

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**Anthony Calabrese,
Plaintiff**

**vs
Joseph Coronato, Michelle
Tierney, Marlene Lynch Ford and
Stuart Rabner, in their official
capacities; John Does 1 to 4, all
individually and in their official
capacities; Bernardino L. Alvarado,
and John Does 5 and 6, all
individually and in their official
capacity as Brick Township police
officers; and Ocean County, a New
Jersey municipal corporation,
Defendants**

CASE NO: 3:19-cv-12526

CIVIL ACTION

NOTICE of LAWSUIT

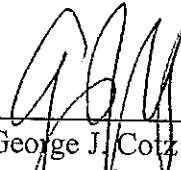
TO: Officer Bernardino L. Alvarado
Brick Township Police Dept
401 Chambers Bridge Road
Brick Township, NJ 08723

A lawsuit has been commenced against you. A copy of the Complaint is attached to this notice. It has been filed in the United States District Court for the District of New Jersey. This is not a formal Summons or notification from the Court, but rather my request that you sign and return the enclosed Waiver of Service in order to save the cost of serving you with a judicial Summons and an additional copy of the Complaint. The cost of service will be avoided if I receive a signed copy of the Waiver within **thirty (30) days** after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope for your use. An extra copy of the Waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the Court and no Summons will be served on you. The action will then proceed as if you had been served on the date the Waiver is filed, except that you will not be obligated to answer the Complaint before **sixty (60) days** from the date designated below as the date on which this notice is sent.

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the Court to require you to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the Summons, which is set forth on the reverse side of the Waiver form.

I affirm that this request is being sent to you on behalf of the Plaintiff, this 5th day of June, 2019.


George J. Cotz
Attorney for Plaintiff
47 S. Franklin Turnpike
Ramsey, New Jersey 07446
Phone 201-327-0900

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CIVIL ACTION

***AMENDED
COMPLAINT
and
JURY DEMAND***

Plaintiff, complaining of Defendants, says:

PARTIES

1. Plaintiff is a resident of the Town of Brick, in the County of Ocean.
2. On information and belief, all Defendants are residents of the County of Ocean, except for Defendant Stuart Rabner who, as Chief Justice of the New Jersey Supreme Court, has an official address in the County of Mercer.
3. The County of Ocean is a New Jersey municipal corporation.

JURISDICTION and VENUE

4. This Court has jurisdiction pursuant to 28 USC 1331 as the claims arise under a federal statute, to wit, 42 USC 1983. This Court also has concurrent jurisdiction over pendent state law claims pursuant to 28 USC 1367.

5. Venue is proper in Trenton vicinage because all of the Defendants have a presence in Ocean County and all of the acts complained of occurred there.

FACTUAL ALLEGATIONS

Plaintiff's Altered Criminal Records

6. On January 27, 2012 Plaintiff was arrested by Lacey Township police and charged with violating a) NJSA 2C:35-5(B)(11) for possessing less than five pounds of marijuana with intent to distribute; b) NJSA 2C:35-10(A)(3), for possessing more than 50 grams of marijuana; and c) NJSA 2C:39 - 4.1(A), for possessing a firearm while violating NJSA 2C:35; and d) NJSA 2C:36 -2 for possessing drug paraphernalia. Copies of the summons issued to Plaintiff by the Lacey Township police are attached as Exhibit A, and incorporated herein by reference.

7. On April 11, 2013, Plaintiff was indicted by an Ocean County Grand Jury for violating a) NJSA 2C:35-10(a)(3) by possessing more than 50 grams of marijuana ; b) NJSA 2C:35- 5(b)(11) by possessing less than five pounds of marijuana with intent to distribute; and c) NJSA 2C:35-10(a)(1) by possessing cocaine. A copy of Indictment No. 13-4-865 is attached as Exhibit B, and incorporated herein by reference.

8. The indictment superceded the charges issued by the Lacey Township Police Department on April 11, 2013.

9. On August 19, 2013, Plaintiff entered into a plea agreement with the Office of the Ocean County Prosecutor, under which he pleaded guilty to the Second Count of the Indictment, amended to be a violation of NJSA 2C:5-2; and the First and Third Counts were dismissed. A copy of the plea agreement is attached as Exhibit C, and incorporated herein by reference.

10. Other than this 2013 event, and a DV incident in 2016, Plaintiff was never arrested.

11. Plaintiff is a registered nurse, and has been since 2012.

12. On or about October 2016, Plaintiff was hired as Director of Nursing at Sunrise Detox in Toms River, New Jersey, subject to a background check. As a result of that background check, Plaintiff first learned that his conviction record showed that he had pleaded guilty to a violation of NJSA 2C:35-5A(1) , possession of meth, heroin and LSD with intent to distribute. SunRise Detox then rescinded its job offer.

13. Shortly thereafter, Plaintiff was offered a management position with Monmouth Medical

Center, which was also rescinded after a background check again showed that he had pleaded guilty to a violation of NJSA 2C:35-5A(1), possession with intent to distribute meth, heroin and LSD.

14. Both of these positions paid substantially better than the position which he held at that time.

15. By letter dated November 15, 2016 Plaintiff's attorney advised Judge Gizinski, of the Ocean County Superior Court bench, of this problem.

16. On November 16, 2016 a Change of Judgment of Conviction was filed by Ocean County which erroneously and falsely stated that the original charge against Plaintiff, when arrested in January 2012, was manufacture and/or distribution of "meth/heroin/LSD". This document was apparently generated in response to Mr. Villani's letter of November 15, 2016, but perpetuated the error. A copy of that Change is attached as Exhibit D, and incorporated herein by reference.

17. Mr. Villani wrote to Judge Gizinski again on January 16, 2018; to the best of Plaintiff's knowledge, nothing was done in response to this letter.

18. Criminal records in New Jersey are maintained and accessed on the PROMIS/GAVEL system. According to the New Jersey judiciary's website,

The Promis/Gavel system is an automated criminal case tracking system. It captures information concerning defendants who have been charged with criminal offenses. It tracks the processing of those defendants from initial arrest through appellate review. The system provides the function of docketing, noticing, calendaring, statistical reporting and case management.

The Promis/Gavel system was implemented statewide as of January 1, 1994. With the statewide Promis/Gavel network, opportunities exist for interaction with all criminal justice systems as well as further enhancements of Promis/Gavel and the development of new applications.

County Prosecutors' Offices handle the initial entry of all case information, e.g., defendant information, arrest and charge data. If the case is remanded or dismissed, the Prosecutor's Office closes the case and then notifies the originating municipality of this decision. If the case is indicted, the Superior Court assumes responsibility for the case and enters the final disposition and sentencing information. The final disposition and sentence are electronically sent to the State Police system and become part of the defendant's official criminal record.

In addition to serving county Prosecutors' Offices and the criminal courts, numerous outside agencies use Promis/Gavel to inquire about defendants' case information and to perform further research based upon the information provided.

Any change to Plaintiff's conviction record could only be made by a person or persons with access to the PROMIS/GAVEL system.

19. Defendant Joseph Coronato was the Ocean County Prosecutor at all times relevant, and is responsible for the employees of that office who had access to PROMIS/GAVEL.
20. John Doe 1 and John Doe 2 are employees of the Ocean County Prosecutor's Office and are subordinates of Defendant Coronato
21. Defendant Michelle Tierney is the Criminal Division Manager of the Superior Court for Ocean County, and is responsible for the employees of that office who have access to PROMIS/GAVEL.
22. Mr. Villani spoke with Ms. Tierney in or about April, 2018; but apparently nothing has been done to correct the erroneous information about Plaintiff on the PROMIS/GAVEL database.
23. John Doe 3 and John Doe 4 are employees and subordinates of Michelle Tierney in the Criminal Division Manager office of the Superior Court for Ocean County.
24. Defendant Marlene Lynch Ford was, at the relevant times, the Ocean County Assignment Judge; Judge Gizinski, Defendant Michelle Tierney and John Does 3 and 4 are subordinate to Defendant Ford.
25. Defendant Stuart Rabner is the Chief Justice of the Supreme Court of New Jersey. Pursuant to Article VI , Section VII, ¶ 1, of the New Jersey Constitution, he is "the administrative head of all the Courts in the state". Defendants Ford, Tierney and John Does 3 and 4 are subordinate to Defendant Rabner.
26. Plaintiff has never been accused, formally or informally, of any offenses involving any CDS other than marijuana.
27. To this day, New Jersey criminal records continue to show, erroneously and falsely, that the original charge against Plaintiff, when arrested in January 2012, was manufacture and/or distribution of "meth/heroin/LSD".
28. Plaintiff and his attorneys have repeatedly brought this to the attention of various officials within Ocean County, all of whom have declined to take any corrective action.
29. By changing Plaintiff's criminal record without any notice to him, and by falsely changing Plaintiff's criminal record, Plaintiff was denied due process guaranteed to him by the United States and New Jersey Constitutions.

Plaintiff's Retaliatory Arrest

30. On July 7, 2018, Michael Claudi borrowed Plaintiff's Toyota 4- runner ("the truck"). Claudi was pulled over by Brick Township detectives, during which stop they realized that his license was suspended.

31. Plaintiff is a registered nurse, and at the time had a position as RN Admin at Pennreach in Long Branch. In furtherance of his duties, he often had patient medical records and prescriptions in the truck.

32. Claudi was arrested and sent to Ocean County jail, and the truck was taken to an Exxon station on Hooper Ave., Brick. Plaintiff travelled to the Exxon. While he was there, he saw Brick Township Detectives, including Defendant Alvarado, around and in the back seat of the truck, ripping and throwing paperwork from his patient files.

33. On July 8, 2018, Plaintiff obtained the keys to the truck from the Jail, and went to the Exxon to retrieve the truck. Upon opening the vehicle, he discovered that the Brick Defendants, or some of them, had taken pictures of his son out of the glove compartment and placed them on the front seat along with all the patient files and left the bags of food that had at this point defrosted on top of the pile. The majority of the pictures of his son and patient files were damaged or destroyed. Plaintiff also noticed scratches all around the exterior of the truck from an animal. Also missing were multiple sterile surgical emergency kits. Papers which pertained to patients were ripped out of files, crumpled and scattered around the vehicle.

34. No one other than Brick Township police officers had access to the vehicle between the time that Claudi was stopped and Plaintiff obtained his keys and inspected the truck.

35. On July 8, 2018, Plaintiff went to Brick police station and made a written complaint with an officer regarding the damage to his truck and personal property.

36. On July 11, 2018 Plaintiff was called by a Brick detective claiming to be the I.A. officer for the township. Plaintiff discussed with him what had happened. The detective said he would finalize the report and contact the township insurance carrier regarding the scratches on the vehicle.

37. On July 16, 2018, at approximately 11:30 AM, Plaintiff was driving the truck on Van Zile Road, travelling to the bank to make his mortgage payment, accompanied by his friend Jill Farley, when he observed flashing lights and sirens behind him. He pulled over to allow the emergency vehicles to pass. At this point a police car and two other unmarked cars pulled behind him. Two detectives jumped out of the vehicle with guns drawn, demanding that

Plaintiff get out of the vehicle. Plaintiff did so, and Defendant Alvarado pointed his gun at Plaintiff's head, and said "This is what happens when you make an IA complaint". He was then hand cuffed and searched by Defendant Alvarado.

38. Defendant Alvarado took the money for Plaintiff's mortgage payment, \$1,050.00, out of his pocket and said "This is mine now", and put the money in his pocket. Defendant Alvarado also took \$80.00 from Ms. Farley's pocket book.

39. Defendant Alvarado only reported seizing \$643.00 from Plaintiff.

40. Some of the Brick officers, including Defendant Alvarado, repeatedly said to Plaintiff "You know what this is about".

41. Plaintiff was taken to Brick Police Department, in handcuffs, and placed in a cell. While in the cell, Plaintiff repeatedly told Brick officers that he was/is hypo- glycemic, and that his sugar was dropping. He received no response and lost consciousness. The EMTs were called, and gave Plaintiff instant glucose to revive him; as he regained consciousness, his blood pressure was 260 over 140. At that point, against the protest of detectives, he was brought to Ocean Medical Center and treated.

42. After Plaintiff was stabilized and released from the hospital, he was sent back to Brick police station. From there, he was then transported to Ocean County jail, where he was repeatedly denied bail.

43. *Inter alia*, Plaintiff was denied bail because of "prior arrest for indictable offense", which refers to the altered criminal record discussed supra.

44. Plaintiff was incarcerated from July 16, 2018 to October 26, 2018, when he entered into a plea of "guilty" to possession of stolen property (a blank prescription form) in the 3d degree, and possession of marijuana with intent to distribute in the 4th degree.

45. While Plaintiff was incarcerated, his cellphone was in the possession of Brick Township police. On September , 2018, someone attempted to access his pharmacy record at CVS using an app on his phone; all without a warrant.

FIRST COUNT

(Conspiracy to deprive Plaintiff of due process, 42 USC 1985)

46. The Defendants, or some of them, conspired among themselves to violate Plaintiff's rights to due process.

47. Defendants, or some of them, failed to give Plaintiff notice of any proceeding to change

his criminal record and an opportunity to be heard.

48. Such conspiracy was contrary to 42 USC 1985.

WHEREFORE, Plaintiff demands judgment on this Count pursuant to 42 USC 1985 against the Defendants, jointly and severally, for injunctive relief, restoring his criminal record to what it should be; compensatory damages, punitive damages, reasonable counsel fees and costs of suit.

SECOND COUNT

(Denial of due process, 42 USC 1983)

49. In changing Plaintiff's criminal record falsely, Defendants or some of them violated his right to procedural due process arising under the Vth and XIVth Amendment to the United States Constitution.

50. In violating Plaintiff's right to due process, Defendants acted under color of state law, contrary to 42 USC 1983.

WHEREFORE, Plaintiff demands judgment on this Count pursuant to 42 USC 1983 against the Defendants, jointly and severally, for injunctive relief, restoring his criminal record to what it should be; compensatory damages, punitive damages, reasonable counsel fees and costs of suit.

THIRD COUNT

(Denial of due process, NJSA 10:6-1)

51. In changing Plaintiff's criminal record falsely, Defendants or some of them violated his right to procedural due process arising under the New Jersey Constitution.

52. In violating Plaintiff's right to due process, Defendants acted under color of state law, contrary to NJSA 10:6-1.

WHEREFORE, Plaintiff demands judgment on this Count pursuant to NJSA 10:6-1 et seq against the Defendants, jointly and severally, for injunctive relief, restoring his criminal record to what it should be; compensatory damages, punitive damages, reasonable counsel fees and costs of suit.

FOURTH COUNT

(Denial of due process, 42 USC 1983)

53. By stopping Plaintiff on July 16, 2018 in retaliation for his making an IA complaint, and without probable cause, Defendant Alvarado and John Doe Defendants violated his right to due process arising under the Vth and XIVth Amendments to the to the United States Constitution.

54. In violating Plaintiff's right to due process, Defendant Alvarado and John Doe Defendants acted under color of state law, contrary to 42 USC 1983.

WHEREFORE, Plaintiff demands judgment on this Count pursuant to 42 USC 1983 against Defendant Alvarado and the John Doe Defendants, jointly and severally, for compensatory damages, punitive damages, reasonable counsel fees and costs of suit.

FIFTH COUNT

(Denial of due process, NJSA 10:6-1)

55. By stopping Plaintiff on July 16, 2018 in retaliation for his making an IA complaint, and without probable cause, Defendant Alvarado and John Doe Defendants violated his right to procedural due process arising under the New Jersey Constitution.

56. In violating Plaintiff's right to due process, Defendants acted under color of state law, contrary to NJSA 10:6-1.

WHEREFORE, Plaintiff demands judgment on this Count pursuant to NJSA 10:6-1 et seq against Defendant Alvarado and the John Doe Defendants, jointly and severally, for compensatory damages, punitive damages, reasonable counsel fees and costs of suit.

SIXTH COUNT

(Violation of First Amendment rights, 42 USC 1983)

57. By stopping Plaintiff on July 16, 2018 in retaliation for his making an IA complaint, and without probable cause, Defendant Alvarado and John Doe Defendants violated his right to petition the government for redress of his grievances, arising under the First Amendment to the United States Constitution.

58. In violating Plaintiff's right to petition for redress of grievances, Defendants acted under color of state law, contrary to 42 USC 1983.

WHEREFORE, Plaintiff demands judgment on this Count pursuant to 42 USC 1983 against the Defendant Alvarado and the John Doe Defendants, jointly and severally, for compensatory damages, punitive damages, reasonable counsel fees and costs of suit.

SEVENTH COUNT

(Violation of Free Speech rights, NJSA 10:6-1)

59. By stopping Plaintiff on July 16, 2018 in retaliation for his making an IA complaint, and without probable cause, Defendant Alvarado and John Doe Defendants violated his right to petition the government for redress of his grievances arising under the New Jersey Constitution.

60. In violating Plaintiff's right to petition the government for redress of his grievances, Defendants acted under color of state law, contrary to NJSA 10:6-1.

WHEREFORE, Plaintiff demands judgment on this Count pursuant to NJSA 10:6-1 et seq against the Defendant Alvarado and the John Doe Defendants, jointly and severally, for compensatory damages, punitive damages, reasonable counsel fees and costs of suit.

EIGHTH COUNT

(Violation of VIIIth Amendment rights, 42 USC 1983)

61. By denying Plaintiff prompt and appropriate medical care while he was in custody on July 16, 2018 in retaliation for his making an IA complaint, Defendant Alvarado and John Doe Defendants violated his right to be free of cruel and unusual punishment, arising under the VIIIth Amendment to the United States Constitution.

62. In violating Plaintiff's right to be free of cruel and unusual punishment, Defendants acted under color of state law, contrary to 42 USC 1983.

WHEREFORE, Plaintiff demands judgment on this Count pursuant to 42 USC 1983 against the Defendant Alvarado and the John Doe Defendants, jointly and severally, for compensatory damages, punitive damages, reasonable counsel fees and costs of suit.

NINTH COUNT

(Violation of right to be free of cruel and unusual punishment, NJSA 10:6-1)

63. By denying Plaintiff prompt and appropriate medical care while he was in custody on July 16, 2018 in retaliation for his making an IA complaint, and without probable cause, Defendant Alvarado and John Doe Defendants violated his right to be free of cruel and unusual punishment arising under the New Jersey Constitution.

64. In violating Plaintiff's right to be free of cruel and unusual punishment, Defendants acted under color of state law, contrary to NJSA 10:6-1.

WHEREFORE, Plaintiff demands judgment on this Count pursuant to NJSA 10:6-1 et seq against the Defendant Alvarado and the John Doe Defendants, jointly and severally, for compensatory damages, punitive damages, reasonable counsel fees and costs of suit.

Dated: May 25, 2019

/s/ George J. Cotz 0463
George J Cotz , Esq # 010711974
47 Franklin Turnpike
Ramsey, NJ 07446

201-327-0900

JURY DEMAND

Plaintiff demands trial by jury.

Dated:

/s/ George J. Cotz 0463
George J Cotz, Esq # 010711974
47 Franklin Turnpike
Ramsey, NJ 07446
201-327-0900