

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK DIVISION

SUPERIOR COURT

CIVIL NO. 1584CV02606

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JEFFREY SOLOMON,  
Plaintiff

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v.

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**SECOND AMENDED  
COMPLAINT**

MASSACHUSETTS

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DEPARTMENT OF PUBLIC HEALTH,  
Defendant

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1. The Plaintiff, Jeffrey Solomon (a/k/a Jeffrey Banks), is a resident of Revere, Suffolk County, Massachusetts.

2. The Defendant, Department of Public Health (“DPH”), is an agency of the Commonwealth and, *inter alia*, was at all material times responsible for operation of the Forensic Drug Laboratory (“Drug Lab”) at the Hinton State Laboratory Institute in Jamaica Plain.

**JURISDICTION AND VENUE**

3. This action seeks damages. The Court has subject matter jurisdiction pursuant to G.L. Ch. 212, Sec. 4. Venue in Suffolk County is proper pursuant to G.L. Ch. 223, Sec. 1 insofar as the Plaintiff and the Defendant reside or have a usual place of business in Massachusetts, and all committed acts forming the basis for this action in Suffolk County, MA.

**FACTS**

4. Donald Keenan (“Keenan”) was at all material times a police detective employed by the Boston Police Department, with the rank of Detective. On or about December 12, 2010, with the acquiescence of his superiors, and in the performance of his official duties, he conducted an undercover buy of alleged crack cocaine from the Plaintiff in Boston, Suffolk County. Upon completion of the transaction, Keenan and other officers arrested the Plaintiff.

5. Upon being arrested, the Plaintiff informed the arresting officers, including but not limited to Keenan, that the alleged controlled substance he had sold them was in fact counterfeit and was not cocaine. Using a so-called “Narc Swipe” (a simple test designed to be used in the field), Keenan conducted a preliminary field test of the substance. If the substance was cocaine, it would upon being swiped turn blue. However, when Keenan swiped the substance it did not change color, and he determined that it was counterfeit. He then destroyed the Narc Swipe and charged the Plaintiff with distribution of a counterfeit substance, a misdemeanor with a maximum penalty of one year in the house of correction.

6. After completing the Narc Swipe, Keenan destroyed the narc Swipe and discarded the substance he had field tested. He then forwarded the entirety of the remaining substance (the “Substance”) to the Drug Lab for chemical testing and analysis.

7. The Substance was received by the Drug Lab on December 16, 2010, and on February 28, 2011 it was released to DPH chemist Annie Dookhan (“Dookhan”) for testing. Thereafter, Dookhan falsely recorded that she had performed the following necessary tests on the substance: (a) Cobalt Thyolicene spot test, Gold Chloride Microcrystalline test, and a TLA Microcrystalline test; in fact, she had performed no testing. The same day, she falsely recorded that the Substance tested positive as cocaine.

8. Thereafter, on March 3, 2011, another Drug Lab chemist, Kate Corbett, recorded that she conducted confirmatory testing on the Substance, using gas chromatography-mass spectrometry (GC/MS). She concluded that the Sample was too weak to confirm Dookhan’s results, and afterward recorded such inability to confirm on a “control sheet” and on the back of a “control card”.

9. On March 7, 2011, Dookhan provided a second set of samples to Corbett for testing, and on that date Corbett recorded on a second control sheet that she confirmed the presence of cocaine. However, in violation of established protocols, Corbett never personally confirmed that the second samples were the Substance and never loaded the second sample into the GC/MS. Rather, she simply reviewed results proffered by Dookhan after Dookhan had allegedly conducted the second testing. The Substance was returned to the Drug Lab safe on March 10, 2011. In the months preceding these tests on the Substance, Corbett was aware that Dookhan was forging her (Corbett’s) initials on documents provided to officials for use during criminal drug prosecutions.

10. Thereafter, Dookhan and Corbett executed and submitted drug certificates falsely certifying that the Substance was cocaine.

11. On April 13, 2011 the Plaintiff’s assigned defense counsel (“Defense Counsel”) from the Committee For Public Counsel Services (CPCS) met with the

Assistant District Attorney (ADA) from the Suffolk County District Attorney's Office ("Suffolk DA") handling the Plaintiff's, and Keenan case to inspect the Substance. When Defense Counsel noted that none of the Substance reflected the blue coloring that would be evident from the swipe, Keenan speculated that he likely, in conformity with his usual practice, discarded the tested portion to the Substance immediately after testing. He then spoke privately with Defense Counsel and stated that the Plaintiff was not a good guy and that he could make things easy or difficult for Defense Counsel.

12. On July 1, 2011 another ADA ("Second ADA") convened a grand jury to consider indicting the Plaintiff. Prior to having Keenan testify as a witness, the Second ADA advised Keenan that he should testify, based upon a conversation she had with an unidentified person at the Drug Lab, that the consistency of crack cocaine was not always uniform and it was possible he swiped a piece that did not have measurable amounts of cocaine. When he testified, Keenan did not know this to be true. The purpose of this false testimony was to explain away the fact that the swipe did not reflect evidence of cocaine in the Substance. In addition, at the request of the Second ADA, Keenan during his testimony on July 1, 2011 introduced to the Grand Jury the false drug certificates prepared and executed by Dookhan and Corbett.

13. Based primarily upon Keenan's false testimony and the false drug certificates, the Grand Jury indicted the Plaintiff insofar as relevant to this Complaint for Possession of a Class Substance With Intent to Distribute in a School Zone (Subsequent Offense) and Distribution of a Class B Substance in a School Zone (Subsequent Offense). Conviction on these charges carries mandatory minimum state prison sentences of seven years. Based upon the indictments, the Defendant remained in custody until at least October 5, 2012.

14. On October 7, 2011, the Second ADA received a letter from Dookhan responding to Defense Counsel's request for discovery. The Suffolk DA generally engaged in a practice of communication with the Drug Lab chemists both before and after testing in Suffolk County prosecutions alleging drug crimes. Among the discovery provided by Dookhan, passed along to Defense Counsel by the Second ADA, were the false drug certificates and the false analysis reports prepared by Dookhan and Corbett. She also provided a copy of Dookhan's CV in which Dookhan falsely claimed to possess a Master of Science Degree in Chemistry from the University of Massachusetts.

15. On November 17, 2011 the Second ADA provided the Plaintiff (through Defense Counsel) notice that she intended to call Dookhan and Corbett as expert witnesses if the case went to trial, and that they would rely on the analysis reports and drug certificates provided to testify that the Substance was cocaine.

16. At no time did the Second ADA provide Defense Counsel with the initial Control Sheet or the back side of the Control Card, each of which the Second ADA knew

or should have known indicated that the Substance was too weak to confirm the presence of cocaine. Rather, the Second ADA only provided the second Control Sheet and Control Card, which falsely reflected the presence of cocaine in the Substance. The Second ADA knew or should have known that the initial Control Sheet and Control Card were clearly exculpatory evidence that should have been provided to Defense Counsel in discovery.

17. Growing concerns about Dookhan's professional behavior eventually triggered an independent investigation of her activities. The investigation revealed widespread fraud by Dookhan. As a result, on September 27, 2012 the Massachusetts State Police ("MSP") retested the Substance, at which time no controlled substances were detected therein. The next day, September 28, 2012, the MSP filed a "Statement of Probable Cause" describing Dookhan's false report of cocaine in the Substance and applied for a criminal complaint against her.

18. On October 5, 2012 the Suffolk DA filed a *nolle prosequi* of the indictment against the Plaintiff, thus terminating the case against him relating to the Substance.

19. On December 17, 2012, Dookhan was indicted on fifteen criminal counts relating to her activity at the Drug Lab, including but not limited to her handling of the Substance. Subsequently, she pleaded Guilty to numerous indictments charging her with *inter alia* obstruction of justice, evidence tampering, and perjury.

20. An investigation by the MSP of misconduct at the Drug Lab found, *inter alia*, the following misconduct by Dookhan, all of which were or should have been readily noticeable to her superiors : (a) forging other chemists and evidence officers initials on various documents; (b) ignoring lab procedures and protocols for testing; (c) failing to properly conduct test samples on the GC/MS, instead simply fabricating results she desired; (d) production of an extraordinarily high level of production compared to her peers, which should have acted as a red flag to supervisors; (e) failure to follow basic laboratory procedures; (f) inappropriate access to office computers, even after her suspension from lab duties; (g) failure to properly inspect slides prepared for microscopic inspection; (h) engaging in direct communication with ADA's and police officers about samples and analyzing them out of order, even though both were forbidden by lab policies; (i) unfettered inappropriate access to the lab and evidence room, even after her suspension from lab duties; (j) failure by supervisors to respond to and correct numerous complaints about Dookhan's activities, including workload, documentation errors, blatant forgeries and dubious test results; (k) improper and unauthorized removal of ninety (90) samples from the evidence room; and (l) falsification of her credentials.

21. There also existed in the Drug Lab, caused and enabled by Jon Auerbach, then Commissioner of DPH, and Judy Ann Bigby, then Secretary of the Executive Office of Health and Human Services ("EOHHS"), a culture of laxity and failure to maintain

professional standards, including but not limited to: (a) failure to create and maintain records of retesting and resubmittal of samples; (b) failure to obey restrictions on access to the evidence room permitting widespread inappropriate access by Dookhan and others; (c) lack of oversight and tracking of samples checked out for testing; (d) failure to initiate controls and tracking over access to the office computers; and (e) failure to implement and follow appropriate procedures to respond to complaints and other evidence of Dookhan's misconduct, even after such misconduct became obvious. As agents for DPH and EOHHS, DPH is liable for their negligence and omissions.

22. In December 2011, Auerbach initiated an investigation of Dookhan's misconduct (notwithstanding that he had been informed of questions surrounding Dookhan's activities as early as 2008), and other deficiencies in the Drug Lab. His investigation, however, was cursory and was not designed to uncover misconduct (and did not do so) but rather to provide political cover for the Drug Lab, himself and DPH. In fact, he intentionally withheld ongoing findings of the subsequent MSP investigations from Drug Lab supervisors so they could not be examined about them in court. At the time of his resignation in December 2012, he publicly acknowledged that there was insufficient quality monitoring, reporting and investigation on the part of supervisors and managers on issues surrounding the Drug Lab.

23. At all times relevant to this Complaint, Auerbach and Bigby had the duty and obligation to assure that, *inter alia*: (a) the credentials of Drug Lab employees were verified to assure that they were qualified to perform the work they were assigned; (b) appropriate and professionally optimum procedures were in place to assure that samples requested to be tested were properly tested; (c) appropriate procedures were implemented to assure that all testing and reporting was tracked, cross-checked, and audited to eliminate the likelihood that misconduct of the type engaged in by Dookhan could occur; (d) all documents, reports and certificates issued by the Drug Lab were accurate and verified as authentic; (e) security measures were enforced to assure that only authorized and necessary persons had access to labs and computers, which access could be documented; (f) the integrity of samples entrusted to the Drug lab was maintained; (g) procedures were implemented so that any exculpatory evidence was documented and communicated to the District Attorney or police department involved, so that it could be appropriately disclosed to a defendant; (h) Drug Lab chemists and other staff were not to have direct contact with prosecuting ADA's or police officers regarding the requested testing of samples, and that proper protocols were in effect for any such necessary communication; (i) all employees were properly trained and competent to perform the tasks they were assigned; (k) the training operation of the Drug Lab and all activities of its employees and agents were properly supervised by them.

24. Auerbach and Bigby negligently failed to perform their duties as described in Para. 23 *supra*, and the misconduct committed by Dookhan and others was a foreseeable result of Auerbach's and Bigby's negligence.

25. As a result the negligence of Auerbach, Bigby and others, Dookhan was allowed and enabled to falsify testing of the Substance and to so report, with the result that the Plaintiff was falsely and improperly indicted for crimes he did not commit, was unjustly and illegally held in custody, was illegally deprived of his liberty, suffered severe emotional distress, and suffered loss of income.

**COUNT 1**  
**(NEGLIGENCE v. DPH)**

26. The Plaintiff incorporates by reference and restates Paras. 1-25 *supra* as if completely set forth.

27. The Defendant, DPH, is jointly and severally responsible for the operation of the Drug Lab and other actions of its various agents with respect to the Drug Lab at all times material to this Complaint. By reason of the actions of Dookhan, and as a proximate cause of the negligent supervision of Dookhan and others by the Defendant DPH, the Plaintiff suffered damages as described in Para. 31 *supra*, in excess of \$25,000.

28. Accordingly, the Plaintiff demands that a judgment enter in his favor against the defendant, DPH for his damages, plus interest and costs as provided by law.

**THE PLAINTIFF CLAIMS A TRIAL BY JURY ON  
ALL ISSUES OT WHICH HE IS SO ENTITLED**

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By his attorney,

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