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300 Harmon Meadow Boulevard
Secaucus, New Jersey 07094-3621
201-348-6000
Attorneys for Plaintiff Curt Kellinger
03800-0014

CURT KELLINGER,

Plaintiff,

vs.

**CITY OF ENGLEWOOD, ENGLEWOOD
POLICE DEPARTMENT, JAMES E.
DOW, JR., LYNN GLADSTONE, AND
JOHN DOES (1-20),**

Defendants.

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

Civil Action No:

COMPLAINT AND JURY DEMAND

Jurisdiction and Venue

1. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. §1331 since the action arises under the Fourth, Eighth and Fourteenth Amendments to the United States Constitution and under 42 U.S.C. §1983.

2. Venue is proper in this Court pursuant to 28 U.S.C. §1331(b) and (c).

3. Jurisdiction lies over State law claims pursuant to the principles of supplemental jurisdiction, as codified at 28 U.S.C. § 1367. Such claims include, but are not limited to violations of the New Jersey Constitution and New Jersey Civil Rights Act.

4. The amount in controversy, exclusive of interest and costs, exceeds the sum of One Hundred Thousand Dollars (\$100,000.00).

Parties

5. Curt Kellinger ("Plaintiff") is a citizen of the United States residing at 4527 Brock Bank Drive, Salt Lake City, Utah.

6. Defendant City of Englewood is a corporate body politic of the State of New Jersey with a business address of 2-10 North Van Brunt Street, Englewood, New Jersey, County of Bergen.

7. Defendant Englewood Police Department is a corporate body politic of the State of New Jersey with a business address of 75 South Van Brunt Street, Englewood, New Jersey, County of Bergen.

8. Defendant James E. Dow, Jr. ("Dow") is, and was at all times mentioned, employed as the Municipal Court Judge by the City, and is sued in his official and individual capacity.

9. Defendant Lynn Gladstone ("Gladstone") is, and was at all times mentioned, employed as an Officer by the City and/or Police Department, and is sued in her official and individual capacity.

10. Defendants JOHN DOES 1-5, persons whose identities are presently unknown ("Does") are, and were at all times mentioned, employees of the City of Englewood, and are sued in their official and individual capacities.

11. Defendants JOHN DOES 5-10, persons whose identities are presently unknown ("Does") are, and were at all times mentioned, employees of the Englewood Police Department, and are sued in their official and individual capacities.

Factual Background

11. On September 16, 2010, Plaintiff, Curt Kellinger, was operating a motor vehicle on a public street in the City of Englewood, behind a vehicle operated by Lynn Gladstone.

12. At said time and place, Gladstone was employed a police officer with the Englewood Police Department, but was not "on duty."

13. At said time and place, Gladstone was operating her personal vehicle, which was not equipped with lights and sirens, nor was demarcated with the Englewood Police Department insignia.

14. At said time and place, Gladstone was not in her Englewood Police Department uniform.

15. At said time and place, Gladstone stopped her vehicle at a traffic circle while traveling in front of the Plaintiff.

16. At said time and place, Gladstone was observed by Plaintiff to be having a conversation on a cell phone, while speaking in an animated fashion using her hands.

17. At said time and place, an unusually lengthy period of time went by with the Gladstone vehicle stopped in front of the Plaintiff's vehicle.

18. At said time and place, the Plaintiff honked his horn.

19. After the Plaintiff honked his horn, Gladstone proceeded to move her vehicle forward, until she came to an intersection, where a pedestrian was standing on the side of the street.

20. The pedestrian did not at any point enter the street. Nonetheless, the Gladstone vehicle, for a second time, remained at a complete stop for an unusually lengthy period of time.

21. Consequently, the Plaintiff passed the Gladstone vehicle safely on the left.

22. Unbeknownst to the Plaintiff, Gladstone was an Englewood Police Officer, who was off duty at the time of the incident. Gladstone then attempted to effectuate a motor vehicle stop of the Plaintiff while traveling in her personal vehicle and while she was not in uniform.

23. Gladstone, who had a cell phone in her hand while operating her motor vehicle alongside that of the Plaintiff, screamed profanities at the Plaintiff to come to a complete stop. Based on his reasonable belief that Ms. Gladstone was not in fact law enforcement, the Plaintiff continued to operate his motor vehicle towards his intended destination.

24. The Plaintiff was subsequently pulled over by members of the Leonia Police Department in uniform, and in marked vehicles. Thereafter, uniformed Englewood police officers arrived on the scene.

25. The Plaintiff was issued two Summonses by Gladstone, one for improper passing on the left contrary to N.J.S.A. 39:4-85 and one for failure to yield to a pedestrian contrary to N.J.S.A. 39:4-36.

26. On or about July 19, 2011, a trial concerning the above mentioned Summonses was conducted before the Honorable James E. Dow, Jr., J.M.C., in the Englewood Municipal Court. The State was represented by Gerald J. Oratio, Esq. The Plaintiff was a Pro Se litigant.

27. After the trial, Judge Dow found the Plaintiff to be guilty on both charges. He imposed a sentence of a \$200.00 fine, driver's license suspension for thirty (30) days, and ten (10) days in jail.

28. The imposition of a term of incarceration was an unavailable and illegal sentence for the offenses Plaintiff was charged with.

29. Nonetheless, Plaintiff was made to serve a period of incarceration in the Bergen County Jail.

30. In determining the sentence Dow indicated on the record that the Plaintiff should have been charged with "eluding," and that was part of the basis for the imposition of this sentence.

31. A Municipal Appeal was conducted on or about January 19, 2012 before the Honorable Eugene H. Austin, J.S.C.

32. After a hearing, Judge Austin found that Plaintiff was guilty of failing to yield to a pedestrian in a crosswalk, contrary to N.J.S.A 39:4-26, but not guilty of improper passing on the left contrary to N.J.S.A. 39:4-85.

33. Judge Austin ruled that as a matter of law, the term of incarceration imposed by Dow was illegal and unavailable as a form of punishment for the motor vehicle infractions alleged.

34. On or about July 24, 2012, Judge Austin entered an Order of expungement of the motor vehicle infraction(s) charged, the illegal term of incarceration as well as the arrest.

COUNT I

(False Arrest/ False Imprisonment)

35. Plaintiff repeats all previous allegations.

36. The defendants, acting under the color of State law and without probable cause, falsely arrested, detained and imprisoned the Plaintiff in violation of his Fourth and Fourteenth Amendment rights of the United States Constitution, and under the laws of the State of New Jersey.

37. The acts of the defendants were knowing, malicious, willful and intentional.

38. As a result of the acts of the defendants, Plaintiff suffered physical injuries and pain, emotional pain, loss of freedom, damage to reputation and other damages.

WHEREFORE, Plaintiff demand judgment on this Count against the defendants, jointly and severally, for compensatory damages, punitive damages, costs of suit, attorneys' fees, interest; and for such other relief as the Court deems equitable and just.

COUNT II

(Malicious Prosecution)

39. Plaintiff repeats all previous allegations.

40. The defendants maliciously charged and/or prosecuted and/or convicted and/or sentenced Plaintiff in a malicious manner, and without probable cause.

41. The Honorable Eugene Austin, J.S.C. reversed the conviction for improper passing charge as to the Plaintiff.

42. The term of incarceration imposed on Plaintiff was an illegal sentence.

43. As a direct and proximate cause of the defendants' intentional and malicious conduct, Plaintiff has suffered physical injuries and pain, emotional pain, loss of freedom, damage to reputation and other damages

WHEREFORE, Plaintiff demand judgment on this Count against the defendants, jointly and severally, for compensatory damages, punitive damages, costs of suit, attorneys' fees, interest; and for such other relief as the Court deems equitable and just.

COUNT III

(Due Process/Unlawful Seizure)

44. Plaintiff repeats all previous allegations

45. The defendants negligently and/or intentionally maliciously charged and/or prosecuted and/or convicted and/or sentenced Plaintiff to an unlawful term of incarceration, without authority, in violation of the Fourth and Fourteenth Amendment to the United States of Constitution, and the laws of the State of New Jersey.

46. The Honorable Eugene Austin, J.S.C. reversed the conviction for improper passing charge as to the Plaintiff.

47. The term of incarceration imposed on Plaintiff was an illegal sentence.

48. The illegal term of incarceration was an unlawful restriction on the liberty of Plaintiff.

49. As a direct and proximate cause of the defendants' negligent, and/or intentional and malicious conduct, Plaintiff was deprived of due process in violation of his Fourth and Fourteenth Amendment rights, and rights under the laws of the State of New Jersey, and caused Plaintiff to suffer physical injuries and pain, emotional pain, loss of freedom, damage to reputation and other damages.

WHEREFORE, Plaintiff demand judgment on this Count against the defendants, jointly and severally, for compensatory damages, punitive damages, costs of suit, attorneys' fees, interest; and for such other relief as the Court deems equitable and just.

COUNT IV

(Monell liability/Failure to Train/Supervise)

50. Plaintiff repeats all previous allegations.

51. At the times mentioned in this Complaint, defendants acted under the direction of the City of Englewood, and/or the Englewood Police Department, which through their agents and/or employees were responsible for making policy in the City of Englewood, and/or the Englewood Police Department.

52. The City of Englewood, and/or the Englewood Police Department had practices, customs, policies and or de facto policies of permitting, allowing and/or tolerating the filing of false and malicious charges, allowing the effectuation of improper motor vehicle stops and allowing illegal sentences and other unconstitutional practices.

53. Defendants acted pursuant to these unlawful practices, customs, policies and/or de facto policies.

54. The City of Englewood, and/or The Englewood Police Department, by their policy-makers, agents and employees intentionally, knowingly and/or with deliberate indifference to Plaintiff's rights, failed to train, supervise, control and/or discipline defendants.

55. As a direct and proximate result of the conduct of the City of Englewood, and/or The Englewood Police Department, Plaintiff was caused to suffer physical injuries and pain, emotional pain, loss of freedom, damage to reputation and other damages

WHEREFORE, Plaintiff demand judgment on this Count against the defendants, jointly and severally, for compensatory damages, punitive damages, costs of suit, attorneys' fees, interest; and for such other relief as the Court deems equitable and just.

COUNT VI

(Cruel & Unusual Punishment)

56. Plaintiff repeats all previous allegations.

57. The defendants maliciously charged and/or prosecuted and/or convicted and/or sentenced Plaintiff in a malicious manner, and without probable cause.

58. The Honorable Eugene Austin, J.S.C. reversed the conviction for improper passing charge as to the Plaintiff.

59. The term of incarceration imposed on Plaintiff was an illegal sentence, and not allowable by law.

60. The illegal term of incarceration was an unlawful restriction on the liberty of Plaintiff.

61. As such, the punishment imposed by Dow was cruel and unusual within the meaning of the Eighth Amendment.

62. As a direct and proximate cause of the defendants' intentional and malicious conduct, Plaintiff was deprived of due process in violation of his Eighth Amendment rights, and caused Plaintiff to suffer physical injuries and pain, emotional pain, loss of freedom, damage to reputation and other damages.

WHEREFORE, Plaintiff demand judgment on this Count against the defendants, jointly and severally, for compensatory damages, punitive damages, costs of suit, attorneys' fees, interest; and for such other relief as the Court deems equitable and just.

Jury Demand

Plaintiff requests a trial by jury on all issues in the above-entitled matter.

Designation Of Trial Counsel

John L. Shahdanian II, Esq. is designated as trial counsel in the within action.

Certification Pursuant to the L.Civ. R. 11. 2

I certify that the matter is not presently the subject of any pending matter, nor am I aware of other parties who should be joined in this matter.

**CHASAN LEYNER & LAMPARELLO, PC
Attorneys for Plaintiff Curt Kellinger**

/s/ John L. Shahdanian

JOHN L. SHAHDANIAN II

Dated: September 13, 2012