

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSHUA BAHADUR,

Plaintiff,

-against-

Detective WILLIAM VARGAS, Tax No. 942652;
Detective PAUL RIVERA, Tax No. 940050; Undercover
Officer No. 84 (“UC 84”); and Police Officers
JOHN/JANE DOE 1 through 10, individually and in their
official capacities (the names John and Jane Doe being
fictitious, as the true names are presently unknown),

Defendants.
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**SECOND AMENDED
COMPLAINT**

Jury Trial Demanded

ECF Case

15-cv-00978

Plaintiff, JOSHUA BAHADUR, by his attorney Katherine E. Smith, complaining of the defendants, respectfully alleges as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action for compensatory damages, punitive damages and attorneys’ fees pursuant to 42 U.S.C. §1983 and 42 U.S.C. §1988 for violations of his civil rights, by defendants Detective WILLIAM VARGAS, Tax No. 942652; Detective PAUL RIVERA, Tax No. 940050; Undercover Officer No. 84, “UC 84,” and Police Officers “JOHN and JANE DOE” #1-10, as said rights are secured by said statutes and the Constitutions of the State of New York and the United States.

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), as the incidents alleged herein occurred in this district.

JURY DEMAND

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

PARTIES

6. Plaintiff JOSHUA BAHADUR is a resident of Bronx County in the City and State of New York.

7. At all times relevant defendants Detective WILLIAM VARGAS, Tax No. 942652; Detective PAUL RIVERA, Tax No. 940050; Undercover Officer No. 84, “UC 84,” and NYPD Defendants John & Jane Doe 1 through 10 (“Doe Defendants”) were police officers, detectives or supervisors employed by the NYPD. Plaintiff does not know the real names and shield / tax numbers of defendants John & Jane Doe 1 through 10.

8. At all times hereinafter mentioned defendant, NYPD, is an agency, instrumentality, department of defendant, CITY, and/or defendant, CITY, derived benefit from the activities of defendant, NYPD.

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

STATEMENT OF FACTS

10. On or about October 9, 2013, at or around 5:00 p.m., plaintiff was lawfully in the vicinity of 44th and 43rd Street on 7th Avenue, New York, New York, in or around Times Square.

11. Without provocation, a NYPD officer working undercover, UC 84, approached plaintiff and inquired about a drug sale.

12. Detective RIVERA was positioned close to UC 84 and plaintiff so that he could observe the interaction.

13. Plaintiff refused UC 84, yet UC 84 persisted in attempting to purchase drugs from plaintiff.

14. Plaintiff repeatedly refused UC 84's requests.

15. RIVERA and UC 84 were angered by plaintiff's refusals and the attention that was being drawn to the undercover narcotics operation.

16. Defendants RIVERA and UC 84 brutally attacked plaintiff, punching him in the face and head.

17. The attack was so violent and outrageous that uniformed NYPD Officers ran to plaintiff's assistance and pulled RIVERA off of, and away from, plaintiff, thereby preventing RIVERA from further injuring plaintiff.

18. Defendant VARGAS had an opportunity to intervene to prevent this unlawful conduct but did nothing. Indeed, RIVERA and/or UC 84 also had an opportunity to prevent this unlawful conduct but failed to act.

19. Plaintiff did not strike, or threaten to strike, any officer; the force that the Defendants used was excessive, objectively unreasonable, and in violation of Plaintiff's civil rights.

20. In an effort to cover up their assault of Plaintiff, defendants falsely claimed that Plaintiff grabbed an officer and "attempted to strike the officer with a closed fist."

21. Plaintiff suffered damage as a result of defendants' actions. Plaintiff suffered emotional distress, mental anguish, fear, pain, bodily injury, anxiety, embarrassment, humiliation, and damage to his reputation.

FIRST CLAIM
UNREASONABLE FORCE

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

23. Defendants RIVERA and UC 84, acting with intent, used excessive, objectively unreasonable force on plaintiff thereby violating plaintiff's constitutional rights.

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

SECOND CLAIM
FAILURE TO INTERVENE

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

26. Defendants VARGAS, UC 84, and RIVERA had a duty and a reasonable opportunity to intervene to prevent the unlawful use of excessive force, and failed to do so.

27. Accordingly, the defendants, including VARGAS, UC 84, and RIVERA, who failed to intervene, violated plaintiff's constitutional rights.

28. 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:

- (a) Compensatory damages against all defendants, jointly and severally;
- (b) Punitive damages against the individual defendants, jointly and severally;
- (c) Reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 1988; and
- (d) Such other and further relief as this Court deems just and proper.

DATED: New York, New York
 September 23, 2016

_____/s_____
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