

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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BENNY WARR and NINA WARR,

Claimants,

vs.

**VERIFIED NOTICE  
OF CLAIM**

CITY OF ROCHESTER and  
CITY OF ROCHESTER POLICE DEPARTMENT,

Respondents.

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TO: City of Rochester  
City of Rochester Police Department  
c/o Corporation Counsel's Office  
30 Church Street Room 404A  
Rochester, New York 14614

**PLEASE TAKE NOTICE**, that the above named Claimants claim and demand from the City of Rochester, the City of Rochester Police Department and certain police officers recompense for personal injuries and damages sustained by Claimants by reason of the wrongful, unlawful, intentional and/or negligent and careless acts and omissions of the City of Rochester, the City of Rochester Police Department, their agents, servants and/or employees, along with any applicable benefits provided by law, and in support thereof, Claimants state:

1. This Notice of Claim is made pursuant to the requirements of the applicable Statutes including § 50(i) and 50(e) of the General Municipal Law of the State of New York and such other laws and statutes as are in the case made and provided.

2. The names and addresses of the Claimants are: Benny Warr and Nina Warr,

185 Bartlett Street, Rochester, New York 14611.

3. The Claimants are represented by Charles F. Burkwit, Esq., Burkwit Law Firm, PLLC, 16 East Main Street, Suite 450, Rochester, New York 14614, Telephone number (585) 546-1588.

4. The incident in which personal injuries and damages were sustained by Claimant Benny Warr occurred on or about May 1, 2013 between approximately 7:15 p.m. and 8:15 p.m. on the sidewalk at the northwest corner of Bartlett Street and Jefferson Avenue in front of Warren's Pharmacy in the City of Rochester, New York. On said date and time, Claimant Benny Warr was sitting in his motorized wheelchair at a bus stop waiting for a southbound bus on Jefferson Avenue. As Claimant Benny Warr, a left leg amputee, was sitting in his wheelchair next to the bus stop sign, a City of Rochester Police vehicle was heading southbound on Jefferson Avenue and pulled up along the side of the Claimant Benny Warr on Jefferson Avenue. There were two police officers in said vehicle. At this time, both City of Rochester police officers got out of the vehicle, approached Claimant Benny Warr and asked him to move. Claimant Benny Warr replied that he was waiting for the bus. One of the Officers then replied back "f---en move". At this time, Claimant Benny Warr again responded that he was waiting for the bus. Upon information and belief, City of Rochester police officer Joseph M. Ferrigno, II, sprayed mace/pepper spray in Claimant Benny Warr's face. In response to being sprayed with mace/pepper spray in his face, Claimant Benny Warr put his hands up to his face and tried to rub his eyes but it was too late. At this time, a City of Rochester police officer who was on the Claimant's right side suddenly and violently pushed the Claimant's wheelchair over causing Claimant Benny Warr to fall over and



slam onto the sidewalk on his left side and left stump. This incident was video recorded and posted on you tube.com by Tache Young, a/k/a Shakur Muhammad. After Claimant Benny Warr's body slammed onto the ground, he rolled over onto his right side due to the pain in his left lower extremity and stump. City of Rochester police officers then jumped on, punched and kicked Claimant Benny Warr in the stomach, chest, back and other areas of his body while he was on the ground. Upon information and belief, City of Rochester police officers Joseph M. Ferrigno, II, Anthony R. Liberatore and a third City of Rochester police officer jumped on, punched and/or kicked Benny Warr while he was on the ground and while he was being handcuffed. One of said police officers drove his knee into the Claimant's neck and throat. After being kicked and punched numerous times, Claimant Benny Warr was then handcuffed with his arms behind his back and remained laying on the sidewalk.

5. After Claimant Benny Warr was handcuffed and laying on the sidewalk, said police officers laughed and joked about Claimant Benny Warr "getting his ass kicked". One City of Rochester police officer then asked the other two (2) officers what Claimant Benny Warr should be charged with. After several seconds passed, a City of Rochester police officer responded "Let's charge him with disorderly conduct and resisting arrest". Claimant Benny Warr laid on the ground for an extended period of time until an ambulance arrived at the scene. At no time did said officers wash or clean Claimant's face after Claimant repeatedly told them that his eyes and face were burning. Claimant repeatedly told said officers that the handcuffs which were applied to him were too tight and were hurting his back but the handcuffs were not loosened nor removed until after Claimant Benny Warr arrived at Strong Memorial Hospital for medical treatment.

6. As a result of the aforescribed incident, Claimant Benny Warr suffered left rib fractures, head pain, neck pain, back pain, left hand numbness, bilateral shoulder pain, left elbow and arm pain, left hip pain, left leg pain at the hip joint and stump, post traumatic stress disorder, chest pain, stomach pain going to the rectum, internal injuries, abrasions and scratches around the wrist since the handcuffs were too tight, burning to the facial area and eyes due to pepper spray/mace together with other physical injuries. The full nature and extent of Claimant's injuries is unknown as Claimant Benny Warr continues treating for his injuries.

7. The foregoing incident was caused by the wrongful, unlawful, intentional and/or the negligent and careless acts and omissions of the City of Rochester, the City of Rochester Police Department, Officer Joseph M. Ferrigno, II, Officer Anthony R. Liberatore and other City of Rochester police officer/s, their agents, servants and/or employees who falsely arrested and used unlawful and excessive force causing serious personal injuries and other damages to the Claimant Benny Warr. Upon information and belief, Respondents City of Rochester and the City of Rochester Police Department were negligent in their training, supervision and retention of said police officers who falsely arrested and used unlawful and excessive force against the Claimant Benny Warr causing personal injuries and damages to him.

8. Upon information and belief, the arrest of Claimant Benny Warr was unlawful and excessive force was used upon his person in violation of his constitutional rights and rights under State law. Furthermore, upon information and belief, Respondent City of Rochester and City of Rochester Police Department has demonstrated a custom and policy of deliberate indifference to the constitutional rights



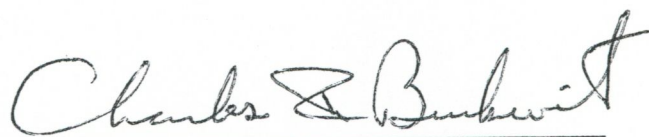
of the citizens of the City of Rochester. Claimant Benny Warr is seeking compensatory and punitive damages, costs and reasonable attorney fees and other relief resulting from Respondents' and their officers' misconduct.

9. Claimant Nina Warr has suffered the loss of her husband's society, companionship and consortium and was otherwise required to render to him services for his care and cure and seeks damages against Respondents for same.

10. This Notice of Claim is made and served on behalf of the Claimants in compliance with the provisions of Section 50(e) of the General Municipal Law and such other laws and statutes as are in the case made and provided.

**PLEASE TAKE FURTHER NOTICE** that the Claimants present these claims for adjustment and payment and notify you that unless these claims are adjusted and paid within the time provided by law from the date of presentation to you, the Claimants intend to commence an action on these claims against the Respondents and the City of Rochester police officers who caused Claimants' injuries and damages.

DATED: May 17, 2013  
Rochester, New York

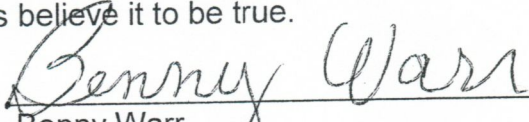
A handwritten signature in cursive script, reading "Charles F. Burkwit", written in black ink over a horizontal line.


Charles F. Burkwit, Esq.  
Burkwit Law Firm, PLLC  
Attorney for Claimants  
16 East Main Street, Suite 450  
Rochester, New York 14614  
(585) 546-1588

VERIFICATION

STATE OF NEW YORK)  
COUNTY OF MONROE) ss:

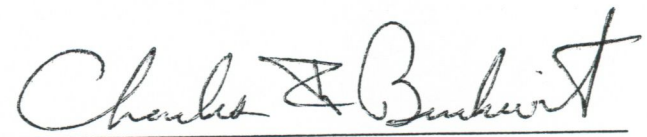
We, **BENNY WARR and NINA WARR**, being duly sworn, depose and say that we are the Claimants in the within action; that we have read the foregoing Notice of Claim and know the contents thereof; that the same is true to the knowledge of the deponents, except as to the matters therein stated to be alleged upon information and belief and as to those matters deponents believe it to be true.

  
Benny Warr

  
Nina Warr

STATE OF NEW YORK)  
COUNTY OF MONROE) ss.:

On the 17<sup>th</sup> day of May 2013 before me, the undersigned, personally appeared **Benny Warr and Nina Warr**, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities and that by their signatures on the instrument, the individuals or the person upon behalf of which the individuals acted, executed the instrument.



Notary Public

CHARLES F. BURKWIT  
Notary Public, State of New York  
No. 5086722  
Qualified in Monroe County 2013  
My Commission Expires Oct. 20, 2013