

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MICHAEL WILDEY JR.,
Plaintiff,

v.

SGT. NICOLAS SALAMONE, in his
official and individual capacities, CPL.
BRADLEY ELLMANN, in his official and
individual capacities, and CHESTER
TOWNSHIP, NEW JERSEY,
Defendants.

Civil Action No. 2:26-cv-01672 (JKS) (CF)

**NOTICE OF MOTION FOR A
TEMPORARY RESTRAINING ORDER
AND/OR A PRELIMINARY INJUNCTION
AND/OR PERMANENT INJUNCTION**

MOTION DATE: March 16, 2026

ORAL ARGUMENT REQUESTED

PLEASE TAKE NOTICE that on March 16, 2026, Plaintiff, Michael Wildey Jr., will move before this Court at the U.S. District Court Courthouse located at the Martin Luther King Building & U.S. Courthouse – 50 Walnut Street – Newark, N.J. 07102 for an Order: 1) Pursuant to Fed. R. Civ. P. 65, issuing a temporary restraining order and/or a preliminary injunction, and/or entry of a permanent injunction enjoining Defendants, their agents, employees, and all persons acting in concert with them, from unlawfully and unconstitutionally prohibiting Plaintiff from engaging in observing and photographing police activity occurring in public spaces and, upon consolidating the hearing with the trial on the merits per Rule 65(a)(2), granting judgment to Plaintiff on all questions of liability and entering a permanent injunction; and/or 2) for such other further relief as the Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that in support of this Motion, Plaintiff shall rely upon the accompanying Verified Complaint, the exhibits annexed hereto, and the accompanying Memorandum of Law dated February 20, 2026.

PLEASE TAKE FURTHER NOTICE that a Proposed Form of Order is annexed hereto pursuant to Local Rule 7.1(e).

Dated: February 20, 2026.

/s/ Vincent S. Verdiramo

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION
FOR A TEMPORARY RESTRAINING ORDER AND/OR A
PRELIMINARY INJUNCTION AND/OR PERMANENT INJUNCTION**

RANDAZZA | LEGAL GROUP

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MEMORANDUM OF LAW

1.0 INTRODUCTION

Michael Wildey listens to his police scanner. When an event takes place, he rushes to the scene to document what he sees. He is a firefighter, so he understands the protocol for remaining out of the way and not interfering in police actions. He parks legally and remains a safe distance away, while he documents the events to the best of his ability. He disseminates the information to people who may have an interest. For example, he will inform people in real time to avoid certain streets if there is a hazardous situation. He also saves his documentation for use if any of the parties involved may need it. Wildey has a good purpose, reason, and technique for his hobby. However, even if he had no interest other than personal curiosity, his news gathering and documentation of public events and police activity is still fully protected by the First Amendment.

The Chester Township police department chose to try to suspend the First Amendment in its jurisdiction. On August 31, 2025,¹ Mr. Wildey was legally engaged in observing and taking photographs of police activity relating to a motor vehicle accident; and was unlawfully detained and threatened with seizure of his property, merely for taking photographs. First the Chester Township police demanded he give up his phone “for evidence” relating to the accident scene, but then conditioned his release from their detention if he agreed to delete the photographs.

He is now unable to continue his pursuit in Chester Township because he fears further retaliation by the police. He most certainly would be engaged in his newsgathering activities but for this fear. And thus, he requires a court order enjoining the Chester police from further violating his First Amendment rights.

¹ Given that the incident occurred in August, it opens up the question as to why he did not act sooner. He did not act until he had gotten ahold of the bodycam footage and then it took him time to find legal representation willing to take on the police. He has moved diligently.

It is clearly established law in this District and in the Third Circuit that the First Amendment protects the public’s “right to record police officers conducting official police activity in public areas.” *Morales v. Maxwell*, 600 F. Supp. 3d 497, 512 (D.N.J. 2022) quoting, *Fields v. City of Phila.*, 862 F.3d 353, 360 (3d Cir. 2017). In addition, on December 7, 2021, the Acting Attorney General for the State of New Jersey, the Hon. Andrew J. Bruck, issued Attorney General Law Enforcement Directive No. 2021-11 to all local and county law enforcement offices entitled, **“First Amendment Right to Observe, Object to, and Record Police Activity”** which directs all law enforcement agencies in the State of New Jersey to “respect to the right to observe, object to, and record police activity.” See Plaintiff’s Verified Complaint (“Compl.”) at Exhibit C. Unfortunately, Defendants, Sgt. Nicolas Salamone, in his official and individual capacities, Cpl. Bradley Ellmann, in his official and individual capacities, and law enforcement officials in Chester Township, New Jersey, refuse to comply with this Constitutional principle, thus requiring Plaintiff to file a Verified Complaint along with this Motion for a Temporary Restraining Order and/or Preliminary Injunction.

There are no disputed issues of fact in this case, since video of the subject incident with all relevant statements and actions was recorded on the bodycams of both individual Defendants, Salamone and Ellmann. Compl. at Exhibits A & B. The video recordings speak for themselves and reveal Plaintiff was the victim of numerous violations of his Constitutional rights.

This Court should issue a Temporary Restraining Order and/or Preliminary Injunction requiring Defendants to cease interfering with Plaintiff’s right to record police activity in public places – consistent with clearly established First Amendment law and the New Jersey Attorney General’s instructions to the police in this state. In addition, it would be logical for this Court to issue a Permanent Injunction upon consolidating the hearing with a trial on the merits, per Rule

65(a)(2), since the bodycam videos (recorded by the Defendants themselves) show that there are no genuine disputes of material facts, which would entitle Plaintiff to judgment as to all issues on the question of liability. Hence, this case could (and should) be resolved efficiently and quickly by collapsing all of this relief into a single hearing and set of briefs, leaving only the question of money damages for trial. Doing so would further the interests of the rules of civil procedure. *See* Fed. R. Civ. P. 1.

2.0 FACTUAL BACKGROUND

On or about August 31, 2025, there was a motor vehicle accident which took place on a public roadway located in Chester Township, New Jersey. *See* Compl. at ¶8. Shortly after the Chester Township Police arrived to investigate the scene, Plaintiff legally parked his vehicle near the scene of the accident, to observe the post-accident investigation and take photographs. *Id.* at ¶9. Plaintiff remained in a public and safe area at all relevant times while observing and photographing without interfering in any post-accident investigation. *Id.* at ¶10. Despite remaining in a public space and not interfering in the post-accident investigation, the Defendants Salamone and Ellmann, in the course of their employment as police officers for Chester Township, New Jersey, engaged in activity in violation of Plaintiff's Constitutional rights. *Id.* at ¶11. The Defendants' activity was recorded as audiovisual footage from the bodycams worn by Defendants Salamone and Ellmann; and the footage reveals numerous violations of Plaintiff's Constitutional rights. *Id.* at ¶12 and Exhibits A & B.

The Bodycam footage reveals that Defendants Salamone and Ellmann approached Plaintiff asking him if he had taken photographs of the accident scene, and when he truthfully admitted that he had, Ellmann said, "Give me your phone. It's going to be seized for evidence." Exh. A at 00:00:29; Exh. B at 00:00:40. When Plaintiff objected to the seizure of his phone, Ellmann said Plaintiff could keep his phone if "you delete them right now." Exh. A at 00:00:39; Exh. B at

00:00:50. Defendants detained him by standing in close proximity to Plaintiff forcing him to delete any photos he took of the accident site, and were to ensure the photos were actually deleted, Ellmann even demanded Plaintiff delete them from his cellphone’s “recently deleted” folder. Exh. A at 00:00:53; Exh. B at 00:01:04. Once Plaintiff complied with these unconstitutional demands, Ellmann stated “Alright. He can leave.” Exh. A at 00:01:15; Exh. B at 00:01:27. Plaintiff only complied with Defendants because he felt that he was not free to go, and that he would be arrested and put in jail for the weekend if he did not comply.² See Compl. at ¶17.

Immediately after the Plaintiff’s photographs were deleted at Defendants’ insistence (backed up with threats of seizure of property and deprivation of liberty), Defendant Salamone walks away from Plaintiff and states to several other police officers on the scene, “Make sure this guy doesn’t take his phone out again because he was taking pictures of everything.” Exh. B at 00:01:59. Defendant Salamone is then heard joking with other Chester Township police officers whether Plaintiff is parked legally or not so as to issue him a ticket; stating, “I gotta look up the ordinance...” Exh. B at 00:02:05. Ultimately, Defendant Salamone made his true intentions known when he advises the other police officers: “We’ll get him out of here.” Exh. B at 00:02:13. Defendant Salamone then instructs Plaintiff to leave the area despite his constitutional right to be in a public place. Exh. B at 00:02:36.

As a result of these facts, Plaintiff filed the subject Verified Complaint pursuant to 42 U.S.C. § 1983, alleging violations of his rights guaranteed by the First, Fourth, and Fourteenth Amendments, along with violations of his rights guaranteed by the New Jersey State Constitution and the New Jersey Civil Rights Act – N.J.S.A. 10:6-1, *et. seq.*

² If the Defendants try to argue that he was actually free to go, the bodycam footage makes it very clear that this argument would be dishonest. However, consider why Defendant Ellman would say that Plaintiff was “now” free to go if he were not detained prior to that statement, and the deletion of his footage.

3.0 LEGAL STANDARD

Whether it is referred to as a Temporary Restraining Order or Preliminary Injunction, the Court's 4-factor legal standard for granting said relief is still the same.

(1) a reasonable likelihood of success on the merits; (2) irreparable harm to the applicant; (3) whether the denial of a preliminary injunction would injure the moving party more than the issuance of an injunction would harm the non-moving party; and (4) whether the grant of relief would serve the public interest.

Holland v. Rosen, 895 F.3d 272, 285-86 (3d Cir. 2018); *Nutrasweet Co. V. Vit Mar Enters., Inc.*, 112 F.3d 689, 693 (3d Cir. 1997); *Am. Tel. & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1426-27 (3d Cir. 1994). More importantly, because Plaintiff's First Amendment rights have been violated, the burden on the question of a likelihood of success on the merits shifts to the Defendants. *See Reilly v. City of Harrisburg*, 858 F.3d 173, 179-80 (3d Cir. 2017). Further, where Plaintiff would be entitled to immediate judgment on liability and to a permanent injunction, Rule 65(a)(2) permits consolidation of a permanent injunction hearing with a trial on the merits. In this regard, but for the Court's individual practices, Plaintiff would be entitled to summary judgment since "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Kreschollek v. S. Stevedoring Co.*, 223 F.3d 202, 204 (3d Cir. 2000). However, as a summary judgment motion cannot yet be filed, Rule 65(a)(2) provides its own avenue for immediate and permanent relief.

In this matter, all of the relevant and material facts have been recorded on two bodycam videos; the source of which comes from the defendants, themselves. Hence, it would be sanctionable for the defendants to question the accuracy of the statements and actions shown in the videos or assert there are any genuine disputes of fact. Simply put, there is no need for the parties to go through the unnecessary time and expense of the discovery process to prevent Plaintiff from obtaining the relief of a Temporary Restraining Order or Preliminary Injunction, and/or

Permanent Injunction right now. While this is not technically a summary judgment motion, if the Defendants were to argue that they need discovery, then they should be held to the strict standards of Fed. R. Civ. P. 56(d) and not simply gifted with the ability to prevent Plaintiff from obtaining a judgment on liability with a rote statement of “we need discovery.” Rule 56(d) exists for a reason, and it has strict mandates to avoid dilatory practice.

4.0 ARGUMENT

Not only is Plaintiff likely to succeed on the merits, he is entitled to a Permanent Restraining Order and/or entry of judgment as to liability. This is not a case where there is any dispute of the facts as they relate to what the parties said to one another and what actions were made. The Bodycam video footage speaks for itself. Plaintiff photographed the accident and Defendants detained him, forcing the destruction of Plaintiff’s photographs.

The law is equally undisputed that Plaintiff is entitled to judgment on liability as to all counts for violation of his First Amendment right to free speech, his Fourth Amendment right to freedom from unreasonable searches and seizures, and analogous rights under the New Jersey Constitution. “To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” (citation omitted). *West v. Atkins*, 487 U.S. 42, 48 (1988). “The New Jersey Civil Rights Act ‘is modeled off of the analogous Federal Civil Rights Act, 42 U.S.C. § 1983[.]’ *Tumpson v. Farina*, 218 N.J. 450, 474, 95 A.3d 210 (2014). Accordingly, claims arising under the New Jersey Civil Rights Act and claims under § 1983 are generally treated as rising and falling together.” *Leak v. City of Paterson*, No. 22-cv-06994 (MEF)(JBC), 2025 U.S. Dist. LEXIS 30215, at *5 (D.N.J. Feb. 19, 2025). Here, Plaintiff’s rights were violated by the police officer Defendants who were undoubtedly acting under color of state law, which entitles Plaintiff to a liability judgment under both federal and state law.

As to his free speech claims, in addition to the Third Circuit, nearly every federal court of appeals has recognized the First Amendment right to film law enforcement performing their duties in public. *See Glik v. Cunniffe*, 655 F.3d 78, 85 (1st Cir. 2011) (“a citizen’s right to film government officials, including law enforcement officers, in the discharge of their duties in a public space is a basic, vital, and well-established liberty safeguarded by the First Amendment.”); *Berge v. Sch. Comm. of Gloucester*, 107 F. 4th 33, 42-44 (1st Cir. 2024) (finding government employees not entitled to qualified immunity for threatening defendant with criminal prosecution over “very public” recording of “public officials performing public duties in the publicly accessible part of a public building”); *Sharpe v. Winterville Police Dep’t*, 59 F.4th 674, 681 (4th Cir. 2023) (“livestreaming a police traffic stop is speech protected by the First Amendment.”); *Turner v. Lt. Driver*, 848 F.3d 678, 688 (5th Cir. 2017) (“First Amendment principles, controlling authority, and persuasive precedent demonstrate that a First Amendment right to record the police does exist, subject only to reasonable time, place, and manner restrictions.”); *Nicodemus v. City of S. Bend*, 137 F.4th 654, 663 (7th Cir. 2025) (“there is a First Amendment right to record the police in the execution of their duties in public spaces.”); *Chestnut v. Wallace*, 947 F.3d 1085, 1090 (8th Cir. 2020) (“if the constitution protects one who records police activity, then surely it protects one who merely observes it—a necessary prerequisite to recording”); *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 827 n.4 (9th Cir. 2020) (the public has a “First Amendment right to observe and film police activities in public”); *Irizarry v. Yehia*, 38 F.4th 1282, 1289 (10th Cir. 2022) (“filming the police performing their duties in public is protected activity.”); *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000) (“The First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest.”); *Price v. Garland*, 45 F.4th 1059, 1070 (D.C. Cir. 2022)

“Filming a public official performing public duties on public property implicates unique first amendment interests.” “The free speech clause of the New Jersey Constitution is generally interpreted as co-extensive with the First Amendment.” *Borden v. Sch. Dist.*, 523 F.3d 153, 168 n.7 (3d Cir. 2008)(quotation marks omitted). Plaintiff’s photography, therefore, was protected under the First Amendment and the New Jersey Constitution.

Defendants unconstitutionally retaliated against him, seizing him and forcing the destruction of those photographs. “In order to plead a retaliation claim under the First Amendment, a plaintiff must allege: (1) constitutionally protected conduct, (2) retaliatory action sufficient to deter a person of ordinary firmness from exercising his constitutional rights, and (3) a causal link between the constitutionally protected conduct and the retaliatory action.” *Thomas v. Independence Twp.*, 463 F.3d 285, 296 (3d Cir. 2006) (citation omitted). Here, as set forth above, Plaintiff was engaged in protected conduct—his photography. Defendants’ actions are a deterrent against the exercise of those rights—Plaintiff faces arrest and destruction of property if he does so again. And there can be no dispute of a causal link—the evidence demonstrates Defendants acted because Plaintiff photographed the scene. Thus, Plaintiff is not only substantially likely to prevail on his free speech claims, he is entitled to a Permanent Restraining Order and/or judgment on all questions of liability.

Just as Plaintiff is entitled to a liability judgment and preliminary and permanent injunction against Defendants on his First Amendment claims, he is so entitled under the Fourth Amendment as well. ““The Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution, in almost identical language, protect against unreasonable searches and seizures.’ *State v. Smart*, 253 N.J. 156, 289 A.3d 469, 474 (N.J. 2023) (quoting *State v. Nyema*, 249 N.J. 509, 267 A.3d 449, 459 (N.J. 2022)).” *Heard v. City of Plainfield*, No. 2:24-cv-10293

(BRM)(MAH), 2025 U.S. Dist. LEXIS 213161, at *47 (D.N.J. Oct. 28, 2025). Probable cause is the standard by which a court assesses whether a police officer’s search or seizure was permissible under the Fourth Amendment. *See Bufkin v. Collins*, 604 U.S. 369, 384 (2025). “Generally, for a search or seizure to be reasonable under the Fourth Amendment, it must be effectuated with a warrant based upon probable cause.” *United States v. Bey*, 911 F.3d 139, 144-45 (3d Cir. 2018). Probable cause is determined “with reference to the facts and circumstances within the officer’s knowledge at the time of the investigative stop or arrest.” *United States v. Outlaw*, 138 F.4th 725, 728 (3d Cir. 2025) (quoting *United States v. Laville*, 480 F.3d 187, 194 (3d Cir. 2007)). When a police officer has a “reasonable, articulable suspicion that criminal activity is afoot,” he may conduct a brief, investigatory stop without a warrant, *i.e.*, a “*Terry* stop.” *See Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). However, an officer must “articulate more than an ‘inchoate and unparticularized suspicion or ‘hunch’ of criminal activity” to establish reasonable suspicion.” *Id.* at 124 (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)). Here, Plaintiff was never accused of a crime, much less did Defendants have an articulable suspicion to stop him. At worst, Plaintiff was accused of a parking violation, *i.e.* a civil infraction, not a criminal one, for which he was never cited. *See* N.J. Stat. § 39:4-139.3 (committing parking offenses to the civil jurisdiction of the courts); *Vickey v. Nessler*, 230 N.J. Super. 141, 148, 553 A.2d 34, 38 (Super. Ct. App. Div. 1989)(observing that traffic offenses, including parking, are civil).

Similarly, destruction of Plaintiff’s property is a Fourth Amendment seizure. *See Brown v. Muhlenberg Twp.*, 269 F.3d 205, 209-10 (3d Cir. 2001). A warrantless seizure of property is only permissible when “the government interest is sufficiently compelling and the nature and extent of the intrusion occasioned by the seizure is not disproportionate to that interest[.]” *Id.* at 210. Here, there was no interest in the destruction of the photographs, let alone a compelling one,

especially where Plaintiff had a constitutionally protected right to take the photographs, and the destruction was grossly disproportionate to whatever interest Defendants may *post hoc* invent.³

Defendants lacked probable cause to seize Plaintiff and his photographs. He committed no crime and Defendants could not articulate any basis for one. And the compelled destruction of his property, the photographs, is a permanent warrantless seizure that had no probable cause either. Thus, Plaintiff is not only likely to prevail on his claims, he would be entitled to judgment on liability and, and therefore, this Court should enter both a preliminary and permanent injunction.

The remaining factors support injunctive relief. Deprivation of freedom of speech, even for a moment, is *ipso facto* irreparable harm. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also Khalil v. President*, 164 F.4th 259 (3d Cir. 2026). The balance of equities similarly favors Plaintiff; there cannot possibly be any harm on Defendants, since Plaintiff is merely requesting they respect the public’s constitutional rights and cease trying to stop members of the public from exercising their First Amendment rights. “The assertion of serious First Amendment questions has been held to compel a finding that the balance of hardships tips sharply in the plaintiff’s favor.” *GJJM Enters., LLC v. City of Atl. City*, 293 F. Supp. 3d 509, 521 (D.N.J. 2017) citing *American Bev. Ass’n v. San Francisco*, 871 F.3d 884, 898 (9th Cir. 2017). And, the public interest is served by entry of injunctive relief. Enforcement of free speech is always in the

³ In the event Defendants attempt to argue that there can be no Fourth Amendment liability because Plaintiff is the one who accomplished the deletion, “[w]here there is coercion there cannot be consent.” *Bumper v. North Carolina*, 391 U.S. 543, 550 (1968). “[T]he Fourth and Fourteenth Amendments require that a consent not be coerced, by explicit or implicit means, by implied threat or covert force. For, no matter how subtly the coercion was applied, the resulting ‘consent’ would be no more than a pretext for the unjustified police intrusion against which the Fourth Amendment is directed.” *Schneckloth v. Bustamonte*, 412 U.S. 218, 228 (1973). Defendants threatened Plaintiff with arrest, coercing him to delete the images.

public interest. “When there are no societal benefits justifying the suppression of First Amendment rights, the public interest is in favor of granting an injunction.” *GJMM Entrs., supra*, citing *Tenaflly Eruv Assoc., Inc. v. Borough of Tenaflly*, 309 F.3d 144, 177 (3d Cir. 2002). Here, there was no societal benefit to suppression of Plaintiff’s rights. In fact, the State of New Jersey explicitly supports Plaintiff; the aforementioned New Jersey Attorney General Law Enforcement Directive No. 2021-11 entitled, “**First Amendment Right to Observe, Object to, and Record Police**” demands that law enforcement departments respect peoples’ constitutional rights and to cease preventing members of the public from recording police activity in public spaces. Indeed, an injunction would prevent more harm from happening to Defendants because it would stop lawsuits like these from being filed. Simply put, if they complied with the law, they would not be subject to Civil Complaints like the one that Plaintiff has filed in this case.

5.0 CONCLUSION

For the reasons laid out herein, Plaintiff requests entry of an Order: 1) Pursuant to Fed. R. Civ. P. 65, issuing a temporary restraining order and/or a preliminary injunction, and/or entry of a permanent injunction, resolving all questions of liability against Defendants, enjoining Defendants, their agents, employees, and all persons acting in concert with them, from unlawfully and unconstitutionally prohibiting Plaintiff from engaging in observing and photographing police activity occurring in public spaces; and/or 2) For such other further relief as the Court may seem just and proper.

Dated: February 20, 2026.

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**UNITED STATES DISTRICT COURT
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Plaintiff,

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RESTRAINING ORDER AND/OR
PRELIMINARY INJUNCTION**

THIS MATTER having been opened to the Court upon motion by counsel for Plaintiff, MICHAEL WILDEY, JR., seeking a Temporary Restraining Order and/or a Preliminary Injunction pursuant to Fed. R. Civ. P. 65, issuing a temporary restraining order and/or a preliminary injunction, and/or permanent injunction, enjoining Defendants from unlawfully and unconstitutionally prohibiting Plaintiff from engaging in observing and photographing police activity occurring in public spaces; and the Court having considered the arguments of the parties, and having consolidated the hearing on the motion with a trial on the merits per Rule 65(a)(2), and for good cause shown,

IT IS on this _____ day of _____, 2026;

ORDERED that Defendants, their agents, employees, and all persons acting in concert with them are preliminarily and temporarily enjoined from unlawfully and unconstitutionally prohibiting Plaintiff and/or all other members of the public from engaging in observing and photographing police activity occurring in public spaces, and/or;

IT IS FURTHER ORDERED that Plaintiff is entitled to entry of Judgment on all questions of liability against Defendants and a final, permanent injunction, set forth above, is to be entered as a separate and final judgment, and;

IT IS FURTHER ORDERED that a copy of the within Order be served upon all counsel of record within seven (7) days of receipt of same.

U.S.D.J.