

CLOSED

**U.S. District Court
Eastern District of New York (Brooklyn)
CIVIL DOCKET FOR CASE #: 1:11-cv-05533-CLP**

Barry et al v. City of New York et al
Assigned to: Magistrate Judge Cheryl L. Pollak
Cause: 42:1983 Civil Rights Act

Date Filed: 11/14/2011
Date Terminated: 05/09/2013
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Ernest Steve Barry

represented by **Arthur Eisenberg**
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Plaintiff

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V.

Defendant

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Defendant

Steven Dutes
*a member of the New York City Police
 Department*

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Liza J Sohn
 (See above for address)
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Date Filed	#	Docket Text
11/14/2011	<u>1</u>	COMPLAINT against All Defendants Disclosure Statement on Civil Cover Sheet completed –no., filed by Michael Burkhart, Ernest Steve Barry. (Attachments: # <u>1</u> Civil Cover Sheet) (Bowens, Priscilla) (Entered: 11/15/2011)
11/14/2011		FILING FEE: \$ 350, receipt number 4653036339 (Bowens, Priscilla) (Entered: 11/15/2011)
11/14/2011		Summons Issued as to All Defendants. (Bowens, Priscilla) (Entered: 11/15/2011)
11/16/2011	<u>2</u>	SCHEDULING ORDER: Initial Status Conference is set for 12/28/2011 at 10:00 AM in Chambers 704S. SEE ATTACHED MANDATORY REQUIREMENTS FOR CONFERENCE. Ordered by Judge Brian M. Cogan on 11/16/2011. (Weisberg, Peggy) (Main Document 2 replaced on 11/17/2011) (Clarke, Melonie). (Entered: 11/16/2011)
11/30/2011	<u>3</u>	SUMMONS Returned Executed by Michael Burkhart, Ernest Steve Barry. City of New York served on 11/16/2011, answer due 12/7/2011. (Angelos, Claudia) (Entered: 11/30/2011)
11/30/2011	<u>4</u>	SUMMONS Returned Executed by Michael Burkhart, Ernest Steve Barry. Steven Dutes served on 11/16/2011, answer due 12/7/2011. (Angelos, Claudia) (Entered: 11/30/2011)
11/30/2011	<u>5</u>	SUMMONS Returned Executed by Michael Burkhart, Ernest Steve Barry. New York City Transit Authority served on 11/17/2011, answer due 12/8/2011. (Angelos, Claudia) (Entered: 11/30/2011)
11/30/2011	<u>6</u>	NOTICE of Appearance by Johana Castro on behalf of City of New York (aty to be noticed) (Castro, Johana) (Entered: 11/30/2011)
12/06/2011	<u>7</u>	NOTICE of Appearance by Claudia Angelos on behalf of Ernest Steve Barry, Michael Burkhart (aty to be noticed) (Angelos, Claudia) (Entered: 12/06/2011)
12/07/2011	<u>8</u>	ANSWER to <u>1</u> Complaint by City of New York, Steven Dutes. (Castro, Johana) (Entered: 12/07/2011)
12/08/2011	<u>9</u>	ANSWER to <u>1</u> Complaint by New York City Transit Authority. (Schoolman, Richard) (Entered: 12/08/2011)
12/08/2011	<u>10</u>	AMENDED ANSWER to <u>1</u> Complaint by New York City Transit Authority. (Schoolman, Richard) (Entered: 12/08/2011)
12/12/2011	<u>11</u>	Letter <i>Requesting Adjournment</i> by Ernest Steve Barry, Michael Burkhart (Angelos, Claudia) (Entered: 12/12/2011)
12/12/2011		ORDER granting <u>11</u> Letter Requesting Adjournment. Initial Status Conference adjourned to 1/17/2012 at 4:30 pm in Chambers 704S. Parties are reminded to comply with the mandatory requirements for the conference set forth at <u>2</u> . Ordered by Judge Brian M. Cogan on 12/12/2011. (Weisberg, Peggy) (Entered: 12/12/2011)
12/20/2011	<u>12</u>	CASE MANAGEMENT STATEMENT <i>Joint Proposed Case Management Plan</i> (Angelos, Claudia) (Entered: 12/20/2011)

01/12/2012	<u>13</u>	Letter <i>Initial Joint Summary of Claims and Defenses</i> by Ernest Steve Barry, Michael Burkhart, City of New York, Steven Dutes, New York City Transit Authority (Angelos, Claudia) (Entered: 01/12/2012)
01/18/2012		MINUTE ENTRY for Initial Status Conference held before Judge Brian M. Cogan on 1/17/12. All parties present. Fact discovery must be completed by 4/16/12. See revised Civil Case Management Plan, which will be docketed separately, for details. (Weisberg, Peggy) (Entered: 01/18/2012)
01/19/2012	<u>14</u>	Civil Case Management Plan is hereby adopted. Ordered by Judge Brian M. Cogan on 1/17/2012. (Siegfried, Evan) (Entered: 01/19/2012)
01/19/2012	<u>15</u>	ORDER. Law Student Intern Appearances are hereby granted. Ordered by Judge Brian M. Cogan on 1/17/2012. (Siegfried, Evan) (Main Document 15 replaced on 1/19/2012) (Siegfried, Evan). (Entered: 01/19/2012)
04/05/2012	<u>16</u>	NOTICE of Appearance by Carl Joseph Copertino on behalf of New York City Transit Authority (aty to be noticed) (Copertino, Carl) (Entered: 04/05/2012)
04/18/2012		SCHEDULING ORDER: Discovery in this matter having concluded, the parties are required to file a Joint Pretrial Order using the form posted on the Court's website by 5/9/2012. The parties are to simultaneously deliver to Chambers a set of those exhibits to which objection has been made, and those portions of deposition testimony that a party intends to offer and to which the adversary objects, both as reflected in the Joint Pretrial Order, so that the Court can rule on the objections at the Conference to the extent practicable. Final Pretrial Conference is set for 5/23/12 at 4:30 P.M. in Courtroom 8D South. Ordered by Judge Brian M. Cogan on 4/18/2012. (Weisberg, Peggy) (Entered: 04/18/2012)
05/01/2012	<u>17</u>	Letter MOTION to Adjourn Conference <i>Application to Advance Date of Scheduled Conference and to Adjourn Date for Submission of Pre-Trial Order</i> by New York City Transit Authority. (Copertino, Carl) (Entered: 05/01/2012)
05/01/2012		ORDER granting <u>17</u> Motion to Adjourn Conference. Pretrial Conference will be held on 5/11/12 at 2:30 pm in Courtroom 8D South; Joint Pretrial Order due by 5/7/12. The parties are to simultaneously deliver to Chambers a set of those exhibits to which objection has been made, and those portions of deposition testimony that a party intends to offer and to which the adversary objects, both as reflected in the Joint Pretrial Order, so that the Court can rule on the objections at the Conference to the extent practicable. Ordered by Judge Brian M. Cogan on 5/1/2012. (Weisberg, Peggy) (Entered: 05/01/2012)
05/02/2012	<u>18</u>	Letter MOTION to Stay <i>Pending Settlement Negotiations</i> by Ernest Steve Barry. (Dunn, Christopher) (Entered: 05/02/2012)
05/02/2012		ORDER denying <u>18</u> Motion to Stay. The parties appear to be suffering from some misconceptions. First, discovery is closed. See <u>14</u> . No extension was requested during discovery and no grounds have been offered for a post-closure reinstatement of discovery. Second, the case is going to trial in short order. Third, this Court does not generally stay proceedings for settlement discussions, and sees no reason to here. The parties have had six months to settle this case, and can do it tomorrow if they want to. Fourth, the Court accelerated the final PTC because the TA asked it to. If the parties want to go back to the original schedule with the final PTC on 5/23, they should so advise the Court; otherwise, the current schedule stands. Ordered by Judge Brian M. Cogan on 5/2/2012. (Cogan, Brian) (Entered: 05/02/2012)
05/04/2012	<u>19</u>	Joint MOTION to Adjourn Conference by Ernest Steve Barry. (Dunn, Christopher) (Entered: 05/04/2012)
05/04/2012	<u>20</u>	NOTICE of Acceptance with Offer of Judgment by Michael Burkhart (Dunn, Christopher) (Entered: 05/04/2012)
05/04/2012	<u>21</u>	NOTICE of Acceptance with Offer of Judgment by Ernest Steve Barry (Dunn, Christopher) (Entered: 05/04/2012)
05/04/2012		ORDER granting <u>19</u> Motion to Adjourn Conference. Pretrial Conference reset to 5/23/12 at 4:30 pm in Courtroom 8D South; Joint Pretrial Order due 5/9/12. Parties

		are reminded to simultaneously deliver to Chambers a set of those exhibits to which objection has been made, and those portions of deposition testimony that a party intends to offer and to which the adversary objects, both as reflected in the Joint Pretrial Order, so that the Court can rule on the objections at the Conference to the extent practicable. Ordered by Judge Brian M. Cogan on 5/4/2012. (Weisberg, Peggy) (Entered: 05/04/2012)
05/07/2012	<u>22</u>	STIPULATION <i>Consent to Magistrate Judge Trial</i> by New York City Transit Authority (Copertino, Carl) (Entered: 05/07/2012)
05/07/2012		Case reassigned to Magistrate Judge Cheryl L. Pollak pursuant to Consent to Magistrate Judge Trial <u>22</u> . Judge Brian M. Cogan no longer assigned to case. (Gapinski, Michele) (Entered: 05/07/2012)
05/08/2012	<u>23</u>	CONSENT to Jurisdiction by US Magistrate Judge by Ernest Steve Barry, Michael Burkhart, City of New York, Steven Dutes, New York City Transit Authority. Case reassigned to Magistrate Magistrate Judge Cheryl L. Pollak (Siegfried, Evan) (Entered: 05/08/2012)
05/08/2012		ELECTRONIC SCHEDULING ORDER: A telephone conference is scheduled for 5/15/12 @ 2:30 PM before MJ Pollak. So Ordered by Magistrate Judge Cheryl L. Pollak on 5/8/2012. (Caggiano, Diana) (Entered: 05/08/2012)
05/15/2012	<u>24</u>	MINUTE ENTRY for Telephone \ Status Conference proceeding held before MJ Pollak on 5/15/2012. Plaintiffs to send 30(b)(6) notice; deposition(s) to be completed in 45 days. Plaintiff to send letter regarding Barry's position (platform or road bed) Telephone conference to motion schedule 7/11/12 @ 11:00 AM . (Caggiano, Diana) (Entered: 05/15/2012)
05/18/2012	<u>25</u>	JUDGMENT: Defendants City of New York and Police Officer Steven Dutes shall pay plaintiff Michael Burkhart the total sum of \$2,501.00, pursuant to the Rule 68 Offer of Judgment. Ordered by Magistrate Judge Cheryl L. Pollak on 5/15/2012. (Brucella, Michelle) (Entered: 05/18/2012)
05/18/2012	<u>26</u>	JUDGMENT: Defendants City of New York and Police Officer Steven Dutes shall pay plaintiff Ernest Steve Barry the total sum of \$5,001.00 pursuant to the Rule 68 Offer of Judgment. Ordered by Magistrate Judge Cheryl L. Pollak on 5/15/2012. (Brucella, Michelle) (Entered: 05/18/2012)
05/29/2012	<u>27</u>	NOTICE of Appearance by Mariko Hirose on behalf of All Plaintiffs (aty to be noticed) (Hirose, Mariko) (Entered: 05/29/2012)
05/31/2012	<u>28</u>	STIPULATION re <u>25</u> Judgment, <u>26</u> Judgment, by Ernest Steve Barry, Michael Burkhart (Hirose, Mariko) (Entered: 05/31/2012)
05/31/2012	<u>29</u>	Letter MOTION to Vacate <u>25</u> Judgment, <u>26</u> Judgment, by City of New York, Steven Dutes. (Castro, Johana) (Entered: 05/31/2012)
06/01/2012	<u>30</u>	STIPULATION AND ORDER re <u>28</u> So Ordered by Magistrate Judge Cheryl L. Pollak on 5/31/2012. (Caggiano, Diana) (Entered: 06/01/2012)
06/01/2012	<u>31</u>	RESPONSE to Motion re <u>29</u> Letter MOTION to Vacate <u>25</u> Judgment, <u>26</u> Judgment, filed by All Plaintiffs. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3) (Hirose, Mariko) (Entered: 06/01/2012)
06/15/2012	<u>32</u>	Letter MOTION for pre motion conference by Ernest Steve Barry. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B) (Hirose, Mariko) (Entered: 06/15/2012)
06/15/2012	<u>33</u>	Letter MOTION to Expedite <i>Conference to Resolve Dispute over Coverage of Plaintiff's Factual Concession Needed for Summary Judgment Motions</i> by New York City Transit Authority. (Copertino, Carl) (Entered: 06/15/2012)
06/18/2012	<u>34</u>	Letter <i>in response to the June 15, 2012 letter (docket entry no. 32) from plaintiffs attorney Mariko Hirose.</i> by New York City Transit Authority (Copertino, Carl) (Entered: 06/18/2012)
06/19/2012	<u>35</u>	RESPONSE to Motion re <u>33</u> Letter MOTION to Expedite <i>Conference to Resolve Dispute over Coverage of Plaintiff's Factual Concession Needed for Summary Judgment Motions</i> , REPLY to Response to Motion re <u>32</u> Letter MOTION for pre

		motion conference filed by Ernest Steve Barry. (Hirose, Mariko) (Entered: 06/19/2012)
06/19/2012		ELECTRONIC SCHEDULING ORDER: The parties are hereby Ordered to appear for a conference on 6/27/12 @ 12:00 p.m. As a reminder, any request for an adjournment must be filed with the Court via ECF at least 48 hours in advance. So Ordered by Magistrate Judge Cheryl L. Pollak on 6/19/2012. (Gordon, Mike) (Entered: 06/19/2012)
06/22/2012	<u>36</u>	NOTICE of Appearance by Paige Ann Evans on behalf of New York City Transit Authority (aty to be noticed) (Evans, Paige) (Entered: 06/22/2012)
06/22/2012	<u>37</u>	Letter <i>Hon. Cheryl L. Pollak, M.J. re: The time scheduled creates a conflict</i> by New York City Transit Authority (Copertino, Carl) (Entered: 06/22/2012)
06/25/2012	<u>38</u>	ENDORSED LETTER – RESCHEDULING ORDER: re <u>37</u> Request granted. Conference adjourned to 6/27/12 @ 9:30 AM . So Ordered by Magistrate Judge Cheryl L. Pollak on 6/25/2012. (Caggiano, Diana) (Entered: 06/25/2012)
06/27/2012	<u>39</u>	MINUTE ENTRY for Status Conference proceeding held before MJ Pollak on 6/27/12 re: <u>29</u> granted – parties to meet and confer. <u>32</u> Denied without prejudice to renew if forthcoming standing facial challenge motions are unsuccessful. <u>33</u> granted – conference held 6/27/12. City defendant and plaintiff to meet and confer regarding settlement papers and attorneys fees and present revised judgment. Transit Authority and plaintiff to file cross-motions: Motions due 7/23/12. Responses due 8/13/12. Replies 8/24/12. Oral argument 9/13/12 @ 11:00 AM . (Caggiano, Diana) (Entered: 06/27/2012)
07/02/2012		ELECTRONIC SCHEDULING ORDER: re <u>24</u> Status Conference, Telephone Conference. Given the briefing schedule set by the Court in the 6/27/12 conference, the telephone conference previously scheduled for 7/11/12 is unnecessary and adjourned <i>sine die</i> . So Ordered by Magistrate Judge Cheryl L. Pollak on 7/2/2012. (Gordon, Mike) (Entered: 07/02/2012)
07/23/2012	<u>40</u>	MOTION to Dismiss by New York City Transit Authority. (Schoolman, Richard) (Entered: 07/23/2012)
07/23/2012	<u>41</u>	MEMORANDUM in Support re <u>40</u> MOTION to Dismiss filed by New York City Transit Authority. (Schoolman, Richard) (Entered: 07/23/2012)
07/23/2012	<u>42</u>	DECLARATION re <u>41</u> Memorandum in Support, <u>40</u> MOTION to Dismiss of <i>Debra Siedman Dewan</i> by New York City Transit Authority (Schoolman, Richard) (Entered: 07/23/2012)
07/23/2012	<u>43</u>	DECLARATION re <u>42</u> Declaration, <u>41</u> Memorandum in Support, <u>40</u> MOTION to Dismiss by New York City Transit Authority (Attachments: # <u>1</u> Exhibit A: Complaint dated 11-14-11, # <u>2</u> Exhibit B: Transit Adjudication Bureau Violation No, 103416730, # <u>3</u> Exhibit C: Notice of Decision & Order, # <u>4</u> Exhibit D: pages 47,48,90,91 of E. Barry Transcript, # <u>5</u> Exhibit E; pages 33-38,41,42,45,47,51,86-91 of Seven Dutes Transcript, # <u>6</u> Exhibit F: two photos) (Schoolman, Richard) (Entered: 07/23/2012)
07/23/2012	<u>44</u>	MOTION for Summary Judgment by Ernest Steve Barry. Responses due by 8/13/2012 (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Rule 56.1 Statement, # <u>3</u> Declaration, # <u>4</u> Exhibit A, # <u>5</u> Exhibit B, # <u>6</u> Exhibit C, # <u>7</u> Exhibit D, # <u>8</u> Exhibit E, # <u>9</u> Exhibit F, # <u>10</u> Exhibit G, # <u>11</u> Exhibit H, # <u>12</u> Exhibit I, # <u>13</u> Exhibit J, # <u>14</u> Exhibit K, # <u>15</u> Exhibit L, # <u>16</u> Exhibit M, # <u>17</u> Exhibit N, # <u>18</u> Exhibit O, # <u>19</u> Exhibit P, # <u>20</u> Exhibit Q, # <u>21</u> Exhibit R, # <u>22</u> Exhibit S, # <u>23</u> Certificate of Service) (Hirose, Mariko) (Entered: 07/23/2012)
07/24/2012	<u>45</u>	MOTION to Strike <u>44</u> MOTION for Summary Judgment <i>Application to Strike Plaintiffs July 23, 2012 Summary Judgment Motion to the Extent It Argues the As Applied Unconstitutionality of 21 NYCRR § 1050.6(d)(3)</i> by New York City Transit Authority. (Copertino, Carl) (Entered: 07/24/2012)
07/24/2012	<u>46</u>	RESPONSE in Opposition re <u>45</u> MOTION to Strike <u>44</u> MOTION for Summary Judgment <i>Application to Strike Plaintiffs July 23, 2012 Summary Judgment Motion to the Extent It Argues the As Applied Unconstitutionality of 21 NYCRR §</i>

		1050.6(d)(3) filed by Ernest Steve Barry. (Hirose, Mariko) (Entered: 07/24/2012)
07/31/2012	<u>47</u>	STIPULATION of Judgment Under Rule 68 by Ernest Steve Barry, Michael Burkhart, City of New York, Steven Dutes (Hirose, Mariko) (Entered: 07/31/2012)
08/01/2012	<u>48</u>	STIPULATION AND ORDER OF JUDGMENT UNDER RULE 68: Defendant City of New York shall pay plaintiff Ernest Steve Barry the total sum of \$5,001.00, and plaintiff Michael Burkhart the total sum of \$2,501.00. Defendant City of New York shall also pay reasonable attorneys' fees, expenses and costs of \$11,000.00 to the New York Civil Liberties Union Foundation. Ordered by Magistrate Judge Cheryl L. Pollak on 7/31/2012. (Brucella, Michelle) (Entered: 08/01/2012)
08/06/2012	<u>49</u>	MOTION for Extension of Time to File Response/Reply by New York City Transit Authority. (Schoolman, Richard) (Entered: 08/06/2012)
08/06/2012	<u>50</u>	ORDER re: <u>44</u> denying <u>45</u> grants <u>49</u> Defendant's motion to strike that portion of plaintiff's motion for summary judgment raising the as applied challenge is hereby denied. By letter dated 8/2/12, defendant requested an extension of the briefing schedule previously established and an adjournment of oral argument. The Court hereby grants both requests. The parties must file their oppositions to each other's motions by 9/10/12, and they must file replies by 9/24/12. The oral argument previously scheduled for 11:00 a.m. on 9/13/12 is rescheduled for 11:00 a.m. on 10/23/12 . So Ordered by Magistrate Judge Cheryl L. Pollak on 8/6/2012. (Caggiano, Diana) (Entered: 08/06/2012)
09/10/2012	<u>51</u>	MEMORANDUM in Opposition re <u>40</u> MOTION to Dismiss filed by Ernest Steve Barry. (Hirose, Mariko) (Entered: 09/10/2012)
09/10/2012	<u>52</u>	AFFIDAVIT/DECLARATION in Opposition re <u>40</u> MOTION to Dismiss filed by Ernest Steve Barry. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Certificate of Service) (Hirose, Mariko) (Entered: 09/10/2012)
09/10/2012	<u>53</u>	RULE 56.1 STATEMENT <i>Defendant's statement in response to Plaintiff's undisputed statement of facts pursuant to local rule 56.1</i> filed by New York City Transit Authority. (Copertino, Carl) (Entered: 09/10/2012)
09/10/2012	<u>54</u>	DECLARATION of <i>Carl J. Copertino</i> by New York City Transit Authority (Copertino, Carl) (Entered: 09/10/2012)
09/10/2012	<u>55</u>	MEMORANDUM in Opposition to <i>Plaintiff's Ernest Barry's Motion for Summary Judgment</i> filed by New York City Transit Authority. (Copertino, Carl) (Entered: 09/10/2012)
09/24/2012	<u>56</u>	REPLY to Response to Motion re <u>44</u> MOTION for Summary Judgment filed by Ernest Steve Barry. (Attachments: # <u>1</u> Rule 56.1 Statement Reply, # <u>2</u> Certificate of Service) (Hirose, Mariko) (Entered: 09/24/2012)
09/24/2012	<u>57</u>	REPLY in Support re <u>40</u> MOTION to Dismiss filed by New York City Transit Authority. (Copertino, Carl) (Entered: 09/24/2012)
09/26/2012	<u>58</u>	Letter MOTION to Adjourn Conference " <i>Request for Re-Scheduling of Oral Argument</i> " by New York City Transit Authority. (Schoolman, Richard) (Entered: 09/26/2012)
09/26/2012	<u>59</u>	ENDORSED LETTER ORDER granting <u>58</u> Motion to Adjourn Conference. Hearing adjourned to 10/25/12 @ 2:30 PM . So Ordered by Magistrate Judge Cheryl L. Pollak on 9/26/2012. (Caggiano, Diana) (Entered: 09/26/2012)
09/28/2012	<u>60</u>	Letter to <i>Hon. Pollak re: Further Request for Re-Scheduling of Oral Argument</i> by New York City Transit Authority (Schoolman, Richard) (Entered: 09/28/2012)
09/28/2012	<u>61</u>	ENDORSED LETTER – RESCHEDULING ORDER: re <u>60</u> Request granted. Oral argument rescheduled to 11/8/12 @ 10:00 AM . So Ordered by Magistrate Judge Cheryl L. Pollak on 9/28/2012. (Caggiano, Diana) (Entered: 09/28/2012)
11/08/2012	<u>62</u>	MINUTE ENTRY for Motion Hearing proceeding re <u>40</u> <u>44</u> proceeding held before MJ Pollak on 11/8/2012. Argument held on motion for summary judgment and motion to dismiss. Decision reserved. (Caggiano, Diana) (Entered: 11/08/2012)

01/11/2013	<u>63</u>	TRANSCRIPT of Proceedings held on 11/8/12, before Judge Pollak. Court Reporter/Transcriber TYPEWRITE WORD PROCESSING SERVICE, Telephone number 718-966-1401. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/1/2013. Redacted Transcript Deadline set for 2/11/2013. Release of Transcript Restriction set for 4/11/2013. (Hong, Loan) (Entered: 01/11/2013)
03/21/2013	<u>64</u>	ORDER denying <u>40</u> Motion to Dismiss; granting <u>44</u> Motion for Summary Judgment. For the reasons stated herein, the Court holds that the ID Rule is unconstitutionally vague on its face and as applied. Accordingly, defendant's motion to dismiss is denied, summary judgment is granted in favor of plaintiff Barry, and the Court issues a Declaration that the ID Rule, as currently written, is unconstitutional. So Ordered by Magistrate Judge Cheryl L. Pollak on 3/21/2013. (Klein, Jennifer) (Entered: 03/21/2013)
03/25/2013		ELECTRONIC SCHEDULING ORDER: A status conference has been scheduled for 4/11/13 at 3:00 p.m. So Ordered by Magistrate Judge Cheryl L. Pollak on 3/25/2013. (Klein, Jennifer) (Entered: 03/25/2013)
03/28/2013	<u>65</u>	NOTICE of Appearance by Liza J Sohn on behalf of City of New York, Steven Dutes (aty to be noticed) (Sohn, Liza) (Entered: 03/28/2013)
04/01/2013	<u>66</u>	Letter MOTION to Adjourn Conference by Ernest Steve Barry. (Hirose, Mariko) (Entered: 04/01/2013)
04/03/2013		ELECTRONIC ORDER withdrawing <u>66</u> Motion to Adjourn Conference. Conference will proceed at the original scheduled date and time (4/11/13 @ 3:00 PM). So Ordered by Magistrate Judge Cheryl L. Pollak on 4/3/2013. (Caggiano, Diana) (Entered: 04/03/2013)
04/10/2013		ELECTRONIC RESCHEDULING ORDER: The status conference previously scheduled for 4/11/13 before MJ Pollak has been rescheduled to 4/15/13 @ 10:00 AM . So Ordered by Magistrate Judge Cheryl L. Pollak on 4/10/2013. (Caggiano, Diana) (Entered: 04/10/2013)
04/15/2013	<u>67</u>	MINUTE ENTRY for Status Conference proceeding held before MJ Pollak on 4/15/2013. Parties given 45 days to discuss possible resolution. Defendant's to send letter regarding remaining sentence of ID Rule relating to fare cards; plaintiff to respond. Next conference set for 6/6/13 @ 11:30 AM . (Caggiano, Diana) (Entered: 04/15/2013)
04/15/2013	<u>68</u>	Letter to <i>Hon. Cheryl L. Pollak, MJ re: Clarification of Memorandum and Order</i> by New York City Transit Authority (Schoolman, Richard) (Entered: 04/15/2013)
04/15/2013	<u>69</u>	Letter <i>Response re: Clarification of Memorandum and Order</i> by Ernest Steve Barry (Hirose, Mariko) (Entered: 04/15/2013)
04/17/2013	<u>70</u>	CLARIFICATION ORDER re <u>68</u> Letter filed by New York City Transit Authority, <u>69</u> Letter filed by Ernest Steve Barry. The Court hereby clarifies that its March 21, 2013 Order did not address or in any way affect the second sentence of 21 N.Y.C.R.R. Section 1050.6(d)(3), and this section of the TA's Rules remains extant. So Ordered by Magistrate Judge Cheryl L. Pollak on 4/17/2013. (Klein, Jennifer) (Entered: 04/17/2013)
04/22/2013	<u>71</u>	NOTICE OF APPEAL as to <u>64</u> Order on Motion to Dismiss, Order on Motion for Summary Judgment,, by New York City Transit Authority. No fee paid. Attorney notified of filing fee. Service done electronically. (Schoolman, Richard) Modified on 4/22/2013 (McGee, Mary Ann). (Entered: 04/22/2013)
04/22/2013		APPEAL FILING FEE DUE re <u>71</u> Notice of Appeal, Please either come to the clerks office or mail the filing fee in the amount of \$455.00. (McGee, Mary Ann) (Entered: 04/22/2013)
04/22/2013		NOTICE of Consent to jurisdiction of Magistrate Judge re <u>71</u> Notice of Appeal. See documents #22 and #23. (McGee, Mary Ann) (Entered: 04/22/2013)

04/22/2013		Electronic Index to Record on Appeal sent to US Court of Appeals. <u>71</u> Notice of Appeal, Documents are available via Pacer. For docket entries without a hyperlink or for documents under seal, contact the court and we'll arrange for the document(s) to be made available to you. (McGee, Mary Ann) (Entered: 04/22/2013)
04/24/2013	<u>72</u>	STIPULATION <i>Concerning Timing of Plaintiff's Motion for Attorneys' Fees and Costs</i> by Ernest Steve Barry (Hirose, Mariko) (Entered: 04/24/2013)
04/25/2013	<u>73</u>	STIPULATION AND ORDER re <u>72</u> So Ordered by Magistrate Judge Cheryl L. Pollak on 4/24/2013. (Caggiano, Diana) (Entered: 04/25/2013)
05/07/2013	<u>74</u>	STIPULATION <i>and Order of Settlement</i> by New York City Transit Authority (Schoolman, Richard) (Entered: 05/07/2013)
05/09/2013	<u>75</u>	STIPULATION AND ORDER OF SETTLEMENT: The Transit Authority shall pay reasonable attorneys' fees, expenses, and costs of FOURTEEN THOUSAND AND FIVE HUNDRED DOLLARS (\$14,500.00) to the New York Civil Liberties Union Foundation within 45 days in complete settlement of all matters between the parties. Ordered by Magistrate Judge Cheryl L. Pollak on 5/8/2013. (Brucella, Michelle) (Entered: 05/09/2013)
05/09/2013	<u>76</u>	MANDATE of USCA as to <u>71</u> Notice of Appeal, filed by New York City Transit Authority. The parties in the above-referenced case have filed a stipulation withdrawing this appeal pursuant to FRAP 42. The stipulation is hereby "So Ordered". Mandate issued: 5/9/13 (McGee, Mary Ann) (Entered: 05/09/2013)