

COURT'S EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
LARRY JACKSON

Plaintiff,

-against-

**PLAINTIFF'S RESPONSE
TO DEFENDANTS'
LOCAL RULE 56.1
STATEMENT OF
UNDISPUTED
MATERIAL FACTS**

THE CITY OF NEW YORK; JESUS TELLADO, as
Duty Captain; STANLEY MACNEAR, as Sergeant,
113th Precinct; JOHN D. CZULADA, as Police Officer,
113th Precinct; JAMES T. GHERARDI, as Police Officer,
113th Precinct; RYANN DUNN, as Police Officer, 113th
Precinct; PATRICK H. D'ONOFRIO, as Police Officer,
113th Precinct; ROBERT J. DEFERRARI, as Police
Officer, 113th Precinct; KENNETH J. BRAUMANN, as
Police Officer, 113th Precinct; BEN KURIAN, as Police
Officer, 113th Precinct; PETER BONETA, as Police
Officer, 113th Precinct; THOMAS E. REO, as Police
Officer, 113th Precinct; MICHAEL FAILLA, as Detective
First Grade, 113th Precinct; ROBERT E. RUSSO, as
Detective Second Grade, 113th Precinct; and BRIAN E.
HEEREY, as Detective Third Grade, 113th Precinct,
JOHN DOES 16-70, each being sued individually and in
their official capacities as employees of defendant THE
CITY OF NEW YORK

11 cv 3028 (PKC)(SMG)

Defendants'
-----X

Plaintiff LARRY JACKSON submits his Response to Defendants' THE CITY OF
NEW YORK; JESUS TELLADO; STANLEY MACNEAR; JOHN D. CZULADA;
JAMES T. GHERARDI; RYANN DUNN; PATRICK H. D'ONOFRIO; ROBERT J.
DEFERRARI; KENNETH J. BRAUMANN; BEN KURIAN; PETER BONETA;
THOMAS E. REO; MICHAEL FAILLA; ROBERT E. RUSSO; BRIAN E. HEEREY
and JOHN DOES 16-70's, Local Rule 56.1 Statement of Undisputed Material Facts,
there are genuine issues of material facts to be resolved by a jury.

PROCEDURAL HISTORY

1. On August 31, 2010, the City of New York was served with a notice of claim alleging claims for race discrimination, false arrest, excessive force, negligent and intentional infliction of emotional distress, assault and negligent hiring, supervision and retention against the City of New York. (See Notice of Claim, annexed to the Declaration of Matthew J. Modafferi as Exhibit "A").

Admit

2. On June 24, 2011, Plaintiff filed this lawsuit alleging that defendant City of New York and numerous John Does violated his civil rights. (See Complaint, annexed to the Declaration of Matthew J. Modafferi as Exhibit "B").

Admit

3. In his complaint, Plaintiff sets forth federal claims for race discrimination pursuant to 42 U.S.C. §§ 1981 and 1983, illegal search of the residence, illegal search and seizure of the person, false arrest, unlawful detention, false imprisonment, excessive force, malicious prosecution and failure to train and discipline under § 1983. (See Exhibit "B").

Admit but, see the actual federal complaint for an accurate count

4. Plaintiff also sets forth state law claims for race discrimination pursuant to New York State Executive Law § 296 and New York City Administrative Code § 8-107, negligent hiring, supervision and retention, assault, battery, false arrest, false imprisonment and intentional infliction of emotional distress. (See Exhibit "B").

Admit but, see the actual federal complaint for an accurate count

5. On March 1, 2013, Plaintiff filed an amended complaint alleging the same federal and state law claims against defendants City of New York, Captain Jesus Tellado, Sergeant Stanley MacNear and Police Officers John Czulada, James Gherardi, Ryan Dunn,

Patrick D'Onofrio, Robert Deferrari, Kenneth Braumann, Ben Kurian, Peter Boneta and Thomas Reo, and Detectives Michael Failla, Robert Russo and Brian Heerey. (See Amended Complaint, annexed to the Declaration of Matthew J. Modafferi as Exhibit "C").

Admit but, see the actual federal complaint for the accurate list of defendants'

6. Plaintiff never filed an Equal Employment Opportunity complaint. (See Plaintiff's deposition, annexed to the Declaration of Matthew J. Modafferi as Exhibit "D", pg. 46 line 25, pg. 47 line 1).

Deny, Plaintiff filed such verbal complaints the night of the incident as well as during his initial interviews with the Internal Affairs Bureau. Additionally, Defendant JESUS TELLADO as the Patrol Borough Queens South Duty Captain failed to follow Department policy, since this was a Confrontation Situation as defined by NYPD Patrol Guide No. 212-33, he failed to AUTOMATICALLY notify the Office of Equal Employment Opportunity. See Exhibit Nos.: 1 through 4. Failure to notify the Office of Equal Employment Opportunity as defined by NYPD Patrol Guide No.: 206-36 is a violation of Department policy. See also Exhibit No.: 55

THE PARTY AT PLAINTIFF'S HOME ON AUGUST 21, 2010

7. On August 21, 2010, Plaintiff was employed by the New York City Police Department as a police officer. (See Exhibit "D", pg. 25, lines 19-23).

Admit

8. Plaintiff started in the police academy on July 1, 2004. (See Exhibit "D", pg. 26, lines 9- 10).

Admit

9. Plaintiff worked Friday night and got off Saturday morning, the morning of August 21, 2010. (See Exhibit "D", pg. 54 lines 3-8).

Admit

10. Plaintiff held a 21st birthday party for his daughter Jaivon on August 21, 2010. (See Exhibit "D", pg. 54 lines 17-19, pg. 62 line 16).

Admit

11. The party started around 5:30 p.m. (See Exhibit "D", pg. 54 lines 20-23).

Admit

12. In the backyard, a table was set up as a bar. (See Tiffanie Johnson deposition, annexed to the Declaration of Matthew J. Modafferi as Exhibit "E", pg. 21 lines 7-11).

Admit

13. Tiffanie Johnson, Plaintiff's niece, was acting as bartender. (See Exhibit "E", pg. 21 lines 3-14).

Admit

14. She started serving alcohol around 1 or 2 pm and the alcohol ran out around 10 pm. (See Exhibit "E", pg. 21 lines 15-22).

Admit

15. There were about 3 bottles of rum, 4 bottles of vodka and about 3 or 4 cases of beer that were finished at the party. (See Exhibit "E", pg. 22 lines 4-11).

Admit

16. Plaintiff admits to having 1 cup of rum, orange juice and cranberry juice. (See Exhibit "D", pg. 61 lines 19-25).

Admit

17. There was also a deejay set up in the yard playing music. (See Exhibit "D", pg. 63 lines 2-6).

Admit

18. After midnight, on August 22, 2010, Plaintiff sat on the stoop because he was tired from working the previous night. (See Exhibit "D", pg. 64 lines 17-22).

Admit

19. A male from the neighborhood then got into a dispute with someone from Plaintiffs residence. (See Exhibit "D", pg. 68 lines 3-5; see also Exhibit "E", pg. 25 lines 7-22).

Admit

20. This male brandished a gun and then numerous other males arrived with bats. (See Exhibit "D", pg. 66 lines 18-21, pg. 67 lines 18-21).

Admit

21. Plaintiff's wife, Ms. Charlene Strong, called 911. (See Exhibit "D", pg. 45 lines 14-17).

Admit but see Exhibit Nos. 5A1 (911 audio file of Non-Party Witness Plaintiff's Fiancé Charlene Strong), 5A2 (911 audio file of Non-Party Witness Plaintiff's Cousin Derrick Collins), 5A6 (Division Radio Dispatcher), 5A7 (Division Radio Dispatcher), 5A8 (Special Operations Division Radio Dispatcher), 5A9 (Related SPRINT printouts), 6 through 10

22. Plaintiff walked the individuals with the weapons away from his house. (See Exhibit "D", pg. 68 lines 23-25, pg. 69 lines 1-11).

Admit

23. Officers arrived outside of Plaintiff's home in response to the 911 call for a man with a gun. (See Exhibit "D", pg. 72 lines 22-25).

Admit but see Exhibit Nos. 11A (Excerpt of Plaintiff's Deposition Testimony Line Page Nos. 70-72:24), 11B (Excerpts of Non-Party Witness Charlene Strong's Deposition Testimony Page Nos. 65-69:6), 11C (Excerpt of Defendant JOHN CZULADA'S Deposition Testimony Page Nos. 8-12) and 11D (Excerpt of Defendant STANLEY MACNEAR'S Deposition Testimony Page Nos.13-19:20)

24. At that time, Tiffanie Johnson yelled "they are fighting" from inside of the house. (See Exhibit "D", pg. 74 line 25, pg. 75 lines 2-4).

Admit but see Exhibit No. 12 (Excerpt of Non-Party Witness Tiffanie Johnson's Deposition Testimony Page Nos. 30-31 and 33-34)

25. Two young males from Plaintiffs party were fighting inside of the house. (See Exhibit "E", pg. 32 lines 20-21).

Deny, they had a brief scuffle. Non-Party Witness Tiffanie Johnson specifically called for her Uncle Larry, not the police. There was no need for any police intervention.

26. Plaintiff and officers ran into the house. (See Exhibit "D", pg. 75 lines 12-14).

Admit but see Exhibit Nos. 5A6-5A9, 13A (Excerpt of Plaintiff's Deposition Testimony Page Nos. 73-90), 13B (Excerpt of Non-Party Witness Charlene Strong's Deposition Testimony Page Nos. 70-91), 13C (Excerpt of Defendant JOHN CZULADA'S Deposition Testimony Page Nos. 18-24, in conflict with video Exhibit No. 14), 13D (Excerpt of Defendant JOHN CZULADA'S NYPD Department Trial Testimony, in conflict with video Exhibit No. 14), 15 (Excerpt of Defendant STANLEY MACNEAR'S Deposition Testimony Page Nos. 20-30), 16 (Excerpt of Non-Party Witness Tiffanie Johnson's Deposition Testimony Page Nos. 35-45, 48-49:1, 51:7-20, 55:2-12), 17 (Excerpt of Non-Party Witness Taimar Bonaparte's Deposition Testimony Page Nos. 38-47), 18 (Excerpt of Non-Party Witness James Kelly's Deposition Testimony Page Nos. 32-55), 19 (Excerpt of Non-Party Witness Marcus Johnson's Deposition Testimony Page Nos. 22-45), 20 (Excerpt of Non-Party Witness Derrick Collin's Deposition Testimony Page Nos. 38-61, 81-97, 104-105), 21 (Excerpt of Non-Party Witness Marilyn Murphy's Deposition Testimony Page Nos. 22-42 and 58-59), 22 (Excerpt of Non-Party Witness Danielle Collier's Deposition Testimony Page Nos. 20-30), 23 (Excerpt of Non-Party Witness Quinton Thomas's Deposition Testimony Page Nos. 28-40, 43-58), 24 (Excerpt of Defendant BEN KURIAN'S NYPD Department Trial Testimony Page Nos. 217-260), 25 (Excerpt of Defendant RYAN DUNN'S Deposition Testimony Page Nos. 16-71), 26 (Excerpt of Defendant PATRICK D'ONOFRIO'S Deposition Testimony Page Nos. 9-54), 27 (Excerpt of Defendant JAMES T. GHERARDI'S Deposition Testimony Page Nos. 4-112), 28 (Excerpt of Defendant ROBERT DEFERRARI'S Deposition Testimony Page Nos. 6-51), 29 (Excerpt of Defendant JESUS TELLADO'S Deposition Testimony Page Nos. 28-120, 136-156, 184-192, 194-206, 249-403), 30 (Excerpt of Defendant KENNETH J. BRAUMANN'S Deposition Testimony Page Nos. 5-10 and 14-17), 31 (Excerpt of Defendant THOMAS REO'S Deposition Testimony Page Nos. 12-19), and 32 (Excerpt of Defendant PETER BONETA'S Deposition Testimony Page Nos. 7-9)

27. Officer D'Onofrio responded to Plaintiff's home but never saw Plaintiff. (See D'Onofrio deposition, annexed to the Declaration of Matthew J. Modafferi as Exhibit "F", pg. 20 lines 15-18).

Admit he testified to that effect but question the veracity of the statement in light of the evidence. See Exhibit Nos. 14, 26 and 33

28. Officer D'Onofrio's only involvement was that he saw Sergeant MacNear trying to subdue an individual named Taimar Bonaparte, and he helped the Sergeant place Mr. Bonaparte under arrest. (See Exhibit "F", pg. 21 lines 18-24).

Admit he testified to that effect but question the veracity of the statement in light of the evidence. See Exhibit Nos. 14, 26 and 33. Non-Party Witnesses Taimar Bonaparte, Marcus Johnson and Derreik Collins were falsely arrested inside of Plaintiff's Home for Obstructing Governmental Administration and related criminal charges that were ultimately dismissed. See Exhibit Nos. 45 through 48

29. Plaintiff was also placed in handcuffs and transported to the 113th Precinct. (See Exhibit "D", pg. 96 lines 3-4).

Deny Plaintiff was falsely arrested outside of his home for an unknown criminal offense after Defendants' used excessive physical force against him. To this date, not one Defendant acknowledges choking him, using the ASP Baton and Pepper Spray against him. Not one Defendant ADMITS to arresting Plaintiff yet, there is a partially completed Desk Appearance Package completed for Assault Second Degree and Defendant JESUS TELLADO was disciplined for failing to follow the Voided Arrest policy. See Exhibit Nos. 19 (Excerpt of Non-Party Witness Marcus Johnson's Deposition Testimony Page Nos. 37-48), 21 (Excerpt of Non-Party Witness Marilyn Murphy's Deposition Testimony Page Nos. 40-50), 29, 34 (Excerpts of Plaintiff's Deposition Testimony Page Nos. 91-124 and 137-142) 35 (Excerpts of Non-Party Witness Charlene Strong's Deposition Testimony Page Nos. 92-135) 36 (Excerpts of Non-Party Witness Taimar Bonaparte's Deposition Testimony Page Nos. 47-54), 37 (Excerpt of Non-Party Witness Derrick Collins's Deposition Testimony Page Nos. 61-67), 38-41 and 51

30. Three individuals, apart from Plaintiff, were arrested at Plaintiff's home. (See Exhibit "D", pg. 119 lines 20-23).

Deny Non-Party Witnesses Taimar Bonaparte, Marcus Johnson and Derreik Collins were falsely arrested inside of Plaintiff's Home for Obstructing Governmental Administration and related criminal charges that were ultimately dismissed. See Exhibit Nos. 45 through 48

31. At the precinct, Plaintiff was placed in the youth officer's room. (See Exhibit "D", pg. 108 lines 19-20).

Deny, Plaintiff was being held handcuffed against his will in the Youth Office guarded by police officers'

32. There, Plaintiff fell to the floor and noticed for the first time that his hand was bleeding. (See Exhibit "D", pg. 109 lines 5-11).

Admit but, Plaintiff already felt pain in his hands while rear cuffed and being transported in the marked police vehicle from the front of his home to the 113th Precinct

33. The officers called an ambulance for Plaintiff and he was taken to Booth Memorial Hospital. (See Exhibit "D", pg. 112 lines 3-8).

Admit after a significant delay an ambulance was dispatched to the 113th Precinct and he was transported to Booth guarded by a police sergeant

34. Plaintiff was not processed as an arrest, but returned to the Precinct and informed by Investigations Division personnel and members of the Internal Affairs Bureau to wait there. (See Exhibit "D", pg. 113 lines 22-24, pg. 114 lines 17-18, pg. 115 lines 12-13).

Admit but, not one Defendant ADMITS to arresting Plaintiff yet, there is a partially completed Desk Appearance Package completed and Defendant JESUS TELLADO was disciplined for failing to follow the Voided Arrest policy. See Exhibit Nos. 29, 38-41 and 51

Plaintiff was transported from Booth guarded by a police sergeant in a police vehicle then ordered to remain at the 113th Precinct for the arrival of the Internal Affairs Bureau. See Exhibit Nos. 49, 50, 54 and 55

35. That same day, Plaintiff was placed on modified duty by the Internal Affairs Bureau. (See Exhibit "D", pg. 33 lines 8-18; pg. 117 lines 11-13; see also Modified Assignment Memo and Removal of Firearms Report, annexed to the Declaration of Matthew J. Modafferi as Exhibit "G").

Admit see Exhibit Nos. 1-4, 49 and 50

FOLLOWING THE INCIDENT AT PLAINTIFF'S HOME ON AUGUST 22, 2010

36. Members of the Internal Affairs Bureau questioned Plaintiff in connection with their investigation into the incident. (See Exhibit "D", pg. 121 lines 18-20).

Admit but, only to determine ‘Duty Status’ and take pictures of his injuries. See Exhibit Nos. 1-4, 49, 50, 54 and 55

37. The result of the Internal Affairs Bureau’s investigation was that they recommended the NYPD charge Plaintiff with failing to identify himself as a police officer, making physical contact with a uniformed member of the service and resisting being placed in handcuffs. (See Exhibit “D”, pg. 122 lines 7-15; see also Memorandum and Charges and Specifications, annexed to the Declaration of Matthew J. Modafferi as Exhibit “H”).

Admit

38. Internal Affairs also issued Officer Czulada a letter of instruction and issued Captain Tellado command disciplines for not complying with arrest procedures. (See Memorandum Regarding a Letter of Instruction, annexed to the Declaration of Matthew J. Modafferi as Exhibit “I”; see also Command Discipline Election Report, annexed to the Declaration of Matthew J. Modafferi as Exhibit “J”).

Admit see Exhibit Nos. 51 and 52

39. Plaintiff did not accept the charges and the charges are currently the subject of an ongoing Departmental trial. (See Exhibit “D”, pg. 122 lines 23-25).

Admit see Exhibit No. 53

40. Plaintiff alleges that he was discriminated against because there was only one officer of ethnic background present and because of the way officers police the neighborhood where he lived. (See Exhibit “D”, pg. 123 lines 16-24).

Deny see Exhibit No. 34 Pages 91-124

41. Plaintiff has no evidence to support his allegation of discrimination except for his personal observations of how officers treat the community. (See Exhibit “D”, pg. 123 line 25. pg. 124 lines 1-10).

Deny see Exhibit Nos. 1 through 55

42. Plaintiff appeared before the medical board in December of 2010 and the NYPD doctor said that Plaintiff's hand was okay and cleared him to resume work. (See Exhibit "D", pg. 35 lines 4-10, pg. 36 lines 7-17).

Deny, Plaintiff appeared before the Medical Division and his 'Duty Status' was changed for the NYPD'S Administrative Convenience. Plaintiff's medical status and long term prognosis are unknown.

43. Plaintiff's salary did not change, but he cannot work overtime while on modified duty. (See Exhibit "D", pg. 39 lines 16-25, pg. 40 lines 1-7).

Admit

44. Plaintiff never complained to his supervisors about race discrimination within the NYPD. (See Exhibit "D", pg. 45 lines 5-7).

Admit, while assigned to the 110 Precinct but, Deny. Plaintiff filed such verbal complaints the night of the incident as well as during his initial interviews with the Internal Affairs Bureau. Additionally, Defendant JESUS TELLADO as the Patrol Borough Queens South Duty Captain failed to follow Department policy, since this was a Confrontation Situation as defined by NYPD Patrol Guide No. 212-33, he failed to AUTOMATICALLY notify the Office of Equal Employment Opportunity. See Exhibit Nos.: 1 through 4. Failure to notify the Office of Equal Employment Opportunity as defined by NYPD Patrol Guide No.: 206-36 is a violation of Department policy. See also Exhibit No.: 55

45. Plaintiff never complained of any discrimination by the NYPD prior to August 22, 2010. (See Exhibit "D", pg. 52 lines 24-25, pg. 53 lines 1-3).

Admit

46. Plaintiff never spoke to any of his fellow officers about race discrimination within the NYPD. (See Exhibit "D", pg. 45 lines 8-10).

Admit

47. Plaintiff had five supervisors, all Caucasian, and always got along with them. (See Exhibit "D", pg. 43 lines 19-23, pg. 44 lines 12-15).

Admit

48. Plaintiff never filed an EEO complaint alleging discrimination by anyone in the NYPD. (See Exhibit "D", pg. 53 lines 4-6).

Admit, while assigned to the 110 Precinct but, Deny. Plaintiff filed such verbal complaints the night of the incident as well as during his initial interviews with the Internal Affairs Bureau. Additionally, Defendant JESUS TELLADO as the Patrol Borough Queens South Duty Captain failed to follow Department policy, since this was a Confrontation Situation as defined by NYPD Patrol Guide No. 212-33, he failed to AUTOMATICALLY notify the Office of Equal Employment Opportunity. See Exhibit Nos.: 1 through 4. Failure to notify the Office of Equal Employment Opportunity as defined by NYPD Patrol Guide No.: 206-36 is a violation of Department policy. See also Exhibit No.: 55

Dated: July 29, 2013
New York, NY

Respectfully submitted,

By:


Eric Sanders

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