

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
THOMAS SMITH#10R3959, PLAINTIFF, PRO-SE

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

**AMENDED
COMPLAINT**

under the Civil Rights Act,
42 U.S.C. § 1983

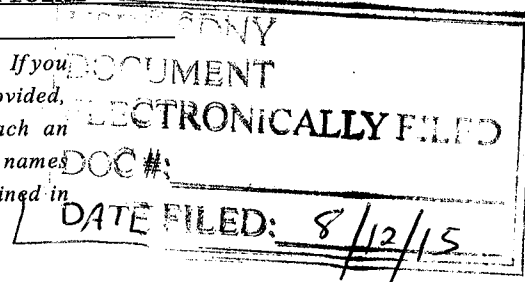
DEFENDANT#1, THE CITY OF NEW YORK,
DEFENDANT#2, THE NEW YORK CITY POLICE DEPARTMENT,
DEFENDANT#3, DANIEL FITZPATRICK SHIELD 3870, a
NEW YORK CITY POLICE OFFICER IN HIS OFFICIAL
CAPACITY,

Jury Trial: Yes No
(check one)

DEFENDANT#4 (SGT) KENNETH MONAHAN SHIELD 5088, A
NEW YORK CITY POLICE OFFICER IN HIS OFFICIAL
CAPACITY.

15 Civ. 1062 (VEC)

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)



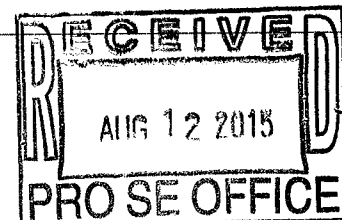
I. Parties in this complaint:

A. List your name, identification number, and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff's Name THOMAS SMITH
ID# 10R3959
Current Institution FRANKLIN CORRECTIONAL FACILITY
Address 62 BARE HILL ROAD, P.O. BOX 10,
MALONE, NEW YORK 12953

B. List all defendants' names, positions, places of employment, and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1 Name THE CITY OF NEW YORK Shield # N/A
Where Currently Employed _____
Address _____



Defendant No. 2 Name THE NEW YORK CITY POLICE DEPARTMENT Shield # N/A
Where Currently Employed ONE POLICE PLAZA
Address NEW YORK, NEW YORK 10038

Defendant No. 3 Name P.O. DANIEL FITZPATRICK Shield # 3870
Where Currently Employed MIDTOWN NORTH PREINCT
Address 306 WEST 54th street,
NEW YORK, NEW YORK 10019

Who did what?

Defendant No. 4 Name P.O. SERGEANT KENNETH MONAHAN Shield # 5088
Where Currently Employed NEW YORK POLICE DEPARTMENT, INTELLIGENCE BUREAU
Address ONE POLICE PLAZA, ROOM#1108
NEW YORK, NEW YORK 10038

Defendant No. 5 Name N/A Shield # N/A
Where Currently Employed N/A
Address N/A

II. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. In what institution did the events giving rise to your claim(s) occur?
N/A
N/A

B. Where in the institution did the events giving rise to your claim(s) occur?
N/A

C. What date and approximate time did the events giving rise to your claim(s) occur?
On JULY 6, 2013 at approximate 2:10am in the vicinity of 165 West 47th
street in the county of Manhattan, New York.
N/A

D. Facts: SEE ATTACHED TO THIS COMPLAINT FORM PLAINTIFF AMENDED COMPLAINT
THANK YOU KINDLY.

What happened to you?

5.

S T A T E M E N T O F F A C T S

On JULY 6,2013 plaintiff was walking around Time Square enjoying the night saying hi to all who passed. As I neared the corner of west 47th street I stopped at the frank vendor to buy a cold water, because it was really hot that night. While buying the water I had asked an unknown couple for a light, and as I said thank you I stood there on west 47th street for about 5 to 6 minutes smoking my smoke. When I began to walk east bound on 47th street defendant#3,P.O.Fitzpatrick shield 3870 and his sgt defendant#4,P.O.Monahan shield 5088 came out of nowhere and placed me up against the wall in the vicinity of 165 west 47th street New York City, N.Y. and began to pat me down. At this time plaintiff asked both defendants#3,#4,P.O.Fitzpatrick shield 3870 Monahan shield 5088 what is going on and why do you have me up against this wall?

6. As plaintiff is against the wall and placed in handcuffs by defendant#3 P.O. Fitzpatrick shield 3870 people are looking to see what's going on, and I can see that the bystanders are taken pictures with their cell phones while plaintiff is in handcuffs. I again asked both defendants#3,#4, P.O. Fitzpatrick shield 3870, and his (sgt)P.O. Monahan shield 5088 what's going on, they both replied "SHUT THE FUCK UP" you know what you did. As plaintiff is standing there a black unmarked police van pulled up and I was arrested. While at the Midtown North precinct plaintiff asked again what am I being arrested for and was told by defendant#3 P.O. Fitzpatrick shield 3870 for PROMOTING PROSTITUTION Docket NO.2013NY052278.

7. On JULY 6,2013 plaintiff was arrested and charged with Promoting Prostitution, and spent the early morning, and late night of JULY 6,2013 in jail and brought before the arraignment judge to face said charge "promoting prostitution!" Plaintiff's counsel BARBARA HO, Esq Legal Aid assigned by the court informed the arraignment Judge that the promoting prostitution charge is false, and insubstantial. Barbara Ho, informed the Judge the accusatory instrument does not show that plaintiff committed any crime on July 6,2013 at 2:10am, and that these allegations are insufficient to show that there was "PROBABLE CAUSE" to arrest plaintiff!.. Further still, the allegations do not establish the elements of the crime charged, and they do not establish reasonable cause to believe that plaintiff committed the crime of "PROMOTING PROSTITUTION on JULY 6,2013 as charged. Plaintiff was released at arraignment, and a court date was set for SEPTEMBER 3,2013.

8. Thereafter my release, I was subjected to rearrest by my parole Officer because of the false charge of Promoting Prostitution, and a false report made by defendant#3 P.O. Fitzpatrick shield 3870 to my Parole Officer that I had returned back to the precinct MidTown North to vouch for a unknown friend to me who was in custody on the night of JULY 6,2013.

9. On JULY 6,2013 at 2:10am in the vicinity of 165 west 47th street Manhattan N.Y. the City of New York,the defendants#3,#4 violated my rights under the Constitution and laws of the United States,The FOUTH Amendment,Eighth,and fourteenth Amendment when defendants P.O.Fitpatrick shield 3870,(sgt)P.O.Monahan shield 5088 knew there was know "PROBABLE CAUSE" to arrest plaintiff. But arrested plaintiff anyway to make the MIDTOWN NORTH PREINCT ILLEGAL NIGHT QUOTA on JULY 6,2013 that is a Practice and policy,and custom at the preinct as well throughout the N.Y.C.P.D., which violated my rights under Color of State Law.

10. On JULY 6,2013 defendant P.O.Fitpatrick shield 3870,and his(sgt)P.O.Monahan shield 5088 gave false reports and information to the District Attorney's Office that there had in fact been a crime committed by the plaintiff of Promoting Prostitution at 2:10am in the vincity of 165 west 47th street N.Y.N.Y. Plaintiff was aware of the false arrest, Malicious Prosecution. I did not consent to the unlawful arrest that violated my STATE AND FEDERAL CONSTITUTION As well as NEW YORK LAWS.

11. upon information and belief on NOVEMBER 19,2013 a WARRANT for plaintiff arrest was issure by The Manhattan District Attorney's Office based on the false arrest report by defendants#3,#4 P.O.Fitzpatrick shield 3870,and his (sgt)P.O.Monabhan shield 5088.This level of intrsion upon plaintiffs' freemdom is unacceptable, especially when it appears to be a result of an unlawful arrest for a crime that never took place on JULY 6,2013 at 2:10am in the vicinty of 165 west 47th street. Thus violates plaintiff federal rights and state under color of law. U.S.C.A. Const amend 4.Furtherstill,the accusatory instrument failed to demonstrate that defendant P.O.Fitzpatrick shield 3870,and his(sgt)defenadnt P.O.Monahan shield 5088 was infact experienced in the field of making arrest for "promoting Prostitution" crimes. This case went on for 10 months in the Manhanattan crimal Court 100 Centre street part"B" and was dismissed in the plaintiffs' favor on MAY 27,2014 Docket No.2013NY052278.

12. The defendants P.O.Fitzpatrick shield 3870,and his (sgt)Monahan shield 5088 initiated this proceeding which ended in plaintiffs' favor. The proceeding was initiated without probable cause. The defendants acted maliciously for the purpose other than brining the plaintiff to justice on JULY 6,2013 at 2:10am 165 west 47th street N.Y.N.Y. when filing a false charge of promoting prostitution. here,the plaintiff liberty was taken away on a baseless charge. the accusatory instrument failed to demonstrate plaintiffs' activies on JULY 6,2013 in the vicinty of 165 west 47th street county of Manhattan at 2:10am.

13. The plaintiff remained "incarcerated" for a crime that was never committed on JULY 6, 2013 at 2:10am in the vicinity of 165 west 47th street in the county of N.Y. N.Y. of promoting prostitution. A "WARRANT" was issued on NOVEMBER 19, 2013 and bail was set at \$1 dollar until the case was terminated on MAY 27, 2014 in my favor. I suffered deprivation of my liberty because of a unlawful arrest, and false charge of promoting prostitution consistent with the concept of seizure as a consequence of a legal proceeding that failed to demonstrate that plaintiff committed a crime. Thus, defendants P.O. Fitzpatrick shield 3870, and his (sgt) P.O. Monahan shield 5088 violated my DUE PROCESS RIGHTS under the FEDERAL and STATE CONSTITUTION and LAWS.

14. On the late night of JULY 6, 2013 at 2:10am in the vicinity of 165 west 47th Manhattan N.Y. defendants #3, #4 P.O. Fitzpatrick shield 3870, and his (sgt) P.O. Monahan shield 5088 violated my DUE PROCESS RIGHTS under the FOURTH, EIGHTH, FOURTEENTH Amendment to the U.S.C Const. by engaging in conscience shocking misconduct, namely, fabricating evidence, filing false reports, making unlawful arrest to make illegal nightly arrest QUOTA that is in place at the MIDTOWN NORTH PREINCT, and widespread throughout the NEW YORK CITY POLICE DEPARTMENT (N.Y.C.P.D.)... The evidence was in fact insufficient to prove that plaintiff ADVANCED or PROFITED from promoting prostitution by managing, supervising, controlling or even activity by one or more prostitutes on JULY 6, 2013 at 2:10am in the vicinity of 165 west 47th street in the county of Manhattan. The defendants P.O. Fitzpatrick shield 3870, and his (sgt) P.O. Monahan shield 5088 soul purpose was to make their illegal night quota that is a policy, and practice, and custom so PERMANENT and well SETTLED that it violated my rights.

15. On JULY 6, 2013 at 2:10am in the vicinity of 165 west 47th street P.O. Fitzpatrick shield 3870, and his (sgt) P.O. Monahan shield 5088 allege that plaintiff offered a N.Y.C. (uncover) police officer \$200.00 U.S. currency to have sex with an unknown prostitute. Further still, The Accusatory Instrument failed to show that plaintiff is or was acting as a "PIMP" with regards of the crime PROMOTING PROSTITUTION under NEW YORK LAW. In order to promote, advance, or profit from prostitution, there must be some underlying proscribed conduct falling within definition of prostitution by the plaintiff. thus, there was no Probable Cause to arrest plaintiff because there was no return of an INDICTMENT because the information defendants #3, #4 gave to the District Attorney's office is the product of fraud, perjury, police misconduct that was undertaken in bad faith by P.O. Fitzpatrick shield 3870, and his (sgt) P.O. Monahan shield 5088 on the night of JULY 6, 2013 within the vicinity of 165 west 47th street Manhattan N.Y. that violate plaintiff U.S.C. Const. Amendment 4.

16.

C O U N T O N E :

Defendant Fitzpatrick shield 3870 exercised deliberate indifference when he unlawfully arrested plaintiff for a crime that never happend. thus,defendant violated plaintiff FOURTH AMENDMENT rights when he knew there was no Probable Cause to arrest plaintiff on JULY 6,2013 at 2:10am in the vicinity of 165 west 47th street, New York, New York. Defendant Fitzpatrick shield 3870 exercised deliberate indifference to plaintiff when he gave false information to the Manhattan District Attorney's office alleging that plaintiff had committed a crime of promoting prostitution,furtherstill he demonstrated deliberate indifference when he spoke to plaintiffs' (PAROLE OFFICER) to cause me further harm. Thus,he violated plaintiffs'EIGHT AMENDMENT.

17.

C O U N T T W O :

Defendant Sergeant Monahan shield 5088 exercised deliberate indifference when he authorize an unlawful arrest of plaintiff of promoting prostitution against plaintiff to make the ILLEGAL NIGHTLY ARREST QUOTA. Thus,violated plaintiffs' FOURTH AMENDMENT rights, and FOURTEENTH AMENDMENT rights by a practice, policy, and custom in place at MIDTOWN NORTH PREINCT,and well settled throughout the New York City Police Department thereby depriving plaintiff of civil rights,guaranteed by the CONSTITUTION and LAWS of the UNITED STATES and the STATE of NEW YORK.

18.

C O U N T T H R E E :

These acts represent a patten of events demonstrating intentional misconduct by the defendants Fitzpatrick and sergeant Monahan in making illegal arrest to make the night arrest quota,as what took place here. as a result of the deliberate indifference exercised by the defendants,plaintiff suffered serious harm by a practice,policy,and custom that has violated my rights. Thus,plaintiff liberity was taken away because of a demand on nightly arrest Quota by the aforementioned defendants.Plaintiff sutained further incarceration of 10 ½ months for a false charge of PROMOTING PROSTITUTION that was dismissed on MAY 27,2014 in plaintiff favor. Plaintiff also suffered extreme emotional disdtress from this arrest. Plaintiffs' 14 year old daugether now thinks that I'am a(P I M P),and she has not spoken with me in 18 months.

19.

C O U N T F O U R :

The acts of defendants Fitzpatrick and Monahan complained of caused the deprivation of plaintiffs' constitutional rights for the alleged fraudulent fabrication of baseless charge of promoting prostitution, malicious prosecution,false arrest, and filing a

false reports to plaintiffs' parole officer. Thus, violated plaintiffs' DUE PROCESS rights under STATE LAW and FEDERAL LAW.

20. Defendants #1, #2 has created a "arrest policy and custom that is unconstitutional. The quota practice, policy, and custom in place by the defendant failed to protect me from unlawful arrest. defendants failed to properly supervise the acts of both defendants Fitzpatrick and sergeant Monahan to ensure that they follow policies, and since the failure of not following policies in place has caused plaintiff his liberty, and to remain incarcerated for a crime that never took place as allege by the arresting officer Fitzpatrick and his sergeant Monahan, and the result of a failure to properly train defendants in making arrest for "promoting prostitution" by the real PIMP's and prostitute. Thus, violated plaintiffs' federal civil rights, and state under color of law. U.S.C.A. CONST. AMEND. 4, 8, 14.

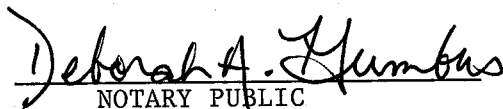
WHEREFORE, Thomas Smith prays for judgement in his favor and, damages in his favor against all defendants #1, #2, #3, #4 in an amount sufficient to compenstae plaintiff for the pain suffered by him due to the deliberate indifference and intentional misconduct of defendants #3, #4 not having probable cause to arrest plaintiff. But to make their illegal nightly quota arrest. In no event less than \$140,000 plaintiff is seeking for damages, Malicious prosecution, false arrest, and filing a false reports and the time that plaintiff spent incarcerated because of the unlawful arrest, and whatever the court may deem just and proper.

RESPECTFULLY SUBMITTED,



THOMAS SMITH, 10R3959
FRANKLIN CORR. FACILITY
62 BARE HILL ROAD,
P.O. BOX 10
MALONE, NEW YORK 12953

SWORN TO BEFORE ME ON
THIS DAY 7th OF August, 2015


NOTARY PUBLIC

DEBORAH A. GUMBUS
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN FRANKLIN COUNTY
NO. 01GU6304688
COMMISSION EXPIRES JUNE 02, 2018

AFFIDAVIT OF SERVICE

STATE OF NEW YORK :
 :
 : ss.:
COUNTY OF FRANKLIN :


NAME OF DOCUMENT (S):

AMENDED COMPLAINT
15-Civ-1062 (VEC)
42 U.S.C. § 1983

I, THOMAS SMITH, DIN: 10R3959, being duly sworn, deposes and says:

That I have on this 7 day of AUGUST, 2015 placed and submitted the within copies of the document(s) or moving papers indicated above, to be duly mailed via the U.S. Postal Service, through the institutional mailroom here at the Franklin Correctional Facility, 62 Bare Hill Road, P.O. Box 10, Malone, New York 12953, in a pre-paid first class envelope to the following parties:

Respectfully submitted,

Thomas 

Name: THOMAS SMITH, DIN: 10R3959
Franklin Correctional Facility
Post Office Box 10, 62 bare Hill Road
Malone, New York 12953.0010

SUBSCRIBED AND SWORN TO BEFORE ME THIS

7th DAY OF AUGUST, 2015

Deborah A. Gumbus
NOTARY PUBLIC

[NOTARY STAMP/SEAL]:

DEBORAH A. GUMBUS
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN FRANKLIN COUNTY
NO. 01GU6304688
COMMISSION EXPIRES JUNE 02, 2018

repositor
1541126
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PRO-SE CLERK
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
THE DANIEL PATRICK MOYNIHAN UNITED STATES COURTHOUSE
500 PEARL STREET,
NEW YORK, NEW YORK 10007-1312

FRANKLIN CORRECTIONAL FACILITY
20 BOX 10-62 BARE HILL ROAD
VALONE NEW YORK 12963
Thomas Smith # 10R3959

