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November 18, 2011

**BY FAX**

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Hon. Michael D. Stallman  
Supreme Court, New York County  
80 Centre Street  
New York, New York 10007

Re: *Waller, et al. v. The City of New York, et al.*  
Index No. 112957/11

Dear Justice Stallman:

We are among the lawyers representing the Petitioners/Plaintiffs in this action and write to request a conference on an emergency basis. We believe that the police are imposing limitations on the rights of the former occupiers of Liberty Park (aka Zuccotti Park) that exceed the Court's Order as well as the concerns that the City expressed in the papers it submitted to the Court. While we could raise these matters in formal proceedings, it is possible that we can avoid additional burdens on the Court and the parties if we could all confer about these matters. Beyond that, we think the Court could play a meaningful role in de-escalating current – and perhaps future – crises related to the City's and Brookfield's responses to the occupation and the Occupy Wall Street movement.

Your Honor's Order accepted the legitimacy of the concerns expressed by the City and Brookfield Properties for insuring "public health and safety" and the right "to public access." We said in Court that the occupiers share those concerns and that they had been and remain willing to address the City's and Brookfield's legitimate concerns.

However, as we said, the City's and Brookfield's actions towards the protesters, members of the press, bystanders, and other members of the public – particularly in the past few days – have gone far beyond issues of public health, safety, and public access, and have far exceeded the scope of Brookfield's rules that were discussed in and attached to the initial pleadings in the case. We believe that the actions of the City and Brookfield since we appeared in Court have been designed to frustrate the Court's Order and abridge the protesters' rights. We list just a few of those actions to illustrate:

- NYPD officers have created a frozen zone around Liberty Park, unreasonably limiting public access to and around the park.
- NYPD officers and Brookfield agents are conducting warrantless and unreasonable searches of people and their property.
- Police have prevented protesters from lying down in the park. Some police officers have even gone through the park waking up protesters who have been sleeping while sitting up.
- Protesters have not been allowed to bring into the park sleeping bags, blankets, and similar items to protect them from colder weather at night. Some protesters have even been prevented from bringing extra clothing into the park.
- Police have prevented protesters from entering the park with food, requiring that they get food from supporters who pass it to them over the police barricades.
- Protesters have not been allowed to enter the park with musical instruments.
- Protesters' books are not allowed into the park.
- Food, musical instruments, books, and other property have been seized without a written warrant and without constitutionally significant notice and opportunity to be heard.
- Many occupiers whose property was seized or destroyed during Tuesday morning's eviction have found it impossible to retrieve their property, or even confirm whether it was seized or simply destroyed. They include people whose medication, medical equipment, identification, cell phones, laptop computers, and other property was seized or destroyed.

We are continuing to collect reports of arbitrary and abusive admission procedures and will provide that information to the court upon request. Not one of these actions has anything to do with the concerns that the City and Brookfield expressed to the Court. Rather, they simply reflect a determination by the City to make life miserable for the occupation in the hope that the protest will go away.

The Court's Order focused on the central purpose of the First Amendment in acknowledging that OWS has "brought attention to the increasing disparity of wealth and power in the United States, largely because of the unorthodox tactic of occupying the subject public space on a 24-hour basis. . . ." OWS can maintain its 24-hour presence only if protesters have the opportunity to protect themselves from the elements and to maintain a livable environment. Respect for their cause, and common decency, demand no less.

Other municipalities have adopted a much more reasonable approach to Occupy protests. By way of illustration, we have attached an Agreement that was signed by the City of Rochester that addresses all of the City's reasonable health and safety concerns while guaranteeing the occupiers' First Amendment right to engage in round-the-clock peaceful protest. Particularly given Mayor Bloomberg's publicly announced support for the Occupy Wall Street protesters' First Amendment rights, the Rochester Agreement may provide an appropriate template – or at least a starting point - for resolving the issues before the Court, perhaps without further litigation.

To be clear, we do not represent the occupation as such. The occupation is a directly democratic event, and, as matters of principle and process, only the General Assembly is authorized to make critical decisions impacting the broader community. However, the General

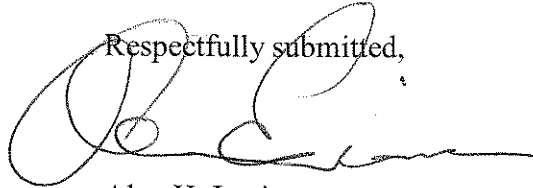
Assembly will be meeting this evening for the first time since most have learned of the Court's Order. We believe that the General Assembly would approve a proposal coming from plaintiffs' counsel to empower representatives to engage in good faith, Court-supervised conversations with the parties as soon as possible, and we are willing to facilitate advancing such a proposal.

We have conferred with Ms. Neufeld, one of the attorneys for the Corporation Counsel representing the City of New York, and with Mr. Flaum of Fried Frank, representing Brookfield Properties, and they have informed us that they are available for a conference with Your Honor on Tuesday, November 22, 2011 at 2:30pm.

We have also informed Ms. Neufeld that we would be happy to adjust the schedule for the submission of papers, as plaintiffs/petitioners intend to amend the pleadings, if Your Honor is agreeable to a short extension for all those concerned..

We are available to confer with the Court on Friday at a mutually convenient time by telephone to discuss whether the Court believes an in-person conference is appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Alan H. Levine", written over the typed name.

Alan H. Levine  
Daniel L. Alterman  
Yetta G. Kurland  
Gideon Orion Oliver  
Margaret Ratner Kunstler

cc: Sheryl Neufeld, Esq. (by email)  
Michelle Goldberg-Cahn, Esq.  
Douglas H. Flaum, Esq. (by email)  
Richard Leland, Esq. (by email)

## AGREEMENT

This Agreement is made this \_\_\_ day of November, 2011 by and between the CITY OF ROCHESTER, a municipal corporation with offices at City Hall, 30 Church Street, Rochester, New York 14614 and OCCUPY ROCHESTER.

The City agrees to permit OCCUPY ROCHESTER to use Washington Square Park ("Park") during all hours subject to the following conditions which are designed to provide for the safety of all persons, preservation of the park, and access to the park by all persons:

1. The right of all persons to use the Park must be respected.
2. No barriers or other obstructions shall be placed in the Park so as to prevent access to all portions of the Park along the sidewalks provided. Park facilities such as benches shall also remain unobstructed and available for use by all persons.
3. The Park use must be in a "green" manner. Sanitary practices must be followed and all trash generated must be contained and removed or prepared for removal properly. The monuments, trees, grounds and physical features in the Park must be respected and not defaced or damaged in any way. Users must facilitate any Park maintenance activities by City employees.
4. Overnight tent camping will be allowed only in the grassy area to the south of the central monuments and within the sidewalks. No structures or portable facilities, including portable bathrooms, shall be brought in to the Park, erected or maintained. The use of propane, kerosene or gasoline heaters or generators is not allowed except with permission of the Fire Chief or his designee. No heaters shall be allowed in the tents. Tables reasonably necessary for food preparation and related activities may also be placed to the south of the central monuments, in a manner so as to not block access through the Park. The tables may be protected from the elements only by a tarp or canvas covering or tent.
5. All campers under 18 years old must have the permission of a parent or legal guardian.
6. No firearms or other dangerous weapons or fireworks are allowed.
7. No glass bottles or glass containers are allowed.
8. No shovels, axes, saws or spades are allowed.
9. No alcoholic beverages are allowed.
10. No fires are allowed.
11. Signs or banners may be placed in the Park in a manner so as not to obstruct access along the sidewalks or prevent ingress or egress along the sides of the Park. The signs and banners shall not be permanently affixed to the trees or other Park features, but may be tied to the rear of a bench, or to the base or main branch of a tree in a manner so as not to harm the tree. Signs and banners may

be placed at the steps at the base of the central monuments, but shall not fully block the steps and shall not be placed on the monuments themselves.

12. Use of megaphones or other sound reproduction equipment for communication within the OCCUPY ROCHESTER group is allowed, provided it is nondisruptive to nearby uses or is in accordance with the Noise Code of the City. Concerts may be held with reasonable notice to the City and City approval, which approval shall not be withheld unless reasonable safety, time and noise standards cannot be met.

This Agreement shall extend through January 11, 2012 and shall be renewable for additional periods of two months upon substantial compliance with the terms contained herein and continued safe operation of the Park.

OCCUPY ROCHESTER hereby designates \_\_\_\_\_ to be its liaison with the City for matters relating to use of the Park under this Agreement. The City shall bring to the attention of the liaison all issues relating to use of the Park and shall attempt to resolve the issues through the liaison.

Approved by:

OCCUPY ROCHESTER

CITY OF ROCHESTER

By: \_\_\_\_\_

\_\_\_\_\_  
THOMAS S. RICHARDS  
MAYOR