

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO: 19-24166-CIV-MORENO

MALEY DACOSTA,

Plaintiff,

v.

**THE CITY OF HIALEAH,
and JESUS “JESSE” MENOCALL, JR.,**

Defendants.

THIRD AMENDED COMPLAINT

Plaintiff, MALEY DACOSTA (“Plaintiff”), by and through the undersigned counsel, hereby files this Third Amended Complaint against Defendants, THE CITY OF HIALEAH (the “City”) and JESUS “JESSE” MENOCALL, JR. (the “Officer” or “Menocall”) (collectively, the “Defendants”) and in support thereof states as follows:

JURISDICTION AND VENUE

1. This action, among other claims, is brought under 42 U.S.C. §1983. Jurisdiction is founded upon 28 U.S.C. §1331 and 28 U.S.C. §§1343 (a)(3) and (4), as this action seeks redress for the violation of Plaintiff’s Constitutional and Civil Rights under federal law and the laws of the State of Florida.

2. Pendent and supplemental jurisdiction is invoked pursuant to 28 U.S.C. §1367(a) for this Court to decide claims that may arise under state law.

3. Venue is properly brought in the Southern District of Florida under 28 U.S.C. §1391(b) and (c) because it is the district in which all the events or omissions establishing the Plaintiff’s claims occurred.

4. This Court has authority to award costs and attorneys' fees under 42 U.S.C. §1988 and 28 U.S.C. §1920 with respect to Plaintiff's Constitutional claims.

PARTIES

5. Plaintiff, MALEY DACOSTA, is a Hispanic female who, at all times material hereto, was a resident of Miami, Florida. Plaintiff is currently in excess of 18-years-of-age, though she was a minor (17) at the time the events complained of herein occurred.
6. Defendant, CITY OF HIALEAH, is a municipality duly incorporated and existing under the laws of the State of Florida. The City established and maintains the City of Hialeah Police Department, as a constituent department or agency. The City is responsible, through its officers, employees, servants, and agents, for enforcing the regulations of the City and for ensuring that its officers, employees, servants, and agents obey the laws of the State of Florida and the United States.
7. Defendant, JESUS "JESSE" MENOCALL, JR., was, at all times material hereto, employed as a certified law enforcement officer with the City of Hialeah Police Department, acting under color of law, to wit, under color of statutes, ordinances, regulations, policies, customs and usages of the State of Florida and/or the City of Hialeah Police Department.
8. At all material times, Defendants City of Hialeah and Menocall were engaged in conduct that was the proximate cause of the violations of Plaintiff's federally protected rights and the damages suffered therefrom.

GENERAL ALLEGATIONS

9. This is a civil rights action in which Plaintiff seeks relief from the Defendants for violations of her rights, privileges, and immunities as guaranteed by the Civil Rights Act of 1871, 42 U.S.C. §1983, the Fourth Amendment and Fourteenth Amendments to the United States Constitution, as well as for false arrest, civil battery, intentional infliction

of emotional distress, and negligence in violation of the laws of the State of Florida and the United States of America.

10. The City is a municipal corporation located in the State of Florida. The City was at all times mentioned engaged in owning, operating, maintaining, managing and doing business as a Police Department in Miami-Dade County, Florida, and in the business of public safety for the residents of the City of Hialeah. All of the acts complained of in this Complaint by Plaintiff against Defendants were done and performed by Defendants by and through their authorized agents, servants and/or employees.
11. Officer Menocall is in excess of 18-years-of-age, at all times material to the allegations of this Complaint was employed by the City as a police officer, and is otherwise sui juris.
12. As a direct and proximate cause of the acts of the Defendants, Plaintiff suffered damages which include physical injury, physical pain and suffering, mental anguish and distress, loss of liberty, humiliation, embarrassment, damage to reputation, loss of income, and the violation of her constitutional rights. Those acts or omissions challenged here as constituting a deprivation of the Plaintiff's constitutionally protected rights, as well as any acts characterized as negligent, intentional, tortious, or otherwise, all occurred within Miami-Dade County, Florida.
13. During the course of the Defendant City's employment of Defendant Menocall, the City of Hialeah became aware, or should have become aware, of information that Defendant Menocall was unfit to serve in the capacity of a police officer, that he posed a danger to the public, and that he had repeatedly violated the civil rights of those he was sworn to serve.
14. Since 2015, at least four women and girls have said Menocall sexually abused or raped

them — and despite a clear pattern of allegations, he remained on the job. Prior to June 14, 2015, the City was on notice of Defendant Menocall's misconduct and his proclivities to violate the civil rights of others.

15. In furtherance of its responsibility to supervise Menocall and in response to Defendant Menocall's conduct, the City did nothing with regard to Menocall.

16. The City did not fire, reprimand, discipline, counsel, reassign or re-train Defendant Menocall prior to June 14, 2015.

17. At no point did Defendant City of Hialeah implement its own supposed policies and procedures of corrective action, training, re-training, supervision, counseling, or any other action that could have been taken to remedy the known pattern of misconduct on the job by Defendant Menocall.

FACTUAL ALLEGATIONS

18. The incident complained of herein, and the factual allegations surrounding the incident as described herein, all occurred on or about June 14, 2015.

19. Plaintiff is currently twenty-one (21) years old, but at the time of the incident, Plaintiff was seventeen (17) years old.

20. On or about June 14, 2015, Defendant Menocall was at all times relevant to this complaint a certified law enforcement officer in the State of Florida, was duly appointed and acting as a police officer of the City of Hialeah, and was acting under color of law, to wit, under color of statutes, ordinances, regulations, policies, customs and usage of the State of Florida/Hialeah.

21. At all material times, Defendants were engaged in unconstitutional and illegal activities, which were the proximate cause of the violations of Plaintiff's protected rights and the damages suffered therefrom.

22. On or about June 14, 2015, Plaintiff was driving with her girlfriend when they were stopped by a police car that blocked their exit, which prevented them from driving any further.
23. Plaintiff gave her Florida Driver's License to Menocall, which clearly indicated she was 17 years old.
24. On or about June 14, 2015, Plaintiff was taken into a facility owned, managed, maintained, or operated by the Hialeah Police Department.
25. Plaintiff was taken into the police station through a back entrance.
26. Plaintiff was taken to what is known as the "squad room," an area that has no cameras.
27. While in the squad room, Menocall forced Plaintiff, a 17-year old girl, to remove her clothing, down to her bra and panties, under the guise that it was being done for legitimate purposes.
28. Menocall touched himself and removed his weapon, while he asked Plaintiff questions regarding lesbian sex with her partner, while he rubbed his penis through his pants.
29. Menocall forced Plaintiff to turn around so that he could see her buttocks through her underwear.
30. Menocall asked the 17-year old Plaintiff to remove her bra and panties, but Plaintiff refused.
31. Menocall stated to Plaintiff, "I thought you wanted to fuck me."
32. After Plaintiff refused Menocall's inappropriate advances and let Menocall know she was on her period, Plaintiff was escorted out of the facility.
33. The facility that Plaintiff was taken to had not been approved as a location to take arrested civilians.
34. There was no legitimate purpose for Menocall to take Plaintiff, an underage female, to this location.
35. There was no legitimate reason for Menocall to touch himself and ask Plaintiff to remove

her clothing.

36. Menocall performed all these actions with Plaintiff against the wall and the door locked.

37. Menocall let Plaintiff know he had her address and wrote Plaintiff's address in the middle of a notepad for later use including, but not limited to, intimidating Plaintiff.

38. Menocall instructed Plaintiff not to tell anyone about what had happened, and told her to never come to Hialeah again.

COUNT I

Violation of § 1983 against Jesus "Jesse" Menocall, Jr.

39. The foregoing facts are incorporated herein.

40. During the relevant time period, the Officer was acting under the color of local, and/or State Law, and acting within the course and scope of his employment as the City's police officer.

41. The events described herein occurred as a direct and proximate result of practices, procedures, customs, and policies, which have been adopted by the City, which resulted in the deprivation of the constitutionally protected rights to which Plaintiff was entitled pursuant to the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. This deprivation of constitutionally protected rights is a violation of § 1983.

42. As a direct and proximate result of unlawful arrests, unlawful searches and seizures, excessive force, intimidation, Plaintiff sustained physical and emotional injuries, loss of income, employment, and resulting pain and suffering, mental anguish, loss of capacity for the enjoyment of life, the expense fines, bond, attorneys' fees, loss of ability to earn money, and various other damages including. Plaintiff will suffer these losses in the future and has already suffered these losses in the past.

43. The actions of the Officer constituted a deprivation of the following constitutionally

protected rights afforded to Plaintiff, and a clear violation of § 1983:

- a. The right and privilege not to be deprived of her life and liberty without due process and equal protection of the laws;
- b. The right and privilege to be free from unlawful attack upon the physical integrity of her person;
- c. The right and privilege to be secure in their person while speaking with or dealing with the Officers or walking down the street;
- d. The right and privilege not to be subjected to punishment without due process of law;
- e. The right and privilege to be immune, while being investigated and/or confronted by the Officers acting under the color of law, from illegal arrest assault and battery;
- f. The right and privilege to be free from cruel and unusual punishment;
- g. The right and privilege to be free from physical abuse, coercion, and intimidation.

44. The actions of the Officer resulted directly and proximately in the deprivation of the aforementioned constitutionally protected rights afforded to Plaintiff. Further, the actions of the Officer constituted a misuse of the power possessed by them by virtue of State Law as well as the law and local ordinances of the City. These deprivations of the constitutionally protected rights of Plaintiff were made possible as a result of the Officer being clothed with the authority of State Law as a duly credentialed and hired as the City's police officers.

WHEREFORE, Plaintiff requests that judgment be entered against the Officer as follows:

- a. For all compensatory damages properly recoverable pursuant to § 1983;

- b. For all attorneys' fees incurred in the prosecution of this cause;
- c. For all costs incurred in the prosecution of this cause;
- d. For all interest incurred subsequent to the entry of judgment;
- e. For any further relief the Court deems just and appropriate or which is necessary to implement the judgments, decrees, or orders of the Court;

COUNT II

False Arrest against Jesus "Jesse" Menocall, Jr.

45. The foregoing facts are incorporated herein.
46. On June 14, 2015, Plaintiff was arrested by Defendant Menocall, a Hialeah police officer who was acting in the course and scope of his duties as a police officer.
47. Such seizure physically deprived Plaintiff of her freedom and liberty.
48. The arrest, sexual advances, and humiliation was unlawful and unreasonable in that it was not based upon lawfully issued process of Court.
49. As a result of the actions of Defendant Menocall, Plaintiff suffered damages.
50. Pursuant to §768.28, Florida Statutes, and in an attempt to preserve this suit, Plaintiff notified Defendant Menocall simultaneously upon filing this action and to date said claim was not resolved.

WHEREFORE, Plaintiff respectfully requests this Court to award (a) reasonable and appropriate compensatory damages (b) Plaintiff's costs, expenses and reasonable attorney's fees, and (c) such other and further relief as this Court deems necessary and proper.

COUNT III

Civil Battery against Jesus "Jesse" Menocall, Jr.

51. The foregoing facts are incorporated herein.
52. An actor is subject to liability to another for battery if:

- a. he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and
 - b. an offensive contact with the person of the other directly or indirectly results.
53. The treatment to which Plaintiff was subjected by Defendant Menocall as set forth above and incorporated herein, was the result of Defendant Menocall's intent to cause harm and offensive contact with Plaintiff.
54. As a result of Defendant Menocall's intentional harmful and offensive contact with Plaintiff, Plaintiff has experienced and will continue to experience emotional anguish, pain and suffering, and loss of dignity damages.
55. Plaintiff also requests punitive damages based on Defendant Menocall's intentional and offensive contact with Plaintiff.
56. Plaintiff further seeks attorney's fees and costs as permitted by law.

WHEREFORE, Plaintiff respectfully requests this Court to award (a) reasonable and appropriate compensatory damages, (b) Plaintiff's costs, expenses and reasonable attorney's fees and (c) such other and further relief as this Court deems necessary and proper.

COUNT IV

Intentional Infliction of Emotional Distress against Jesus "Jesse" Menocall, Jr.

57. The foregoing facts are incorporated herein.
58. During the time frame enumerated, Defendant Menocall deliberately and recklessly inflicted mental suffering on Plaintiff by and through intentional verbal and physical harassment and humiliation.
59. Defendant Menocall's conduct is so outrageous in character, and so extreme in degree, that it is considered atrocious and utterly intolerable in a civilized society.

60. Defendant Menocall's conduct caused Plaintiff severe emotional distress.

61. As a direct and proximate result of Defendant Menocall's conduct described above, Plaintiff suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, and/or the aggravation of a previously existing condition. The losses are either permanent or continuing, and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff respectfully requests this Court to award (a) reasonable and appropriate compensatory damages, (b) Plaintiff's costs, expenses and reasonable attorney's fees and (c) such other and further relief as this Court deems necessary and proper.

COUNT V

Negligent Infliction of Emotional Distress against Jesus "Jesse" Menocall, Jr.

62. The foregoing facts are incorporated herein.

63. Any and all injuries to Plaintiff, when considering the acts of Defendant Menocall, were reasonably foreseeable.

64. At all relevant times, Defendant Menocall owed Plaintiff a duty to act with reasonable care.

65. Defendant Menocall had the power, ability, authority, and duty to stop engaging in the conduct described herein and to intervene to prevent or prohibit such conduct.

66. Defendant negligently failed to stop such conduct, despite having known that the conduct described herein would and did proximately result in Plaintiff's damages, with the knowledge that Plaintiff's emotional and physical distress would thereby increase, and with wanton and reckless disregard for the injurious and deleterious consequences to Plaintiff.

WHEREFORE, Plaintiff respectfully requests this Court to award (a) reasonable and appropriate compensatory damages, (b) Plaintiff's costs, expenses and reasonable attorney's fees and (c) such other and further relief as this Court deems necessary and proper.

COUNT VI

Negligence against Jesus "Jesse" Menocall, Jr.

67. The foregoing facts are incorporated herein.

68. Defendant Menocall failed to use ordinary or reasonable care to avoid injury to Plaintiff.

69. Defendant Menocall's negligence was a cause of injury, damage, loss, or harm to Plaintiff.

70. As a result of the actions described herein, Plaintiff suffered harm including, but not limited to, mental suffering and severe emotional distress.

71. Defendant Menocall's conduct constitutes negligence and is actionable under the laws of the State of Florida.

72. Plaintiff is entitled to compensatory and punitive damages in amounts to be ascertained at trial.

WHEREFORE, Plaintiff respectfully requests this Court to award (a) reasonable and appropriate compensatory damages, (b) Plaintiff's costs, expenses and reasonable attorney's fees, (c) punitive and exemplary damages, and (d) such other and further relief as this Court deems necessary and proper.

COUNT VII

State Tort of Negligent Supervision and Retention against Defendant City of Hialeah

73. The foregoing facts are incorporated herein.

74. The Defendant City has a duty to protect individuals from the acts of false arrest by the police officers the City employs.

75. During the course of the City's employment of Defendant Menocall, the City knew or had reason to know that Defendant Menocall had a history of misconduct indicating that he

was unfit to serve as a police officer; that he had a history of committing civil rights violations involving excessive force, battery, and false arrest; and, that he posed a danger to the public.

76. The City breached its duty of reasonable care by: a) retaining Defendant Menocall as a police officer; b) failing to discipline Defendant Menocall for committing acts of misconduct including excessive force and false arrest against members of the public; c) failing to train and/or retrain Defendant Menocall; d) failing to reassign Menocall to a position where he would not pose a threat to the public; e) failing to properly supervise and counsel Menocall; and f) failing to implement and utilize supposed training and supervisory procedures to remedy a known pattern of misconduct by Defendant Menocall.

77. As a direct and proximate cause of the wrongful acts and omissions of the Defendant City, Plaintiff suffered damages.

WHEREFORE, Plaintiff respectfully requests this Court to award (a) reasonable and appropriate compensatory damages, and (b) such other and further relief as this Court deems necessary and proper.

JURY DEMAND

Plaintiff demands trial by jury of all issues triable as of right by jury.

Dated: July 9, 2020

Respectfully submitted,

/s/ Max L. Horowitz

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 9, 2020, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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