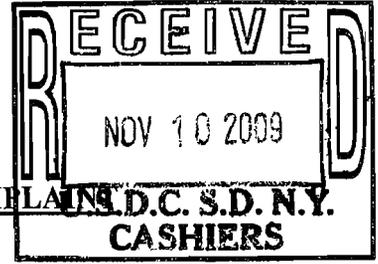


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X

FRANK DE MICHELE,
Plaintiff,

-against-

COMPLAINT D.C. S.D. N.Y.
CASHIERS

PLAINTIFF DEMANDS
TRIAL BY JURY

CITY OF NEW YORK, COUNTY OF WESTCHESTER
and DOES 1-20.

Defendants.

-----X

Plaintiff, FRANK DE MICHELE, by his attorneys, LAW OFFICE OF TODD J.

KROUNER, respectfully alleges:

1. The plaintiff, Frank De Michele, brings this action for compensatory damages, emotional distress, and punitive damages proximately caused by the conduct of both the police forces maintained by the City of New York (the "New York City Police Department"), and the County of Westchester and their respective police officers, whose true names are not presently known to plaintiff, but who are referred to herein collectively as Does 1-20. Defendants, acting under color of state law, forcibly removed plaintiff from his home, used excessive force upon him, and subjected him to a false arrest. As a result of defendants' actions, the plaintiff sustained serious and permanent physical and emotional injuries.

THE PARTIES AND JURISDICTION

2. Plaintiff resides at Pelham Parkway South, Apt. 3J, Bronx, New York 10461.

3. Defendant City of New York maintains a police force known as the New York City Police Department, which police force has its principal place of business at 1 Police Plaza, New York, New York 10038.

4. Defendant County of Westchester, maintains a police force known as the Westchester County Department of Public Safety (the “Westchester County Police Department”), which police force has its principal place of business at 1 Saw Mill River Parkway, Hawthorne, New York 10532.

5. Defendant Does 1-20 are police officers employed by the New York City Police Department and the Westchester County Police Department.

6. All of the incidents giving rise to all claims herein arose in the City of New York, Bronx County, New York.

7. On or about April 7, 2009, a Notice of Claim was duly served upon the City of New York Law Department.

8. On or about April 7, 2009, a Notice of Claim was duly served upon the Westchester County Attorney.

9. More than thirty (30) days have elapsed since the service of the aforesaid Notice of Claim upon the defendant the New York City Police Department, and said defendant has failed, neglected and refused to pay, settle, adjust or compromise the claim of the plaintiff herein.

10. More than thirty (30) days have elapsed since the service of the aforesaid Notice of Claim upon the defendant the Westchester County Police Department, and said defendant has failed, neglected and refused to pay, settle, adjust or compromise the claim of the plaintiff herein.

11. This action is being commenced within one (1) year and ninety (90) days from the date of the incident, and the plaintiff has duly complied with all of the conditions precedent to the commencement of this action as against the defendants.

12. Jurisdiction over the federal claims is invoked pursuant to pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(4), as this is a civil action arising under the law of the United States, namely 42 U.S.C. § 1983 (“Section 1983”) and the Fourth and Fourteenth Amendments to the United States Constitution. The Court has supplemental jurisdiction over the remaining causes of action pursuant to 28 U.S.C. § 1367.

FACTS

13. On January 18, 2009, around 1:00 a.m., at plaintiff’s former residence, 1164 Edison Avenue, Bronx, New York, plaintiff was the subject of a false arrest, during which excessive force was used.

14. Police officers employed by the New York City Police Department, as well as the Westchester County Police Department, were involved in a vehicle chase of a young adult male, Frankie Desideri, who was driving a white Mercedes Benz (the “Suspect Vehicle”). Mr. Desideri was the son of plaintiff’s landlord. At the time of the incident, the plaintiff lived with his mother and infant brother.

15. On January 18, 2009, at approximately 1:00 a.m., plaintiff’s mother answered a knock at the door. She opened the door and witnessed Mr. Desideri run into her home. Moments later, police officers from both the New York City Police Department and Westchester County Police Department appeared at plaintiff’s home. Plaintiff, who was watching a movie with his girlfriend, heard the commotion and approached the front door. Immediately thereafter, police officers from the New York City Police Department and Westchester County Police Department, grabbed plaintiff and forcibly removed him from his home. Police officers employed by the New York City Police Department and the Westchester County Police Department proceeded to use excessive force on the

plaintiff. The plaintiff was subsequently the subject of a false arrest, and held in jail for three days, until January 20, 2009.

**FIRST CAUSE OF ACTION: AGAINST ALL
DEFENDANTS FOR DEPRIVATION OF PLAINTIFF'S
RIGHTS IN VIOLATION OF SECTION 1983**

16. Plaintiff repeats and realleges Paragraphs 1 through 15, above.

17. The New York City Police Department acted under color of state law, when it subjected plaintiff to an excessive use of force and a false arrest, and thereby deprived the plaintiff of his liberty, rights, privileges, or immunities secured by the Fourth Amendment to the United States Constitution and laws of New York. As a result of the actions of the New York City Police Department, the plaintiff sustained serious physical and emotional injuries, for which defendant is liable.

18. The Westchester County Police Department acted under color of state law, when it subjected plaintiff to an excessive use of force and a false arrest, and thereby deprived the plaintiff of his liberty, rights, privileges, or immunities secured by the Fourth Amendment to the United States Constitution and laws of New York. As a result of the actions of the Westchester County Police Department, the plaintiff sustained serious physical and emotional injuries, for which defendant is liable.

19. Does 1-20 acted under color of state law, when they subjected plaintiff to an excessive use of force and a false arrest, and thereby deprived the plaintiff of his liberty, rights, privileges, or immunities secured by the Fourth Amendment to the United States Constitution and laws of New York. As a result of the actions of Does 1-20, the plaintiff sustained serious physical and emotional injuries, for which defendant is liable.

**SECOND CAUSE OF ACTION: AGAINST ALL
DEFENDANTS FOR EXCESSIVE USE
OF FORCE IN VIOLATION OF SECTION 1983**

20. Plaintiff repeats and realleges Paragraphs 1 through 19, above.

21. Plaintiff did not pose a threat to the safety of the police officers, Does 1-20, employed by the New York City Police Department at the time of his arrest. Plaintiff did not resist or attempt to evade Does 1-20.

22. Plaintiff did not pose a threat to the safety of the police officers, Does 1-20, employed by the Westchester County Police Department at the time of his arrest. Plaintiff did not resist or attempt to evade Does 1-20.

23. Police officers, Does 1-20, employed by the New York City Police Department proceeded to use excessive force against the plaintiff, which included punching, hitting, dragging, and beating the claimant on his head, torso, legs, feet and arms, causing serious and permanent personal injuries.

24. Police officers, Does 1-20, employed by the Westchester County Police Department proceeded to use excessive force against The plaintiff, which included punching, hitting, dragging, and beating the claimant on his head, torso, legs, feet and arms, causing serious and permanent personal injuries.

25. Police officers, Does 1-20, employed by the New York City Police Department, handcuffed the plaintiff, and repeatedly lifted and dragged him by using the handcuffs, causing the plaintiff to sustain serious and permanent personal injuries.

26. Police officers, Does 1-20, employed by the Westchester County Police Department handcuffed the plaintiff, and repeatedly lifted and dragged him by using the handcuffs, causing the plaintiff to sustain serious and permanent personal injuries.

27. Police officers, Does 1-20, employed by the New York City Police Department arrested plaintiff while he was only wearing his underwear, refused to allow plaintiff to obtain clothing, and placed him in a patrol car, with both doors open while it was approximately 12 degrees Fahrenheit.

28. Police officers, Does 1-20, employed by the Westchester County Police Department arrested plaintiff while he was only wearing his underwear, refused to allow plaintiff to obtain clothing, and placed him in a patrol car, with both doors open while it was approximately 12 degrees Fahrenheit.

29. Police officers, Does 1-20, employed by the New York City Police Department used excessive force to effectuate plaintiff's seizure that was unreasonable under the circumstances, thereby depriving plaintiff of his liberty in violation of Section 1983, the Fourth and Fourteenth Amendments of the United States Constitution.

30. Police officers, Does 1-20, employed by the Westchester County Police Department used excessive force to effectuate plaintiff's seizure that was unreasonable under the circumstances, thereby depriving plaintiff of his liberty in violation of Section 1983, the Fourth and Fourteenth Amendments of the United States Constitution.

**THIRD CAUSE OF ACTION: AGAINST ALL
DEFENDANTS FOR FALSE ARREST
IN VIOLATION OF SECTION 1983**

31. Plaintiff repeats and realleges Paragraphs 1 through 30, above.

32. Plaintiff's mother and his girlfriend witnessed Frank Desideri run through their residence.

33. Police officers, Does 1-20, employed by the New York City Police

Department ignored plaintiff's mother's, and his girlfriend's pleas that they search the building for Mr. Desideri. The New York City Police Department and Does 1-20 were negligent when they failed to search the premises for Mr. Desideri despite eye-witness accounts.

34. Police officers, Does 1-20, employed by the Westchester County Police Department ignored plaintiff's mother's, and his girlfriend's pleas that they search the building for Mr. Desideri. The Westchester County Police Department and Does 1-20 were negligent when they failed to search the premises for Mr. Desideri despite eye-witness accounts.

35. An eye-witness was brought forward to identify the plaintiff while he was sitting in a patrol car. The eye-witness stated that the plaintiff did not resemble the individual he had seen earlier that evening. Despite an eye-witness's exoneration of the plaintiff, police officers, Does 1-20, employed by the New York City Police Department arrested the plaintiff.

36. An eye-witness was brought forward to identify the plaintiff while he was sitting in a patrol car. The eye-witness stated that the plaintiff did not resemble the individual he had seen earlier that evening. Despite an eye-witness's exoneration of the plaintiff, police officers, Does 1-20, employed by the Westchester County Police Department arrested the plaintiff.

37. On the morning of plaintiff's arrest, plaintiff's father informed a New York City police officer, at the 45th precinct where plaintiff was being held, that his son was not the owner of the Suspect Vehicle. Plaintiff's father explained that plaintiff owned a white BMW, and not a white Mercedes. Despite having received credible, and readily

verifiable, exculpatory information from plaintiff's father, upon information and belief, defendant New York City Police Department did nothing to investigate plaintiff's father's statement. Instead, plaintiff remained incarcerated until his arraignment on January 20, 2009.

38. Defendant New York City Police Department had no probable cause to arrest and detain the plaintiff. Therefore, the seizure and detention of the plaintiff was unlawful.

39. Defendant Westchester County Police Department had no probable cause to arrest and detain the plaintiff. Therefore, the seizure and detention of the plaintiff was unlawful.

40. Defendant New York City Police Department acted with gross and wanton disregard of plaintiff's rights, thereby depriving him of his liberty when they subjected him to an unlawful detention in violation of Section 1983, the Fourth Amendment and Fourteenth Amendment.

41. Defendant Westchester County Police Department, acted with gross and wanton disregard of plaintiff's rights, thereby depriving him of his liberty when they subjected him to an unlawful detention in violation of Section 1983, the Fourth Amendment and Fourteenth Amendment.

**FOURTH CAUSE OF ACTION: AGAINST
DEFENDANT NEW YORK CITY POLICE
DEPARTMENT FOR MALICIOUS PROSECUTION
IN VIOLATION OF THE FOURTH AMENDMENT**

42. Plaintiff repeats and realleges Paragraphs 1 through 41, above.

43. Defendant New York City Police Department arrested the plaintiff and

initiated a criminal proceeding against him, despite eye-witness accounts exonerating the plaintiff of any wrongdoing.

44. Defendant New York City Police Department, charged the plaintiff with felony robbery, grand larceny, petit larceny, resisting arrest and criminal possession of stolen property.

45. The Bronx County District Attorney's office dismissed all of the criminal charges against the plaintiff in his favor on or about March 26, 2009.

46. Defendant New York City Police Department maliciously prosecuted the plaintiff where there was no probable cause to initiate the criminal proceedings against him.

47. Evidence of defendant New York City Police Department's malice toward the plaintiff following his arrest, includes, without limitation:

- a. Leaving plaintiff in handcuffs in an open police vehicle, in 12 degree Fahrenheit weather, while the plaintiff was only wearing a tank top and underwear.
- b. Ignoring plaintiff's mother's and his girlfriend's pleas for police to search the house for the true perpetrator;
- c. Not providing plaintiff with his Miranda rights in a timely fashion;
- d. Withholding food, water, clothing and sanitary conditions from the plaintiff while he was in custody; and
- e. Ignoring plaintiff's father's statement that his son did not own the Suspect Vehicle.

48. Defendant the New York City Police Department acted under color of state

law in maliciously prosecuting the plaintiff and subjecting him to an unlawful detention, thereby depriving the plaintiff of his liberty in violation of his rights pursuant to Section 1983, and the Fourth and Fourteenth Amendments of the United States Constitution.

WHEREFORE, plaintiff prays that judgment be entered:

I. On the First Cause of Action, under Section 1983, awarding plaintiff Frank De Michele damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees, and reasonable costs;

II. On the Second Cause of Action, under Section 1983, awarding plaintiff Frank De Michele damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

III. On the Third Cause of Action, under Section 1983, awarding plaintiff Frank De Michele damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, attorney's fees and reasonable costs;

IV. On the Fourth Cause of Action, for malicious prosecution, awarding plaintiff Frank De Michele damages in an amount to be determined at trial, including without limitation, compensatory damages, damages due to emotional distress, punitive damages, white and reasonable costs;

V. On the above stated causes of action, awarding the plaintiff prejudgment interest, costs and such other further relief as this Court deems appropriate.

Dated: Pleasantville, New York
November 10, 2009

LAW OFFICE OF TODD J. KROUNER

By: Todd J. Krouner
Todd J. Krouner (TK0476)
Dominique N. Ferrera (DF0709)
Law Office of Todd J. Krouner
Attorneys for Plaintiff
140 Bedford Rd.
Pleasantville, New York 10570
(914) 769-8700