

FILED: KINGS COUNTY CLERK 04/10/2017 07:44 PM

NYSCEF DOC. NO. 1

INDEX NO. 507131/2017

RECEIVED NYSCEF: 04/10/2017

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No:

Date Filed:

-----X
DESTIN SMITH,

Plaintiff,

Plaintiff designates
KINGS COUNTY
as the place of trial

-against-

The basis of the venue is:
Place where the cause of
action arose

SUMMONS

THE CITY OF NEW YORK, DETECTIVE JOHN
MCHUGH (Shield # 581) and POLICE OFFICERS
JOHN DOE 1-10,

The plaintiff resides at:
Kings County, New York

Defendants,

-----X
To the above named defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's Attorney within twenty days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear, judgment will be taken against you by default for the relief demanded in the complaint set forth below.

Dated: Brooklyn, New York
April 10, 2017

Yours, etc,


LAW OFFICES OF WALE MOSAKU, P.C.

BY: WALE MOSAKU
Attorney for the Plaintiff
25 Bond Street, 3rd Floor
Brooklyn, New York 11201
(718) 243-0994

THE CITY OF NEW YORK
C/O New York City Corporation Counsel
100 Church Street
New York, N.Y. 10007

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X Index No.
DESTIN SMITH,

Plaintiff,

-against-

COMPLAINT

THE CITY OF NEW YORK, DETECTIVE JOHN
MCHUGH (Shield # 581) and POLICE OFFICERS
JOHN DOE 1-10.

Defendants.

-----X

DESTIN SMITH (hereinafter "plaintiff"), by his attorney(s) THE LAW OFFICES OF
WALE MOSAKU, P.C., complaining of the defendants THE CITY OF NEW YORK,
DETECTIVE JOHN MCHUGH (Shield # 581) and POLICE OFFICERS JOHN DOE 1-
10 (collectively referred to as "the defendants"), upon information and well founded
belief, alleges as follows:

NATURE OF THE ACTION

1. This is an action at law to redress the deprivation of rights secured to the plaintiff under color of statute, ordinance, regulation, custom; and/or to redress the deprivation of rights, privileges, and immunities secured to the plaintiff by the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States; and by Title 42 U.S.C. §§ 1982, 1983 and 1985; and arising under the laws and statutes of the City and/or State of New York.

THE PARTIES

2. The plaintiff is a resident of the City of New York, who resides in Kings County, City and State of New York. Plaintiff is an African-American male of full age.
3. At all relevant times, defendants DETECTIVE JOHN MCHUGH (Shield # 581) and POLICE OFFICERS JOHN DOE 1-10 of the New York City Police Department (hereinafter "defendant officers"), upon information and belief, were and still are law enforcement officers in

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the employ of the police department of the City of New York (hereinafter "NYPD").

4. At all times herein, the defendant officers were employed as law enforcement officers of the City of New York, State of New York, and were acting under the color of their official capacity, and their acts were performed under color of the statutes and ordinances of the City of New York and/or the State of New York. The defendant officers were the servants, agents, and employees of their co-defendant, the City of New York, so that their acts are imputed to the City of New York and the NYPD.
5. At all relevant times, the defendant City of New York was/is a municipal corporation of the State of New York, and was/is the employer of the defendant officer, through its Police Department, namely NYPD, and the actions of the defendant officer complained of herein were done as part of the custom, practice, usage, regulation and/or direction of the City of New York.
6. The plaintiff sues all defendants in their individual and official capacities.

SATISFACTION OF THE PROCEDURAL PREREQUISITES FOR SUIT

7. All conditions precedent to filing of this action have been complied with: on August 8, 2016, within ninety days after the claim(s) alleged in this complaint arose, a written notice of claim, sworn to by the plaintiff and/or his representative, was served upon the defendant City of New York by personal delivery of the notice in duplicate, to the person designated by law as one to whom a summons issued against such party may be delivered in an action in the applicable Courts. Plaintiff's claim was assigned Claim No. 2016PI023660.
8. At least thirty days have elapsed since the service of the above-mentioned notice of claim, and adjustment or payment of the claim has been neglected or refused.

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This action, pursuant to New York State and City Law, has been commenced within one year after the happening of the event upon which the malicious prosecution claim is based.

FACTUAL ALLEGATIONS

9. On or about November 11, 2015, at approximately 05:25 p.m., inside of the premises described as 1004 Hegeman Avenue, Brooklyn, N.Y. ("subject premises) the plaintiff was unlawfully and wrongfully arrested by the defendant officers.
10. That at the time of the incident, the plaintiff was visiting the subject premises. Also present within the subject premises at the time were approximately four (4) other person(s).
11. That as the plaintiff was within the subject premises, the defendant officers forcefully entered into the subject premises by breaking down the front door.
12. That the defendant officers immediately placed each occupant of the subject premises in handcuffs, following which the plaintiff was searched. That nothing illegal was found upon the person of the plaintiff.
13. That the respondent officers then proceeded to search the subject premises.
14. That nevertheless, the plaintiff was transported to the 75th police precinct, where he was processed, or otherwise fingerprinted and photographed.
15. That the plaintiff was subsequently transported to "central booking" situated within the Kings County Criminal Courthouse located at 120 Schermerhorn Street, Brooklyn, New York 11201.
16. That at approximately 09:30 p.m. on November 12, 2015, the plaintiff was arraigned in front of a judge upon a complaint that was sworn to by the defendant Officer Detective John McHugh, and charged with the following offense:

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- a. Criminal Possession of a Controlled Substance in the 7th Degree [P.L. 220.03].
17. That the above-referenced charges and allegations were false, and a complete fabrication.
18. That upon arraignment the plaintiff plead "not guilty" and was released from custody upon his own recognizance.
19. The criminal case against the plaintiff was dismissed on June 30, 2016.

CAUSE OF ACTION AGAINST EACH DEFENDANT: FALSE ARREST AND FALSE IMPRISONMENT UNDER 42 U.S.C § 1983/NEW YORK STATE LAW

20. By this reference, the plaintiff incorporates each and every allegation and averment set forth in paragraphs 1 through 19 of this complaint as though fully set forth herein.
21. The above-described respective arrest, detention and imprisonment of the plaintiff were without just or probable cause and without any warrant or legal process directing or authorizing the plaintiff's arrest or subsequent detention.
22. As a result of plaintiff's above-described false arrest and detention, he has been caused to suffer humiliation, great mental and physical anguish, embarrassment and scorn among those who know him, was prevented from attending to his necessary affairs, and has been caused to incur legal expenses, and has been otherwise damaged in his character and reputation.
23. Consequently, the plaintiff has been damaged and hereby demands compensatory and punitive damages in an amount to be proven at trial against each of the defendant officers, individually and severally.

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CAUSE OF ACTION AGAINST DEFENDANT DETECTIVE
JOHN MCHUGH AND THE CITY OF NEW YORK: MALICIOUS
PROSECUTION UNDER 42 U.S.C § 1983/NEW YORK STATE
LAW

24. By this reference, plaintiff incorporates each and every allegation and averment set forth in paragraphs 1 through 23 of this complaint as though fully set forth herein.
25. The commencement and continued prosecution of the criminal judicial proceeding by defendant Detective John McHugh against plaintiff, including the arrest, the imprisonment, and the charges against plaintiff were committed by or at the insistence of defendant Detective John McHugh without probable cause or legal justification, and with malice.
26. That defendant Detective John McHugh was directly involved in the initiation of criminal proceedings against the plaintiff.
27. That defendant Detective John McHugh lacked probable cause to initiate criminal proceedings against the plaintiff.
28. That defendant Detective John McHugh acted with malice in initiating criminal proceedings against the plaintiff.
29. That defendant Detective John McHugh was directly involved in the continuation of criminal proceedings against the plaintiff.
30. That defendant Detective John McHugh lacked probable cause in continuing criminal proceedings against the plaintiff.
31. That defendant Detective John McHugh acted with malice in continuing criminal proceedings against the plaintiff.
32. That defendant Detective John McHugh misrepresented and falsified evidence throughout all phases of the criminal proceedings.
33. That defendant Detective John McHugh misrepresented and falsified evidence to the prosecutors in the Kings County District Attorney's office.

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34. That defendant Detective John McHugh withheld exculpatory evidence from the prosecutors in the Kings County District Attorney's office.
35. That defendant Detective John McHugh did not make a complete statement of facts to the prosecutors in the Kings County District Attorney's office.
36. The criminal judicial proceeding initiated against plaintiff by defendant Detective John McHugh was dismissed on June 30, 2016, and terminated in the plaintiff's favor.
37. The arrest, imprisonment and prosecution of the plaintiff defendant Detective John McHugh were malicious and unlawful, because plaintiff had committed no crime and there was no probable cause to believe that plaintiff had committed any crimes.
38. Defendant Detective John McHugh's actions were intentional, unwarranted and in violation of the law. Defendant Detective John McHugh had full knowledge that the charges made before the Court against the plaintiff were false and untrue.
39. As a consequence of the malicious prosecution by defendant Detective John McHugh, plaintiff suffered loss of liberty, humiliation, mental anguish, depression, loss of wages from work, and his constitutional rights were violated.
40. Plaintiff hereby demands compensatory damages and punitive damages, in the amount of to be determined at trial, against defendant Detective John McHugh and the City of New York, individually and severally.
41. Defendant defendant City is vicariously liable for defendant Detective John McHugh acts as described above.
42. This action falls within one or more of the exceptions of the New York State Civil Practice Law and Rules §1602.

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CAUSE OF ACTION AGAINST DEFENDANT DETECTIVE
JOHN MCHUGH: DENIAL OF A CONSTITUTIONAL RIGHT TO
A FAIR TRIAL UNDER 42 U.S.C. § 1983 DUE TO THE
FABRICATION OF EVIDENCE

43. By this reference, plaintiff incorporates each and every allegation and averment set forth in paragraphs 1 through 42 of this complaint as though fully set forth herein.
44. Defendant Detective John McHugh fabricated evidence and/or created false evidence against the plaintiff.
45. Defendant Detective John McHugh forwarded fabricated and false evidence/false information to the prosecutors in the Kings County District Attorney's office.
46. Defendant Detective John McHugh forwarded fabricated and false evidence/false information that was likely to influence a jury to the prosecutors in the Kings County District Attorney's office.
47. Defendant Detective John McHugh misrepresented and falsified evidence throughout all phases of the criminal proceeding.
48. Defendant Detective John McHugh misrepresented and falsified evidence to the prosecutors in the Kings County District Attorney's office.
49. Defendant Detective John McHugh withheld exculpatory evidence from the prosecutors in the Kings County District Attorney's office.
50. Defendant Detective John McHugh did not make a complete statement of facts to the prosecutors in the Kings County District Attorney's office.
51. By creating false evidence against the plaintiff; forwarding false evidence and information to the prosecutors; and by providing false and misleading testimony throughout the criminal proceedings, which directly resulted in the plaintiff being deprived of his liberty, defendant Detective John McHugh violated the plaintiff's

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- constitutional right to a fair trial under the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution.
52. As a consequence of defendant Detective John McHugh's actions, plaintiff suffered loss of liberty, humiliation, mental anguish, depression, loss of wages from work, and his constitutional rights were violated. Plaintiff hereby demands compensatory damages and punitive damages, in an amount to be determined at trial, against defendant Detective John McHugh.

CAUSE OF ACTION AGAINST DEFENDANT DETECTIVE JOHN MCHUGH: FAILURE TO INTERVENE UNDER 42 U.S.C § 1983

53. By this reference, the plaintiff incorporates each and every allegation and averment set forth in paragraphs 1 through 52 of this complaint as though fully set forth herein.
54. Defendant Detective John McHugh had an affirmative duty to intervene on the plaintiff's behalf to prevent the violation to his constitutional rights, as more fully set forth above.
55. Defendant Detective John McHugh failed to intervene on the plaintiff's behalf to prevent the violation of his constitutional rights, despite having had a realistic and reasonable opportunity to do so.
56. As a consequence of Defendant Detective John McHugh's actions, plaintiff suffered loss of liberty, humiliation, mental anguish, depression, loss of wages from work, and his constitutional rights were violated. Plaintiff hereby demands compensatory damages and punitive damages, in the amount of to be determined at trial, against Defendant Detective John McHugh.

WHEREFORE, plaintiff prays for judgment against the defendants, individually and severally, as follows: for compensatory damages against each defendant in an amount to be proven at trial; for exemplary and punitive damages against each defendant in an amount to be proven at trial; for costs and expenses of suit herein, including plaintiff's reasonable attorney's fees; for pre-judgment and post-judgment interest; all in a sum of

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money that exceeds the jurisdiction of all lower Courts, and for such other and further relief as this court deems just and appropriate.

Dated: Brooklyn, New York
April 10, 2017

LAW OFFICES OF WALE MOSAKU, P.C.

By: 

Wale Mosaku
Attorney for the Plaintiff
25 Bond Street, 3rd Floor
Brooklyn, N.Y. 11201
(718) 243-0994

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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DESTIN SMITH,

Plaintiff,

-against-

ATTORNEY
CERTIFICATION
PURSUANT TO 22 NYCRR
Part 130-1.1(c)

THE CITY OF NEW YORK, DETECTIVE JOHN
MCHUGH (Shield # 581) and POLICE OFFICERS
JOHN DOE 1-10.

Defendants.

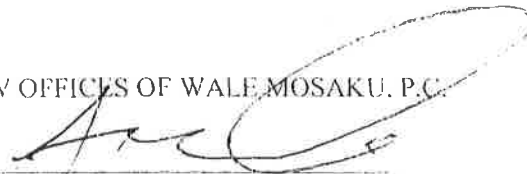
-----X

The undersigned attorney does hereby certify:

That I am the attorney for the plaintiff and duly admitted to practice law before the
Courts of the State of New York. I do hereby provide this signed certification pursuant to
22 NYCRR Part 130-1.1 (c), that the papers that I have served, filed or submitted to the
Court in this action are not frivolous.

Dated: Brooklyn, New York
April 10, 2017

LAW OFFICES OF WALE MOSAKU, P.C.



BY: Wale Mosaku, Esq.
Attorney(s) for Plaintiff
25 Bond Street, 3rd Floor
Brooklyn, New York 11201
(718) 243-0994

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Plaintiff,

-against-

THE CITY OF NEW YORK, DETECTIVE JOHN
MCHUGH (Shield # 581) and POLICE OFFICERS
JOHN DOE 1-10,

Defendants.

SUMMONS and COMPLAINT

LAW OFFICES OF WALE MOSAKU, P.C.
Attorney(s) for Plaintiff(s)
25 Bond Street, 3rd Floor
Brooklyn, New York 11201
(718) 243-0994

To:

Service of a copy of the within
is hereby admitted.

Dated: 04/10/2017 200

Attorneys for Defendant(s)