

JUDGE BATTS

10 CIV 0434

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LATOYA NELSON,

)
)
) Plaintiff,

)
) -against-
)

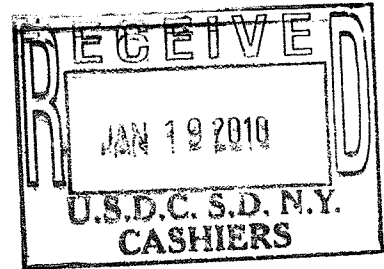
)
) THE CITY OF NEW YORK,
) JULIO SANTANA, RAYMOND MARRERO,
) and JOHN and JANE DOES,
)

)
) Defendants.
)
-----X

COMPLAINT

JURY TRIAL DEMANDED

ECF Case



PRELIMINARY STATEMENT

1. This is a civil rights action in which the plaintiff seeks relief for the defendants' violation of her rights secured by the Civil Rights Act of 1871, 42 U.S.C. Section 1983, and by the United States Constitution, including its Fourth and Fourteenth Amendments. The plaintiff seeks damages, both compensatory and punitive, affirmative and equitable relief, an award of costs and attorneys' fees, and such other and further relief as this court deems equitable and just.

JURISDICTION

2. This action is brought pursuant to the Constitution of the United States, including its Fourth and Fourteenth Amendments, and pursuant to 42 U.S.C. § 1983. Jurisdiction is conferred upon this court by 42 U.S.C. § 1983, and 28 U.S.C. §§ 1331 and 1343(a)(3) and (4), this being an action seeking redress for the violation of the plaintiff's constitutional and civil rights.

3. The plaintiff further invokes this court's supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over any and all state law claims and as against all parties that are so related to claims in this action within the original jurisdiction of this court that they form part of the same

case or controversy.

JURY TRIAL DEMANDED

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

VENUE

5. Venue is proper for the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1391 (a), (b) and (c).

NOTICE OF CLAIM

6. Plaintiff filed a Notice of Claim with the Comptroller of the City of New York within 90 days of the events complained of herein. More than 30 days have elapsed since the filing of the Notice of Claim, and adjustment or payment thereof has been neglected or refused.

PARTIES

7. Plaintiff LATOYA NELSON is a resident of New York City.

8. Defendant THE CITY OF NEW YORK is and was at all times relevant herein a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to maintain a police department which acts as its agent in the area of law enforcement and for which it is ultimately responsible. Defendant THE CITY OF NEW YORK assumes the risks incidental to the maintenance of a police force and the employment of police officers as said risk attaches to the public consumers of the services provided by them.

9. Defendants SANTANA, MARRERO, and DOES are and were at all times relevant herein duly appointed and acting officers, servants, employees and agents of THE CITY OF NEW YORK and/or the New York City Police Department, a municipal agency of defendant

THE CITY OF NEW YORK. The aforementioned defendants are and were at all times relevant herein acting under color of state law in the course and scope of their duties and functions as officers, agents, servants, and employees of defendant THE CITY OF NEW YORK, were acting for, and on behalf of, and with the power and authority vested in them by THE CITY OF NEW YORK, and were otherwise performing and engaging in conduct incidental to the performance of their lawful functions in the course of their duties.

STATEMENT OF RELEVANT FACTS

10. On February 3, 2008, at approximately 8:35 p.m. plaintiff LATOYA NELSON was in the vicinity of 3277 Decatur Avenue, Bronx, New York, at which time her boyfriend, Ronald Jones, was being arrested by defendants SANTANA and MARRERO. Plaintiff protested to defendants SANTANA and MARRERO that they were being unnecessarily rough with Jones, and plaintiff NELSON used her cell phone to take a video of the defendants' interactions with Jones. Plaintiff NELSON did nothing to interfere with the arrest of Jones. Jones was placed in a police vehicle and removed from the vicinity; plaintiff NELSON was not siezed.

11. Plaintiff NELSON went to the 52nd Precinct stationhouse, where she was told that Jones had been removed to North Central Bronx Hospital. Plaintiff NELSON went to North Central Bronx Hospital, where she was told that any inquiries regarding Jones would have to be made at the 52nd Precinct stationhouse. While at the hospital, plaintiff NELSON again used her cell phone to take video images.

12. Plaintiff NELSON then returned to the 52nd Precinct stationhouse, where she was placed under arrest by defendants SANTANA, MARRERO, and DOES, allegedly for conduct which had occurred at 3277 Decatur Avenue during the arrest of Jones. Plaintiff NELSON's cell

phone was siezed by defendants and was never returned to her.

13. Plaintiff NELSON was charged with Obstructing Governmental Administration, Disorderly Conduct, and Harassment.

14. Plaintiff was acquitted of all charges at a criminal trial which concluded on October 27, 2009.

FIRST CLAIM

DEPRIVATION OF RIGHTS UNDER THE UNITED STATES CONSTITUTION AND 42 U.S.C. §1983

15. The plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.

16. By their conduct and actions in falsely arresting and maliciously prosecuting plaintiff; and in failing to intervene to prevent the complained of conduct or to remedy it; in maliciously abusing criminal process against plaintiff; and in fabricating evidence against plaintiff; defendants SANTANA, MARRERO, and DOES, acting under color of law and without lawful justification, intentionally, maliciously, and with a deliberate indifference to or a reckless disregard for the natural and probable consequences of their acts, caused injury and damage in violation of plaintiff's constitutional rights as guaranteed under 42 U.S.C. § 1983 and the United States Constitution, including its Fourth and Fourteenth Amendments.

17. As a result of the foregoing, plaintiff was deprived of liberty, suffered emotional distress and humiliation, loss of property, costs and expenses, and was otherwise damaged and injured.

SECOND CLAIM

**LIABILITY OF THE CITY OF NEW YORK
FOR CONSTITUTIONAL VIOLATIONS**

18. The plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.

19. At all times material to this complaint, defendant THE CITY OF NEW YORK had de facto policies, practices, customs and usages which were a direct and proximate cause of the unconstitutional conduct alleged herein.

20. At all times material to this complaint, defendant THE CITY OF NEW YORK failed to properly train, screen, supervise, or discipline employees and police officers, and failed to inform the individual defendants' supervisors of their need to train, screen, supervise or discipline defendants defendants SANTANA, MARRERO, and DOES.

21. The policies, practices, customs, and usages, and the failure to properly train, screen, supervise, or discipline, were a direct and proximate cause of the unconstitutional conduct alleged herein, causing injury and damage in violation of plaintiff's constitutional rights as guaranteed under 42 U.S.C. § 1983 and the United States Constitution, including its Fourth and Fourteenth Amendments.

22. As a result of the foregoing, plaintiff was deprived of liberty, suffered emotional distress and humiliation, loss of property, costs and expenses, and was otherwise damaged and injured.

THIRD CLAIM

MALICIOUS PROSECUTION

23. The plaintiff incorporates by reference the allegations set forth in all preceding

paragraphs as if fully set forth herein.

24. By the actions described above, defendants maliciously prosecuted plaintiff without any right or authority to do so. The acts and conduct of the defendants were the direct and proximate cause of injury and damage to the plaintiff and violated plaintiff's statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

25. As a result of the foregoing, plaintiff was deprived of liberty, suffered emotional distress and humiliation, loss of property, costs and expenses, and was otherwise damaged and injured.

WHEREFORE, plaintiff demands the following relief jointly and severally against all of the defendants:

- a. Compensatory damages;
- b. Punitive damages;
- c. The convening and empaneling of a jury to consider the merits of the claims

herein;

- d. Pre- and post-judgment costs, interest and attorney's fees;
- e. Such other and further relief as this court may deem appropriate and equitable.

Dated: New York, New York
January 14, 2010


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