

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STEFON LUCKEY,

Plaintiff,

- against -

CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT, "JOHN DOE" POLICE OFFICERS OF
THE 113TH PRECINCT, individually and in their official
capacities, fictitious names used to identify presently
unknown police officers,

Defendants.
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Docket No.

VERIFIED COMPLAINT

Jury Trial Demanded

Plaintiff, STEFON LUCKEY, by his attorneys, HELD & HINES, LLP, complaining of
the defendants, hereinafter states and alleges as follows upon information and belief:

PRELIMINARY STATEMENT

1. Plaintiff commences this action seeking compensatory damages, punitive damages, and attorney's fees for violations of his civil rights by the defendants, their agents, servants and/or employees, while acting under color of law, as said rights are secured by the Constitution of the United States of America, 42 U.S.C. §1983 *et seq.* Plaintiff also asserts supplemental state law claims for violations of his rights secured by the Constitution of the State of New York, as well as Article 15 of the New York State Executive Law ("NYS Human Rights Law"), Section 40 *et seq.* of the New York State Civil Rights Law (the "NYS Civil Rights Law"), and Sections 8-107 *et seq.*, 8-502 *et seq.* and 8-603 *et seq.* of the Administrative Code of the City of New York (the "City Human Rights Law"), as well as common law claims of assault, battery, negligent hiring, training and retention, intentional infliction of emotional distress,

51. The supervisory staff within the NYPD and the command structure of the NYPD knew and/or knows that the pattern of police harassment, intimidation, physical abuse, cover-up, and denial of medical care, as described above, existed and still exists within the NYPD. The NYPD's failure to take measures to curb this pattern of brutality constitutes acquiescence in the known unlawful behavior of its officers. The prevalence of these practices and general knowledge of their existence, and the failure of these defendants to take remedial action despite the fact that the foregoing has been persistently brought to the NYPD's attention, constitutes deliberate indifference to the rights and safety of the public in general, and Plaintiff in particular. The defendants' conduct has been a substantial factor in the continuation of such violence and a proximate cause of the civil rights violations alleged in this Complaint.

52. The NYPD operates under a system-wide policy. With some exceptions, the NYPD trains all of its officers at a single Training Academy according to a uniform curriculum; maintains a centralized Investigation Division to investigate allegations such as those contained herein under uniform procedures; and maintains a centralized unit to conduct administrative prosecutions (or to decline to prosecute, or to plea-bargain) in those few instances where the NYPD substantiates the allegation(s).

53. The supervisory staff of the NYPD has consistently failed to investigate allegations such as those contained herein and to discipline officers who have violated NYPD guidelines. The investigation of these incidents by central office and/or supervisory staff reflects a bias in favor of uniformed officers. Furthermore, officers and staff who are known to have violated an individual's civil rights in one command are often transferred by NYPD to another command rather than be disciplined, demoted or fired by the NYPD.

negligent infliction of emotional distress, neglect and failure to provide medical treatment, general negligence, and failure to protect.

2. On or about May 14, 2013, at approximately 12:00 a.m., the plaintiff was lawfully standing on a public sidewalk in New York City, Queens County, when several officers and/or supervisory personnel of the New York City Police Department ("NYPD") subjected Plaintiff to an unlawful police stop and then verbally harassed and threatened Plaintiff. After said encounter, Plaintiff walked into a nearby deli and these officers followed Plaintiff into same. Then, in an unprovoked and excessive use of force, said officers did assault, batter and pepper spray Plaintiff, did call him racial and derogatory epithets, did constrain and handcuff Plaintiff, and then did punch Plaintiff several times in the chest and stomach while he was restrained and handcuffed, causing the plaintiff to suffer physical, psychological and emotional injuries and pecuniary loss. At no time did any officer or supervisor intervene or protect Plaintiff from this excessive use of force.

3. Then, in an effort to cover-up and/or conceal their unlawful conduct, the defendant police officers, still acting under color of law, did, individually and/or in concert and conspiracy with one another: falsely arrest Plaintiff; falsely charge Plaintiff with crimes said officers knew Plaintiff had not committed; falsely imprison and/or otherwise confine Plaintiff for several hours; drafted, executed and filed knowingly false statements and reports wherein the defendant officers and their supervisors dishonestly stated that Plaintiff posed a danger to officers, others and/or property and/or that Plaintiff caused and/or threatened to cause serious physical injury to an officer; maliciously abused process; and the defendant officers and their supervisors made other knowingly false allegations against Plaintiff in an effort to cover-up and/or conceal their unlawful conduct.

4. Upon information and belief, the defendant officers and their supervisors lied, submitted false statements, arrested and imprisoned Plaintiff, and/or purposely failed to fully and faithfully investigate the subject incident, all in an effort to prevent the aforesaid unlawful conduct from coming to light.

5. Following the subject incident, Defendants were deliberately indifferent to Plaintiff's injuries and medical needs and denied him reasonable and timely access to medical care and treatment, thereby exacerbating Plaintiff's pain and suffering and causing an unnecessary and wanton infliction of pain.

6. As a result of the defendants' unlawful conduct set forth herein, Plaintiff was caused and continues to suffer physical, psychological and emotional injuries and pecuniary loss.

JURISDICTION AND VENUE

7. This action is brought pursuant to 42 U.S.C. §§1983, 1985, 1986 and 1988; the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States of America; the Constitution of the State of New York; the NYS Human Rights Law; the NYS Civil Rights Law; the City Human Rights Law; and the Charter and Administrative Code of the City of New York.

8. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§1331 and 1343(a)(3) and (4) and the aforesaid statutory and constitutional provisions.

9. Pursuant to 28 U.S.C. §1367, this Court has supplemental jurisdiction over claims which arise under the relevant provisions of New York state law.

10. Plaintiff's claim for attorneys' fees and costs is predicated upon 42 U.S.C. §1988, which authorizes the award of attorneys' fees and costs to prevailing plaintiffs in actions brought

pursuant to 42 U.S.C. §1983, as well as New York C.P.L.R. Art. 86 and City Human Rights Law §8-502(f) for pendent claims arising under New York state and local law.

11. Venue is appropriate in this Court pursuant to 28 U.S.C. §1391(b)(2), as a substantial part of the events or omissions giving rise to this claim occurred within Queens County, New York, which is within this judicial district.

PARTIES

11. At all times mentioned herein, Plaintiff was and remains a resident of the City and State of New York, County of Queens.

12. Upon information and belief, and at all times mentioned herein, the defendant, **THE CITY OF NEW YORK** (hereinafter referred to as "the City"), was and still is a body corporate and politic, constituting a municipal corporation, duly organized and existing under and by virtue of the laws of the City and State of New York.

13. Upon information and belief, and at all times mentioned herein, the City maintains the defendant, **NEW YORK CITY POLICE DEPARTMENT** (hereinafter referred to as the "NYPD"), pursuant to law.

14. Upon information and belief, and at all times mentioned herein, the defendants, **"JOHN DOE" POLICE OFFICERS OF THE 113TH PRECINCT** (hereinafter referred to as "the defendant police officers"), are residents of the State of New York.

15. At all times mentioned herein, the defendant police officers were police officers employed by the City and NYPD. As used herein, the term "police officer" is intended to refer to NYPD officers and supervisory personnel in the general and not to any specific rank, title or position.

16. Plaintiff is not in possession of the names of the defendant police officers and will amend this Complaint to state the true names of said individuals when they become known.

17. Upon information and belief, and at all times mentioned herein, the defendant police officers were assigned to the NYPD's 113th Precinct.

18. The City was and remains the public employer of the defendant police officers.

19. The NYPD was and remains the public employer of the defendant police officers.

20. At all times mentioned herein, the defendants were acting under the color of law, to wit, under color of statutes, ordinances, regulations, policies, customs and usages of the City and State of New York and/or NYPD.

21. The defendant police officers are sued in their individual and official capacities.

22. That upon information and belief, and at all times mentioned herein, the City, its departments, agents, servants and/or employees, owned, operated, maintained, managed, supervised, directed and/or controlled the police precincts and divisions of the NYPD, including but not limited to the 113th Precinct, as well as the police officers assigned to and/or stationed thereat.

23. At all times mentioned herein, the City, its departments, agents, servants and/or employees, was charged with hiring, training, retaining, directing, supervising, investigating, disciplining, overseeing, appointing and promoting police officers, supervisors and staff in their employ, including but not limited to the defendant police officers.

24. At all times mentioned herein, the NYPD, its agents, servants and/or employees, was charged with hiring, training, retaining, directing, supervising, investigating, disciplining, overseeing, appointing and promoting police officers, supervisors and staff in their employ, including but not limited to the defendant police officers.

25. That upon information and belief, and at all times mentioned herein, the defendant police officers were acting under the direction, supervision, authority and/or control of the City and/or NYPD, their agents, servants and/or employees.

26. The NYPD, through its senior officials at the central office and in each of its precincts, promulgates and implements policies, including those with respect to the racial profiling, stop and frisk, use of force, reporting and investigation of uses of force by uniformed staff, and provision and access to medical and other program services mandated by local law and court orders. In addition, senior officials in the NYPD are aware of and tolerate certain practices by subordinate employees, including those that are inconsistent with formal policy. These practices, because they are widespread, long-standing, and deeply embedded in the culture of the agency, constitute unwritten NYPD policies or customs.

27. At all times mentioned herein, NYPD supervisory personnel had direct, first-line supervisory responsibilities over the police officers assigned to the 113th Precinct, including responsibility for taking appropriate measures to ensure and protect the civil rights and personal safety of members of the public in general, and Plaintiff in particular, who come into contact with the police officers of the 113th Precinct. These responsibilities were required to be carried out in a manner consistent with the laws and mandates that govern or control the City and NYPD, including City and NYPD directives and orders concerning: the use of force, the reporting of use of force, the provision of and access to medical care, treatment and services. Each of these supervisors are sued in his/her individual and official capacities. Plaintiff does not know the names of these supervisors and will amend this Complaint to state the true names of said individuals when they become known.

28. The defendant police officers were those police officers employed by the City and/or NYPD who harassed, intimidated, threatened, and used excessive physical force on Plaintiff; who falsely detained, arrested and imprisoned Plaintiff; who conspired to violate Plaintiff's civil rights; who conspired to falsely arrest and imprison Plaintiff; who made false criminal allegations against the plaintiff; who ignored, refused, denied, and/or delayed Plaintiff's requests for medical attention for the injuries alleged herein; who knowingly drafted and/or filed, or conspired to file, false reports, incident reports, medical reports, summons(es), appearance tickets, and complaint and arrest reports against Plaintiff; who gave knowingly false statements or testimony in or for a criminal proceeding regarding Plaintiff; and/or who converted Plaintiff's money and identification and refused to return either.

STATEMENT OF FACTS

33. On or about May 14, 2013, at approximately 12:00 a.m., the plaintiff, an African-American male, was lawfully standing on a public sidewalk with several of his friends in the vicinity of Y&H Deli, located at 110-52 Farmers Boulevard, St. Albans, New York, Queens County (hereinafter the "deli"), when the defendant police officers racially-profiled Plaintiff, stopped the police vehicle they were traveling in, and in a harassing and threatening manner did order Plaintiff to approach their vehicle. Plaintiff complied.

34. Following this encounter, Plaintiff walked into the deli and was inexplicably followed by several of the defendant police officers. Then, in an unprovoked and excessive use of force, one of the defendant police officers did assault, batter and pepper spray Plaintiff without legal cause or justification.

35. Plaintiff was then forcibly removed from the deli, called racial and derogatory epithets, handcuffed tightly, and roughly shoved into a police vehicle by the defendant police officers.

36. Once inside the police vehicle, Plaintiff informed the defendant police officers that his eyes were burning from the pepper spray and asked the defendant police officers to open a window so he could breathe. At least one of the defendant police officers then punched Plaintiff in the chest and stomach. Plaintiff was not disruptive or argumentative with said officer(s) at the time he was punched as he was restrained, handcuffed and struggling with the effects of pepper spray at the time.

37. The defendant police officers then transported Plaintiff to the 113th Precinct, where said officers pointed a Taser at Plaintiff and threatened to use same against him. Plaintiff was not disruptive or argumentative with said officers at the time this threat was made.

38. The defendant police officers then confiscated Plaintiff's identification, keys and wallet containing approximately \$200.00 in cash.

39. Plaintiff was then transferred to a holding cell, where he remained for several hours before being released without being charged.

40. Once released from the defendants' unlawful detention, Plaintiff sought medical treatment at a hospital.

41. Upon being discharged from the hospital's care, Plaintiff returned to the 113th Precinct and attempted to obtain his identification, keys and wallet containing approximately \$200.00 in cash. The defendants returned only Plaintiff's keys. The defendants have not returned Plaintiff's cash or identification to date.

42. At no time during the foregoing incidents did any of the defendant police officers intervene, protect, or come to the aid or defense of Plaintiff.

43. The aforesaid conduct, all undertaken while the defendant police officers were acting under the color of law, was without legal cause or justification.

44. The defendants' aforesaid conduct constitutes a gratuitous, unjustified and excessive use of force and punishment.

45. The defendants' aforesaid conduct was not founded upon reasonable suspicion, probable cause or any lawful interest.

46. As a result of the aforesaid conduct, Plaintiff suffered physical injuries of a serious and important nature. Despite having notice of same, both actual and constructive, the defendants delayed and/or failed to authorize, make arrangements for, or provide timely and adequate medical care or treatment to Plaintiff.

47. Plaintiff's medical condition was of such gravity that it can be considered a serious medical condition. Defendants, by ignoring his requests for treatment, acted with deliberate indifference.

48. As a result of the defendants' deliberate indifference, Plaintiff experienced prolonged and significantly increased pain.

49. Plaintiff's aforesaid injuries significantly effect his daily activities, including but not limited to his fear of the police.

50. The failure of all defendants to provide due and timely medical care and treatment to the plaintiff caused further and substantial harm to the plaintiff, including but not limited to increased and prolonged pain, and psychological and emotional injuries.