

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

Eric Whalen,)	
)	Civil Case.:
Plaintiff,)	5:08-CV-0246
)	(NAM/GHL)
v.)	
)	First Amended
City of Syracuse, a municipal)	Complaint.
corporation, Syracuse Police)	
Department, S.H. Marte individually and)	
in his official capacity as Syracuse)	
Police Officer, John Doe 1 through 20,)	
)	Jury Trial Demanded
Defendants.)	

Plaintiff alleges the following based upon information and belief:

JURISDICTION AND VENUE

1. This is a civil action seeking relief and damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. This Court has Jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4) and 2201. This Court also has pendant jurisdiction for state tort claims.
2. Venue is proper in this Court under 28 U.S.C. § 1391(b) and Local Rule 3.2. The Northern District of New York is the district in which the Plaintiffs claims arose so venue is proper in this Court.

PARTIES

3. Plaintiff Eric Whalen is a long time resident of the City of Syracuse. Plaintiff currently resides in the Skyline Apartments located in Syracuse.
4. Defendant City of Syracuse is a municipal corporation responsible for the policies, procedures, and practices implemented through the Syracuse Police Department and its employees.
5. Defendant Syracuse Police Department is responsible for instructing, supervising and controlling the activities of its employees on an ongoing basis pursuant to its official policy and custom.
6. Upon information and belief Officer S.H. Marte was acting in both his official and individual capacities as a Syracuse Police Officer on October 4, 2007.
7. Upon information and belief Defendant's John Doe 1 through 20 are persons or entities responsible for the surveillance and disclosure of information about the Plaintiff gained through that surveillance. They will be referred to as the Doe Defendants throughout this complaint.

FACTS

8. Doe defendants conducted surreptitious electronic surveillance of the Plaintiff and disclosed personal information about the Plaintiff gained

through that surveillance.

9. Doe Defendants surveillance and disclosure of personal information about the Plaintiff occurred in a manner and for a period of time that both knowledge of Doe Defendants activities and personal details about the Plaintiff were widespread.
10. Doe Defendants made accusations about the Plaintiff to justify and gain support for what they were doing. The Plaintiff was accused of being dangerously mentally ill and accused of being a sexual pervert among other things. These accusations generated widespread animosity. The Plaintiff was exposed to harassment related to the animosity generated by the accusations made by Doe Defendants.
11. Doe Defendants disclosed the Plaintiff's mental health diagnosis. The myths, stereotypes, and stigma associated with the Plaintiff's mental health diagnosis also generated widespread animosity. The Plaintiff was also exposed to harassment due to widespread animosity generated by the disclosure of his mental health diagnosis.
12. Doe Defendants conducted surveillance and disclosed information about the Plaintiff knowing their activity could be interpreted as symptoms of mental illness.
13. Knowledge of Doe Defendant's activity was widespread enough for members of the Syracuse Police Department to have knowledge of Doe

Defendant's activities and personal details about Plaintiff. Both individual officers and their superiors would have knowledge of Doe Defendant's activity.

14. On October 4, 2007 Plaintiff called the Syracuse Police Department non-emergency number believing that Doe Defendants activity was illegal¹. Defendant S.H. Marte was sent on the same day to the Plaintiff's apartment at the Skyline Apartments to take a police report.

15. After arriving at the Plaintiff's apartment Plaintiff explained his situation to Defendant Officer S.H. Marte. Without being told anything about a mental health diagnosis defendant Officer S.H. Marte immediately began asking about psychiatric medication. Defendant S.H. Marte made other statements to the effect that the Plaintiff's suspicions were due to mental illness. Defendant Officer S.H. Marte declined to investigate the matter or take a report.

16. Doe Defendants continued the surveillance after October 4, 2007.

17. No action was taken by the Syracuse Police Department to stop Defendant Doe's activity after October 4, 2007.

First Cause of Action: Violation of The Equal Protection Clause

¹ Surveillance and stalking laws: 18 U.S.C.A. § 2511, N.Y. Penal Law §§ 120.45, 120.50, 120.60, 250.00, 250.05, 250.40, 250.45, 250.50, 250.55, 250.60, 250.65.

18. Plaintiff repeats and re-alleges paragraphs 8 through 14 and incorporate them herein.
19. Defendant Officer S.H. Marte was acting under color of law and pursuant to the policies and customs of Defendant Syracuse Police Department when he arrived at the Plaintiff's apartment to take a police report.
20. Plaintiff is similarly situated to other who receive protection from defendant Syracuse Police Department in similar matters.
21. Plaintiff has a right to be equally treated by Defendant Syracuse Police Department.
22. Defendant Officer S.H. Marte knowing of the Doe Defendant's activity and motivated by the animus generated by Doe Defendants that also existed in the community denied the Plaintiff equal protection under the law.
23. Defendant S.H. Marte knew or should have known that his actions would violate the Plaintiff's constitutional rights.
24. If it were not for the actions and lack of action on the part of Defendants City of Syracuse, Syracuse Police Department and Officer S.H. Marte the Plaintiffs deprivation of constitutional right would not have occurred. Defendant Officer S.H. Marte showed a callous disregard for the Plaintiff's constitutional rights. Plaintiff suffered

intense emotional distress, mental anguish, humiliation, further damage to his reputation and standing in the community. The Plaintiff is seeking compensatory and punitive damages pursuant to 42 U.S.C. § 1983.

**Second Cause of Action: State Law Claim of
Intentional Infliction of Emotional Distress**

25. Plaintiff repeats and re-alleges paragraphs 8 through 14 and incorporates them herein.
26. The Defendant Does actions were extreme and outrageous and taken knowing that the Plaintiff would suffer extreme emotional distress.
27. The Defendants City of Syracuse, Syracuse Police Department and S.H. Marte acted and failed to act knowing that it would probably cause the Plaintiff severe emotional distress.
28. As a result of the actions and inaction of the Defendants named in this cause of action the Plaintiff did suffer extreme emotional distress, personal and public humiliation, mental anguish, embarrassment and ridicule.
29. The Plaintiff is seeking compensatory damages and punitive damages in an amount that will both punish and deter the Defendants from further harming the Plaintiff.

RELIEF

WHEREFORE, Plaintiff prays for relief against Defendants as follows:

A. The Plaintiff demands of the Defendants named in the first cause of action both jointly and severally the sum of ONE MILLION DOLLARS (1,000,000.00) plus punitive damages.

B. The Plaintiff demands of the Defendants named in the second cause of action both jointly and severally the sum of FIVE MILLION DOLLARS (5,000,000.00) plus punitive damages.

C. Costs and reasonable attorneys fees under 42 U.S.C. § 1988 and other relevant provisions of law.

D. Such other relief as this court deems just and proper.

F. Plaintiff demands a jury trial for both causes of action

Eric Whalen

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Plaintiff pro se.

I declare under penalty of perjury that the forgoing is true and

correct.

Dated

Signature of Plaintiff