

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----- x **SUMMONS**

JESSICA KRIGSMAN,

Index No.:

Plaintiff,

The basis of venue is:
Location of the incident

-against-

Plaintiff designates Kings
County as the place of trial.

THE CITY OF NEW YORK, POLICE OFFICER
CANAVAN, Tax ID # 940896, POLICE OFFICERS
JOHN DOES # 1-4 (names and numbers of whom are
unknown at present), and other unidentified members of the
New York City Police Department,

Defendants.

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To the above named Defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

DATED: New York, New York
October 7, 2013

Yours, etc.



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Jacobs & Hazan, LLP
Attorneys for Plaintiff
11 Park Place, 10th Floor
New York, New York 10007
(212) 577-2690

CITY OF NEW YORK CORPORATION COUNSEL, 100 Church Street New York, New York
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Police Officer Canavan, Tax ID # 940896, 68th Precinct, 333 65th St, Brooklyn, NY 11220

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JESSICA KRIGSMAN,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER
CANAVAN, Tax ID # 940896, POLICE OFFICERS
JOHN DOES # 1-4 (names and numbers of whom are
unknown at present), and other unidentified members of the
New York City Police Department,

Defendants.

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INDEX NO:

VERIFIED COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, **JESSICA KRIGSMAN**, by her attorneys, Jacobs & Hazan, LLP, as and for her Verified Complaint herein, alleges upon information and belief as follows:

PRELIMINARY STATEMENT

1. This is a civil rights action to recover money damages arising out of defendants' violation of plaintiff's rights as secured by the Civil Rights Act, 42 U.S.C. Section 1983, and of rights secured by the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution, the common law and the laws of the State of New York. On or about July 12, 2012, at approximately 3:00 PM, plaintiff was lawfully laying topless on a park bench in Calvert Vaux Park in Brooklyn, New York, a public park owned and maintained by the defendant City of New York, in Brooklyn, NY, when she was falsely arrested, falsely imprisoned and maliciously prosecuted by New York City police officers. Plaintiff was deprived of her constitutional and common law rights when the individually named police officers defendants assaulted, battered, falsely arrested, falsely imprisoned and maliciously prosecuted plaintiff in violation of the First, Fourth and Fourteenth Amendments to the United States Constitution.

PARTIES

2. Plaintiff Jessica Krigsman is a citizen of the United States and a resident of the County of Kings, City and State of New York.

3. Police Officer CANAVAN, Tax ID # 940896, is and was at all times relevant herein an officer, employee, and agent of the New York City Police Department.

4. Police Officer CANAVAN, Tax ID # 940896, is and was at all times relevant herein assigned to the 68th precinct.

5. Police Officer CANAVAN, Tax ID # 940896, is being sued in his individual capacity and official capacity.

6. Police Officers John Does # 1-4, are and were at all times relevant herein officers, employees, and agents of the New York City Police Department.

7. Police Officers John Does # 1-4 are being sued in their individual capacities and official capacities.

8. At all times relevant herein, the individually named police officer defendants were acting under color of state law in the course and scope of their duties and functions as agents, servants, employees and officers of the New York City Police Department, and otherwise performed and engaged in conduct incidental to the performance of their lawful functions in the course of their duties. They were acting for and on behalf of the New York City Police Department at all times relevant herein, with the power and authority vested in them as officers, agents and employees of the New York City Police Department and incidental to the lawful pursuit of their duties as officers, employees and agents of the New York City Police Department.

9. Defendant City of New York is 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. The defendant City of New York assumes the risks incidental to the maintenance of a police force and the employment of police officers as said risks attach to the public consumers of the services provided by the New York City Police Department.

10. Plaintiff in furtherance of her State causes of action filed a timely Notice of Claim against the CITY OF NEW YORK, in compliance with the Municipal Law Section 50.

11. More than thirty (30) days have elapsed since service of said Notice of Claim was filed and THE CITY OF NEW YORK has failed to pay or adjust the claim.

12. This action falls within one or more of the exceptions as set forth in CPLR Section 1602, involving intentional actions, as well as the defendant, and/or defendants, having acted in reckless disregard for the safety of others, as well as having performed intentional acts.

13. Plaintiff has sustained damages in an amount in excess of the jurisdictional limits of all the lower Courts of the State of New York.

STATEMENT OF FACTS

14. On July 12, 2012, at approximately 3:00 p.m., plaintiff was lawfully on a park bench in Calvert Vaux Park in Brooklyn, New York.

15. Calvert Vaux Park is a public park, owned and maintained by the defendant City of New York.

16. On July 12, 2012, at approximately 3:00 p.m., two defendant police officers unlawfully approached plaintiff and unlawfully ordered her to put her shirt on.

17. Plaintiff then politely told the defendant police officers that in 1992, in *People v. Santorelli*, 80 N.Y.2d 875 (1992), the New York State Court of Appeals held that it is legal for a woman to be topless in any public place in New York State where it is legal for a man to be topless.

18. One of the defendant police officers then told plaintiff to “stop mouthing off” and told plaintiff that if she did not put her shirt back on she would be arrested.

19. Plaintiff politely informed the defendant police officers that it would be unlawful for them to arrest her because she had not broken the law.

20. One of the defendant police officers then said, “that’s it,” unlawfully grabbed plaintiff in a very aggressive manner, and unlawfully handcuffed her, without probable cause or legal justification.

21. The defendant police officers then unlawfully pulled plaintiff’s shirt on over her head in a very aggressive manner.

22. At no time did the defendant police officers have reasonable suspicion or any objectively reasonable basis to believe plaintiff committed or was about to commit a crime.

23. At no time did the defendant police officers have probable cause or any objective reason to believe plaintiff committed a crime.

24. No reasonable police officer would have believed that they had probable cause to arrest plaintiff.

25. Despite knowing plaintiff had not committed any crime, the defendant police officers nevertheless falsely arrested and imprisoned plaintiff without probable cause or legal justification.

26. The defendant police officers then placed plaintiff in the back of an NYPD vehicle and unlawfully transported her to the 68th precinct.

27. When she arrived at the precinct, plaintiff was fingerprinted, photographed and placed into a holding cell.

28. Plaintiff was unlawfully held at the 68th precinct for approximately 5 hours before she was issued summons for Obstruction of a Sitting Area (56 RCNY1-04(o)), and released from police custody.

29. Thereafter, plaintiff appeared in court on October 10, 2012, and all of the charges against her were dismissed.

30. Certain individually named police officer defendants observed the violation of plaintiff’s rights under New York State Law and did nothing to prevent the unlawful assault, battery, false arrest and false imprisonment of plaintiff.

31. The false arrest, false imprisonment, and malicious prosecution of plaintiff by the individually named police officer defendants caused plaintiff to sustain physical, psychological and emotional trauma.

FIRST CAUSE OF ACTION

Violation of Plaintiff’s Fourth Amendment and Fourteenth Amendment Rights

32. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 31 with the same force and effect as if more fully set forth at length herein.

33. The individually named police officer defendants while acting in concert and within the scope of their authority, arrested and caused plaintiff to be unlawfully seized, unlawfully searched, falsely arrested and imprisoned, and maliciously prosecuted without probable cause in violation of plaintiff's right to be free of an unreasonable seizure under the Fourth Amendment of the Constitution of the United States and to be free of a deprivation of liberty under the Fourteenth Amendment to the Constitution of the United States.

SECOND CAUSE OF ACTION

False Arrest and False Imprisonment

34. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 33 with the same force and effect as if more fully set forth at length herein.

35. The acts and conduct of the defendants constitute false arrest and false imprisonment under the laws of the State of New York and under the Fourth Amendment to the United States Constitution. Defendants intended to confine plaintiff and, in fact, confined plaintiff, and plaintiff was conscious of the confinement. In addition, plaintiff did not consent to the confinement and the confinement was not otherwise privileged.

36. The individually named police officer defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

37. The City, as the employer of defendants, is responsible for his wrongdoing under the doctrine of respondeat superior.

THIRD CAUSE OF ACTION

Malicious Prosecution

38. Plaintiff repeats and realleges paragraphs 1 through 37 as if fully set forth herein.

39. The acts and conduct of the defendants constitute malicious prosecution under the laws of the State of New York and under the Fourth Amendment to the United States Constitution.

40. Defendants commenced and continued a criminal proceeding against plaintiff.

41. There was actual malice and an absence of probable cause for the criminal proceeding against plaintiff and for each of the charges for which she was prosecuted.

42. The prosecution and criminal proceedings terminated favorably to plaintiff.

43. Plaintiff was subjected to a post-arraignment deprivation of liberty sufficient to implicate plaintiff's Fourth Amendment rights.

44. The individually named defendant Police Officers were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

FOURTH CAUSE OF ACTION

Assault

45. Plaintiff repeats and realleges paragraphs 1 through 44 as if fully set forth herein.

46. Defendants, their agents, servants and employees, acting within the scope of their employment, intentionally, willfully and maliciously assaulted plaintiff in that they had the real or apparent ability to cause imminent harmful and/or offensive bodily contact and intentionally did a violent and/or menacing act which threatened such contact to the plaintiff, and that such acts caused apprehension of such contact in the plaintiff.

47. Defendants were at all times an agent, servant, and employee acting within the scope of his employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

48. The City, as the employer of defendants, is responsible for his wrongdoing under the doctrine of respondeat superior.

FIFTH CAUSE OF ACTION

Battery

49. Plaintiff repeats and realleges paragraphs 1 through 48 as if fully set forth herein.

50. Defendants, their agents, servants and employees, acting within the scope of their employment, intentionally, willfully and maliciously battered plaintiff, when they, in a hostile and/or offensive manner struck plaintiff without her consent and with the intention of causing harmful and/or offensive bodily contact to the plaintiff and caused such battery.

51. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

52. The City, as the employer of defendants, is responsible for his wrongdoing under the doctrine of respondeat superior.

SIXTH CAUSE OF ACTION

Violation of Plaintiff's Fourth And Fourteenth Amendment Rights

53. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 52 with the same force and effect as if more fully set forth at length herein.

54. The use of excessive force by defendants in grabbing, pulling and pushing plaintiff was an objectively unreasonable physical seizure of plaintiff in violation of her rights under the Fourth and Fourteenth Amendments to the Constitution of the United States and to be free of a deprivation of liberty under the Fourteenth Amendment to the Constitution of the United States.

55. The individually named police officer defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

56. The City, as the employer of defendants, is responsible for their wrongdoing under the doctrine of respondeat superior.

SEVENTH CAUSE OF ACTION

Failure to Intervene

57. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 56 with the same force and effect as if more fully set forth at length herein.

58. The individually named police officer defendants had an affirmative duty to intervene on behalf of plaintiff, whose constitutional rights were being violated in their presence by other officers.

59. The individually named police officer defendants failed to intervene to prevent the unlawful conduct described herein.

60. As a result of the foregoing, plaintiff's liberty was restricted for an extended period of time, she was put in fear of her safety, and she was humiliated and subject to other physical constraints.

61. The individually named police officer defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

62. The City, as the employer of defendants, is responsible for their wrongdoing under the doctrine of respondeat superior.

EIGHTH CAUSE OF ACTION

Negligent Hiring, Retention, Training, and Supervision

63. Plaintiff repeats and realleges paragraphs 1 through 62 as if fully set forth herein.

64. At all relevant times hereto, defendants THE CITY OF NEW YORK had the duty to competently and sufficiently hire, train and retain within the Police Academy and at the Command, precinct and Patrol levels, the defendant Officers in the protection of the rights of the plaintiff under the laws of the State of New York.

65. The City of New York and its employees, servants and/or agents acting within the scope of their employment did negligently hire, retain, train and supervise defendants individually named defendants, individuals who were unfit for the performance of police duties on the aforementioned dates, at the aforementioned location.

NINTH CAUSE OF ACTION

Common Law Negligence

66. Plaintiff repeats and realleges paragraphs 1 through 65 as if fully set forth herein.

67. Defendants owed a duty of care to plaintiff.

68. Defendants breached that duty of care by falsely arresting, assaulting, and battering plaintiff.

69. As a direct and proximate cause of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

70. All of the foregoing occurred without any fault or provocation by plaintiff.

71. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of respondeat superior.

TENTH CAUSE OF ACTION

Negligence Infliction of Emotion Distress

72. Plaintiff repeats and realleges paragraphs 1 through 71 as if fully set forth herein.

73. By the actions described herein, the individually named defendants, each acting individually and in concert with each other, engaged in extreme and outrageous conduct, conduct utterly intolerable in a civilized community, which negligently caused severe emotional distress to plaintiff Jessica Krigsman. The acts and conduct of the defendants were the direct and proximate cause of injury and damage to plaintiff and violated plaintiff's statutory and common law rights as guaranteed plaintiff by the laws and Constitution of the State of New York.

74. As a result of the foregoing, plaintiff was deprived of liberty, was assaulted, and sustained great emotional injuries.

75. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of respondeat superior.

76. Plaintiff hereby demands trial by jury of all issues properly triable thereby.

JURY DEMAND

77. Plaintiff hereby demands trial by jury of all issues properly triable thereby.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Jessica Krigsman demands judgment against the defendants on each cause of action in amounts to be determined upon the trial of this action which exceeds the jurisdiction of lower courts, inclusive of punitive damages and attorneys' fees inclusive of costs and disbursements of this action, interest and such other relief as is appropriate under the law. That the plaintiff recover the cost of the suit herein, including reasonable attorneys fees pursuant to 42 U.S.C. § 1988.

Dated: New York, New York
October 7, 2013

By: 

STUART E. JACOBS, ESQ.
DAVID M. HAZAN, ESQ.
JACOBS & HAZAN, LLP
11 Park Place, 10th Floor
New York, NY 10007

TO: CITY OF NEW YORK CORPORATION COUNSEL, 100 Church Street New York,
New York 10007
Police Officer Canavan, Tax ID # 940896, 68th Precinct, 333 65th St, Brooklyn, NY
11220

ATTORNEY'S VERIFICATION

DAVID M. HAZAN, ESQ., an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am a partner of the law firm of **JACOBS & HAZAN, LLP**, I have read the annexed **VERIFIED COMPLAINT** and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files. The reason this verification is made by me and not Plaintiff is because plaintiff does not reside in the county wherein I maintain my office.

DATED: New York, New York
October 7, 2013



DAVID M. HAZAN, ESQ.