UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KEVIN CHRISTOPHER o/b/o minor N. C.,

Plaintiff,

-against-

THE CITY OF MOUNT VERNON; DETECTIVE EVERETT JOHNSON, individually and in his official capacity, POLICE OFFICER DEBENEDICTIS, individually and his official capacity, POLICE OFFICER BILLY EXARHAKOS and MVPD officers JOHN and JANE DOE 1 through 10, individually and in their official capacities (the names John and Jane Doe being fictitious, as the true names are presently unknown),

Defendants.

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AMENDED COMPLAINT

Jury Trial Demanded

ECF Case

16-cv-00137 (NSR)(JCM)

PLAINTIFF, KEVIN CHRISTOPHER o/b/o N.C. (hereinafter "N.C."), by her attorney Katherine E. Smith, complaining of the defendants, respectfully alleges as follows:

NATURE OF THE ACTION

1. PLAINTIFF brings this action for compensatory damages, punitive damages and attorneys' fees pursuant to 42 U.S.C. §1983 and 42 U.S.C. §1988 for violations of her civil rights, by defendants THE CITY OF MOUNT VERNON, and defendants JOHNSON, DEBENEDICTIS, EXARHAKOS P.O.s "JOHN and JANE DOE" #1-10, as said rights are secured by said statutes and the Constitutions of the State of New York and the United States.

JURISDICTION AND VENUE

2. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth and Fourteenth Amendments to the Constitution of the United States.

3. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331, 1343 and 1367(a).

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 (b) and (c), as the incidents alleged herein occurred in this district.

JURY DEMAND

5. PLAINTIFF demands a trial by jury in this action.

PARTIES

6. PLAINTIFF, N.C., is a resident of WESTCHESTER County in the City of Mount Vernon and State of New York.

7. Defendant City of Mount Vernon ("City") is a municipal corporation organized under the laws of the State of New York.

8. Defendant City, maintains the Mount Vernon Police Department ("MVPD"), a duly authorized public authority and/or police department, authorized to perform all functions of a police department as per the applicable sections of the New York State Criminal Procedure Law, acting under the direction and supervision of defendant City. The MVPD is responsible for the appointment, training, supervision, promotion and discipline of police officers and supervisory police officers, including the individually named defendants herein.

9. At all times relevant defendants JOHNSON, DEBENEDICTIS, EXARHAKOS and MVPD Defendants John & Jane Doe 1 through 10 ("Doe Defendants") were police officers, detectives or supervisors employed by the MVPD. Plaintiff does not know the real names and shield numbers of defendants John & Jane Doe 1 through 10.

10. At all times hereinafter mentioned defendants JOHNSON, DEBENEDICTIS, EXARHAKOS and the DOE Defendants, either personally or through their employees, were

acting under color of state law and/or in compliance with the official rules, regulations, laws, statutes, customs, usages and/or practices of the State of New York or City of Mount Vernon.

11. Each and all of the acts of the DOE Defendants alleged herein were done by said defendants while acting within the scope of their employment by defendant City of Mount Vernon.

12. Each and all of the acts of the DOE Defendants alleged herein were done by said defendants while acting in furtherance of their employment by defendant City of Mount Vernon.

STATEMENT OF FACTS

13. On or about November 21, 2013, at or around 2:30 p.m., MINOR PLAINTIFF N.C. was lawfully within the vicinity of 4th Avenue and West 2nd Street, Mount Vernon, Westchester, New York.

14. PLAINITFF N.C. is a minor and was fifteen (15) years of age on the above date.

15. As PLAINTIFF was walking home from Nellie Thornton High School, several unidentified MVPD Officers, including defendants DEBENEDICTIS, JOHNSON, EXARHAKOS and the DOE defendants, approached PLAINTIFF.

16. The officers stopped PLAINTIFF, despite the fact that they had no reasonable suspicion to do so, and questioned her without parental supervision.

17. Unprovoked, the officers then sprayed PLAINTIFF with pepper spray, stomped and beat her, causing her to experience pain to her body, specifically to her eyes and back.

18. Despite the fact that defendants had no probable cause to believe that PLAINTIFF had committed any crimes or offenses, defendants placed PLAINTIFF under arrest.

19. While in custody, defendants transported PLAINTIFF to Mount Vernon Hospital for treatment.

20. After receiving treatment, PLAINTIFF was subsequently transported to the police precinct and interviewed by defendants again without parental consent or supervision.

21. At the precinct the officers, including defendants DEBENEDICTIS, JOHNSON and EXARHAKOS falsely informed employees of the Westchester County District Attorney's Office ("DA's Office") that they had observed PLAINTIFF N.C. commit various crimes/offenses including assault, resisting arrest and obstructing governmental administration.

22. Neither DEBENEDICTIS, JOHNSON, FRIPPO, EXARHAKOS nor the DOE defendants observed PLAINTIFF violate any laws / ordinances.

23. The allegations made by Defendants to the DA's Office were false, and the defendants knew them to be false at the time that they made the allegations.

24. The defendants forwarded these false allegations to the DA's Office in order to justify the unlawful arrest and to persuade the DA's Office to commence and/ or continue the criminal prosecution of PLAINTIFF.

25. The defendants knew and understood that the DA's Office was relying on the truthfulness of defendants' claims and statements in order to evaluate whether to commence a criminal prosecution against the PLAINTIFF. Defendants were aware that the DA's Office assumed that all of the factual statements, claims and allegations that defendants relayed to the DA's Office were truthful in all material respects.

26. From the precinct, PLAINTIFF was then transported to Criminal Court, and was subsequently arraigned.

27. From arraignment, PLAINTIFF was transported to Woodfield Juvenile Detention Center.

28. At Woodfield Juvenile Detention Center PLAINTIFF was subjected to an invasive strip search and was detained for approximately two (2) weeks.

29. Upon release, PLAINTIFF appeared in court as required, and on May 23, 2014, PLAINTIFF's criminal case was dismissed.

30. PLAINTIFF suffered damage as a result of defendants' actions. PLAINTIFF was deprived of her liberty, suffered emotional distress, mental anguish, fear, pain, bodily injury, anxiety, embarrassment, humiliation, and damage to her reputation.

CLAIM ONE
42 U.S.C. § 1983 Federal Civil Rights Violations

31. PLAINTIFF repeats and re-alleges each and every allegation as if fully set forth herein.

32. All of the aforementioned acts of defendants, their agents, servants and employees were carried out under the color of law.

33. All of the aforementioned acts deprived PLAINTIFF of the rights, privileges and immunities guaranteed to citizens of the United States by the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States of America, and in violation of 42 U.S.C. §1983.

34. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, with all the actual and/or apparent authority attendant thereto.

35. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, pursuant to the customs, usages, practices,

procedures, and rules of the City of Mount Vernon and the Mount Vernon Police Department, all under the supervision of ranking officers of said department.

36. Defendants, collectively and individually, while acting under color of state law, engaged in conduct which constituted a custom, usage, practice, procedure or rule of their respective municipality/authority, which is forbidden by the Constitution of the United States.

CLAIM TWO
Unlawful Stop and Search

56. PLAINTIFF repeats and re-alleges each and every allegation as if fully set forth herein.

57. Defendants violated the Fourth and Fourteenth Amendments because they unlawfully stopped and searched plaintiff.

58. As a direct and proximate result of this unlawful conduct, PLAINTIFF sustained the damages hereinbefore alleged.

CLAIM THREE
False Arrest

37. PLAINTIFF repeats and re-alleges each and every allegation as if fully set forth herein.

38. The Defendants violated the Fourth and Fourteenth Amendments because they arrested PLAINTIFF without probable cause, privilege or consent.

39. As a direct and proximate result of this unlawful conduct, PLAINTIFF'S liberty was restricted for an extended period of time, they were put in fear for her safety, humiliated and subjected to handcuffing, and other physical restraints, without probable cause, in addition to the damages hereinbefore alleged.

CLAIM FOUR
State Law False Imprisonment and False Arrest

40. PLAINTIFF repeats and re-alleges each and every allegation as if fully set forth herein.

41. By their conduct, as described herein, the individual defendants are liable to PLAINTIFF for falsely imprisoning and falsely arresting PLAINTIFF.

42. PLAINTIFF was conscious of the confinement.

43. PLAINTIFF did not consent to the confinement.

44. PLAINTIFF's confinement was not otherwise privileged.

45. Defendant City of Mount Vernon as an employer of the individual defendant officers, is responsible for their wrongdoing under the doctrine of *respondeat superior*.

46. As a direct and proximate result of the misconduct and abuse of authority stated above, PLAINTIFF sustained the damages alleged herein.

CLAIM FIVE
Unreasonable Force

47. PLAINTIFF repeats and re-alleges each and every allegation as if fully set forth herein.

48. The defendants violated the Fourth and Fourteenth Amendments because they used unreasonable force on PLAINTIFF.

49. As a direct and proximate result of this unlawful conduct, PLAINTIFF sustained the damages hereinbefore alleged.

CLAIM SIX
State Law Assault and Battery

50. PLAINTIFF repeats and re-alleges each and every allegation as if fully set forth herein.

51. By their conduct, as described herein, the defendants are liable to PLAINTIFF for having assaulted and battered PLAINTIFF.

52. Defendant City of Mount Vernon, as an employer of the individual defendant officers, is responsible for their wrongdoing under the doctrine of *respondeat superior*.

53. As a direct and proximate result of the misconduct and abuse of authority stated above, PLAINTIFF sustained the damages alleged herein.

CLAIM SEVEN
Malicious Prosecution

54. PLAINTIFF repeats and re-alleges each and every allegation as if fully set forth herein.

55. By their conduct, as described herein, and acting under color of state law, defendants are liable to PLAINTIFF under 42 U.S.C. § 1983 for the violation of PLAINTIFF's constitutional right to be free from malicious prosecution under the Fourth and Fourteenth Amendments to the United States Constitution.

56. Defendants' unlawful actions were done willfully, knowingly, with malice and with the specific intent to deprive plaintiff of his constitutional rights. The prosecution by defendants of PLAINTIFF constituted malicious prosecution in that there was no basis for the PLAINTIFF's arrest, yet defendants continued with the prosecution, which was resolved in PLAINTIFF's favor.

57. As a direct and proximate result of defendants' unlawful actions, PLAINTIFF has suffered, and will continue to suffer, damages, including physical, mental and emotional injury and pain, mental anguish, suffering, humiliation, embarrassment and loss of reputation.

CLAIM EIGHT
State Law Malicious Prosecution

58. PLAINTIFF repeats and re-alleges each and every allegation as if fully set forth herein.

59. By their conduct, as described herein, defendants are liable to PLAINTIFF for having committed malicious prosecution under the laws of the State of New York.

60. Defendants maliciously commenced criminal proceeding against PLAINTIFF, charging PLAINTIFF with resisting arrest, assault and obstructing governmental administration. Defendants falsely and without probable cause charged PLAINTIFF with violations of the laws of the State of New York.

61. The commencement and continuation of the criminal proceedings against PLAINTIFF was malicious and without probable cause.

62. All charges were terminated in PLAINTIFF's favor.

63. Defendants, their officers, agents, servants and employees were responsible for the malicious prosecution of PLAINTIFF. Defendant City of Mount Vernon, as an employer of the individual defendants, is responsible for their wrongdoing under the doctrine of *respondeat superior*.

64. As a direct and proximate result of the misconduct and abuse of authority stated above, PLAINTIFF sustained the damages alleged herein.

CLAIM NINE
Malicious Abuse of Process

59. PLAINTIFF repeats and re-alleges each and every allegation as if fully set forth herein.

60. The individual defendants issued legal process to place PLAINTIFF under arrest.

61. The Municipal Defendants arrested plaintiff in order to obtain collateral objectives outside the legitimate ends of the legal process.

62. The Municipal Defendants acted with intent to do harm to PLAINTIFF without excuse or justification.

63. As a direct and proximate result of this unlawful conduct, PLAINTIFF sustained, *inter alia*, loss of liberty, loss of earnings, emotional distress, mental anguish, shock, fright, apprehension, embarrassment, humiliation, and deprivation of her constitutional rights, in addition to the damages hereinbefore alleged.

CLAIM TEN
Denial Of Constitutional Right To Fair Trial

64. PLAINTIFF repeats and re-alleges each and every allegation as if fully set forth herein.

65. The individual defendants created false evidence against PLAINTIFF.

66. The individual defendants forwarded false evidence to prosecutors in the Westchester County District Attorney's office.

67. In creating false evidence against PLAINTIFF, and in forwarding false information to prosecutors, the individual defendants violated PLAINTIFF's constitutional right

to a fair trial under the Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution.

68. As a direct and proximate result of this unlawful conduct, PLAINTIFF sustained the damages hereinbefore alleged.

CLAIM ELEVEN
Failure To Intervene

69. PLAINTIFF repeats and re-alleges each and every allegation as if fully set forth herein.

70. Those defendants that were present but did not actively participate in the aforementioned unlawful conduct observed such conduct, had an opportunity prevent such conduct, had a duty to intervene and prevent such conduct and failed to intervene.

71. Accordingly, the defendants who failed to intervene violated the First, Fourth, Fifth And Fourteenth Amendments.

72. As a direct and proximate result of this unlawful conduct, PLAINTIFF sustained the damages hereinbefore alleged.

CLAIM TWELVE
Negligent Infliction of Emotional Distress

73. PLAINTIFF repeats and re-alleges each and every allegation as if fully set forth herein.

74. By reason of the foregoing, and by assaulting, battering, and using gratuitous, excessive, brutal, sadistic, and unconscionable force, failing to prevent other defendants from doing so, or causing an unlawful seizure and extended detention without due process, the defendants, acting in their capacities as MVPD officers, and within the scope of their

employment, each were negligent in committing conduct that inflicted emotional distress upon PLAINTIFF.

75. The negligent infliction of emotional distress by these defendants was unnecessary and unwarranted in the performance of their duties as MVPD officers.

76. Defendants, their officers, agents, servants, and employees were responsible for the negligent infliction of emotional distress upon Plaintiff. Defendant City, as employer of each of the defendants, is responsible for their wrongdoings under the doctrine of *respondeat superior*.

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

CLAIM THIRTEEN
Unlawful Strip Search

78. PLAINTIFF repeats and re-alleges each and every allegation as if fully set forth herein.

79. The defendants violated the Fourth and Fourteenth Amendments because they unlawfully subjected PLAINTIFF to a strip search without legal justification.

80. As a direct and proximate result of this unlawful conduct, PLAINTIFF sustained the damages hereinbefore alleged.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF respectfully requests judgment against defendants as follows:

(a) Compensatory damages against all defendants, jointly and severally;

(b) Punitive damages against the individual defendants, jointly and severally;

(c) Reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 1988; and

(d) Such other and further relief as this Court deems just and proper.

DATED: New York, New York
August 5, 2016

_____/s/_____

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