

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

----- X

IVAN MARTINEZ,

Plaintiff,

-against-

THE CITY OF NEW YORK, a municipal entity; New  
York City Police Department Detective MATTHEW  
COSTELLO and NYPD Officers JOHN DOES, in their  
individual capacities,

Defendants.

----- X

**VERIFIED COMPLAINT**

Index No.:

Plaintiff IVAN MARTINEZ, by and through his attorneys, Beldock Levine & Hoffman LLP, as and for his complaint alleges as follows:

**JURISDICTION**

1. This is a civil rights action brought under federal and New York State law. Plaintiff asserts claims pursuant to 42 U.S.C. § 1983 for violations of his federal rights and privileges secured by the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. Plaintiff also asserts claims for violations of his state rights under Article 1 §§ 5 and 6 of the New York State Constitution and New York State common law.

2. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.

**VENUE**

3. Venue is proper in Bronx County pursuant to C.P.L.R. § 503(3) as this is an action against the City of New York and its officers, and Bronx County is where the events giving rise to this action took place.

### **JURY DEMAND**

4. Plaintiff demands a trial by jury in this action on each and every one of his claims for which jury trial is legally available.

### **THE PARTIES**

5. Plaintiff IVAN MARTINEZ is a citizen of the United States and of the State of New York.

6. At all times relevant to this complaint, plaintiff was a resident of Bronx County, New York.

7. Defendant THE CITY OF NEW YORK (“the City”) is a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to maintain, manage, supervise, and control a police department, and does maintain the New York City Police Department (“NYPD”).

8. The NYPD is a duly authorized public authority and/or police department, authorized to perform all functions of a police department as per the governing law, rules, and regulations of the City.

9. Upon information and belief, at all relevant times, defendants NYPD Detective MATTHEW COSTELLO and NYPD Officers JOHN DOES (collectively “the individual defendants”) were and are citizens of the United States and the State of New York.

10. At all relevant times, the individual defendants were employed by the City and acted under color of law in the course and scope of their duties and authority as officers, agents, servants, and employees of the NYPD and the City.

11. At all relevant times, the individual defendants violated plaintiff’s clearly established rights under the Fourth, Fifth, and Fourteenth Amendments to the United States

Constitution and Article 1 §§ 5 and 6 of the New York State Constitution, of which reasonable law enforcement officers in their respective circumstances would have known.

**COMPLIANCE WITH NEW YORK GENERAL MUNICIPAL LAW**

12. Plaintiff served his Notice of Claim upon the City of New York by hand delivery on February 18, 2016, within ninety days of the events giving rise to plaintiff's claims.

13. Defendant City acknowledged receipt of plaintiff's Notice of Claim on February 29, 2016, assigning it claim number 2016PI006312.

14. Defendant City never requested to conduct an examination pursuant to New York General Municipal Law § 50-h.

15. More than thirty (30) days have elapsed since service of the Notice of Claim and the Comptroller of the City of New York and defendant City of New York have neglected to adjust or pay said claim.

16. This action is filed within one year and ninety days of the events giving rise to plaintiff's claims.

**STATEMENT OF FACTS**

17. On May 24, 2013, Dayson Sumpter was shot and killed in front of 1730 Andrews Avenue in the Bronx.

18. Plaintiff Ivan Martinez had nothing to do with the shooting.

19. Defendant NYPD Detective Matthew Costello and other NYPD officers (the JOHN DOE defendants), referred to collectively herein as "the individual defendants," were responsible for investigating Dayson Sumpter's murder.

20. A witness told defendant Costello, and possibly other investigating officers, that she knew plaintiff and that he was not the person who shot Dayson Sumpter.

21. This same witness told defendant Costello and possibly other officers that the shooter was a person named “Treezy.”

22. Upon information and belief, this same witness told the investigating officers where Treezy lived.

23. The investigating officers never spoke with Treezy or otherwise meaningfully investigated his role in the murder of Dayson Sumpter.

24. On or about December 18, 2013, Woodrow Ward purportedly told investigating officers that he saw plaintiff shoot Dayson Sumpter.

25. This identification, however, was highly tainted and unreliable.

26. Woodrow Ward identified plaintiff as the person who shot Dayson Sumpter only after Mr. Ward was arrested for larceny and, upon information and belief, was offered a favorable plea deal in exchange for his statement and testimony that he saw plaintiff shoot Dayson Sumpter.

27. An NYPD officer also told Mr. Ward that he would receive \$2,000 for providing a written statement and testifying that he saw plaintiff shoot Dayson Sumpter.

28. Based on the earlier witness’ statement that plaintiff was not the shooter, and the highly tainted statement of Woodrow Ward, any reasonable person would investigate further.

29. Although the only thing that linked plaintiff to the murder was the tainted statement of Woodrow Ward, and despite the statement of the other witness that plaintiff was not the shooter, plaintiff was arrested for the murder of Dayson Sumpter on or about December 20, 2013.

30. The conduct of the police in identifying and charging plaintiff for the murder of Dayson Sumpter deviated so egregiously from acceptable police activity as to demonstrate an intentional or reckless disregard for proper procedure.

31. Any reasonable investigating officer would have made efforts to investigate the

involvement of Treezy in the murder of Dayson Sumpter, and would have made further efforts to investigate before arresting and charging plaintiff for the murder.

32. Any reasonable investigating officer would have given little or no credit to the tainted identification of Woodrow Ward.

33. At the very least, any reasonable investigating officer would have made efforts to locate corroborating evidence before arresting, charging, or securing the indictment of plaintiff based on such an incredible identifying witness, particularly in the face of a definitive statement by an eye witness that plaintiff was not the shooter.

34. On or about December 21, 2013, a grand jury indicted plaintiff for the murder of Dayson Sumpter.

35. Upon information and belief, the grand jury was not informed about the money Woodrow Ward was offered for his statement, nor was the grand jury informed about his plea deal.

36. Upon further information and belief, the grand jury was not informed about the witness' statement that plaintiff was not the shooter and that Treezy was the shooter.

37. As a result of his arrest and the charges brought against him, plaintiff was incarcerated until on or about May 6, 2015.

38. Plaintiff was 21 years old at the time he was arrested, and had never been incarcerated before.

39. At the time he was arrested, plaintiff was living with his mother and then 9-year-old sister.

40. On or about May 5, 2015, Woodrow Ward gave a sworn statement at the District Attorney's Office that he did not see plaintiff shoot Dayson Sumpter.

41. Woodrow Ward further testified that he "was under the impression that [he] was

going to get \$2,000 just for writing that statement [that he saw plaintiff shoot Dayson Sumpter] and going about testifying against somebody to put them in jail, Ive.”

42. “Ive” or “Ives” was the nickname that Woodrow Ward used for plaintiff.

43. Even after the District Attorney consented to plaintiff’s release following this statement by Woodrow Ward, the charges against plaintiff were not dismissed for another seven months.

44. Despite a complete lack of evidence against him, plaintiff stood accused of the murder of Dayson Sumpter until December 3 or 6, 2015, when the District Attorney finally dismissed the charges.

45. As a result of the foregoing, Plaintiff suffered, *inter alia*, a significant loss of liberty, severe psychological injuries, pain and suffering, emotional distress, loss of familial association, and the deprivation of his constitutional rights.

46. As a result of the foregoing, Plaintiff is entitled to compensatory damages in an amount to be fixed by a jury, and is further entitled to punitive damages against the individual defendants in an amount to be fixed by a jury, plus reasonable attorneys’ fees, costs and disbursements of this action.

#### **FIRST CAUSE OF ACTION**

#### **42 U.S.C. § 1983 – Violations of the Fourth, Fifth, and Fourteenth Amendments**

47. Plaintiff realleges and incorporates by reference each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

48. In committing the acts and omissions complained of herein, the individual defendants acted under color of state law to deprive plaintiff of certain constitutionally protected

rights under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, including, but not limited to:

- a. the right to be free from unreasonable seizure of his person;
- b. the right to be free from arrest without probable cause;
- c. the right to be free from false imprisonment, that being wrongful detention without good faith, reasonable suspicion, or legal justification, and of which detention plaintiff was aware and to which he did not consent;
- d. the right to be free from deprivation of liberty without due process of law;
- e. the right to be free from malicious prosecution; and
- f. the right to a fair trial;

49. In committing the acts and omissions complained of herein, the individual defendants breached their affirmative duty to intervene to protect the constitutional rights of citizens from infringement by other law enforcement officers in their presence.

50. As a direct and proximate result of the individual defendants' deprivation of plaintiff's constitutional rights, plaintiff suffered the injuries and damages set forth above.

51. The unlawful conduct of the individual defendants was willful, malicious, oppressive, and/or reckless, and was of such a nature that punitive damages should be imposed.

**SECOND CAUSE OF ACTION**  
**False Arrest/Imprisonment**

52. Plaintiff realleges and incorporates by reference the allegations set forth in the foregoing paragraphs as if fully set forth herein.

53. Defendants, through the foregoing acts, caused plaintiff to be wrongfully detained without good faith, reasonable suspicion, probable cause, or legal justification,

54. Plaintiff was aware of this detention and did not consent to it.

55. Defendants committed the foregoing acts intentionally, willfully, and with

malicious disregard for plaintiff's rights and are therefore liable for punitive damages.

**THIRD CAUSE OF ACTION**  
**Intentional Infliction of Emotional Distress**

56. Plaintiff realleges and incorporates by reference the allegations set forth in the foregoing paragraphs as if fully set forth herein.

57. Defendants, through the foregoing acts, did commit extreme and outrageous conduct and thereby intentionally, and/or recklessly caused plaintiff to experience severe mental and emotional distress, pain, suffering, and damage to name and reputation.

58. Defendants committed the foregoing acts intentionally, willfully, and with malicious disregard for plaintiff's rights and are therefore liable for punitive damages.

**FOURTH CAUSE OF ACTION**  
**Malicious Prosecution**

59. Plaintiff realleges and incorporates by reference the allegations set forth in the foregoing paragraphs as if fully set forth herein.

60. A criminal proceeding was commenced against plaintiff in Bronx County Criminal Court.

61. Defendants initiated the proceeding, even though there was no probable cause that plaintiff was responsible for the shooting of Dayson Sumpter.

62. The presumption of probable cause created by the grand jury's indictment is overcome by the above-stated facts, which show that the conduct of the investigating officers deviated so egregiously from acceptable police activity as to demonstrate an intentional or reckless disregard for proper procedure.

63. The presumption is also overcome by the above-stated facts, which show that the

police failed to make further inquiry when a reasonable person would have done so.

64. The criminal proceeding was terminated in plaintiff's favor when the charges against him were dismissed.

65. The proceeding was brought with malice, which is shown by the above-stated facts establishing a lack of probable cause, and that the investigating officers' conduct was reckless or grossly negligent.

66. Defendants committed the foregoing acts intentionally, willfully, and with malicious disregard for plaintiff's rights and are therefore liable for punitive damages.

**FIFTH CAUSE OF ACTION**  
**New York State Constitutional Violations**

67. Plaintiff realleges and incorporates by reference the allegations set forth in the foregoing paragraphs as if fully set forth herein.

68. Defendants subjected plaintiff to the foregoing acts and omissions without due process of law, thereby depriving plaintiff of rights, privileges, and immunities guaranteed by Article 1 §§ 5 and 6 of the New York State Constitution.

69. As a direct and proximate result of defendants' deprivations of plaintiff's rights, privileges, and immunities guaranteed by the New York State Constitution, plaintiff suffered the injuries and damages set forth above.

70. As a result of the foregoing, plaintiff is entitled to compensatory damages in an amount to be fixed by a jury, and is further entitled to punitive damages against the individual defendants in an amount to be fixed by a jury, plus reasonable attorney's fees, costs and disbursements of this action.

**SIXTH CAUSE OF ACTION**  
**Negligence**

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

72. Plaintiff's injuries herein were caused by the carelessness, recklessness and negligence of the defendants, who were acting in the scope of their employment when they engaged in the wrongful conduct described herein and breached the duty of care they owed plaintiff.

73. As a result of the foregoing, plaintiff is entitled to compensatory damages in an amount to be fixed by a jury, and is further entitled to punitive damages against the individual defendants in an amount to be fixed by a jury, plus reasonable attorney's fees, costs and disbursements of this action.

**SEVENTH CAUSE OF ACTION**  
**Negligent Infliction of Emotional Distress**

74. Plaintiff realleges and incorporates by reference the allegations set forth in the foregoing paragraphs as if fully set forth herein.

75. As police officers acting in the performance of their duties, the individual defendants owed plaintiff a duty of care.

76. In breach of that duty, the individual defendants endangered plaintiff's safety and caused him to fear for his safety.

77. As a result, plaintiff suffered emotional distress.

**EIGHTH CAUSE OF ACTION**  
**Gross Negligence**

78. Plaintiff repeats, reiterates and realleges each and every allegation contained in

foregoing paragraphs with the same force and effect as if fully set forth herein.

79. Plaintiff's injuries herein were caused by the gross negligence of the defendant City and its employees and agents, who were on duty and acting in the scope of their employment when they engaged in the wrongful conduct described herein.

80. As a result of the foregoing, plaintiff is entitled to compensatory damages in an amount to be fixed by a jury, and is further entitled to punitive damages against the individual defendants in an amount to be fixed by a jury, plus reasonable attorneys' fees, costs and disbursements of this action.

#### **NINTH CAUSE OF ACTION**

#### ***Respondent Superior* liability under the laws of the State of New York**

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

82. Defendant City is vicariously liable for the acts of its employees and agents who were on duty and acting in the scope of their employment when they engaged in the wrongful conduct described herein.

83. As a result of the foregoing, plaintiff is entitled to compensatory damages in an amount to be fixed by a jury, and is further entitled to punitive damages against the individual defendants in an amount to be fixed by a jury, plus reasonable attorney's fees, costs and disbursements of this action.

**WHEREFORE**, plaintiff demands judgment and prays for the following relief, jointly and severally, against the defendants:

- (A) full and fair compensatory damages in an amount to be determined by a jury;
- (B) punitive damages against the individual defendants in an amount to be determined

- by a jury;
- (C) reasonable attorney's fees;
  - (D) the costs and disbursements of this action;
  - (E) interest; and
  - (F) such other and further relief as appears just and proper.

Dated: New York, New York  
December 20, 2016

BELDOCK LEVINE & HOFFMAN LLP  
99 Park Avenue, PH/26th Floor  
New York, New York 10016  
(212) 490-0400

By:   
\_\_\_\_\_  
JOSHUA S. MOSKOVITZ

*Attorneys for Plaintiff Ivan Martinez*

