

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF

MASSACHUSETTS

MICHAEL ELBERY

V

JAMES HESTER

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) COMPLAINT - AMENDED  
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CIVIL ACTION NO:97-11047-PB

Count One - Malicious Prosecution

1. The plaintiff is Michael Elbery who lives at 168 Fairfield St., Needham, Mass., in the county of Norfolk.
2. The defendant is Shrewsbury police officer James Hester. The Shrewsbury Police are at Maple St., Shrewsbury, Mass. in the county of Worcester.
3. On October 14, 1992 the defendant obtained a warrant for the arrest of the plaintiff without probable cause.
4. The plaintiff was falsely arrested by the Shrewsbury Police on 10-19-92 and imprisoned for the alleged intimidation of a witness, one Jeff Schlener.
5. The plaintiff was tried on 7-28-93 at Westboro District Court before Judge Waickowski and found guilty.
6. The plaintiff appealed the guilty verdict to the Worcester six-man jury , whereupon, at the request of the assistant district attorney the charges were dismissed by District Judge Loconto on 3-16-94. The case was determined finally in the plaintiff's favor.
7. The district court has no jurisdiction over Mass. criminal charge G.L. c. 268 s. 13B, intimidation of a witness. The district court findings are therefore void.
8. Information of the lack of jurisdiction was concealed from this plaintiff until February 1997.
9. There has been no other activity regarding these charges.

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10. The prosecution was commenced, instituted and continued by the defendant maliciously without basis and was done to harm the plaintiff.

11. As a result of the malicious prosecution the plaintiff suffered in his business and reputation, paid legal expenses and costs, and suffered emotional distress.

#### Count Two - Abuse of Process

1. The plaintiff repeats the facts in count one items 1-10 inclusive with same force and effect as though fully set forth herein.

2. On 10-14-92 the defendant maliciously and without probable cause made a criminal complaint against the plaintiff in order to obtain a warrant for the plaintiff's arrest.

3. The defendant obtained this 10-14-92 arrest warrant against the plaintiff for the sole purpose of harming the plaintiff, therefore abusing process using process for an ulterior and illegitimate purpose for which it was not designed.

4. As a result thereof the plaintiff suffered loss of reputation, paid attorney fees and costs, and incurred mental suffering and distress.

#### Count Three - Conspiracy

1. The plaintiff repeats the facts in count two items 1-3 inclusive with the same force and effect as though fully set forth herein.

2. The defendant making a false complaint and obtaining a false and illegal warrant for the plaintiff's arrest with no probable cause resulting in the false arrest and malicious prosecution of the plaintiff did conspire with Linda Schlener and Jeff Schlener as well as other Shrewsbury police officers .

3. The plaintiff as a result of this conspiracy incurred legal fees, costs, and suffered great emotional harm, a loss of reputation, embarrassment and humiliation. The plaintiff in addition seeks punitive damages against the defendant for his unlawful behavior.

Count Four - Violation of Civil Rights Under U.S. Title 42 sec. 1983

1. The plaintiff repeats the facts in count three items 1-2 inclusive with the same force and effect as though fully set forth herein.
2. The defendant , as a result of these actions, conspired to and deprived the plaintiff of his U.S. Constitutional rights to due process and liberty as is guaranteed by the 14th Ammendment and his right to be free from illegal and unreasonable seizure as guaranteed by the Fourth Amendment. The defendant acted under the color of state law.
3. The plaintiff as a result of his constitutional rights being violated by the defendant incurred legal fees, costs, suffered mental anguish and emotional distress, embarrassment, and humiliation. The plaintiff in addition seeks punitive damages against the defendant for his unlawful behavior.

Wherefore, the plainfiff demands judgement against the defendant for

damages, costs and expenses as enumerated

Compensatory damages of	\$250,000
Punitive damages of	\$250,000
Attorney's fees	\$ 3,500
Related legal expenses	\$ 500
Bail and Towing	\$ 100
Costs of this action	\$ 500
Other relief as this Court deems just , and equitable	

Michael Elbery, pro se

168 Fairfield St.  
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617-444-7324  
8-9-97

Certificate of Service

I the plaintiff sent the motion to amend and the amended complaint to the defendant's attorney at 67 Baternarch St., Boston, Mass. 02110 via first class mailprepaid on 8-11-97.