

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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DENISE MCINTYRE,

Plaintiff,

-against-

FIRST AMENDED  
COMPLAINT AND  
JURY DEMAND

CITY OF NEW YORK, POLICE OFFICER GEORGE  
ALLEN, SERGEANT JAMES GRILLO AND JOHN DOE  
POLICE OFFICERS #1,

15CV1894 (SLT)(RML)

Defendants.  
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Plaintiff Denise McIntyre, by her attorneys, Stoll, Glickman & Bellina, LLP, for her amended complaint alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil rights action in which plaintiff seeks relief through 42 U.S.C. §1983 for the violation of her Fourth and Fourteenth Amendment rights in addition to violations of the laws and Constitution of the State of New York.

2. The claim arises from an incident on October 10, 2013 in which Officers of the New York City Police Department (“NYPD”), acting under color of state law, intentionally and willfully arrested Ms. McIntyre without probable cause.

3. Plaintiff seeks monetary damages (special, compensatory, and punitive) against defendants, as well as an award of costs and attorneys’ fees, and such other and further relief as the Court deems just and proper.

JURISDICTION

4. This action arises under the Fourth and Fourteenth Amendments to the United States Constitution and under 42 U.S.C. §1983 and §1988 and the laws and Constitution

of the State of New York.

5. The jurisdiction of this court is predicated upon 28 U.S.C. §§ 1331, 1343(a)(3) and (4), 1367(a) and the doctrine of pendent jurisdiction.

#### VENUE

6. Venue is laid within the Eastern District of New York in that Defendant City of New York is located within and a substantial part of the events giving rise to the claim occurred within the boundaries of the Eastern District.

#### PARTIES

7. Plaintiff resided at all times here relevant in Kings County, City and State of New York.

8. The City of New York (“City”) is a municipal corporation organized under the laws of the State of New York. At all times relevant hereto, Defendant City, acting through the New York Police Department (“NYPD”), was responsible for the policy, practice, supervision, implementation, and conduct of all NYPD matters and was responsible for the appointment, training, supervision, discipline and retention and conduct of all NYPD personnel. In addition, at all times here relevant, Defendant City was responsible for enforcing the rules of the NYPD, and for ensuring that the NYPD personnel obey the laws of the United States and the State of New York.

9. Defendant Police Officers were at all times here relevant police officers of the NYPD, and as such were acting in the capacity of an agents, servants and employees of the City of New York. On information and belief, at all times relevant hereto, Defendant Officers were involved in the decision to arrest plaintiff without probable cause or failed to intervene in the actions of their fellow officers when they observed them arresting

plaintiff without probable cause. Upon information and belief, Defendant Officers were under the command of the 73<sup>rd</sup> precinct on the date of the incident and are sued in their individual capacities.

10. At all times here mentioned defendants were acting under color of state law, to wit, under color of the statutes, ordinances, regulations, policies, customs and usages of the City and State of New York.

#### FACTUAL ALLEGATIONS

11. On October 10, 2013 plaintiff was visiting her boyfriend at his home at 43 Dumont Avenue in Brooklyn, New York.

12. At approximately 11AM, she heard her boyfriend yelling from downstairs that there were police officers outside. Her boyfriend and his brother went outside the house when the police beckoned them. Plaintiff remained inside.

13. Approximately five minutes later, the officers began banging on the door to the home. Plaintiff opened the door and saw many officers with their guns pointed at her.

14. Plaintiff was yanked from the home, handcuffed and ordered to stand in the street. An officer kept plaintiff detained in the street while other officers conducted an extensive search of the home which lasted at least an hour. Throughout the search, plaintiff was repeatedly threatened that she would be charged with whatever was found in the home.

15. Eventually, plaintiff was taken to the 73<sup>rd</sup> precinct, searched and placed in a cell. She did not know and was not told why she was being arrested.

16. More than twenty four hours after her arrest, plaintiff was released from Central Booking. The Kings County District Attorney declined to prosecute the matter.

17. At all times during the events described above, the defendant police officers were engaged in a joint venture and formed an agreement to violate plaintiff's rights. The individual officers assisted each other in performing the various actions described and lent their physical presence and support and the authority of their office to each other during said events. They failed to intervene in the obviously illegal actions of their fellow officers against plaintiff.

18. During all of the events above described, defendants acted maliciously and with intent to injure plaintiff.

#### DAMAGES

19. As a direct and proximate result of the acts of defendants, plaintiff suffered the following injuries and damages:

- a. Violation of her rights pursuant to the Fourth Amendment of the United States Constitution to be free from an unreasonable search and seizure of their persons;
- b. Violation of her rights pursuant to the Fourteenth Amendment of the United States Constitution to due process;
- c. Physical pain and suffering;
- d. Emotional trauma and suffering, including fear, embarrassment, humiliation, harassment, emotional distress, frustration, extreme inconvenience, anxiety; and
- e. Loss of liberty.

#### FIRST CAUSE OF ACTION

42 U.S.C. § 1983

20. The above paragraphs are here incorporated by reference.

21. The officer defendants wrongfully and illegally arrested, detained and imprisoned plaintiff.

22. The wrongful, unjustifiable, and unlawful apprehension, arrest, detention, and imprisonment of plaintiff was carried out without a valid warrant, without plaintiff's consent, and without probable cause or reasonable suspicion.

23. At all relevant times, defendants acted forcibly in apprehending, arresting, and imprisoning plaintiff.

24. All of this occurred without any illegal conduct by plaintiff.

25. All charges were dismissed.

26. The officer defendants acted under pretense and color of state law and within the scope of their respective employment as NYPD officers. Said acts by officer defendants were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said defendants acted willfully, knowingly and with the specific intent to deprive plaintiff of her constitutional rights secured by the United States Constitution.

27. As a direct and proximate result of the misconduct and the abuse of authority detailed above, plaintiff sustained the damages described above.

## SECOND CAUSE OF ACTION

### Municipal Liability

28. The above paragraphs are here incorporated by reference.

29. The City is liable for the damages suffered by plaintiff as a result of the conduct of their employees, agents, and servants, in that, after learning of their employees' violation of plaintiff's constitutional rights, they failed to remedy the wrong; they have

created a policy or custom under which unconstitutional practices occurred and allowed such policies or customs to continue, and they have been grossly negligent in managing subordinates who caused the unlawful condition or event. The City has been alerted to the regular use of excessive force and false arrests by its police officers, but has nevertheless exhibited deliberate indifference to such excessive force and false arrests; that deliberate indifference caused the violation of plaintiff's constitutional rights in this case.

30. The City of New York has isolated NYPD officers from accountability for its civil rights lawsuits by indemnifying officers who violate the constitutional rights of citizens, and, as a result, is preventing civil rights lawsuits from having any deterrent value to the City, the NYPD or its officers. Civil rights lawsuits against police officers have no impact on the officers' careers, regardless of the expense to the City of the officers' lawsuit liability, even after multiple lawsuits. In 1999, former Comptroller Alan Hevesi reported that there was a "a total disconnect" between the settlements of even substantial civil claims and police department action against officers. This "total disconnect" between officers' liability and NYPD discipline, results in a system where the City pays vast sums to settle false arrests, but the NYPD does nothing to investigate nor address the underlying causes of such false arrests or officers who have incurred large sums of civil rights liability. The City Council Government Operations Committee, despite being alerted at a City Council hearing on December 12, 2009, and on other occasions, to the obvious problem of officers and precincts with a disproportionate responsibility for civil rights lawsuit liability, has failed to take action to hold officers or precincts accountable. It has likewise failed to hold an investigative hearing into what

extent specific officers, units and precincts are disproportionately responsible for New York City civil rights lawsuits.

31. The aforesaid event underlying plaintiff's claim was not an isolated incident. The City has been aware for some time, from lawsuits, notices of claim, complaints filed with the Civilian Complaint Review Board, cases resulting in declined prosecutions and dismissals, and judicial rulings suppressing evidence and finding officers incredible as a matter of law, that a disturbing number of their police officers unlawfully search and seize citizens, bring charges against citizens with no legal basis, perjure themselves in charging instruments and testimony, and fail to intervene in and report the obviously illegal actions of their fellow officers. Nevertheless, the City has allowed policies and practices that allow the aforementioned to persist.

32. The Civilian Complaint Review Board ("CCRB"), a City police oversight agency, often finds complainants lack credibility based in part on the fact that such complainants have also brought lawsuits to remedy the wrongs they have experienced, a practice that often results in not substantiating the most serious charges brought to the CCRB. In addition, the CCRB virtually never initiates their own findings of false statements against officers who have made false statements to the CCRB in their own defense, nor do they initiate findings that officers have failed to report their fellow officers' misconduct; thus, officers have no real incentive to come forward, or to testify truthfully at the CCRB. The CCRB has no enforcement mechanisms once making a finding against an officer; it can only make recommendations to the NYPD, once finding misconduct by an officer.

33. The NYPD, once receiving a substantiated complaint by the CCRB, fails to

adequately discipline officers for misconduct. In 2002, the percentage of officers who were the subject of substantiated CCRB complaints who received no discipline was 47%; in 2007, it was 75%.<sup>1</sup> The NYPD Department Advocate, which is endowed with the responsibility of following up on substantiated CCRB charges, is understaffed and underutilized. Furthermore, in the extraordinarily rare event that the CCRB substantiates a complaint and the Department Advocate proves the case in an internal trial against an officer, the police commissioner still maintains the power to reduce the discipline against such an officer, which the police commissioner has done on many occasions. This entire procedure provides so many opportunities for meritorious complaints of false arrests to be dismissed or disregarded.

34. Further, the City has no procedure to notify individual officers or their supervisors of unfavorable judicial review of their conduct or to calculate the total liability of an individual officer or of a precinct. Without this notification, improper search and seizure practices and incredible testimony go uncorrected, problematic supervision or leadership at the precinct level goes ignored, and repeated misconduct by individual officers goes unaccounted for. Even occasional judicial findings that officers have testified incredibly are not reported routinely to the police department or any oversight agencies.

35. All of the aforementioned has created a climate where police officers and detectives lie to prosecutors, falsify police paperwork and charging instruments, and testify falsely, with no fear of reprisal. “Informal inquiry by the court and among the

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<sup>1</sup> The NYCLU issued a report in September 2007 on the CCRB detailing the failure of the NYPD to follow up on substantiated CCRB complaints, among other failures by the City and the CCRB to address police misconduct: “Mission Failure: Civilian Review of Policing in New York City, 1994-2006”, available at: [http://www.nyclu.org/files/ccrb\\_failing\\_report\\_090507.pdf](http://www.nyclu.org/files/ccrb_failing_report_090507.pdf), last visited on June 25, 2013.



judges of this court, as well as knowledge of cases in other federal and state courts, has revealed anecdotal evidence of repeated, widespread falsification by arresting police officers of the New York City Police Department. Despite numerous inquiries by commissions and strong reported efforts by the present administration-through selection of candidates for the police force stressing academic and other qualifications, serious training to avoid constitutional violations, and strong disciplinary action within the department-there is some evidence of an attitude among officers that is sufficiently widespread to constitute a custom or policy by the city approving illegal conduct of the kind now charged.” See Colon v. City of New York, et al, 2009 WL 4263362 (E.D.N.Y.)(Weinstein, J.).

36. The City is aware that all of the aforementioned has resulted in violations of citizens’ constitutional rights. Despite such notice, the City has failed to take corrective action. This failure and these policies caused the officers in the present case to violate plaintiffs’ civil rights, without fear of reprisal.

37. Plaintiff has been damaged as a result of the deliberate indifference of the Defendant City.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally, as follows:

- A. In favor of plaintiff in an amount to be determined by a jury for each of plaintiff’s causes of action;
- B. Awarding plaintiff’s punitive damages in an amount to be determined by a jury;

C. Awarding plaintiff's reasonable attorneys' fees, costs and disbursements of this action; and

D. Granting such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: October 15, 2015  
Brooklyn, New York

TO:

City of New York  
100 Church Street  
New York, NY 10007

Police Officer George Allen  
Sergeant James Grillo  
73<sup>rd</sup> Precinct  
1470 East New York Avenue  
Brooklyn NY 11212

Respectfully yours,



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