

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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THE CITY OF NEW YORK, RAYMOND KELLY, as  
COMMISSIONER of THE NEW YORK CITY POLICE  
DEPARTMENT and ADRIAN BENEPE, as  
COMMISSIONER of THE NEW YORK CITY  
DEPARTMENT OF PARKS AND RECREATION,

**SUMMONS**

Index No.

Filed On:

Plaintiffs,

-against-

TIMES' UP, INC., WILLIAM DiPAOLA, BRANDON  
NEUBAUER, LEAH RORVIG and MATTHEW ROTH,

Defendants.

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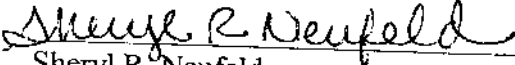
TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED TO ANSWER the complaint in this action and to serve a copy of your answer on plaintiffs' attorney within twenty (20) days after the service of this summons, exclusive of the day of service or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In the case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue designated is New York County, the county in which plaintiffs reside. Plaintiffs designate New York County as the place of trial.

Dated: New York, New York  
March 15, 2005

MICHAEL A. CARDOZO  
Corporation Counsel of the  
City of New York  
Attorney for Plaintiffs  
100 Church Street  
New York, New York 10007  
(212) 788-1035

By:   
Sheryl R. Neufeld  
Assistant Corporation Counsel

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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THE CITY OF NEW YORK, RAYMOND KELLY, as  
COMMISSIONER of THE NEW YORK CITY POLICE  
DEPARTMENT and ADRIAN BENEPE, as  
COMMISSIONER of THE NEW YORK CITY  
DEPARTMENT OF PARKS AND RECREATION,

**VERIFIED COMPLAINT**

Index No.

Plaintiffs,

-against-

TIMES' UP, INC., WILLIAM DiPAOLA, BRANDON  
NEUBAUER, LEAH RORVIG and MATTHEW ROTH,

Defendants.

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Plaintiffs, by their attorney, MICHAEL A. CARDOZO, Corporation Counsel of  
the City of New York, as and for their complaint against the defendants, allege, upon information  
and belief, as follows:

**INTRODUCTION**

1 Plaintiffs bring this action pursuant to and by the authority of Section  
20(22) of the General City Law to permanently enjoin the violation of the parade permit  
requirement (contained in Section 10-110 of the New York City Administrative Code  
("Administrative Code" or "Admin. Code")) and the parks permit requirement (contained in  
Title 56, Section 1-01 et seq. of the Rules of the City of New York ("RCNY")) by defendants  
and other participants in Critical Mass bicycle rides in New York City, and to permanently  
enjoin defendants from advertising or otherwise promoting Critical Mass bicycle rides unless the  
required Parks Department permit has been obtained for any pre-ride gatherings which take place  
in a City park.

## THE PARTIES

2. Plaintiff THE CITY OF NEW YORK (“the City”) is a municipal corporation incorporated under the laws of the State of New York.

3. Plaintiff RAYMOND KELLY, COMMISSIONER of THE NEW YORK CITY POLICE DEPARTMENT (“Police Department”) is empowered under Sections 434 and 435 of the New York City Charter (“City Charter”) to regulate and control pedestrian and vehicular traffic, which includes, as set forth in Administrative Code Section 10-110, the authority to regulate the use of the City’s streets for parades and processions.

4. Plaintiff ADRIAN BENEPE, COMMISSIONER of THE NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION (“Parks Department”) is empowered under Section 533 of the City Charter to regulate use of the City’s public parks.

5. Defendant TIME’S UP, INC. (“Time’s Up”) is a registered New York State Domestic Not-For-Profit Corporation that advertises, promotes and encourages Critical Mass bicycle rides in the City of New York. In addition Time’s Up regularly hosts pre and post ride events at their offices which are located at 49 E. Houston Street, New York, New York 10012.

6. Defendant WILLIAM DiPAOLA is the Executive Director of Time’s Up, and a regular participant in Critical Mass bicycle rides in New York City.

7. Defendant BRANDON NEUBAUER is a lead organizer of Time’s Up, and a regular participant in Critical Mass bicycle rides in New York City.

8. Defendant LEAH RORVIG is a Time’s Up volunteer and media liaison, and a regular participant in Critical Mass bicycle rides in New York City.

9. Defendant MATTHEW ROTH is the media and legal liaison for Time's Up and a regular participant in Critical Mass bicycle rides in New York City.

#### VENUE

10. Venue for this proceeding is in New York County, which is the county where the monthly New York City Critical Mass Rides take place and the county where Time's Up has its principal place of business.

#### BACKGROUND FACTS AND APPLICABLE LAW

11. Bicycle rides known as "Critical Mass" have occurred in New York City on the last Friday of every month for a number of years. However, in recent months, and particularly in the nice weather, the rides have increased in size to the point where they regularly attract hundreds, if not thousands, of participants. For example, there were between three and four thousand participants in the July 2004 Critical Mass bicycle ride, approximately five thousand participants in the August 2004 Critical Mass bicycle ride, approximately one thousand participants in the September 2004 Critical Mass bicycle ride and between two and three thousand participants in the October 2004 Critical Mass bicycle ride.

12. The Critical Mass bicycle rides appear to take place along a different route each month, however, they all begin in Union Square Park.

#### The Parks Permit Requirement

13. Prior to actually starting to ride their bicycles, most participants in the monthly Critical Mass bicycle rides meet in Union Square Park where they congregate together while waiting for the ride to begin. Defendant Time's Up disseminates information to the public inviting participants to meet at Union Square Park North at 7 p.m. on the last Friday of each month. Participants often remain in Union Square Park for upwards of half an hour before the ride begins.

4. Special events and demonstrations in City parks involving more than twenty people are not permitted unless a special events permit is obtained from the Parks Department. 56 RCNY §§1-05(a), 2-08. This rule applies to all gatherings of more than twenty people in a City park, including those that occur either before or after a parade or other procession.

15. As defined in the Parks Department's regulations, a special event is any "group activity including, but not limited to, a performance, meeting, assembly, contest, exhibit, ceremony, parade, athletic competition, reading, or picnic involving more than 20 people or a group activity involving less than 20 people for which specific space is requested to be reserved." 56 RCNY §1-02 (definition of "Special Event"). A demonstration is a group activity including but not limited to, a meeting, assembly, protest, rally, march or vigil which involves the expression of views or grievances, involving more than 20 people or a group activity involving less than 20 people for which specific space is requested to be reserved." 56 RCNY §1-02 (definition of "Demonstration").

16. Thus, it is unlawful for a group of more than twenty people to meet or gather together for a group activity in a City park without having obtained a special events permit from the Parks Department. 56 RCNY §1-03(b)(6)(a).

17. In addition, unless a special events permit has been issued by the Parks Department, it is unlawful to advertise the time and location of a meeting or group activity in a City park involving twenty or more people. 56 RCNY §2-08(s).

18. No special events permit has been issued by or sought from the Parks Commissioner in connection with any past or planned Critical Mass pre-ride gathering. Nonetheless, Time's Up advertises the date, time and meeting place of Critical Mass rides on its

website ([www.times-up.org](http://www.times-up.org)). Upon information and belief, Time's Up has also advertised the date, time and meeting place of Critical Mass rides using other media outlets including, but not limited to newspapers and magazines.

### **The Parade Permit Requirement**

19. After leaving Union Square Park, Critical Mass participants typically ride their bicycles *en masse* through the City's streets while taking up the entire roadway, disobeying red lights and other traffic regulations and disrupting other pedestrian and vehicular traffic. This behavior violates various City and State traffic regulations.

20. Traffic regulations applicable in the City of New York are contained in both the New York State Vehicle and Traffic Law ("VTL") and the New York City Department of Transportation's Traffic Rules and Regulations (Title 34, Section 4-01 *et seq.* of the RCNY) ("DOT Traffic Rules").

21 Both the VTL and DOT Traffic Rules provide that bicyclists are subject to traffic regulations applicable to vehicle drivers (except those that by their nature cannot have any application to bicyclists). VTL §1231; 34 RCNY §4-02(a). Thus, bicyclists must obey traffic signs and signals.

22. Bicyclists must also ride in designated bicycle lanes or, if no bicycle lanes are provided, as near as practicable to the curb or edge of a roadway, unless it is unsafe to do so or s/he is preparing to turn left. 34 RCNY §4-12(p)(1), (3).

23 Because participants in Critical Mass bicycle rides typically do not obey traffic signs and signals and typically do not ride in designated bicycle lanes or as near as practicable to the curb or edge of the roadway, Critical Mass bicycle rides are "parades or processions," as those terms are defined in 38 RCNY §19-02(a). As set forth in 38 RCNY §19-

02(a), parades and processions are “any march, motorcade, caravan, promenade, foot or bicycle race, or similar event of any kind, upon any public street or roadway.”

24. Parades and processions are required to have permits from the Police Department. In this regard, Administrative Code §10-110(a) provides that “[a] procession, parade, or race shall be permitted upon any street ... only after a written permit therefor has been obtained from the police commissioner.”

25. Each parade permit granted pursuant to Administrative Code §10-110(a) designates the specific route which the parade or procession will use. Admin. Code §10-110(a)(3).

26. It is unlawful to participate in a parade or procession unless a parade permit has been issued for the event. Admin. Code §10-110(c).

27. No parade permit has been issued by or sought from the Police Commissioner in connection with any past or planned Critical Mass bicycle ride.

28. The publicized philosophy of the Critical Mass rides is that bicycles are just as much traffic and have just as much right to be on the roads and travel at their own speed as cars and other vehicles. Thus, it is evident that defendants have no intention of seeking a parade permit from the Police Department. Rather, their intention is to continue to flout this requirement.

#### **AS AND FOR A FIRST CAUSE OF ACTION**

29. Plaintiffs repeat and reallege, as fully as if set forth herein at length, the facts contained in paragraphs 1-28 above.

30. Absent the grant of a parade permit authorizing a procession or parade of bicycles, it is a violation of law for bicycle riders to proceed through the streets *en masse*, to disrupt pedestrian and vehicular traffic, and to disobey traffic restrictions.

31 Participants in the monthly Critical Mass bicycle rides in New York City routinely proceed through the streets *en masse*, disrupt pedestrian and vehicular traffic and disobey traffic restrictions.

32. No parade permit has been issued by or sought from the Police Commissioner in connection with any past or planned Critical Mass bicycle ride.

33. Accordingly, plaintiffs seek a declaration that the Critical Mass bicycle rides are processions that are unlawful pursuant to Administrative Code §10-110 absent the grant of a parade permit by the Police Commissioner, and a permanent injunction enjoining and restraining the defendants, and all those acting in concert with them, from participating in future Critical Mass bicycle rides absent the grant of a parade permit by the Police Commissioner.

**AS AND FOR A SECOND CAUSE OF ACTION**

34. Plaintiffs repeat and reallege, as fully as if set forth herein at length, the facts contained in paragraphs 1-33 above.

35. Absent the grant of a special events permit by the Parks Department, it is a violation of law for a group of twenty or more persons to meet or gather together in a City Park.

36. On the last Friday of each month more than twenty Critical Mass bicycle riders meet and congregate in Union Square Park prior to the start of the monthly Critical Mass bicycle ride.

37. No special events permit has been issued by or sought from the Parks Commissioner in connection with any past or planned Critical Mass pre-ride gathering.

38. Accordingly, plaintiffs seek a declaration that when twenty or more Critical Mass bicycle ride participants meet and gather in Union Square Park, such gathering is a special event (or demonstration) that is unlawful pursuant to 56 RCNY §§1-03(b)(6)(a) and 2-08 absent the grant of a special events permit by the Parks Commissioner, and a permanent

injunction enjoining and restraining the defendants, and all those acting in concert with them, from gathering in Union Square Park (or any other City park) with a group of twenty or more Critical Mass participants absent the grant of a permit by the Parks Commissioner.

**AS AND FOR A THIRD CAUSE OF ACTION**

39. Plaintiffs repeat and reallege, as fully as if set forth herein at length, the facts contained in paragraphs 1-38 above.

40. Unless a special events permit has been issued by the Parks Department, it is unlawful to advertise the time and location of a meeting or group activity in a City park involving twenty or more people. 56 RCNY §2-08(s).

41 Time's Up routinely advertises on its website ([www.times-up.org](http://www.times-up.org)) that Critical Mass bicycle ride participants meet and gather in Union Square Park at 7:00 p.m. on the last Friday of each month. Upon information and belief, Time's Up has also advertised that Critical Mass bicycle ride participants meet and gather in Union Square Park at 7:00 p.m. on the last Friday of each month using other media outlets, including, but not limited to newspapers and magazines.

42. No special events permit has been issued by or sought from the Parks Commissioner in connection with any past or planned Critical Mass pre-ride gathering in Union Square Park.

43. Accordingly, plaintiffs seek a declaration that any advertisement that indicates that Critical Mass ride participants gather in Union Square Park prior to the start of their monthly rides is unlawful pursuant to 56 RCNY §2-08(s) absent the grant of a special events permit by the Parks Commissioner, and a permanent injunction enjoining and restraining the defendants, and all those acting in concert with them, from advertising that Critical Mass bicycle ride participants gather in Union Square Park immediately prior to the start of the

monthly Critical Mass bicycle ride, unless a special events or demonstration permit has been issued by the Parks Commissioner.

**WHEREFORE**, plaintiffs seek a judgment

A. Declaring that the Critical Mass bicycle rides are processions that are unlawful pursuant to Administrative Code §10-110 absent the grant of a parade permit by the Police Commissioner, and

B. Permanently enjoining and restraining the defendants, and all those acting in concert with them, from participating in future Critical Mass bicycle rides absent the grant of a parade permit by the Police Commissioner, and

C. Declaring that when twenty or more Critical Mass participants meet and gather in Union Square Park, such gathering is a special event (or demonstration) that is unlawful pursuant to 56 RCNY §§1-03(b)(6)(a) and 2-08 absent the grant of a special events permit by the Parks Commissioner, and

D. Permanently enjoining and restraining the defendants, and all those acting in concert with them, from gathering in Union Square Park (or any other City park) with a group of twenty or more Critical Mass participants absent the grant of a permit by the Parks Commissioner, and

E. Declaring that any advertisement that indicates that Critical Mass participants gather in Union Square Park prior to the start of their monthly rides is unlawful pursuant to 56 RCNY §2-08(s) absent the grant of a special events permit by the Parks Commissioner, and

F. Permanently enjoining and restraining the defendants, and all those acting in concert with them, from advertising that Critical Mass bicycle ride participants gather in

Union Square Park (or any other City park) immediately prior to the start of the monthly Critical Mass bicycle rides, unless a special events permit has been issued by the Parks Commissioner, and

G. Awarding plaintiffs such other and further relief as to this Court may seem just and proper.

Dated: New York, New York  
March 14, 2005

MICHAEL A. CARDOZO  
Corporation Counsel of the City of New York  
Attorney for Defendants  
100 Church Street, Rm. 5-188  
New York, NY 10007  
(212)788-1035

By   
SHERYL R. NEUFELD


**VERIFICATION**

**ROBIN BINDER**, an attorney admitted to practice before the Courts of the State of New York, hereby affirms the following to be true, under penalties of perjury, pursuant to CPLR 2106:

I have been duly designated as Acting Corporation Counsel of the City of New York and, as such, I am an Officer of the City of New York, a plaintiff in the within action. I have read the foregoing complaint and know the contents thereof. I believe the same to be true upon information and belief.

The reason why this verification is not made by the City of New York is that it is a corporation. My belief as to all matters is based upon information obtained from various departments of the city government, from statements made to me by certain officers or agents of the City of New York, and from statements, affidavits or affirmations of other persons.

Dated:           New York, New York  
                  March 14, 2005

  
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ROBIN BINDER