

*Amended Summons
Issued (CP)*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

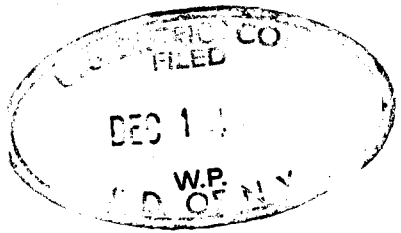
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ANGELA STERN,
Plaintiff,

AMENDED COMPLAINT
CIVIL ACTION NO. 05 CV 8574 (SCR)
JURY TRIAL DEMANDED

-against-

THE TOWN OF MOUNT KISCO & THE MOUNT
KISCO POLICE DEPARTMENT, Mount Kisco Police
Department Lieutenant Patrick M. O'Reilly, and
Detective Raul Fernandez, and other individual
employees of The Mount Kisco Police Department AND
THE STATE OF NEW YORK DIVISION
OF ALCOHOLIC BEVERAGE CONTROL, and
State of New York Division of Alcoholic Beverage
Control Investigator Frank Englander, and others
individual employees of the State of New York Division
of Alcoholic Beverage Control,



Defendants.

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The plaintiff, complaining of the defendants, by her attorneys, Watters & Svetkey, LLP., respectfully shows to this Court and alleges:

JURISDICTION IS FOUNDED UPON A FEDERAL QUESTION.

1. This action arises under the United States Constitution, particularly under provisions of the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States, and under federal law, particularly the Civil Rights Act, Title 42 of the United States Code, Section 1983, and the rights guaranteed by the Constitution and laws of the State of New York.
2. This is an action to redress the deprivation under color of statute, ordinance, regulation, policy, custom, or usage of rights, privileges, and immunities secured to plaintiff by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States pursuant to (42 U.S.C. § 1983) and arising under the law and statutes of the State of New York, including protections of due

process, equal protection and prohibitions against selective enforcement of State and Federal laws.

3. Jurisdiction is founded upon 28 U.S.C. Sections 1331, 1343(3) and 1343(4), this being an action authorized by law to redress the deprivation under color of law, statute, ordinance, regulation, custom, policy and usage of rights, privileges, and immunities secured to plaintiff by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States, plaintiff further invokes the supplemental jurisdiction of this Court to adjudicate pendant state law claims pursuant to 28 U.S.C. § 1367. Venue is proper pursuant to 28 U.S.C. § 1391 (b) (1&2).

4. The matter in controversy exceeds, exclusive of interest and costs, the sum or value of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS.

5. That an award of attorney's fees is appropriate pursuant to 42 U.S.C. § 1988.

PARTIES

6. That the plaintiff, is a resident of Westchester County and the State of New York.

7. Upon information and belief, that at all times hereinafter mentioned, the defendant, TOWN OF MOUNT KISCO, was and still is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York, and that it is vicariously liable for the violations of New York State tort law by its servants, agents and employees via the principle of respondeat superior as at all times relevant all officers employed by defendant, TOWN OF MOUNT KISCO POLICE DEPARTMENT, were acting for, upon, and in furtherance of the business of their employer and within the scope of their employment.

8. The TOWN OF MOUNT KISCO POLICE DEPARTMENT, is a local governmental agency, duly formed and operating under and by virtue of the Laws and Constitution of the State of New York and the defendant, TOWN OF MOUNT KISCO, is responsible for the policies, practices and

customs of the TOWN OF MOUNT KISCO POLICE DEPARTMENT as well as the hiring, screening, training, supervising, controlling and disciplining of its police officers, civilian employees and is the final decision maker for that agency.

9. That the defendant TOWN OF MOUNT KISCO is vicariously liable for the torts of its employees working for the TOWN OF MOUNT KISCO POLICE DEPARTMENT as police officers.

10. The STATE OF NEW YORK DIVISION OF ALCOHOLIC BEVERAGE CONTROL, is a state governmental agency in charge of enforcing New York State laws governing the sale of alcoholic beverages in New York State.

11. Defendant Mount Kisco Police Department Lieutenant Patrick M. O'Reilly, and Detective Raul Fernandez, are employees of defendant THE MOUNT KISCO POLICE DEPARTMENT.

12. State of New York Division of Alcoholic Beverage Control Investigator Frank Englander, is an employee of the defendant STATE OF NEW YORK STATE DIVISION OF ALCOHOLIC BEVERAGE CONTROL.

13. Each and all of the acts of the defendants alleged herein were done by the defendants, their agents, servants and employees, and each of them not as individuals, but under the color and pretense of the statutes, ordinances, policies, regulations, customs, and usages of the State of New York and the TOWN OF MOUNT KISCO, and under the authority of their office as police officers of said Town and State.

STATEMENT OF FACTS

BACKGROUND

14. PLAINTIFF ANGELA STERN is a resident of the Town of Mt. Kisco. In 1976 she opened the "Au Fun Chinese Restaurant" at 31 Main Street in downtown Mount Kisco. The restaurant initially served Chinese food but then later added Spanish dishes to cater to the local and growing Hispanic population in the town. She also obtained a liquor license for the restaurant with the permission of the landlord in 1996.

15. On or about July 31, 1999, the lease expired and PLAINTIFF ANGELA STERN stayed on as month to month tenant and attempted to negotiate a renewal. The landlord initially agreed to the renewal but thereafter refused to enter into a new lease. The refusal led to a law suit in 1999 pursuant to 42 USC section 1981 challenging the failure to renew the lease. Judge Colleen McMahon conducted a hearing September 29, 1999 and found in pertinent part:

[the landlord]'s decision not to renew Mrs.. Stern's lease, made after he had promised to send her a renewal lease in the mail, despite his receipt of, and awareness of, what he referred to as numerous complaints about her clientele from his other tenants, was motivated in significant part by a desire to help the officials of Mount Kisco rid the central business [di]strict of what they viewed as an undesirable element . . . local officials, including the Mayor of Mount Kisco, advised . . . [the landlord] . . . that Ah Fun's irresponsibility was the reason why his other tenants were dissatisfied. [the landlord] had agreed to renew Mrs. Stern's lease with full knowledge that his other tenants had complained of problems . . .

[and]

[i]t appears to me that [the landlord] decided to evict Ah Fun because area officials and business people who were hostile to Latinos congregating in downtown Mount Kisco convinced him that Mrs. Stern was an irresponsible tenant, without having any basis in fact to draw that conclusion. I find that their conclusory statements to . . . [the landlord] were motivated by racial animus.

Stern v. Resnick, 99 Civ. 10053 (CM)(transcript to proceedings dated September 29, 1999 pages 58

& 60).

16. The court directed entry of a preliminary injunction barring the landlord from refusing to rent to Mrs. Stern. The parties thereafter entered a stipulation settling the action and the lease was renewed and the restaurant operates to this day.

17. Defendant TOWN OF MOUNT KISCO was subject to similar law suits in 1996 and 1999 which challenged police enforcement tactics as discriminatory. These cases eventually were settled.

POLICE ENFORCEMENT AT CAFÉ LA CHINA

18. In or around 2001 PLAINTIFF ANGELA STERN opened Café La China at 155 Lexington Avenue in Mt. Kisco. The restaurant caters to a predominantly Hispanic clientele.

19. In or around May 2001, PLAINTIFF ANGELA STERN received a complaint from her landlord at Café la China claiming that the restaurant, catering to mostly Hispanic customers, was actually allowing women to prostitute themselves at the location. PLAINTIFF ANGELA STERN immediately contacted town officials to assure them that that was a blatant falsehood and invited them to the restaurant to make their own observations. The invitation was not accepted. She did notice thereafter an increased police presence at Café La China and after a new mayor took office in 2003 law enforcement policing escalated to the point of harassment of PLAINTIFF ANGELA STERN and Café La China's clientele.

20. Defendants THE TOWN OF MOUNT KISCO & THE MOUNT KISCO POLICE DEPARTMENT also have used defendant THE STATE OF NEW YORK DIVISION OF ALCOHOLIC BEVERAGE CONTROL, to interfere with PLAINTIFF ANGELA STERN's business. Generally, defendant MOUNT KISCO POLICE DEPARTMENT would single out Café La China for police investigation after which they would issue referrals to defendant STATE OF

NEW YORK DIVISION OF ALCOHOLIC BEVERAGE CONTROL that resulted in that agency issuing pleadings claiming license violations.

21. In the first nine months of 2005, defendant STATE OF NEW YORK DIVISION OF ALCOHOLIC BEVERAGE CONTROL issued eight separate pleadings involving allegations of violations at Café La China on thirteen separate dates. These pleadings alleged various violations including disorderly premise, selling to intoxicated persons and the failure to post the store liquor license or warnings concerning alcohol consumption and pregnancy and selling alcohol to minors, that took place on January 1, 2005, February 27, 2005, March 3, 2005 [case no 22396]; April 20, 2005, April 24, 2005 [case 24957]; April 30, 2005 [case no 25057] - involving individual defendant Mount Kisco Police Department Lieutenant Patrick M. O'Reilly and Detective Raul Fernandez and defendant State of New York Division of Alcohol and Beverage Control Investigator Frank Englander - ; May 1, 2005 [case no 25163]; May 20, 2005 [case no 26565]; June 19, 2005, June 25, 2005, July 2, 2005 [case no 26282]; July 14, 2005 [case no 26706]; and August 15, 2005 [case no 27405].

22. Each of the foregoing investigations and resulting pleadings were conducted by individuals of the defendant MOUNT KISCO POLICE DEPARTMENT and on at least one occasion noted above - April 30, 2005, case number 25057 - was conducted by individual defendant Mount Kisco Police Department Lieutenant Patrick M. O'Reilly and Detective Raul Fernandez and defendant State of New York Division of Alcohol and Beverage Control Investigator Frank Englander.

23. PLAINTIFF ANGELA STERN is contesting all of these claims as unfounded. The cases are still pending.

24. PLAINTIFF ANGELA STERN has observed during this time frame an increased police

presence in front of Café La China. On or about July 15, 2005, as well as on June 25, 26 & 27, 2005, the police conducted random searches of people leaving the location but did not investigate patrons of the deli adjacent to Café La China.

25. On July 2, 2005, PLAINTIFF ANGELA STERN observed the police chase someone who had been standing in front of Café La China but left alone those people standing in front of the deli located nearby.

26. On September 10, 2005 the police stopped persons in a car after they left Café La China. The driver produced a Guatemalan license and the officer said this was not Guatemala and they did not belong in the country.

27. PLAINTIFF ANGELA STERN welcomes the police presence and is the first to report unlawful or possibly criminal activity but claims herein that Café La China is singled out by defendants for unnecessary police activity and interference because her business has a predominantly if not exclusively an Hispanic clientele.

28. PLAINTIFF ANGELA STERN, through counsel, attempted to arrange meetings with the police and town officials to no avail.

29. Requests for records of enforcement of other town establishments for other restaurants in the area - Mango Café, 222 Main Street; Tacos La Cabana, 96 S. Moger Avenue; Kavners Bar & Grill, 30 East Main Street; Marys Bar, 96 South Moger Avenue; Mount Kisco Coach Diner, 252 Main Street - in an attempt to verify or provide context for policing activity were not answered.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS
THE TOWN OF MOUNT KISCO & THE MOUNT
KISCO POLICE DEPARTMENT, Mount Kisco Police
Department Lieutenant Patrick M. O'Reilly, and
Detective Raul Fernandez, and other individual
employees of The Mount Kisco Police Department

30. Plaintiff, PLAINTIFF ANGELA STERN, repeats, reiterates and realleges each and every allegation set forth in paragraphs "1" through "29" of this complaint, with the same force and effect as if more fully set forth herein.

31. As a result of the town and police selective enforcement in violation of constitutional and statutory rights, including those rights protected by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, and comprised in the protections against unreasonable search and seizure, the right to due process and equal protection of the laws by both the New York State and United States constitutions, PLAINTIFF ANGELA STERN has suffered business losses and emotional distress.

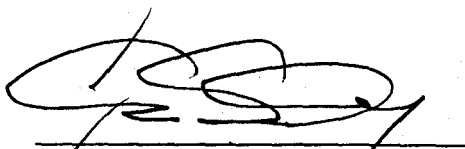
32. Accordingly, PLAINTIFF ANGELA STERN is entitled to recover compensatory and punitive damages against defendants and to equitable relief enjoining defendants from selective enforcement of laws; and termination of all actions as a result of selective enforcement including but not limited to those aforementioned by defendant STATE OF NEW YORK DIVISION OF ALCOHOLIC BEVERAGE CONTROL as well as those pending in the Mount Kisco Justice Court.

33. That by reason of the aforesaid PLAINTIFF ANGELA STERN has been damaged in the sum of ONE MILLION (\$1,000,000.00) DOLLARS and is entitled to an award of punitive damages and an award of attorney's fees is appropriate pursuant to 42 U.S.C. § 1988.

JURY TRIAL DEMANDED

WHEREFORE, plaintiff demands judgment against the defendants THE TOWN OF MOUNT KISCO & THE MOUNT KISCO POLICE DEPARTMENT, Mount Kisco Police Department Lieutenant Patrick M. O'Reilly, and Detective Raul Fernandez, and other individual employees of The Mount Kisco Police Department, in the sum of ONE MILLION (\$1,000,000.00) DOLLARS, punitive damages, and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and granting PLAINTIFF ANGELA STERN equitable relief enjoining defendants from selective enforcement of the laws; granting PLAINTIFF ANGELA STERN equitable relief enjoining defendant STATE OF NEW YORK DIVISION OF ALCOHOLIC BEVERAGE CONTROL from pursuing any pleadings or actions involving the enumerated cases above and enjoining defendants THE TOWN OF MOUNT KISCO & THE MOUNT KISCO POLICE DEPARTMENT from pursuing any cases or actions now pending in the Mount Kisco Justice Court arising from selective enforcement activities of defendants; and for such other and further relief as this Court deems just and proper;

Dated: November 28, 2005
New York, New York



Jonathan Svetkey(JS 3938)
Watters & Svetkey, LLP
Attorney for Plaintiff
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New York, New York 10016
(212) 679-8999

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANGELA STERN,

Case No. 05-CV-8574

Plaintiff(s),

-against-

AFFIDAVIT OF SERVICE

THE TOWN OF MOUNT KISCO, ET AL.,

Defendant(s).

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STATE OF NEW YORK)

:
COUNTY OF NEW YORK)

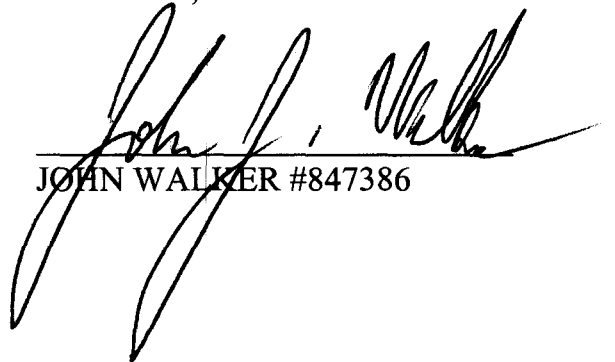
JOHN WALKER, being duly sworn, deposes and says that he is an employee of KEATING & WALKER ATTORNEY SERVICES, INC., is over the age of eighteen years and is not a party to the action.


That on the 9th day of December, 2005, deponent served a true copy of the **AMENDED COMPLAINT** upon attorneys for defendants in this action by placing the same in securely sealed and postage paid wrapper, and mailing same via regular first class mail, by depositing same in an official depository maintained by the government of the United States, City and State of New York, addressed as follows:

Lisa Gharthey, Esq.
State of New York
Office of the Attorney General
120 Broadway, 24th Floor
New York, New York 10271

John Carmody, Esq.
Servino & Santanelo
151 Broadway
Hawthorne, New York 10532

Sworn to before me this
9th day of December, 2005


JOHN WALKER #847386


MICHAEL J. KEATING
NOTARY PUBLIC, STATE OF NEW YORK
Reg. No. 01-KE-4851559
Qualified in Queens County
Certificate Filed in New York County
Commission expires February 3, 2006