

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
ZIMING SHEN,

Plaintiff,

Index No.:

Date Filed: April 11, 2018

**SUMMONS**

New York County is designated as the place of trial as plaintiff maintains his principal residence at 2 River Tr., New York, NY 12082

-against-

DANIEL SHAPIRO, NYP HOLDINGS, INC.,  
d/b/a THE NEW YORK POST and JOHN DOE,

Defendants.

-----X  
TO: THE ABOVE NAMED DEFENDANTS:

DANIEL SHAPIRO  
127 Rivington Street, Apt 2 A  
New York, NY 10002

NYP HOLDINGS, INC, d/b/a THE NY POST  
1211 Avenue of the Americas  
New York, NY 10036

39 Paloma Avenue, Apt 1  
Venice, CA 90291

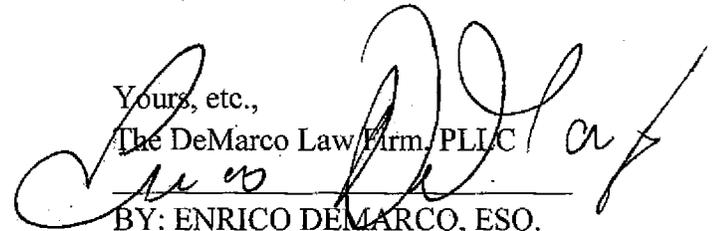
JOHN DOE  
1211 Avenue of the Americas  
New York, NY 10036

2441 N. Broadway, Unit 301  
Denver, CO 80205

**YOU ARE HEREBY** summoned to answer the complaint, a copy of which is herewith served upon you, and to serve copies of your answer upon the undersigned attorney for the plaintiffs whose address is 118-21 Queens Blvd, Suite 603, Forest Hills, New York 11375, and upon within twenty days after the service of the summons and complaint, exclusive of the day of service, or within thirty days after completion of service where service is made in any other manner than by personal delivery within the State. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in complaint.

Dated: April 10, 2018  
Forest Hills, New York

Yours, etc.,  
The DeMarco Law Firm, PLLC



BY: ENRICO DEMARCO, ESQ.  
Attorneys for plaintiff Ziming Shen  
118-21 Queens Blvd, Suite 603  
Forest Hills, NY 11375  
(718) 520-7500

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

\_\_\_\_\_ X  
ZIMING SHEN,  
Plaintiff, Index No: \_\_\_\_\_  
-against-

**VERIFIED COMPLAINT**

DANIEL SHAPIRO, NYP HOLDINGS, INC.,  
d/b/a THE NEW YORK POST and JOHN DOE,  
Defendants.  
\_\_\_\_\_ X

Plaintiff, ZIMING SHEN, by his attorneys THE DEMARCO LAW FIRM, PLLC., as and for his Verified Complaint, alleges upon information and belief, at all times hereinafter mentioned, as follows:

**INTRODUCTION**

1. This action arises from an overly aggressive media/press photographer defendant DANIEL SHAPIRO (“defendant Shapiro”) employed by the newspaper defendant NYP Holdings, Inc., doing business as The New York Post who physically and verbally harassed, annoyed and goaded the plaintiff into a confrontation during which this photographer physically attacked and pummeled the plaintiff with racial animus and then falsely reported to police and other law enforcement officials that he had been assaulted by plaintiff and that plaintiff damaged his property.

2. This disturbing incident was compounded by the defendant's use of his heavy metal camera as a blunt instrument to strike the plaintiff, and defendant's use of his camera cord to strangle the plaintiff after he had thrown plaintiff to the ground, fracturing plaintiff's shoulder.

3. Defendant Shapiro also during the attack pulled Plaintiff up from the ground, with great force kneed Plaintiff in the body, and then threw Plaintiff to the ground, and caused Plaintiff to lose consciousness.

4. An officer that arrived on the scene, was told by an eyewitness Elissa Krebbs ("Krebbs") that defendant Shapiro's claim of being assaulted by plaintiff were unfounded.

5. The witness Krebbs informed the police that the defendant Shapiro was responsible for the incident, and not the plaintiff.

6. Plaintiff also made statements to police officers at the scene that he was attacked by Defendant Shapiro.

7. There was also video surveillance available from a nearby establishment, and testimony from the store manager on duty at the establishment that supported that defendant was the aggressor who had attacked plaintiff.

8. Defendant Shapiro's injuries, a bloody nose, he sustained during his assault of plaintiff, however, such an injury was not caused by Plaintiff.

9. After defendant Shapiro's assault of plaintiff, Defendant Shapiro approached the Police Officers from the NYC Police Department, as plaintiff was sitting on the ground dazed with a fractured shoulder, and falsely told police at the scene and at the precinct and later to the Kings County District Attorney's Office a fabricated story about how plaintiff was the aggressor and he was only defending himself after he was punched in the nose by plaintiff, causing him an injury.

10. Further defendant Shapiro contacted at the approximate aforementioned time and place the NYC Police Department 911 communications system and falsely reported to the 911 operator that plaintiff had assaulted defendant Shapiro and several photographers.

11. Based upon defendant's representations to the NYC Police Department, and the Kings County District Attorney's office commenced an unfounded criminal proceeding charging plaintiff with various crimes including a felony. The criminal matter was reduced from a felony charge to a Class A misdemeanor and plaintiff, who submitted notice of his intention to testify before the grand jury, was denied this opportunity to be heard before the Grand Jury. The matter was further reduced at a later time to a class B misdemeanor to avoid a jury trial and plaintiff was again denied his opportunity to be heard on the merits, under oath in a public forum, before a jury. This criminal prosecution of the plaintiff had no merit and after two and half years in defending the baseless criminal proceeding, the criminal proceeding was eventually dismissed by the Court.

#### ALLEGATIONS AS TO JURISDICTION OF THIS COURT AND PARTIES

12. At all times hereinafter mentioned and at the commencement of this action, plaintiff, ZIMING SHEN, was and still is a citizen and resident of the City of New York, State of New York.

13. At the time of the commencement of this action, Defendant DANIEL SHAPIRO ("Defendant SHAPIRO") was an individual with an actual place of business and residence in New York County, State of New York.

14. Upon information and belief, defendant SHAPIRO also maintains a residence in the State of California.

15. Upon information and belief, defendant SHAPIRO also maintains a residence in the State of Colorado.

16. Defendant NYP HOLDINGS, INC, d/b/a The NEW YORRK POST (“NY Post”) is a corporation organized and existing under the laws of the State of Delaware with a principal office in the State of New York, County of New York.

17. Defendant JOHN DOE is an entity organized and or controlled by defendants NY Post that maintains its offices in the State of New York, County of New York. The identity of JOHN DOE cannot be ascertained with reasonable diligence, except that it is affiliated with defendant NY Post and employs defendant Shapiro as a staff photographer. Defendant JOHN DOE is collectively referred to herein as Defendant NY Post.

18. Defendants NY Post and any affiliate operate a media business whereby defendant NY Post publishes newspapers, and other media accounts for profit to the general public predominantly in the State of New York.

19. Defendant NY Post’s publications of news also consist of photographs and images published in its online sites and in its newspapers.

20. Defendant NY Post and its affiliates employed at the time of these events Defendant Shapiro as a staff photographer.

21. On or about September 11, 2014 this action was timely commenced in the US District Court, Southern District of New York (Civil Case No. 14-cv-7358) (“US District Court”) alleging various civil rights claims as well as state law claims, including a malicious prosecution claim against Defendant SHAPIRO.

22. After due deliberation the District Court dismissed all of plaintiff’s claims under Civil Case No. 14-cv-7358. The plaintiff appealed to the US Court of Appeals, 2<sup>nd</sup> Circuit

(“Court of Appeals”) which reinstated plaintiff’s state claim of malicious prosecution as against defendant Shapiro.

23. The Court of Appeals ruled that based upon defendant Shapiro’s representations to the Police, the Police has probable cause to arrest plaintiff and that defendant is responsible for any liability that may arise for the prosecution of the plaintiff.

24. The malicious prosecution claim was remanded back to US District Court for further proceedings.

25. The US District Court declined to exercise supplemental jurisdiction of the remaining malicious prosecution state law claim and the matter was dismissed without prejudice.

26. The order of the Appeals Court was rendered February 9, 2018.

27. The order of the US District Court declining supplemental jurisdiction over the state claim of malicious prosecution was made March 6, 2018.

28. Plaintiff filed this action timely within the applicable statute of limitations.

**FACTUAL ALLEGATIONS UNDERLYING ALL CAUSES OF ACTION  
COMPLAINED OF HEREIN**

29. Plaintiff repeats and re-alleges the aforementioned paragraphs numbered “1” through “28”, with the same force and effect as if fully set forth herein at length.

30. Defendant Shapiro, based upon his prior testimony, at the times of the events relevant

to this action was employed exclusively by defendant NY Post as a photographer and was acting within the scope of his employment as a staff photographer with defendant NY Post during the events complained of herein.

31. In Defendant Shapiro's LinkedIn online profile, a workplace social media site, defendant Shapiro describes himself as a staff photographer for defendant NY Post.

32. Defendant Shapiro and defendant NY Post also entered into a written contract that governed their employment relationship at the time of the events complained of herein and that despite the contract being demanded by plaintiff, the contract has never been disclosed to plaintiff.

33. Defendant NY Post controlled and supervised the manner in which Shapiro performed his duties as a media photographer specifically directing Shapiro to photograph certain subjects, and otherwise controlling the manner he performed his duties as a photographer.

34. On September 16, 2011 defendant NY Post and its agents directed defendant Shapiro to photograph plaintiff Shen and his wife who would be attending court proceedings in the US District Court, Eastern District of New York situated in Brooklyn, New York. ("the Courthouse").

35. On September 16, 2011, at approximately 2:15 p.m. in front of the Courthouse, defendant Shapiro physically restrained plaintiff and prevented plaintiff from peacefully leaving the area.

36. Defendant Shapiro grabbed the plaintiff while he was running away and held on to him so more photographs could be taken.

37. At this time, Shapiro caused the strap of his heavy, large metal camera to become wrapped around plaintiff's arm.

38. Defendant Shapiro tugged on the strap and physically pushed and struck plaintiff while plaintiff was entangled in the camera strap.

39. Plaintiff's wife, Joanna Fan, along with a friend Jenny Yuen came to plaintiff's aid and helped him unravel himself from the camera strap.

40. Plaintiff immediately ran away from the scene and Shapiro pursued him as he escaped from the vicinity of the courthouse.

41. On the 16<sup>th</sup> day of September, 2011, at approximately 2:34 p.m. in the vicinity of Tillary Street and Jay Street, in the County of Kings, City and State of New York defendant Shapiro after pursuing and following the Plaintiff, physically threatened Plaintiff and called Plaintiff various derogatory names, including "Chink Bastard".

42. Plaintiff is a Chinese-American.

43. At the aforementioned time and place Defendant SHAPIRO made physical contact with Plaintiff's person thereby causing Plaintiff to lose consciousness and sustain various bodily injuries that required immediate medical attention, including a fractured and dislocated shoulder, and bruising and swelling over a majority of his body.

44. At the aforementioned time and place Defendant SHAPIRO caused a camera to make physical contact with Plaintiff's person thereby causing Plaintiff to sustain various bodily injuries that required immediate medical attention, including without limitation a fractured shoulder, injured knees, cuts and lacerations, and bruising and swelling over a significant portion of plaintiff's body.

45. At the aforementioned time and place defendant Shapiro strangled plaintiff with his camera cord.

46. At the aforementioned time and place, defendant Shapiro kned plaintiff in his body and threw him to the ground rendering plaintiff unconscious.

47. At the aforementioned time and place SHAPIRO was observed "high fiving" and celebrating other photographers in the area after Defendant Shapiro made physical contact with Plaintiff, and plaintiff lay on the ground injured. Plaintiff was unable to get up from the ground by his own volition because he was serious injured by defendant Shapiro.

48. NYC Police Officers responded to the scene.

49. At the aforementioned time and place, Defendant SHAPIRO falsely maintained to NYC Police Officers that Plaintiff had assaulted Defendant SHAPIRO and other persons, had menaced Defendant SHAPIRO, and had unlawfully damaged his property.

50. Further, Defendant SHAPIRO maintained that Plaintiff had menaced and attempted to assault another individual when Defendant SHAPIRO knew those allegations to be false.

51. Defendant SHAPIRO also falsely stated while at the above approximate time and place to an operator of the NYC Police Department 911 communications division that plaintiff "assaulted" Shapiro, and that plaintiff "assaulted three of us."

52. The police officers that responded to this incident physically detained, and arrested and physically restrained Plaintiff with handcuffs based upon these statements made by defendant Shapiro that were false.

53. In truth, Plaintiff had not assaulted, menaced, or threatened any person or made or attempted to make unlawful physical contact or cause physical injury to another person and/or unlawfully damaged the property of any person, and that in fact Plaintiff had been assaulted and battered by defendant SHAPIRO; that Plaintiff had suffered physical injuries as a result of

Defendant SHAPIRO's physical contact with Plaintiff, and that SHAPIRO damaged his own property.

54. Plaintiff was taken immediately to the hospital because he required immediate medical attention.

55. Defendant SHAPIRO, through his false and malicious testimony caused the Kings County District Attorney on September 16, 2011 to file a felony complaint in the Criminal Court of the City of New York, Kings County under Docket Number 2011KN074117 against Plaintiff.

56. Defendant SHAPIRO alleged in the felony complaint that Plaintiff unlawfully assaulted, menaced Defendant SHAPIRO and unlawfully damaged Defendant SHAPIRO's property.

57. On or about September 17, 2011 Plaintiff was arraigned on the felony complaint in Kings County, Criminal Court and bail was set in an amount that Plaintiff satisfied.

58. Defendant intentionally, and knowingly made the aforementioned false statements set forth herein to the Kings County District Attorney's Offices and their agents knowing that a criminal proceeding would be initiated by the Kings County District Attorney.

59. The aforementioned statements made by Defendants were false.

60. Defendants knew such statements were false, and such statements were made intentionally, maliciously, or with reckless disregard for the truth and were calculated to cause Plaintiff to be prosecuted in a criminal proceeding and to be incarcerated.

61. The aforementioned conduct by Defendants was malicious in that the

Defendants gave the false statements to the NYC Police Department and the Kings County District Attorney with the purpose of initiating a criminal prosecution and causing defendant to be incarcerated. As a result of Defendants conduct, Plaintiff was incarcerated and deprived his liberty commencing from the date of his arrest on September 16, 2011 through September 17, 2011.

62. The criminal proceeding that was commenced against Plaintiff was ultimately dismissed on February 25, 2014.

63. Upon information and belief, Defendant Shapiro, based upon his conduct during these events, in the past has engaged in conduct that is intended to provoke a response by the subject or person he is photographing in order to obtain a reaction from the subject that he can capture in photographs and that defendant NY Post can then print in its newspapers and in other media formats.

64. Upon information and belief, photographs that capture a reaction or an image of a subject reacting in a certain manner is a photograph preferred by the defendant NY Post as the publication of such photographs increases the likelihood that consumers will purchase the defendant NY Post's newspapers and read their media publications.

65. Defendant Shapiro during the events in this case closely followed and made certain statements to plaintiff Shen in order to provoke a certain response, including telling him that he was going to jail for a long time, calling plaintiff "a Chink Bastard" threatening plaintiff and using derogatory or offensive language.

66. Upon information and belief, defendant NY Post is aware that defendant Shapiro and

other staff photographers employed by defendant NY Post engage in certain conduct such as closely following a subject and directing comments to the subjects they photograph while using profanity, or otherwise direct comments that are designed to provoke a response in the person they are photographing that will then be captured by their photographers in photographs.

67. On December 6, 2011 defendant NY Post sent another photographer/ journalist believed to be named Gregory Paul Mango to photograph and report on plaintiff's pending state assault case initiated as result of defendant Shapiro's false complaint.

68. On December 6, 2011 the NY Post photographer believed to be Mango attempted to photograph plaintiff as he attended the criminal proceedings in the NY City Criminal/Supreme Court in Kings County. At this time this NY Post photographer followed plaintiff closely, as defendant Shapiro had done on the day of the incident, and using a long lens camera which the photographer placed approximately one foot from plaintiff's face and directed the following comments to plaintiff: ' "chink' " asshole' " "come on, hit me, do it!" The photographer kept following plaintiff for about one block, until plaintiff's lawyer asked the photographer to leave plaintiff alone, and plaintiff's attorney and the photographer had a heated argument.

69. Upon information and belief, defendant NY Post has prior to the events in this case employed photographers that have engaged in similar conduct whereby the photographer makes certain statements or engages in certain conduct to provoke a response in the persons being photographed and is then involved in violent or otherwise physical confrontations with the subjects they intend to photograph.

70. As a result of these violent confrontations, upon information and belief, these

photographers then contact the police department and give accounts of their confrontation with the subjects they are photographing.

71. Upon information and belief, defendant NY Post is aware of this practice by its photographers of contacting the police to give accounts of the events of the confrontation with the subject they are photographing when the encounter is physical or involves physical contact with the subject they are photographing.

72. Upon information and belief, defendant NY Post tacitly approves the tactics or conduct employed by its photographers in order to get the subject to react in a certain manner so that reaction by the subject can be photographed and then published in defendant NY Post's newspapers.

73. In the events in this case defendant Shapiro contacted the NYC Police Department after he violently assaulted Plaintiff and falsely claimed that plaintiff had assaulted defendant Shapiro and that plaintiff had assaulted others.

74. Defendant NY Post was aware of this violent episode between Shapiro and plaintiff, and directed another staff photographer on the scene identified as Spencer Burnett ("Burnett") to go to the precinct to "check on" his co-worker defendant Shapiro to "support" Shapiro, and directed its employee Burnett to give his account of what the witness claimed transpired at the scene.

75. Plaintiff submits that Burnett also gave a false account of the events at the scene by claiming falsely that plaintiff had menaced other photographers by kicking and punching at other photographers.

76. Upon information and belief, Plaintiff submits that defendant NY Post directed Burnet to the police precinct for the purpose of bolstering Shapiro's false account of the events as to his encounter with plaintiff in order to shield defendant NY Post and Shapiro from any legal liability.

77. Defendant NY Post in various published articles falsely maintained that Plaintiff Shen had "punched and kicked several photographers" (see NY Post Article dated September 17, 2011) and falsely maintained that one photographer, referring to defendant Shapiro, was bloodied by Plaintiff Shen. (NY Post Article dated September 16, 2011, and February 25, 2014).

78. Plaintiff further submits that after the criminal case was dismissed the NY Post then claimed in an article dated February 25, 2014 that the prosecutors dismissed the case because defendant Shapiro was moving and did not want to pursue the case. Upon information and belief, plaintiff submits that this published statement is false.

79. Defendant NY Post also hired attorneys and paid defendant Shapiro's and Burnett's legal fees in defending the case filed by plaintiff against defendant Shapiro in the US District Court, Southern District of New York.

### **DAMAGES**

80. As a result of the aforementioned conduct, Defendants violated plaintiff's constitutional rights, caused plaintiff to suffer a loss of his liberty, bodily injuries, a loss of consciousness, humiliation and mental anguish and injury to Plaintiff's reputation and other compensable loss, including lost profits and attorney's fees to defend the criminal prosecution.

**AS AND FOR THE FIRST CAUSE OF ACTION (MALICIOUS PROSECUTION)  
AGAINST DEFENDANTS**

81. Plaintiff repeats and re-alleges the aforementioned paragraphs numbered "1" through "80", with the same force and effect as if fully set forth herein at length.

82. Defendant Shapiro while acting in the scope of his employment with defendant NY Post, and united in interest with defendant NY Post, at the aforementioned time and place intentionally and knowingly made the aforementioned false statements set forth herein and caused and otherwise maintained a criminal prosecution without lawful basis against the plaintiff in the Criminal Court of the City of New York, Kings County.

83. The aforementioned statements made by Defendants were false.

84. Defendants knew such statements were false, and such statements were made intentionally, maliciously, or with reckless disregard for the truth.

85. Defendants intentionally made such statements in order to cause the commencement and continuation of a criminal prosecution against Plaintiff with reckless disregard of the rights of Plaintiff.

86. The aforementioned conduct by Defendants was malicious in that the Defendants gave false statements and maintained the criminal proceeding so as to cause Plaintiff's incarceration and to hinder and prevent plaintiff from disclosing the true nature of defendants conduct.

87. As a result of the foregoing, a criminal proceeding was commenced against Plaintiff that was ultimately dismissed.

88. As a result of such conduct, Defendants caused Plaintiff to suffer a loss of liberty,

humiliation and mental anguish and injury to Plaintiff's reputation, including intense negative publicity in both Chinese and English local newspapers, injury and inconvenience to Plaintiff caused by his arrest and imprisonment, expenses incurred in defending the criminal prosecution, and other compensatory damages, caused by Defendants false statements and malicious prosecution.

89. Accordingly, Plaintiff demands a judgment against Defendants in an amount to be determined at trial estimated to be Three Million (\$3,000,000.00) Dollars in compensable damages.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demands a judgment against Defendants on the above cause of action as follows:

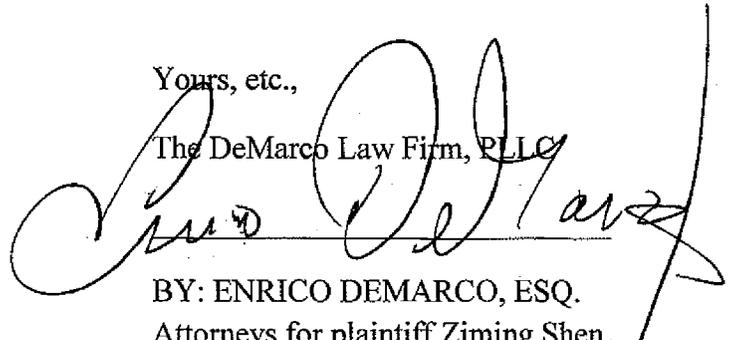
Three Million (\$3,000,000.00) Dollars as compensatory damages; and

Five Million (\$5,000,000.00) Dollars in Punitive Damages together with costs and disbursements in this action.

Dated: Forest Hills, New York  
April 10, 2018

Yours, etc.,

The DeMarco Law Firm, PLLC



BY: ENRICO DEMARCO, ESQ.  
Attorneys for plaintiff Ziming Shen  
118-21 Queens Blvd, Suite 603  
Forest Hills, NY 11375  
(718) 520-7500

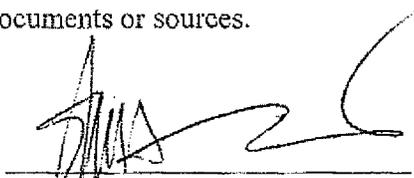
VERIFICATION

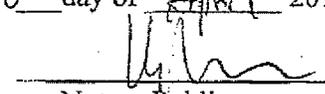
STATE OF NEW YORK  
COUNTY OF NY

ZIMING SHEN, being duly sworn, deposes and says:

1. I am a party to this action and I have read the foregoing Verified Complaint and know the contents thereof; that the same are true to my own personal knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe the contents thereof to be true to the best of my knowledge.

2. The grounds of my belief as to all matters not stated upon my knowledge are documents and records and various correspondence, conversations had between the parties, witnesses and other documents or sources.

  
ZIMING SHEN

Sworn to before me this  
10 day of April 2018  
  
Notary Public

YUBIN LIU  
Notary Public, State of New York  
Reg. No. 0116264939  
Qualified in New York County  
Commission Expires July 02, 20 20