

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WARREN DIGGS,

Plaintiff,

**COMPLAINT AND
JURY DEMAND**

-Against-

THE CITY OF NEW YORK;

Police Officer JAMES FRASCATORE Shield No. 11981,
Police Officer TIMOTHY COSTELLO Shield No. 20855,
Police Officer ALEX LOMBARDOZZI Shield No. 4863,
Sergeant JARED HOSPEDALES Shield No. 3299,
Police Officer JOHN DOE 1 through 5,
in their individual and official capacities
as employees of the City of New York,

Defendants.
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CV 15 - 2396

MATSUMOTO, J.

REYES, M.J.

The Plaintiff, WARREN DIGGS, by his attorney, Amy Rameau Esq., of The Law Office of Amy Rameau, alleges the following, upon information and belief for this Complaint:

NATURE OF THE ACTION / PRELIMINARY STATEMENT

1. This is a civil rights action for money damages brought pursuant to 42 U.S.C. §§ 1981, 1983, and 1988, the Fourth, Eighth and Fourteenth Amendments of the United States Constitution, Article I, Sections 6, 11, and 12 of the Constitution of the State of New York, and the common law of the State of New York, against the City of New York, the New York City Police Department, and against Police Officers named above, police officers of the City of New York, in their individual and official capacities. Plaintiff seeks compensatory and punitive damages, affirmative and equitable relief, an award

of attorneys' fees and costs, and such other relief as this Court deems equitable and just.

JURISDICTION

2. This Court has subject matter jurisdiction over the federal claims pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1343 (3) and (4). Plaintiff also asserts jurisdiction over the City of New York under 28 U.S.C. §1331 and §1367. Plaintiff requests that this Court exercise pendent jurisdiction over those state law claims arising out of the same common nucleus of operative facts as plaintiff's federal claims.

VENUE

3. Under 28 U.S.C. § 1391(a),(b),(c), venue is proper in the Eastern District of New York.

PARTIES

4. Plaintiff at all times relevant hereto resided in the City and State of New York.

5. That at all times hereinafter mentioned, and upon information and belief, the defendant, THE CITY OF NEW YORK, was at all times relevant hereto, a municipal corporation duly organized and existing pursuant to the laws, statutes and charters of the State of New York.

6. THE NEW YORK CITY POLICE DEPARTMENT was at all times relevant hereto, an agency of the defendant THE CITY OF NEW YORK.

7. That at all times hereinafter mentioned, and on information and belief, the defendant Police Officers, were at all times relevant hereto, employees

of the defendant CITY OF NEW YORK, as police officers employed by the NEW YORK CITY POLICE DEPARTMENT.

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

9. That at all times hereinafter mentioned, and upon information and belief, the individual defendants are named herein both personally and in their official representative capacities as police officers employed by the defendant, THE CITY OF NEW YORK through the NEW YORK CITY POLICE DEPARTMENT. And that each and all of the acts of the individual defendants alleged herein were done by the individual defendants and each of them under cover and pretense of the statutes and laws of the State of New York, and under and by virtue of their authority as police officers and employees of defendant, THE CITY OF NEW YORK.

FACTUAL ALLEGATIONS

10. Plaintiff is and African-American male.

11. On January 13, 2013 at approximately 7:30 pm, plaintiff was riding his bicycle to his house located at [REDACTED] New York. Once plaintiff was in the driveway of his residence, plaintiff heard one of the defendant officers screaming, "Where are you going?" Plaintiff got off his bicycle and saw three officers approaching him. One of the officers asked plaintiff for an identification card. Plaintiff replied that he had his identification card inside

plaintiff's residence. Plaintiff was about to open the door to his house to fetch plaintiff's identification card, when one of the officers grabbed plaintiff and pulled plaintiff away from the doorway. Another officer approached plaintiff, wrapped his hands around plaintiff's chest and hit plaintiff on the head with brute force. Plaintiff became lightheaded and fell onto the ground face first. Once plaintiff was on the ground, defendant continued kicking and punching plaintiff about plaintiff's body. At some point, one of the officers pressed plaintiff to the ground with his full body weight. Plaintiff felt terrified and started screaming for help. More officers arrived and continued beating plaintiff. One of the officers sprayed plaintiff with pepper spray causing irritation on plaintiff's face and shortness of breath.

12. At some point, plaintiff's fiancée, Nafeesah Hines, came out of the house to inquire as to what was happening. Defendants stopped beating plaintiff. Plaintiff asked defendant officer, "Why did you do this to me?" One of the officers replied, "Shut the fuck up." Nafeesah Hines requested that officers would identify themselves. Defendants refused to disclose their full names and shield numbers.

13. Nafeesah Hines was standing at the doorway to her house when one defendant officer grabbed Nafeesah Hines and pulled her out of the house. Thereafter, at least two officers entered the house without having a warrant and started conducting a search of the premises. Defendants went into the bedroom and searched the drawers. Defendants also questioned two minor children who

were in the house at that time without their parents present. This was captured on an audio recording device and later transcribed.

14. Defendants searched plaintiff, dragged plaintiff to an awaiting police vehicle, and transported plaintiff to the 113th Precinct, then to Central Bookings. Because of the injuries claimant sustained at the time of the arrest, plaintiff had to be transported to Jamaica Hospital where his injuries were documented.

15. On or about January 12, 2013, plaintiff was arraigned in Queens County Criminal Court. All charges against plaintiff were false and were later dismissed.

16. As a result of this assault, plaintiff sustained a number of sprains and strains, swelling about the face and neck, cuts and lacerations about the face, body and more.

17. Defendants employed unnecessary and unreasonable force against the plaintiff. Defendant officers acted maliciously and intentionally, and said acts are examples of gross misconduct. The officers intentionally used excessive force. They acted with reckless and wonton disregard for the rights, health, and safety of the plaintiff.

18. The conduct of the defendant officers in assaulting the plaintiff directly and proximately caused physical and emotional injury, pain and suffering, mental anguish, humiliation and embarrassment. All of the events complained of above have left permanent emotional scars that the plaintiff will carry with him for the remainder of his life.

19. At no time did plaintiff assault or attempt to assault any officer, nor did he present a threat or perceived threat to the personal safety of any officer or to the security of the precinct so as to warrant the repeated application of blows. Plaintiff did not provoke this beating nor did he conduct himself in any manner that would warrant any use of force, much less the excessive force actually used. Defendant officers acted sadistically and maliciously and demonstrated deliberate indifference toward plaintiff's rights and physical well-being.

20. All of the above was done in violation of state and federal law.

21. As a direct and proximate result of the malicious and outrageous conduct of defendants set forth above, plaintiff's injury has become permanent in nature as plaintiff now has a mark and a scar on his face.

22. The conduct of the defendant correctional officers in assaulting the plaintiff and denying him medical attention directly and proximately caused physical and emotional injury, pain and suffering, mental anguish, humiliation and embarrassment.

FIRST CLAIM FOR RELIEF

**42 U.S.C. § 1983/Eight, Fourth and Fourteenth Amendments
(Against All Individual Defendants)**

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

24. By reason of the foregoing, and by assaulting and using gratuitous, excessive, brutal, sadistic, and unconscionable force, failing to prevent other defendants from doing so, or failing to provide necessary medical care, the Individual Defendants deprived plaintiff of rights, remedies, privileges, and immunities guaranteed to every citizen of the United States, secured by 42 U.S.C. § 1983, including, but not limited to, rights guaranteed by the Eight, Fourth and Fourteenth Amendments to the United States Constitution to be free from gratuitous and excessive force.

25. As a direct and proximate result of the misconduct and abuse of authority detailed above, plaintiff sustained the damages hereinbefore alleged.

SECOND CLAIM FOR RELIEF

**42 U.S.C. § 1983/Fourteenth Amendment
(Against Defendant City)**

26. Plaintiff repeats and realleges each and every allegation above as if fully set forth herein.

27. Defendant CITY, through the NEW YORK CITY POLICE DEPARTMENT, and acting under the pretense and color of law, permitted, tolerated and was deliberately indifferent to a pattern and practice of staff brutality and retaliation by DOC staff at the time of plaintiff's beating. This widespread tolerance of officer abuse of civilians constitutes a municipal policy, practice, or custom and led to plaintiff's assault.

28. By permitting, tolerating, and sanctioning a persistent and widespread policy, practice, and custom pursuant to which plaintiff was