

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL P. THOMAS,

Plaintiff,

-against-

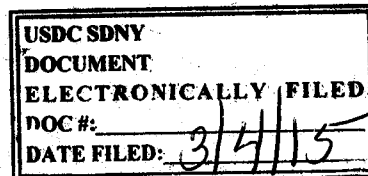
J. DAVID JIMENEZ, Principal of
Manhattan Center for Science and Mathematics, in
his individual capacity; DANIEL ALBETTA,
Assistant Principal of Manhattan Center for Science
and Mathematics, in his individual capacity;
BRIAN BRADLEY, Former Assistant
Principal of Manhattan Center for Science and
Mathematics, in his individual capacity; and
DENNIS HERNANDEZ, Teacher of Manhattan
Center for Science and Mathematics, in his
individual capacity;

Defendants.

AMENDED
COMPLAINT

14-CV-8019 (JMF)

JURY TRIAL DEMANDED

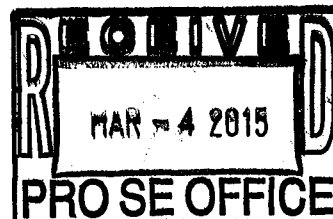


Plaintiff MICHAEL P. THOMAS, as and for his Amended Complaint against
Defendants, respectfully states as follows:

PRELIMINARY STATEMENT

1. Plaintiff brings this action under 42 U.S.C. § 1983 seeking monetary relief
against Defendants for committing acts with the intent and for the purpose of depriving
Plaintiff of rights guaranteed under the First Amendment of the Constitution of the United
States.

2. Plaintiff seeks compensatory, punitive and nominal damages, to the extent
allowable by law.



JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 for claims arising under 42 U.S.C. § 1983.

4. The Southern District of New York, pursuant to 28 U.S.C. § 1391, is the proper venue for this action because the events giving rise to Plaintiff's claims occurred in New York County.

PARTIES

5. Plaintiff Michael P. Thomas is a resident of New York County and was employed by the New York City Department of Education as a mathematics teacher at Manhattan Center for Science and Mathematics ("MCSM"), a school operated by the New York City Department of Education, from September, 1989 to July 1, 2012, the effective date of his retirement from the New York City Department of Education.

6. Defendant J. David Jimenez ("Defendant Jimenez"), at all relevant times herein, was the Principal of MCSM.

7. Defendant Daniel Albetta ("Defendant Albetta"), at all relevant times herein, was the Assistant Principal of Security of MCSM.

8. Defendant Brian Bradley ("Defendant Bradley"), at all relevant times herein, was the Assistant Principal of Special Education of MCSM.

9. Defendant Dennis Hernandez ("Defendant Hernandez"), at all relevant times herein, was a teacher of Physical Education at MCSM and, upon information and belief, performed the duties of the Dean of Students.

10. At all relevant times herein, Defendants were acting within the scope of their employment and under the color of state law. Each is sued in his individual capacity.

STATEMENT OF FACTS

11. On or about September 25, 2012, Plaintiff – then retired – created the blog “MCSM Satire” which used satire and parody to criticize the administration of MCSM and Defendant Hernandez.

12. On the morning of January 10, 2013, Plaintiff distributed business cards with the blog’s name and address to MCSM students on their way to school. The cards indicated that “MCSM Satire” was “[a] blog dedicated to the removal of J. David Jimenez[,] et al. from MCSM.”

13. At approximately 7:50 a.m., Plaintiff was approached by Defendants Albetta, Bradley, and Hernandez on the southeast corner of 116th Street and First Avenue.

14. Defendant Albetta said “Go the fuck away” three times to Plaintiff. Plaintiff commented “Nice language” to Defendant Bradley, and Defendant Albetta said “Go the fuck away” three more times to Plaintiff.

15. For the next two minutes, Defendants Albetta, Bradley, and Hernandez argued that the content of Plaintiff’s blog was libelous and students should not be encouraged to visit the blog. Plaintiff asserted that the blog was factual in nature, and he had a constitutional right to disseminate information concerning the blog.

16. Several times during the conversation, Plaintiff attempted to distance himself from Defendants Albetta, Bradley, and Hernandez by walking west on 116th Street. Each time, they followed Plaintiff and prevented him from interacting with students.

17. The interaction between Plaintiff and Defendants Albetta, Bradley, and Hernandez was captured on video recordings obtained from the security cameras of a check-cashing store on the southeast corner of 116th Street and First Avenue.

18. As Plaintiff crossed First Avenue, he was approached by Defendant Jimenez who was walking east on 116th Street. Defendant Jimenez extended his arm as if to shake hands, and Plaintiff responded in kind.

19 Defendant Jimenez grabbed Plaintiff's hand and threw himself to the ground, immediately asking Plaintiff why he assaulted him. One or more of Defendants Albetta, Bradley, and Hernandez asked Plaintiff why he assaulted the principal.

20. Plaintiff, unable to find any witnesses to the alleged assault, continued to walk west on 116th Street. Defendants followed Plaintiff, and Defendant Albetta called 911. An unofficial transcript of the 911 call is annexed hereto as Exhibit "1."

21. Plaintiff was subsequently arrested on the corner of 116th Street and Third Avenue at 8:21 a.m. Plaintiff was charged with assault in the third degree and harassment in the second degree. A copy of the arrest report is annexed hereto as Exhibit "2."

22. Upon information and belief, the arresting officer initially planned to issue Plaintiff a Desk Appearance Ticket and release him on his own recognizance. She was directed, however, to send Plaintiff to central booking in Manhattan because of the nature of the charges.

23. Plaintiff was placed in a holding cell pending his arraignment. During that time, a person in the same cell as Plaintiff was assaulted by another detainee.

24. Plaintiff was arraigned and released on his own recognizance at approximately 12:30 a.m. on January 11, 2013. A order of protection was issued which prohibited Plaintiff from contact with Defendant Jimenez either directly, electronically, or through any third person parties. A copy of the order of protection is annexed hereto as Exhibit "3."

25. A violation of an order of protection is a class D felony punishable by up to

seven years in jail. Plaintiff was advised by counsel to take down his blog.

26. The assault charges against Plaintiff were eventually reduced to attempted assault in the third degree.

27. Plaintiff's trial was held from September 9, 2013 to September 11, 2013 in the Supreme Court of New York County with Justice Kevin McGrath presiding.

28. The Defendants generally testified that, on the morning of January 10, 2013, students reported that a man near the school was handing out flyers and, in doing so, was harassing and accosting students. Video recordings from the check cashing store show that Plaintiff was neither harassing nor accosting students.

29. According to the transcript for *People of the State of New York v Michael Thomas*, Docket No. 2013NY003499, Defendants testified that they had the duty to ensure the safety of students in the "safe corridor." The "safe corridor" is the section of 116th Street, between the school at 116th Street and Pleasant Avenue and the subway station at 116th Street and Lexington Avenue, that is frequently used by students on their way to and from school.

30. Plaintiff was found guilty of harassment in the second degree by the Court and sentenced to ten days of community service. The order of protection which prohibited Plaintiff from contact with Defendant Jimenez was extended to September 10, 2015 and expanded to prohibit Plaintiff's presence in the "safe corridor." A copy of the order of protection is annexed hereto as Exhibit "4."

31. Plaintiff completed ten days of community service and is appealing the conviction.

32. Plaintiff, as a holder of a New York City License, was required to report his arrest to the New York City Department of Education.

CLAIM FOR RELIEF

33. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 32 as if set forth herein.

34. While allegedly acting under color of state law, Defendants violated Plaintiff's First Amendment rights by preventing Plaintiff from distributing cards with the address for the blog "MCSM Satire" and by filing false charges against Plaintiff to effect his arrest and obtain an order of protection against Plaintiff, thereby causing Plaintiff to take down the blog "MCSM Satire."

35. Significantly, Plaintiff was only found guilty of harassment in the second degree, and was acquitted of all assault charges. Defendants' allegations that Plaintiff assaulted Defendant Jimenez and caused substantial injuries are false.

36. Defendants used their authority under the color of state law – and under the pretense that they were protecting students – to wage a vendetta against Plaintiff. Defendants, however, jeopardized the safety of 1,600 students in order to exact retribution on Plaintiff for posting his blog. Indeed, Defendants Albetta and Bradley, the administrators responsible for the safety of students in MCSM's building on the morning of January 10, 2013, testified that they left the school building to confront Plaintiff without informing School Safety Agents or even knowing whether another school administrator was in the building.

37. As a proximate result of Defendants' actions against Plaintiff, Plaintiff has suffered monetary damages, a loss of past and future income, severe emotional distress, humiliation, mental and physical anguish and suffering, and damage to his professional reputation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendants as follows:

- A. For appropriate compensatory, punitive, and nominal damages against Defendants in an amount to be determined at trial;
- B. For an award of reasonable litigation costs; and
- C. For such other and further relief as may be just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury of all issues triable of right by a jury.

Dated: New York, New York
March 3, 2015

By. Michael P. Thomas

Michael P. Thomas
Plaintiff, *pro se*
343 East 92nd Street, Apt. 5W
New York, New York 10128
(917) 545-4254
michaelpthomas@hotmail.com

EXHIBIT 1

911 CALL

Operator: 911. Where is your emergency?
Albetta: Yes. We're on 116th Street between 1st and 2nd Avenue. Um, there's a principal that was assaulted by a former staff member. His name is Michael Thomas from Manhattan Center for Science and Math. Could you send a police car over, please?

O: So we're at a school. What is the address for the school?
A: Oh no, no. We're on the street corner.
O: Okay. How long ago did this assault take place?
A: Like, just now. I just witnessed it with two other people.
O: Does the principal need an ambulance?
A: No, he just fell down on the...
O: Where's the person that assaulted him?
A: Well, 116th Street.
O: So the guy who assaulted him is there?
A: Yeah.
O: What does he look like?
A: He's walking. He's got glasses.
O: Glasses. Black, white or Hispanic male?
A: He's white male with black, um, jacket on... Glasses
O: What direction is he walking?
A: He's, he's, he's, he's leaving. He's walking up to 116th Street and we're following him right now. Keeping an eye on him
O: 116th Street and what? What direction?
A: He's um.. He's walking..
O: Uptown. Up off third avenue?
A: He's walking across.. He's walking towards Second Avenue on 116th Street. [pause] And I'm, I'm just walking with three other people.
O: Male. White. Black jacket. Anything else?
A: That's it. Thank you.
O: Male. White. Black jacket.
A: Yeah, yes.
O: Anything else?
A: No.
O: What color is his pants, sir?
A: Uh, denim.
O: He has a blue jeans?
A: Yeah
[pause]
O: Your name, sir.
A: Daniel Albetta. A-L-B-E-T-T-A
O: Phone number you're calling from, sir.
A: XXX-XXX-XXXX
O: All right, sir. Police, help is on the way. Please stand around.
A: Okay. Thank you.
O: Okay. Goodbye.

EXHIBIT 2

NYPD/025PCT

Fax: 212-860-6558

Jan 10 2013 07:28pm

P001/004

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

MISDEMEANOR

Michael Thomas (M 61),

Defendant.

Police Officer Jacqueli Rivera, Shield 13590 of the 25th Precinct, states as follows:

The defendant is charged with:

- 1 PL 120.00(2) Assault in the Third Degree (1 count)
- 2 PL 120.00(1) Assault in the Third Degree (1 count)
- 3 PL 240.26(1) Harassment in the Second Degree (1 count)

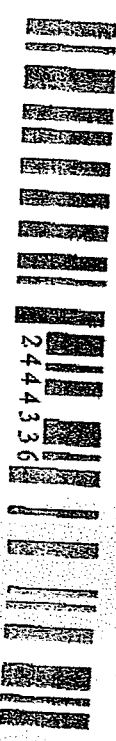
On or about January 10, 2013 at about 7:45 AM, at 1 Avenue between 1 Avenue & East 116 Street in the County and State of New York, the defendant recklessly caused physical injury to another person; the defendant, with intent to cause physical injury to another person, caused such injury to another person; the defendant, with intent to harass, annoy and alarm another, subjected that person to physical contact and attempted and threatened to do the same.

The factual basis for these charges are as follows:

I am informed by Jose Jimenez, of an address known to the District Attorney's Office, that he observed the defendant extend the defendant's hand to him. Mr. Jimenez also told me that he took the defendant's hand and then observed the defendant abruptly pull his hand, forcing him to lose balance and fall to the pavement on his right knee. Mr. Jimenez told me that he then felt a strike to the right side of his face.

I am also informed by Denise Hernandez, of an address known to the District Attorney's Office, that he observed the defendant strike several times at Mr. Jimenez's body.

Because of the defendant's above described actions, Mr. Jimenez suffered substantial pain to his knee, face, back and redness to the right side of his face.



NYPD/025PCT

Fax: 212-860-6558

Jan 10 2013 07:28pm

P002/004

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CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

MISDEMEANOR

Michael Thomas (M 61),

Defendant.

False statements made in this written instrument are punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law, and as other crimes.

PO Rivera
Police Officer Jacqueli Rivera

1/10/13 1925
Date Time

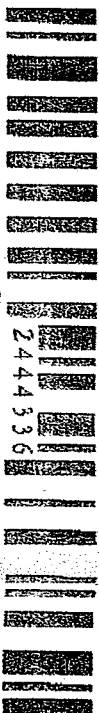


EXHIBIT 3

ORI No: NY030033J
Order No: 09303863R
NYSID No:
CJTN No:

At a term of the Criminal Court, County of New York,
at the Courthouse at 100 Centre Street, State of New York

ORDER OF PROTECTION
Family Offenses - C.P.L. §530.12

Present: Hon. Armstrong

Youthful Offender (check if applicable)

THE PEOPLE OF THE STATE OF NEW YORK

Part: AR3A Index/Docket No:
Indictment No., if any: 2013NY003499

Michael Thomas, -against-

Charges: PL 120.00(1) et al.

Defendant.

[Check one] Ex Parte Defendant Present In Court

Date of Birth: 10/6/1951

NOTICE: YOUR FAILURE TO OBEY THIS ORDER MAY SUBJECT YOU TO MANDATORY ARREST AND CRIMINAL PROSECUTION WHICH MAY RESULT IN YOUR INCARCERATION FOR UP TO SEVEN YEARS FOR CONTEMPT OF COURT. IF THIS IS A TEMPORARY ORDER OF PROTECTION AND YOU FAIL TO APPEAR IN COURT WHEN YOU ARE REQUIRED TO DO SO, THIS ORDER MAY BE EXTENDED IN YOUR ABSENCE AND THEN CONTINUES IN EFFECT UNTIL A NEW DATE SET BY THE COURT.

- TEMPORARY ORDER OF PROTECTION - Whereas good cause has been shown for the issuance of a temporary order of protection as a condition of recognizance release on bail adjournment in contemplation of dismissal.
- ORDER OF PROTECTION - Whereas defendant has been convicted of [specify crime or violation]

And the Court having made a determination in accordance with section 530.12 of the Criminal Procedure Law,

IT IS HEREBY ORDERED that the above-named defendant observe the following conditions of behavior:

[Check applicable paragraphs and subparagraphs]:

- [01] Stay away from:
[A] [name(s) of protected person(s) or witness(es)] Jose Jimenez and/or from the,
[B] home of Jose Jimenez
[C] school of Jose Jimenez
[D] business of Jose Jimenez
[E] place of employment of Jose Jimenez
[F] other
- [14] Refrain from communication or any other contact by mail, telephone, e-mail, voice-mail or other electronic or other means with [specify protected person(s)] Jose Jimenez;
- [02] Refrain from assault, stalking, harassment, aggravated harassment, menacing, reckless endangerment, disorderly conduct, criminal mischief, sexual abuse, sexual misconduct, forcible touching, intimidation, threats, or any criminal offense against [specify name(s) of protected person(s), members of protected person's family or household, or person(s) with custody of child(ren)] Jose Jimenez;
- [15] Refrain from intentionally injuring or killing without justification the following companion animal(s) (pet(s)) [specify type(s) and, if available, names(s)]
- [11] Permit [specify individual] to enter the residence at [specify] during [specify date/time] with [specify law enforcement agency, if any] to remove personal belongings not in issue in litigation [specify items]
- [04] Refrain from [indicate acts] that create an unreasonable risk to the health, safety, or welfare of [specify child(ren), family or household member]
- [05] Permit [specify individual(s)] entitled by a court order or separation or other written agreement, to visit with [specify child(ren)] during the following periods of time [specify] under the following terms and conditions [specify]
- [12] Surrender any and all handguns, pistols, revolvers, rifles, shotguns and other firearms owned or possessed, including, but not limited to, the following and do not obtain any further guns or other firearms. Such surrender shall take place immediately, but in no event later than [specify date/time] at
- [99] Specify other conditions defendant must observe for the purposes of protection Do not have any contact with the above person(s) through any third parties.

IT IS FURTHER ORDERED that the above-named Defendant's license to carry, possess, repair, sell or otherwise dispose of a firearm or firearms, if any, pursuant to Penal Law §400.00, is hereby [13A] suspended or [13B] revoked (note: final order only), and/or [13C] the Defendant shall remain ineligible to receive a firearm license during the period of this order. (Check all applicable boxes.)

IT IS FURTHER ORDERED that this order of protection shall remain in force until and including [specify date] 7/10/13

DATED: 1/10/13

JUDGE / JUSTICE
Court (Court Seal)

MICHELLE A. ARMSTRONG

Defendant advised in Court of issuance and contents of Order.
 Order personally served on Defendant in Court: Michael P. Thomas
(Defendant's signature)

- Order to be served by other means [specify]:
- Warrant issued for Defendant.
- ADDITIONAL SERVICE INFORMATION: [specify]:

The Criminal Procedure Law provides that presentation of a copy of this order of protection to any police officer or peace officer acting pursuant to his or her special duties shall authorize and in some situations may require, such officer to arrest a defendant who is alleged to have violated its terms and to bring him or her before the Court to face penalties authorized by law. Federal law requires that this order be honored and enforced by state and tribal courts, including courts of a state, the District of Columbia, a commonwealth, territory or possession of the United States, if the person against whom the order is sought is an intimate partner of the protected party and has been or will be afforded reasonable notice and opportunity to be heard in accordance with state law sufficient to protect that person's rights (18 U.S.C. §§2265, 2266). It is a federal crime to:
• cross state lines to violate this order or to stalk, harass or commit domestic violence against an intimate partner or family member;
• buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition while this Order remains in effect (Note: there is a limited exception for military or law enforcement officers but only while they are on duty); and
• buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition after a conviction of a domestic violence-related crime involving the use or attempted use of physical force or a deadly weapon against an intimate partner or family member, even after this Order has expired. (18 U.S.C. §§922(g)(8), 922(g)(9) 2261, 2261A, 2262).

EXHIBIT 4

