

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
NATALIA MALAVE

Plaintiff,

-against-

Index No.: 19 CV 05534

**SECOND AMENDED  
COMPLAINT**

Plaintiff Demands Trial by Jury

NYPD SERGEANT TREVOR AUSTIN,

Defendants.

-----X  
Plaintiff NATALIA MALAVE, by and through her attorney, Alexis G. Padilla, Esq.,  
complaining of the defendant NYPD SERGEANT TREVOR AUSTIN, upon information and  
belief hereby state the following:

**PRELIMINARY STATEMENT**

1. This is a civil rights action in which the plaintiff, NATALIA MALAVE, seeks redress for the defendants' violation of rights secured by the Civil Rights Act of 1871, 42 U.S.C. § 1983, and by the Fourth and Fourteenth Amendments to the United States Constitution. Plaintiff seeks compensatory and punitive damages, an award of costs, interest and attorney's fees, and such other and further relief as this Court deems just and proper.

**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 United States Constitution. Jurisdiction is conferred upon this court by 28 U.S.C. §§ 1331 and 1343, this being an action seeking redress for the violation of the plaintiff's constitutional and civil rights.

3. Venue in this District is proper under 28 U.S.C. § 1391(b) and (c) in that the events giving rise to this claim occurred within the boundaries of the Eastern District of New York.

**JURY TRIAL DEMANDED**

4. Plaintiff demands a trial by jury on each and every one of her claims as pleaded herein.

**PARTIES**

5. Plaintiff is a United States citizen of full age residing in Kings County, New York.

6. Defendant NYPD SERGEANT TREVOR AUSTIN (“AUSTIN”) was at all times relevant herein a duly appointed and acting officer, servant, employee and agent of the New York Police Department, a municipal agency of the City of New York. At all times relevant herein, Defendant AUSTIN acted under color of the laws, statutes, ordinances, regulations, policies, customs and/or usages of the State of New York and the New York Police Department, in the course and scope of his duties and functions as an officer, agent, servant and employee of the City of New York, was acting for, and on behalf of, and with the power and authority vested in him by the City of New York and the New York Police Department, and was otherwise performing and engaging in conduct incidental to the performance of his lawful functions in the course of his duty. He is sued individually and in his official capacity.

**STATEMENT OF FACTS**

7. In or around February 28, 2019 plaintiff was attending the High School for Performing Arts and Technology in Brooklyn, when she was suddenly attacked by another student who struck her several times with a closed fist without reason.

8. Defendant AUSTIN, who upon information and belief was assigned to the aforesaid school as an NYPD School Safety Agent, observed the attack and responded to the assault upon plaintiff.

9. When defendant AUSTIN responded to the scene, he encountered plaintiff attempting to charge towards her attacker.

10. Defendant AUSTIN pushed plaintiff to the side to keep her from getting any closer to her attacker.

11. Then plaintiff made a second attempt to push past defendant AUSTIN, at which point the officer violently shoved plaintiff to the ground.

12. As a result of defendant AUSTIN's reckless, intentional, and excessive use of force, plaintiff suffered severe pain to her neck, back, chest, arms, and left wrist.

13. Plaintiff required orthopedic treatment and physical therapy thereafter to convalesce.

14. The excessive force in question was captured via cellular phone recording device.

**AS FOR A FIRST CAUSE OF ACTION**

***Excessive Force in violation of 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments to the United States Constitution as against SCHOOL SAFETY AGENT SERGEANT TREVOR AUSTIN***

15. Plaintiff repeats, reiterates and asserts each and every allegation contained in the previous paragraphs with the same force and effect as if fully set forth herein.

16. At all times during the events described above defendant AUSTIN lacked probable cause to use force against plaintiff.

17. All of the aforementioned acts of defendant AUSTIN were carried out under the color of state law.

18. All of the aforementioned acts of AUSTIN deprived plaintiff of the rights, privileges

and immunities guaranteed to citizens of the United States by the Fourth and Fourteenth Amendments to the Constitution of the United States of America, and in violation of 42 U.S.C. § 1983.

19. The acts complained of were carried out by the defendant AUSTIN in his capacity as a police officer, with all actual and/or apparent authority afforded thereto.

20. The acts complained of resulted in pain and injury to plaintiff

21. The acts complained of deprived plaintiff of her right to be free from excessive force.

**WHEREFORE**, plaintiff demands relief jointly and severally against all of the defendants for compensatory damages in an amount to be determined by a jury; punitive damages in an amount to be determined by a jury; costs, interest and attorney's fees, and such other and further relief as this Court may deem just and proper.

Dated: 02/27/2020  
Brooklyn, NY

By: /s/Alexis G. Padilla  
Alexis G. Padilla, Esq. [AP8285]  
*Attorney for Plaintiff*  
*Natalia Malave*  
575 Decatur Street #3  
Brooklyn, NY 11233  
Tel. 917 238 2993  
alexpadilla722@gmail.com