

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARK W. MOODY,

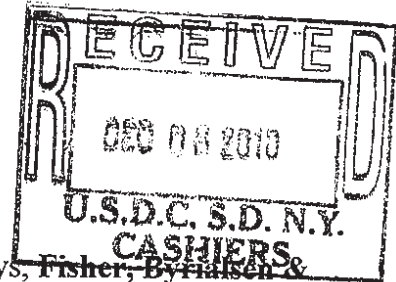
Plaintiff.

-against-

THE CITY OF NEW YORK and POLICE  
OFFICER MORRIS, POLICE OFFICER  
GONZALEZ, and POLICE OFFICERS  
JOHN DOE 1 - 10,  
Individually and in their Official Capacities,

Defendants.  
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**10 CIV 9161**  
COMPLAINT  
AND DEMAND FOR  
JURY TRIAL



Plaintiff, MARK W. MOODY, by and through his attorneys, Fisher, Byrnes & Kreizer,

PLLC, complaining of the defendants herein, respectfully shows the Court and alleges:

**PRELIMINARY STATEMENT**

1. Plaintiff brings this action for compensatory damages, punitive damages, and attorney's fees pursuant to 42 U.S.C. §§1981, 1983, and 1988, for the wrongful acts of Defendants THE CITY OF NEW YORK, POLICE OFFICER MORRIS, POLICE OFFICER GONZALEZ and POLICE OFFICERS JOHN DOE 1 through 10 as Officers of the New York City Police Department, acting under color of state law and pursuant to their authority, in violation of Plaintiff's rights secured by the Civil Rights Act of 1871, 42 U.S.C. §§ 1981, 1983, 1988; by the United States Constitution, including its Fourth, Fifth, Eighth, and Fourteenth Amendments; and by the laws and Constitution of the State of New York.

## **JURISDICTION**

2. This action is brought pursuant to 42 U.S.C. §§ 1981, 1983, and 1988, and the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, and the constitutional, statutory, and common laws of the State of New York.

3. Jurisdiction is invoked herein pursuant to the aforementioned statutory and constitutional provisions and pursuant to 28 U.S.C. §§1331, 1343, this being an action seeking redress for the violation of the plaintiff's constitutional and civil rights.

4. Plaintiff further invokes this Court's pendent jurisdiction over any and all state law claims and causes of action which derive from the same nucleus of operative facts that give rise to the federally based claims and causes of action pursuant to 28 U.S.C. §1367.

## **VENUE**

5. Venue is properly laid in this District under 28 U.S.C. §1391(b), this being the District in which the claim arose.

## **NOTICE OF CLAIM**

6. Plaintiff Mark W. Moody 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 90 days have elapsed since the filing of the Notice of Claim, and adjustment or payment thereof has been neglected or refused.

## **TRIAL BY JURY**

7. Plaintiff demands a trial by jury on each and every one of his claims as pled herein pursuant to Fed. R. Civ. P. 38(b).

## **PARTIES**

8. At all times relevant hereto Plaintiff Mark W. Moody was residing in New York, New York.

9. At all times relevant hereto defendant The City of New York (hereinafter, NYC) was and is a municipality of the State of New York and owns, operates, manages, directs, and controls the New York City Police Department, which employs the other named Defendants.

10. At all times relevant to this action, Defendant Police Officers Morris and Gonzalez, and Police Officers John Doe 1 through 10 are and were police officers employed by the New York City Police Department (hereinafter NYPD), and acting under color of state law. They are being sued in both their individual and official capacities.

11. At all times relevant hereto and in all their actions described herein, Defendant Police Officers were acting under color of statutes, ordinances, regulations, policies, customs, and usages of the NYC and NYPD, pursuant to their authority as employees, servants, and agents of the NYC and NYPD within the scope of employment and incidental to their otherwise lawful duties and functions as employees, servants, agents, and police officers.

12. NYC was responsible for the hiring, training, supervision, discipline, retention, and promotion of the police officers, sergeants, and/or employees of the NYPD. They are being sued both in their individual and official capacity.

### **FACTS**

13. On August 5, 2010, in Manhattan, New York, at approximately 2:00 p.m., Plaintiff Mark W. Moody, was sitting in the window of his apartment smoking a cigarette and speaking on his cell phone.

14. Plaintiff's apartment is located on the second floor, approximately 12 feet from the street level.

15. Plaintiff was not engaged in any illegal, suspicious or dangerous conduct at any time that day.

16. A police car pulled up in front of Plaintiff's apartment and Defendants Police Officer Morris and Police Officer Gonzalez exited the vehicle.

17. Defendant Gonzalez yelled up from the street, asking Plaintiff if he was going to commit suicide.

18. Plaintiff interrupted his cell phone conversation and told Defendant Gonzalez that he was simply smoking a cigarette.

19. Defendant Gonzalez asked Plaintiff to move out of the window.

20. Plaintiff responded that he would move out of the window once he was finished smoking his cigarette as he did not want smoke in his apartment.

21. Defendant Gonzalez informed Plaintiff that emergency personnel were on their way and Plaintiff informed her that that was not necessary.

22. Shortly thereafter, two police cars and two ambulances arrived in front of Plaintiff's apartment.

23. Defendant John Doe yelled up to Plaintiff that he better come down to the street and speak to the police or they would come up and speak to him.

24. Plaintiff stated that he was not coming down to the street and explained that he would move away from the window when he was done.

25. Plaintiff was then grabbed from behind by Defendants Police Officer John Doe 1 through 10 and ripped away from the window with great force.

26. Defendants Police Officer John Doe 1 through 10 threw Plaintiff to the floor causing Plaintiff's head to slam into the floor.

27. Defendants Police Officer John Doe 1 through 10 kneeled on Plaintiff's head while Defendants Police Officer John Doe 1 through 10 kneeled on his back and placed Plaintiff in handcuffs. These actions by the Defendants caused bruising, swelling and substantial pain to Plaintiff.

28. At no time did Plaintiff refuse to be placed in handcuffs or resist arrest in any way.

29. Plaintiff was lifted by the arms to standing position by Defendants John Doe 1 through 10 causing bruising and pain.

30. While this incident occurred, Andrew Bernstein, an independent consultant of Plaintiff's, was present in the apartment.

31. Neither Plaintiff nor Andrew Bernstein permitted the Defendant Police Officers to enter the apartment.

32. Defendants did not have a warrant or probable cause to enter the apartment, nor were exigent circumstances in place permitting entry without a warrant or probable cause.

33. Plaintiff was removed from his apartment in handcuffs and walked out in the street while his neighbors and local business owners looked on.

34. Plaintiff was placed in an ambulance.

35. Plaintiff asked the Defendant police officers to remove his handcuffs and they refused.

36. Plaintiff was taken by ambulance to Beth Isreal Hospital Psychiatric Ward.

37. Plaintiff was taken into Beth Israel Hospital in handcuffs.

38. Plaintiff was taken to the basement to the Psychiatric Ward and placed in a locked area.

39. Plaintiff was ushered into a bathroom and told to change into a hospital gown, which

he did. Plaintiff's clothes were placed in a paper bag.

40. Shortly thereafter Plaintiff was examined by the attending psychiatrist.

41. After speaking to Plaintiff for a few minutes the psychiatrist told him he would be discharged shortly.

42. Approximately thirty minutes later Plaintiff was discharged and took a taxi home.

43. As a result of his unlawful arrest Plaintiff suffered loss of liberty, emotional distress, bruising, swelling and substantial pain.

44. As a result of the assault and battery by Defendant police officers, Plaintiff suffered emotional distress, bruising, swelling and serious pain.

45. On or about September 10, 2010, and within ninety (90) days of the incident, a Notice of Claim on behalf of Plaintiff was served upon NYC.

46. At least thirty (30) days have elapsed since said demand and/or claim upon which this action is in part predicated was presented to NYC for adjustment and NYC has neglected and/or refused to adjust and/or make payment.

47. This action is commenced within one (1) year and ninety (90) days of the occurrence herein.

**FIRST CLAIM FOR RELIEF:  
DEPRIVATION OF FEDERAL CIVIL RIGHTS**

48. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth herein.

49. All of the aforementioned acts of Defendants, their agents, servants, and employees were carried out under color of state law.

50. All of the aforementioned acts deprived Plaintiff of the rights, privileges, and

immunities guaranteed citizens of the United States by the Fourth, Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States and in violation of 42 U.S.C. § 1983.

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

52. 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 NYC and the NYPD, all under the supervision of ranking officers of said department.

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

54. By these actions, these Defendants have deprived Plaintiff of rights secured by the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. § 1983, for which the Defendants are individually and jointly liable.

**SECOND CLAIM FOR RELIEF:**  
**EXCESSIVE FORCE UNDER 42 U.S.C. § 1983**

55. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth herein.

56. The degree of force used by Defendants was excessive, unreasonable, and unwarranted.

57. Defendants' actions were intentional, willful, malicious, egregious, grossly reckless and negligent, unconscionable, and unprovoked.

58. As a result of the excessive force and brutality, Plaintiff Mark W. Moody sustained substantial pain and injury to his head, and he has endured emotional and psychological distress.

59. All of the aforementioned acts of the Defendants constituted excessive force under the laws of the State of New York and the Defendants are liable said damage. Pursuant to 28 U.S.C. § 1367, this Court has pendant jurisdiction to hear and adjudicate such claims.

**THIRD CLAIM FOR RELIEF:  
ASSAULT AND BATTERY**

60. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth herein.

61. By the aforementioned actions, the Defendants did inflict assault and battery upon the Plaintiff. The acts and conduct of the Defendant Police Officers were the direct and proximate cause of injury and damage to the Plaintiff and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

62. As a result of the foregoing, Plaintiff was deprived of his liberty, suffered specific bodily injury, pain and suffering, great humiliation, mental anguish, and was otherwise damaged and injured.

**FOURTH CLAIM FOR RELIEF:  
FALSE ARREST**

63. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth herein.

64. As a result of Defendants' aforementioned conduct, Plaintiff was subject to an illegal, improper, and false seizure and arrest by the Defendants and taken into custody and caused to be falsely detained and confined, without any probable cause, privilege, or consent.

65. As a result of his false arrest, Plaintiff was subjected to humiliation, mental anguish,



ridicule, and disgrace and was deprived of his liberty. Plaintiff was discredited in the minds of many members of the community.

66. All of the aforementioned acts of the Defendants constituted false arrest under the laws of the State of New York and the Defendants are liable for said damage. Pursuant to 28 U.S.C. § 1367, this Court has pendant jurisdiction to hear and adjudicate such claims.

**FIFTH CLAIM FOR RELIEF:  
FALSE IMPRISONMENT**

67. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth herein.

68. As a result of his false imprisonment, Plaintiff was subjected to humiliation, ridicule, mental anguish and disgrace and was deprived of his liberty. Plaintiff was discredited in the minds of many members of the community.

69. All of the aforementioned acts of the Defendants constituted false imprisonment under the law of the State of New York and the Defendants are liable said damage. Pursuant to 28 U.S.C. § 1367, this Court has pendant jurisdiction to hear and adjudicate such claims.

**SIXTH CLAIM FOR RELIEF:  
UNLAWFUL ENTRY**

70. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth herein.

71. As a result of the unlawful entry, Plaintiff was subjected to mental anguish, he was deprived of the security and sanctity of his home and was deprived of his liberty.

72. All of the aforementioned acts of the Defendants constitute unlawful entry into Plaintiff's private residence and violate the rights secured by the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. § 1983, for

which the Defendants are individually and jointly liable.

**SEVENTH CLAIM FOR RELIEF:  
NEGLIGENCE**

73. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth herein.

74. Defendant Police Officers failed to use that degree of care that reasonably prudent police officers would have used under the same circumstances when they failed to do acts that reasonably prudent police officers would have done under the same circumstances.

75. Defendant Police Officers breached their duty of ordinary care to Plaintiff by failing to exercise ordinary care and to follow proper police procedures in entering Plaintiff's home, forcefully throwing Plaintiff to the floor and detaining Plaintiff without probable cause; in investigating, assessing and evaluating the circumstances of Plaintiff being by his window; and arresting and detaining without probable cause or justification.

76. All of the aforementioned acts of the Defendants constituted negligence under the law of the State of New York and the Defendants are liable for said damage. Pursuant to 28 U.S.C. § 1367, this Court has pendant jurisdiction to hear and adjudicate such claims.

**EIGHTH CLAIM FOR RELIEF:  
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

77. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth herein.

78. Defendants NYC, Defendants Police Officer Morris, Police Officer Gonzalez and Police Officers John Doe engaged in extreme and outrageous conduct beyond all possible bounds of decency when they assaulted Plaintiff Moody.

79. Defendants' extreme and outrageous conduct was intended to inflict severe distress

upon Plaintiff Moody when they assaulted him.

80. Defendants Police Officer Morris's, Police Officer Gonzalez's and Police Officers John Doe's outrageous conduct did inflict severe distress upon Plaintiff Moody, which caused Plaintiff Moody to suffer anxiety and mental anguish.

81. All of the aforementioned acts of the Defendants constituted intentional infliction of emotional distress under the law of the State of New York and the Defendants are liable for said damage. Pursuant to 28 U.S.C. § 1367, this Court has pendant jurisdiction to hear and adjudicate such claims.

**NINETH CLAIM FOR RELIEF:  
FAILURE TO INVESTIGATE**

82. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth herein.

83. All of the aforementioned acts of Defendants, their agents, servants, and employees constituted a complete failure to investigate when the Defendant Police Officers disregarded the Plaintiff's explanation of his actions.

84. In the absence of any exigent circumstances, and where there existed a reasonable explanation, the Defendant Police Officers' complete failure to investigate fell far short of a thorough investigation where the law enforcement officers would not have been unduly hampered if they had waited to obtain more facts before seeking to detain the Plaintiff and unlawfully enter his apartment.

85. As a result of the foregoing, Plaintiff was deprived of his liberty, endured great humiliation, anguish, costs and expenses and was otherwise damaged and injured.

**TENTH CLAIM FOR RELIEF:  
MUNICIPAL LIABILITY**

86. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth herein.

87. Defendant Police Officers used excessive and unreasonable force during the stop, search, and arrest of Plaintiff despite a lack of force or resistance by Plaintiff, notwithstanding knowledge that said force would jeopardize Plaintiff's liberty, well-being, safety, and constitutional rights.

88. Defendant Police Officer John Doe 2 failed to protect Plaintiff from the violation of his civil and constitutional rights by Defendants Police Officer Morris, Defendant Police Officer Gonzalez and Defendant Police Officer John Does' use of excessive and unreasonable force against Plaintiff.

89. The acts complained of were carried out by the aforementioned Defendants in their capacities as police officers and officials, with the entire actual and/or apparent authority attendant thereto.

90. The acts complained of were carried out by the aforementioned individual Defendants in their capacities as police officers and officials pursuant to the customs, policies, usages, practices, procedures, and rules of NYC and the NYPD, all under the supervision of ranking officers of said department.

91. The aforementioned customs, policies, usages, practices, procedures, and rules of NYC and the NYPD included, but were not limited to, seizure of the Plaintiff without evidence of criminal activity and deprivation of freedom.

92. The foregoing customs, policies, usages, practices, procedures, and rule of NYC and the NYPD constituted deliberate indifference to the safety, well-being, and constitutional rights

of Plaintiff.

93. The foregoing customs, policies, usages, practices, procedures, and rule of NYC and the NYPD were the proximate cause of the constitutional violations suffered by Plaintiff as alleged herein.

94. The foregoing customs, policies, usages, practices, procedures, and rule of NYC and the NYPD were the driving force behind the constitutional violations suffered by Plaintiff as alleged herein.

95. Defendants, collectively and individually, while acting under color of state law, were directly and actively involved in violating the constitutional rights of Plaintiff.

96. Defendants, collectively and individually, while acting under color of state law, acquiesced in a pattern of unconstitutional conduct by subordinate police officers and were directly responsible for the violation of Plaintiff's constitutional rights.

97. Defendant NYC, as municipal policymaker in the training and supervision of Defendant police officers, has pursued a policy and custom of deliberate indifference to the rights of persons in their domain who suffer violations of their freedom from the excessive use of force and unreasonable force and freedom from deprivation of Liberty without Due process of law in violation of the Fourth, Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983, and the Constitution and laws of the State of New York.

98. All of the foregoing acts by Defendants deprived Plaintiff of federally protected rights, including, but not limited to, the right:

- a. Not to be deprived of liberty without due process of law;
- b. To be free from unreasonable search and seizure under the Fourth and Fourteenth Amendments to the United States Constitution;

- c. To be protected against violations of his civil and constitutional rights;
- d. To be free from intentional assault, battery, and infliction of emotional distress;
- e. Not to have cruel and unusual punishment imposed upon him; and
- f. To receive equal protection under the law.


**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment and prays for the following relief, jointly and severally, against the Defendants:

- 1. Special and compensatory damages in the amount of FOUR HUNDREND THOUSAND DOLLARS (\$400,000.00); and
- 2. Punitive damages in the amount of FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00); and
- 3. Reasonable attorney's fees and costs; and
- 4. Such other and further relief as this Court deems just and proper.

DATED: New York, New York  
December 8, 2010

Respectfully submitted,

  
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Jane Fisher-Byrialsen, Esq. (JB9108)

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