

THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----	x	FIRST AMENDED COMPLAINT
CHARLES AVERY,		<u>Jury Trial Demanded</u>
	Plaintiff,	15-CV-06418 (FB)(CLP)
-against-		

THE CITY OF NEW YORK; Detective Shante Terrell, Shield No. 4424; Undercover officer No. 271; and Police Officers JOHN and JANE DOE 1-10.

Defendants.

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JURISDICTION AND VENUE

- 2. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth and Fourteenth Amendments to the Constitution of the United States.
- 3. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331, 1343 and 1367(a).
- 4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 (b) and (c).

JURY DEMAND

- 5. Plaintiff demands a trial by jury in this action.

PARTIES

- 6. Plaintiff Charles Avery (“plaintiff,” or “Mr. Avery”) is a resident of Kings County in the City and State of New York.

7. Defendant City of New York is a municipal corporation organized under the laws of the State of New York. It operates the NYPD, a department or agency of defendant City of New York responsible for the appointment, training, supervision, promotion and discipline of police officers and supervisory police officers, including the individually named defendants herein.

8. At all times relevant, defendant P.O. Shante Terrell (“Terrell”) was a police officer employed by the NYPD, acting as an agent, servant and employee of defendant City of New York and the NYPD.

9. At all times relevant, defendant Undercover Officer 271 was a police officer employed by the NYPD, acting as an agent, servant and employee of defendant City of New York and the NYPD.

10. At all times relevant defendants John and Jane Doe 1 through 10 were police officers, detectives or supervisors employed by the NYPD. Plaintiff does not know the real names and shield numbers of defendants John and Jane Doe 1 through 10.

11. At all times relevant herein, defendants John and Jane Doe 1 through 10 were acting as agents, servants and employees of defendant City of New York and the NYPD. Defendants John and Jane Doe 1 through 10 are sued in their individual and official capacities.

12. At all times relevant herein, all individual defendants were acting under color of state law.

STATEMENT OF FACTS

13. On April 17, 2014, at or about 3:30 p.m., plaintiff was lawfully walking in in the vicinity of 3225 Neptune Avenue in Brooklyn, New York.

14. Plaintiff was stopped and questioned by defendants.

15. Plaintiff objected to the intrusion and asked the defendants their reason for stopping him.

16. Plaintiff was placed in handcuffs and taken to the precinct.

17. At the precinct defendants told plaintiff that he had a warrant.

18. Plaintiff had no warrant.

19. Once at the precinct, defendants misrepresented to the Kings County District Attorney's Office that Plaintiff had committed a drug sale on May 8, 2013.

20. Plaintiff was transported from the precinct to central booking.

21. Plaintiff pled not guilty to the charges and was released.

22. After attending Court for almost a year, all charges were dismissed.

23. Plaintiff was deprived of his liberty, assaulted, battered, suffered emotional distress, mental anguish, pain, fear, anxiety, embarrassment, humiliation, damage to their reputation and loss of income.

FIRST CLAIM

42 U.S.C. § 1983

24. Plaintiff repeats and re-alleges each and every allegation as if fully set forth herein.

25. Defendants, by their conduct toward plaintiffs alleged herein, violated plaintiff's rights guaranteed by 42 U.S.C. § 1983, the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

26. As a direct and proximate result of this unlawful conduct, Plaintiff sustained the damages hereinbefore alleged.

SECOND CLAIM

False Arrest

27. Plaintiff repeats and re-alleges each and every allegation as if fully set forth herein.

28. Defendants violated the Fourth and Fourteenth Amendments because they arrested Plaintiff without probable cause.

29. As a direct and proximate result of this unlawful conduct, Plaintiff sustained the damages hereinbefore alleged.

THIRD CLAIM

Failure To Intervene

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30. Plaintiff repeats and re-alleges each and every allegation as if fully set forth herein.

31. Those defendants that were present but did not actively participate in the aforementioned unlawful conduct observed such conduct, had an opportunity prevent such conduct, had a duty to intervene and prevent such conduct and failed to intervene.

32. Accordingly, the defendants who failed to intervene violated the First, Fourth, Fifth And Fourteenth Amendments.

FOURTH CLAIM
Malicious Prosecution

33. As a direct and proximate result of this unlawful conduct, Plaintiff sustained the damages hereinbefore alleged.

34. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

35. By their conduct, as described herein, and acting under color of state law, defendants are liable to plaintiff under 42 U.S.C. § 1983 for the violation of his constitutional right to be free from malicious prosecution under the Fourth and Fourteenth Amendments to the United States Constitution.

36. Defendants' unlawful actions were done willfully, knowingly, with malice and with the specific intent to deprive plaintiff of his constitutional rights. The prosecution by defendants of plaintiff constituted malicious prosecution in that

there was no basis for the plaintiff's arrest, yet defendants continued with the prosecution, which was resolved in plaintiff's favor.

37. As a direct and proximate result of defendants' unlawful actions, plaintiff had suffered, and will continue to suffer, damages, including physical, mental and emotional injury and pain, mental anguish, suffering, humiliation, embarrassment and loss of reputation.

FIFTH CLAIM
Malicious Abuse Of Process

38. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

39. The individual defendants issued legal process to place Plaintiff under arrest.

40. The individual defendants arrested Plaintiff in order to obtain collateral objectives outside the legitimate ends of the legal process, to wit, to cover up their assault of him.

41. The individual defendants acted with intent to do harm to Plaintiff without excuse or justification.

42. As a direct and proximate result of this unlawful conduct, Plaintiff sustained the damages hereinbefore alleged.

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SIXTH CLAIM
Denial Of Constitutional Right To Fair Trial

43. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

44. The individual defendants created false evidence against Plaintiff.

45. The individual defendants forwarded false evidence to prosecutors in the New York County District Attorney's office.

46. In creating false evidence against Plaintiff, and in forwarding false information to prosecutors, the individual defendants violated Plaintiff's constitutional right to a fair trial under the Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution.

47. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests judgment against defendants as follows:

- i. Compensatory damages against all defendants, jointly and severally;
- ii. Punitive damages against the individual defendants, jointly and severally;
- iii. Reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 1988; and
- iv. Such other and further relief as this Court deems just and proper.

DATED: April 29, 2016
New York, New York

_____/s/_____
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