, approximately 918,888 individuals resided there, and as of 2007, approximately 106,754 businesses were located there. Id. According to documents produced by Defendant Wildstein in response to a subpoena issued by the Committee, on a typical weekday, roughly 105,000 vehicles with E-ZPass travel Eastbound on the George Washington Bridge from New Jersey to New York. See Exhibit Q, George Washington Bridge Total Eastbound E-ZPass Auto Traffic. These numbers do not take into account the thousands of other commuters who do not have E-ZPass or the tens of thousands who travel to commute to work or school in Fort Lee and its bordering towns.

The number of individuals damaged and injured by Defendants' nefarious political scheme to close off the dedicated lanes are so numerous that joinder of all

claims would be nearly impossible. FED. R. CIV. P. 23(a)(1); Stewart, 275 F.3d at 226-27; Lerch, 144 F.R.D. at 250.

Therefore, the Court should hold that the Plaintiff Class is sufficiently numerous to satisfy Rule 23(a)'s requirement of numerosity.

2. There are Questions of Law or Fact Common to the Class

Rule 23(a)'s second prerequisite for class certification requires a showing of commonality; that there is some question of law or fact common to the class. "A finding of commonality does not require that all class members share identical claims, and indeed factual differences among the claims of the putative class members do not defeat certification." In re Prudential Ins. Co. America Sales Practice Litigation Agent Actions, 148 F.3d 283, 310 (3d Cir. 1998). The threshold for the commonality requirement is not high and "'will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the proposed class.'" Id. (quoting Baby Neal, 43 F.3d at 56 (wherein the Appeals Court found that the proposed class definition of children in custody of the city department of human services and were injured by the city's systemic failures in providing child care services met the commonality requirement even though the children had individualized circumstances)).

In the present action, there are myriad questions of law and fact common to the class, all stemming from the massive gridlock traffic jam caused by the Defendants. They include, but are not limited to:

1. Whether Defendants deprived Plaintiffs and the Plaintiff Class of their constitutional rights to substantive due process and/or pursuant to the Fourteenth Amendment;
2. Whether Defendants engaged in a civil conspiracy and/or failed to exercise their power to prevent or aid in preventing the dedicated lane closures;
3. Whether Defendants committed acts of official misconduct and/or failed to properly hire, train, and/or supervise their employees and staff;
4. Whether Defendants created a public nuisance which harmed the rights of the Plaintiffs and class members to health, safety, peace, comfort and convenience;
5. Whether Defendants falsely imprisoned Plaintiffs and the class members within their vehicles and in traffic for an extended period of time; and
6. Whether harm befell the Plaintiff Class and whether or not Defendants intended to harm and did harm the Plaintiff Class.

All of the aforementioned questions of law and fact are common to the Plaintiff Class in this action. Since the threshold for the commonality requirement

of Rule 23(a)(2) is easily overcome, the Court should find that Plaintiffs and the Plaintiff Class have sufficiently set forth common questions of law and fact to support a finding of commonality required by Rule 23(a)(2) of the Federal Rules of Civil Procedure. See Baby Neal, 43 F.3d at 56-57.

3. The Claims or Defenses of the Representative Parties are Typical of the Claims or Defenses of the Class

Rule 23(a)(3) sets forth the typicality inquiry the Court must undertake before granting an order for class certification, and requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." FED. R. CIV. P. 23(a)(3). It is important to note that "Rule 23 does not require that the representative plaintiffs have endured precisely the same injuries that have been sustained by the class members, only that the harm complained of be common to the class." Liberty Lincoln Mercury, Inc. v. Ford Marketing Corp., 149 F.R.D. 65 (D.N.J. 1993) (citing Hassine v. Jeffes, 846 F.2d 169, 177 (3d Cir. 1988)) (holding that the typicality and commonality prerequisites of Rule 23 mandate only that the plaintiffs' "claims be common, and not conflict."). If the named plaintiffs' claims "[arise] from the same event or practice or course of conduct that give rise to the claims of the class members" and are "based on the same legal theory," the typicality requirement is met even if there are factual differences between the named plaintiffs' claims and those of prospective class

members. Baby Neal, 43 F.3d at 58 (stating "[c]ommentators have noted that cases challenging the same unlawful conduct which affects plaintiffs and the putative class usually satisfy the typicality requirement irrespective of the varying fact of the individual claims" (citing 1 Newberg & Conte § 3.13)); see also Hassine, 846 F.2d at 177.

In this action, the named Plaintiffs' legal theories and factual circumstances are typical to those of the proposed Plaintiff Class. This Class Action Complaint alleges the following typical factual allegations as to each named Plaintiff: All of the Plaintiffs reside, work or attend school in Bergen County and commute through Fort Lee to attend work, do business, or go to school. All of the Plaintiffs, either individuals or businesses, sustained some kind of damage as the result of their inability to get where they needed to go or sustained damaged because others were unable to get to them. The named Plaintiffs' claims all arise from the same "course of conduct": the Defendants' actions of causing Plaintiffs to be stuck in massive traffic jams by closing the dedicated lanes for political purposes on September 9, 2013 through September 13, 2013. See Baby Neal, 43 F.3d at 58.

Plaintiffs submit that their claims are sufficiently typical of those of the Plaintiff Class, which justifies the representation of class claims by proxy.

Accordingly, the Court should find that the Plaintiffs have satisfied the typicality requirement of Rule 23(a)(3) necessary for class certification.[7]

4. The Representative Parties Will Fairly and Adequately Protect the Interests of the Class.

Rule 23(a)(4) requires "class representatives must fairly and adequately protect the interests of the class." FED. R. CIV. P. 23(a)(4). To satisfy the adequacy

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[7] Should the Court find that the Global Class definition does not meet the certification requirements, Plaintiffs have submitted an Alternate Proposed Order for the Court to divide the Class into Subclasses pursuant to Rule 23(c)(1),(4), and (5)) and to further limit the Class definition.

The leading treatises addressing subclasses confer that creating subclasses may assist the Court in defining the scope of this action and permitting the Plaintiffs to meet the requirements for class certification. See 7A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1764, at 312-13 (3d ed. 2013) ("Finally, in considering a question under Rule 23(a)(3), the court should keep in mind that it has the authority under Rule 23(c)(1) and Rule 23 (c)(4) to shape the contours of the action by allowing class treatment for only some of the issues or by dividing the original class into subclasses").

Dividing the Class in terms of the following statuses of plaintiffs may assist the Court in finding that the plaintiffs have met the typicality and adequacy of representation requirements of Rule 23(a), as well as the predominance and manageability requirements of Rule 23(b)(3):

- **Subclass A**: Commuters residing in Bergen County, working in Bergen County, and/or attending school in Bergen County, who were late for and/or missed work or school from September 9, 2013 through September 13, 2013, as a result of the traffic gridlock in Fort Lee, New Jersey.
- **Subclass B**: Businesses located in Bergen County and/or conduct business in Bergen County who were delayed and/or prevented from serving their customers from September 9, 2013 through September 13, 2013, as a result of the traffic gridlock in Fort Lee, New Jersey.

requirement to class certification, the moving party must establish two elements: "(a) the plaintiff's attorney must be qualified, experienced and generally able to conduct the proposed litigation, and (b) the plaintiff must not have interests antagonistic to those of the class." Wetzel v. Liberty Mut. Ins. Co., 508 F.2d 239, 247 (3d Cir. 1975). The party challenging class certification bears the burden to prove inadequacy of representation. Wilson v. County of Gloucester, 256 F.R.D. 479, 487 (D.N.J. 2009).

All of the named Plaintiffs have interests that align with those of the Plaintiff Class. Each of the named Plaintiffs, as do potential class members, seek justice and redress for the economic, physical, and/or emotional harms perpetrated upon them by the Defendants. The Plaintiffs' claims are typical to those of the Plaintiff Class as they or their customers/employees were all similarly trapped in the same traffic gridlock created by the Defendants' common scheme when they closed off the dedicated lanes to the GWB for improper political purposes. Moreover, in order to meet Rule 23(a)(4)'s requirement that the named Plaintiffs' interests are aligned with those of the Plaintiff Class, each of the named Plaintiffs to this Class Action lawsuit have executed Certifications averring that they will adequately

protect the interests of the Plaintiff Class, act in the best interests of the Class as a whole, and fulfill the responsibilities required of them as class representatives.[8]

Since each and every single named Plaintiff will "fairly and adequately protect the interests of the class," the Court should appoint Plaintiffs the Galickis, Arnold, Joscelyn, Psaltos, Lobue, Lee, Katz, Liberty News, Doggie Daycare, and Apple, as the class representatives for the this Class Action. FED. R. CIV. P. 23(a)(4).

Rule 23(c)(1)(B) provides: "An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g)." FED. R. CIV. P. 23(c)(1)(B). Rule 23(g)(1) provides:

> Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court: (A) must consider: (i) the work

[8] Although two of the named class representatives in this Class Action lawsuit, Kim Joscelyn and Elizabeth Psaltos, are employees of proposed class counsel, Rosemarie Arnold, Esq. and named Plaintiff Robert Arnold has a familial relationship with her, they should be permitted to serve as class representatives as: "[a] personal relationship with a member of the law firm representing named plaintiffs does not, standing alone, warrant a finding undue reliance upon counsel." Weikel v. Tower Semiconductor Ltd., 183 F.R.D. 377, 390 (D.N.J. 1998). Similar to the class representative in Weikel, Plaintiffs Joscelyn, Psaltos and Arnold have each certified that they have reviewed the Complaint, the facts alleged in the Complaint are true to the best of their knowledge, they are familiar with the steps class counsel have taken in connection with this matter, understand all of their responsibilities as a class representative, they will act in the best interests of the class as a whole, and they are willing to cooperate and attend events such as depositions, hearings, trial and other meetings relative to this case. Id. at 398. See Exhibit S, Certifications of Joscelyn, Psaltos and Arnold.

> counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class; (B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class; (C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs; (D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and (E) may make further orders in connection with the appointment.
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> [FED. R. CIV. P. 23(g)(1).]

As to the second inquiry required to determine compliance with Rule 23(a)(4), for purposes of brevity and clarity, please refer to Exhibit R, Certification of Rosemarie Arnold, Esq., for an explanation of Plaintiffs' counsels' qualifications to be appointed as class counsel under Rule 23(g).

B. THE COURT SHOULD CERTIFY THIS ACTION AS A CLASS ACTION AS THE PREREQUISITES OF RULE 23(b) FOR CLASS CERTIFICATION HAVE BEEN SATISFIED

Along with satisfying the criteria set forth under Rule 23(a) of the Federal Rules of Civil Procedure, the party requesting class certification must also demonstrate the class action falls within one of the three categories of Rule 23(b). FED. R. CIV. P. 23(b).

Rule 23(b)(3), which applies when the proposed class primarily seeks monetary relief, sets forth two requirements: (1) "that the questions of law or fact common to class members predominate over any questions affecting only individual members," and (2) "that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." FED. R. CIV. P. 23(b)(3).

Rule 23(b)(3) of the Federal Rules of Civil Procedure provides:

> A class action may be maintained if Rule 23(a) is satisfied and if: . . . (3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include: (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.
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> [FED. R. CIV. P. 23(b)(3).]

Rule 23(b)(3) "encompasses those cases in which a class action would achieve economic time, effort, and expense, and promote uniformity of decision as to persons similarly situated without sacrificing procedural fairness or bringing about other undesirable results." See FED. R. CIV. P. 23(b)(3), advisory committee's notes to 1966 amendment.

1. The Questions of Law and Fact Common to Class Members Predominate Over Any Questions Affecting Only Individual Class Members.

Although similar to Rule 23(a)'s commonality requirement, Rule 23(b)(3)'s predominance inquiry tests "whether proposed classes are sufficiently cohesive to warrant adjudication by representation." In re Ins. Brokerage Antitrust Litig., 579 F.3d 241, 266 (3d Cir. 2009) (quoting Amchem Products, Inc. v. Windsor, 521 U.S. 591, 623-24 (1997)). "While damages for each class member may prove to be different, this fact alone should not preclude class certification when common issues concerning liability predominate." Weikel, 183 F.R.D. at 399 (citing In re Prudential, 148 F.3d at 314 (certifying a class in which questions of law and fact concerning a common scheme to defraud insurance policy holders predominated)).

The issues that are common to the Class and satisfied the commonality prong of Rule 23(a) also predominate over issues that are individual to each class member. See supra Point IV(A)(2).

The instant Class Action lawsuit was filed on behalf of the named Plaintiffs as well as all individuals who meet the class definition and were damaged and/or injured as a result of Defendants' callous and politically motivated scheme to close the lanes leading to the dedicated toll booths to the GWB from September 9, 2013 – September 13, 2013. The orchestrated lane closures, the Defendants' political

motivation for the same, and the fact that the Plaintiffs were stuck in the same traffic gridlock and suffered harm as a result of the Defendants' actions are all facts common to the named Plaintiffs and absent class members which predominate over any questions of fact that may be applicable to any individual class member.

Plaintiffs' legal theories are also common to Plaintiffs and the Plaintiff Class and predominate over questions of law affecting only individual class members. Proofs of the essential elements of each cause of action are markedly similar to each individual Plaintiff as they arise out of a single cohesive event: namely, Defendants' intentional and politically motivated dedicated lane closures in Fort Lee on September 9, 2013 – September 13, 2013, causing Plaintiffs and their customers to be stuck in massive traffic jams for a prolonged period of time. Thus, issues as to Defendants' liability to Plaintiff and the class members predominate over issues of damages or other issues that may be individual to each class member. FED. R. CIV. P. 23(b)(3).

All of the Plaintiffs and potential class members suffered the following common damages as a result of the Defendants' heinous political scheme: (i) lost wages, lost gas, lost tuition, lost financial opportunities, medical bills, and other special damages; (ii) emotional damages; (iii) damages to their peace, comfort and convenience; and (iv) physical harm. Plaintiffs concede that the damages they and

potential class members experienced may vary in their particulars to some degree, and individual class members will be required to prove the damages they suffered resulting in varying awards. However, the common questions with regard to the facts of this case as well as the issue of the Defendants' liability under the aforementioned legal theories predominate over any damages issues that may be individual to the Plaintiffs.[9] A Class Action to resolve these common questions of fact and law and the issues of liability will most certainly and significantly advance the litigation against the Defendants in the simplest and least burdensome way. Requiring proof of individual damages would address any issues the Defendants

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[9] In Amchem, 521 U.S. at 591, the United States Supreme Court addressed a motion for certification of a proposed global settlement class action of claims by individuals exposed to asbestos. The Class Action complaint in Amchem identified nine lead plaintiffs who had been exposed occupationally or through occupational exposure of a spouse or household member to asbestos, or whose spouse or family member had been exposed to asbestos. Id. at 602. The Court held, *inter alia*, that Rule 23(b)(3)'s predominance requirement was not met as the different members of this "sprawling" class were exposed to different products in a myriad of different ways and in different amounts of time. Id. 622-24. The Court also held that differences in state law compounded these disparities. Id. at 624. The Court further noted the Amchem complaint did not delineate any subclasses. Id. at 626.

In contrast to Amchem, the Plaintiffs' claims arise out of a single incident, the traffic gridlock caused by Defendants Id. at 625 ("[e]ven mass tort cases arising from a common cause or disaster may, depending upon the circumstances, satisfy the predominance requirement."). Further, the Plaintiffs here propose Subclasses as a way to better manage the Global Class should the Court deem it necessary. See supra footnote 7. In addition, there is no concern for differences in state law as was the case in Amchem, since New Jersey law applies to any and all of Plaintiffs' state common law claims.

may have with regard to the definition of the Plaintiff Class or the Subclasses being too broad in this instance.

2. The Class Action Mechanism is the Superior Mechanism to Adjudicate this Controversy.

Finally, Plaintiffs have satisfied the requirements of Rule 23(b)(3). As explained above, common questions of law and fact predominate over any individual issues. Additionally, a Class Action vehicle is "superior to other available methods for fairly and efficiently adjudicating the controversy." FED. R. CIV. P. 23(b)(3). The Rule 23(b)(3) superiority requirement requires the court to "balance, in terms of fairness and efficiency, the merits of a class action against those of 'alternative available methods' of adjudication." In re Cmty. Bank of N. Va., 418 F.3d 277, 308 (3d Cir. 2005).

The individual Class members' damages are most likely too small to warrant bringing individual actions against these Defendants. The costs of litigating these actions on an individual case-by-case basis would likely outweigh any monetary benefit that could be recouped by the hundreds of thousands of victims of the Defendants' political scheme. Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 809 (1985) ("Class actions . . . permit the plaintiffs to pool claims which would be uneconomical to litigate individually."). In drafting Rule 23(b)(3), the "Advisory Committee had dominantly in mind vindication of 'the rights of groups of people

who individually would be without effective strength to bring their opponents into court at all.'" See, e.g., Amchem, 521 U.S. at 617 (citation omitted). The United States Supreme Court has even gone so far as to opine that "'[t]he policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor.'" Amchem, 521 U.S. at 617 (quoting Mace v. Van Ru Credit Corp., 109 F.3d 338, 344 (7th Cir. 1997)).

In this instance, it is expected that hundreds of thousands of commuters and businesses residing in Bergen County lost wages, tuition, and were otherwise harmed as a result of the Defendants' politically motivated dedicated lane closures in Fort Lee. Thousands of individual suits seeking, for example, four hours-worth of lost wages in this matter would cause a huge and unnecessary burden on the Court system for what some may perceive to be small quantifiable damages. It would be drastically more efficient for the Court system to determine the liability of the Defendants and damages in one setting, i.e. through Class Action litigation.

Further, the Class Action mechanism would cut the costs for both the Plaintiff Class and the Defendants. As to the Defendants, potentially hundreds of thousands of lawsuits would be consolidated into one single Class Action

effectively eliminating duplicative litigation. As to the Plaintiffs, the granting of class status would allow the costs of prosecuting this action to be shared by the entire Class.

Certainly, the Class Action mechanism is clearly the superior method for adjudicating this controversy as compared to other alternative mechanisms available to the Plaintiffs.

Thus, as questions of law and fact applicable to the Class predominate over questions of law and fact applicable to the individual class members, Plaintiffs submit that the proposed Class is sufficiently cohesive to warrant adjudication of this matter through Class Action litigation under Rule 23(b)(3).

V. TRIAL PLAN

In Watchel v. Guardian Life Insurance Co. of Am., 453 F.3d 179, 186 n.7 (3d Cir. 2006), the Third Circuit noted that the presentation of a trial plan prior to certification is "an advisable practice within the class action area." Id. Plaintiffs respectfully submit the following Trial Plan for the Court's consideration, while also being cognizant that the Court may manage this Class Action in any just way it deems appropriate. FED. R. CIV. P. 23(d)(1). Whether the Court certifies a Global Class or Subclasses as proposed herein, Plaintiffs propose a single trial in the following phases:

Phase 1: Liability:

This first phase will focus on common questions of fact regarding the liability of the Defendants in this matter, including the existence of an intentional scheme by the Defendants to close the dedicated lanes leading to the GWB as a means of punishment. Proof will be presented primarily by testimony from the Defendants and witnesses to the instant matter, as well as documents produced to the Committee, other investigative agencies,[10] and by the Defendants during the course of discovery. Plaintiffs submit that there will be little need for liability testimony from the absent Class members because the delay time will be similar for everyone Plaintiffs propose the following witnesses and proofs in their case-in-chief:

- Documents produced by the Defendants and witnesses;
- Testimony from the Defendants, their employees, and other relevant third parties;
- Testimony of Plaintiffs' experts;
- Testimony of Plaintiffs;
- Testimony of Plaintiffs' witnesses

Phase 2: Damages

[10] Plaintiffs propose a traditional Rule 23 "Opt-Out" Class, allowing absent Class members, after receiving appropriate notice of the Class Action, to opt-out of the Class and pursue individual litigation.

After the jury has made its findings regarding the Defendants' liability, Plaintiffs request that the Court hold a case management conference to decide the best means of resolving damages for the Plaintiff Class. Plaintiffs' counsel has consulted with Tinari Economics Group, economic experts who have agreed to assist Plaintiffs in determining damages. See Exhibit R. As to commuters trapped in the traffic gridlock, Plaintiffs would present either documents proving actual damages to certain plaintiffs or expert evidence regarding the economic damages of the commuters based on the median income of Fort Lee residents and the average loss to the commuter. As to businesses in Fort Lee and its bordering towns, it would be straight-forward for them to calculate their own damages and submit proofs of the same. With regard to emotional and/or physical damages sustained by individuals trapped in the traffic gridlock, Plaintiffs would present expert testimony regarding causal connection and proximate cause. Plaintiffs submit that their Trial Plan demonstrates their claims may be successfully tried on a Class-wide basis, which is a highly preferable method compared to individual litigation.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant their motion for class certification and to appoint class counsel. A proposed order and an alternate proposed order granting this relief is submitted herewith.

Dated: February 19, 2014

Respectfully submitted,

By: *//s// Rosemarie Arnold*

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