

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ALFRED SMITH,
Plaintiff

V.

SUMMONS IN A CIVIL CASE

THE CITY OF PLAINFIELD, ET AL.,
Defendant

CASE NUMBER: 2:15-CV-07258-ES-MAH

TO: *(Name and address of Defendant):*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States Agency, or an office or employee of the United States described in Fed. R. civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

WILLIAM T. WALSH

CLERK

MARIA F. GARCIA

(By) DEPUTY CLERK



ISSUED ON 2015-10-05 15:00:09, Clerk
USDC NJD

RETURN OF SERVICE		
Service of the Summons and complaint was made by me(1)	DATE	
NAME OF SERVER (PRINT)	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
☐ Served personally upon the defendant. Place where served: _____ _____ ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. ☐ Name of person with whom the summons and complaint were left: _____ ☐ Returned unexecuted: _____ _____ ☐ Other (specify) : _____ _____ _____		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.		
Executed on _____ Date _____ Signature of Server _____ Address of Server		

SHEBELL & SHEBELL^{LLC}
ATTORNEYS AT LAW

Raymond P. Shebell, Sr.
Thomas F. Shebell, III*

September 18, 2015.

Danielle S. Chandonner**
Michelle C. Shebell
Mark T. Apostolou, Jr.
Robert A. Morley
John H. Sanders, II†

Clerk,
U.S. District Court
402 East State Street
Trenton, New Jersey 08625

OF COUNSEL
Thomas F. Shebell, Jr. **
Victor Rallo, Jr.

Re: Alfred J. Smith v. City of Plainfield
File No.: 48666

IN MEMORIAM
Thomas F. Shebell, Sr.
(1927-1986)

Dear Sir and/or Madam:

Enclosed please Complaint and Jury Demand together with Civil Cover Sheet for filing with respect to the above-entitled matter.



Very truly yours,

SHEBELL & SHEBELL, LLC

s/Thomas F. Shebell, III
THOMAS F. SHEBELL, III

*Certified by the Supreme Court
of NJ as a Civil Trial Attorney
**Member NJ & NY Bars
† Licensed in Illinois

T 732.663.1122

F 732.663.1144

655 Shrewsbury Ave.
Suite 314
Shrewsbury, NJ 07702

25 Monument St.
Freehold, NJ 07728

www.Shebell.com

TFS/san
Enclosure

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ALFRED SMITH

(b) County of Residence of First Listed Plaintiff Middlesex
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, Email and Telephone Number)

Shebell & Shebell, LLC, 655 Shrewsbury Ave., Shrewsbury, NJ 07702
(732)663-1122
tshebell@shebell.com

DEFENDANTS

City of Plainfield, Plainfield City Police Department, Police Officer
Edward Jackson, Police Officer Charles Martina, Union County
Prosecutor Peter Benza, Union County Prosecutor's Office

County of Residence of First Listed Defendant Union
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question
(U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | ☒ 1 | ☒ 1 | Incorporated or Principal Place of Business in This State | ☐ 4 | ☒ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business in Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization, Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395f) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☒ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC 1983

Brief description of cause:
Wrongful conviction

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/18/2015

SIGNATURE OF ATTORNEY OF RECORD

/s/ Thomas F. Shebell, III

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE:

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. **Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

SHEBELL & SHEBELL, LLC
655 Shrewsbury Avenue, Suite 314
Shrewsbury, New Jersey 07702
(732) 663-1122 Telefax (732) 663-1144

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY

ALFRED SMITH

Civil Case No.

Plaintiff,

vs.

Civil Action

THE CITY OF PLAINFIELD, ✓
PLAINFIELD CITY POLICE DEPARTMENT,
POLICE OFFICER EDWARD JACKSON,
POLICE OFFICER CHARLES MARTINA,
UNION COUNTY PROSECUTOR PETER BENZA ✓
UNION COUNTY PROSECUTOR'S OFFICE, ✓
NEW JERSEY DEPARTMENT OF THE TREASURY
JOHN and JANE DOES (1-100)

COMPLAINT AND JURY DEMAND

Defendants.

Plaintiff, Alfred Smith, by and through his attorneys, the law firm of Shebell & Shebell, LLC, states as follows:

JURISDICTION

1. This action is brought pursuant to 42 USC section 1983 and section 1988, and the Fourth, Fifth, and Fourteenth amendments to the United States Constitution, and the Constitution and laws of the State of New Jersey. Jurisdiction is founded upon 28 USC sections 1331, 1343 and 2202. Plaintiff further involves the supplemental jurisdiction of this Court to adjudicate state law claims pursuant to 28 USC section 1367.

INTRODUCTION

2. On July 10, 2009, Plaintiff ALFRED SMITH was unconstitutionally and without due process, stopped, arrested, subjected to an unlawful identification, prosecuted, convicted and spent more than four years suffering in jail and state prison for an assault and robbery of a woman in Plainfield, a heinous crime which he did not commit. This gross miscarriage of justice was brought about by the egregious misconduct of law enforcement officers who improperly stopped and arrested him, fabricated evidence by having him identified during improper and suggestive police identification, presented evidence which it knew or should have known was incorrect and improper through trial and an improper conviction based on the suggestive identification which, due to the acts of the police officers, their supervisors and superiors, and the department within the City of Plainfield and office of the Union County Prosecutor's office, which created a irreparable misidentification and later a conviction of the Plaintiff as the perpetrator of a crime which he did not commit through impermissible suggestiveness in the identification process.

3. The county prosecutor's office and prosecutor handling the case, acting in a pattern with the custom and practice of the Union County Prosecutor's Office, knowing that the arrest was illegal, that the evidence was improperly and illegally collected, that the police identification was performed illegally and improperly by denying due process to Plaintiff Smith, and further that there was a complete lack of actual evidence connecting him to the crime, nevertheless brought the case to a conviction, in large part by introducing evidence which

it knew was tainted and testimony which it knew or had reason to know was false and/or by eliciting perjured testimony from a victim of a crime which had nothing to do with Plaintiff Smith.

4. Mr. Smith maintained his innocence at trial and continued to fight to prove his innocence throughout his incarceration. Finally, after years of incarceration, the Appellate Division reversed the conviction, finding that identification violated his due process because it was impermissibly suggestive and that identification evidence was improperly presented to the jury in order to obtain the conviction. Union County, aware that they had only and could only obtain the conviction through the use of illegal and improper evidence and that the Appellate Court had now ruled that the Plaintiff's due process rights were repeatedly violated by the officers and by the prosecutor, dismissed the charges against the Plaintiff.

5. Beyond compensating Mr. Smith for the years that he spent in prison, his continuing suffering, this action seeks to remedy the unlawful City of Plainfield, Plainfield Police Department and Union County Prosecutors Office policies, practices, or customs of conducting unlawful interrogations, unlawful police identification procedures, unlawful stop and arrests, and failing to adequately train, supervise and discipline officers and assistant prosecutors that led defendants to violate his constitutional rights as guaranteed by the Fourth, fifth and Fourteenth Amendments of the United States Constitution, and the laws of the State of New Jersey.

THE PARTIES

6. Plaintiff Alfred Smith is currently and was at all times material to this complaint a resident of the State of New Jersey.

7. Defendant Officer Edward Jackson and Defendant Officer Charles Martina are or were members of the Plainfield Police Department. At all times relevant to this complaint, they were duly appointed and acting police officers of the Plainfield Police Department, acting under color of law pursuant to the statutes, ordinances, regulations, policies, customs and usage of the City of Plainfield and the State of New Jersey. They are each sued individually and in their official capacity.

8. Attorney Assistant Prosecutor Peter Benza is or was a member of the Union County Prosecutors Office. At all times relevant to this complaint, he was a duly appointed and acting under color of law pursuant to the statutes, ordinances, regulations, policies, customs and usage of the City of Plainfield, County of Union and the State of New Jersey.

9. The criminal trial of Plaintiff Alfred Smith was the first criminal trial for Assistant Prosecutor Peter Benza within the Union County Prosecutor's Office. He had been trained and supervised concerning the policies and procedures being followed by the Defendant Union County Prosecutor's Office.

10. Defendants John Doe 1-10, whose identities are currently unknown, represent those employees of the Plainfield Police Department, acting under color of law, pursuant to the statutes, ordinances, regulations, policies, customs and/or usage of the City of

Plainfield and the State of New Jersey, who had supervisory authority over Defendants Officer Edward Jackson and/or Officer Charles Martina, that participated in the investigation that lead to Plaintiff Smith's wrongful conviction or to the supervision and/or had active engagement in behavior which violated the Constitution and statutes of the United States and the State of New Jersey with respect to the conduct of Officer Edward Jackson and/or Officer Charles Martina, and/or who encouraged and condoned violations of the Constitution and statutes of the United States and the State of New Jersey and/or who failed as supervisors to establish a system to prevent violations of the Constitution and statutes of the United States and the State of New Jersey, which failure resulted in or was likely to lead to the violation of the Constitution and statutes of the United States and the State of New Jersey, and/or failed to properly and adequately train officers who had police powers for the City of Plainfield, State of New Jersey, or any other entity, which resulted in or was likely to lead to violations of the Constitution and statutes of the United States and the State of New Jersey. They are each sued individually and in their official capacity.

11. The City of Plainfield is a city duly incorporated in the County of Union, in the State of New Jersey, which at all times had a duty to provide training, supervision and/or overall management of the City of Plainfield Police Officers.

12. The Plainfield Police Department is a police department organized and operating in the City of Plainfield, the County of Union, in the State of New Jersey, at all times relevant hereto had

the duty to provide training, supervision and/or overall management of the City of Plainfield Police Officers.

13. Defendant John Doe Supervising Officers 1-9 were at all times relevant hereto officers in the Plainfield Police Department responsible for upholding and enforcing the law and maintaining the peace in the City of Plainfield and were also responsible for supervising and training subordinate officers and were also responsible for creating and implementing policy statements, ordinances, regulations, official decisions and well settled customs and practices. They are sued individually and in their official capacity.

14. The Union County Prosecutors Office is an entity operating within the County of Union and State of New Jersey, and had the duty to provide training, supervision and/or overall management to prosecuting attorneys.

15. The New Jersey Department of the Treasury is an entity operating within the County of Union and State of New Jersey, and had the duty to provide training supervision and/or overall management to prosecuting attorneys.

FACTS COMMON TO ALL COUNTS

16. In the evening of July 10, 2009, a woman, Josephine DiMeglio, called the Plainfield police department and claimed that she had been forcibly robbed on a dimly lit street in Plainfield, New Jersey.

17. The original description given by DiMeglio to the 911 operator on the call was of a "Black Male, wearing a black shirt, a brown windbreaker, about six feet tall with a scar on his mouth". DiMeglio has also described the robbery as lasting for as long as ten minutes.

18. When the Plainfield Police Department arrived to the call from DiMeglio, Defendant Officer Edward Jackson was given a substantially different and utterly vague description of the assailant by her, namely a "tall black male in jeans and a dark shirt".

19. Despite that Plaintiff Alfred Smith matched neither description, other than being black, he was arrested by the Plainfield Police Officer Defendant Charles Martina, who called in the arrest back to Defendant Officer Jackson, who was still with the alleged victim, Dimeglio.

20. According to DiMeglio, she was told by Defendant Officer Edwards that her assailant had been caught and that they needed her to positively identify him, "They told me they apprehended him and he was across the street in the park..."

21. Subsequently, DiMeglio was driven by Defendant Officer Edwards to the park. She rode in the back of Defendant Officer Edwards police cruiser.

22. When DiMeglio arrived at the park in the dark at after 10 o'clock PM for the "show-up" identification, Plaintiff Smith had been detained and was standing between two officers, Defendant Officer Martina and another officer.

23. At the instruction of Defendant Officer Edwards, DiMeglio was permitted, under those circumstances, to make an identification from the back seat of the police cruiser, without exiting the vehicle to view Plaintiff Smith, and without even rolling down the car window. Predictably, given the suggestive nature of the show-up, DiMeglio misidentified Plaintiff Smith as her assailant.

24. DiMeglio's uncertainty regarding this identification was further illustrated by her written description given at the Plainfield Police Department, even after the "show-up" identification. DiMeglio now described her assailant as an "Afro-American. 6 feet - 5'8", brown shirt, cap, black pants."

25. While Plaintiff Smith had been taken into custody by Defendant Officer Martina, he had now been arrested without any description matching his clothing, identifying his shaven head or beard and with a wide range of height descriptions, from five foot eight inches.

26. Later, during a *Wade* hearing before the trial court, DiMeglio gave yet another description of her assailant, describing him as having hair on his head, a scar on his mouth, and reducing her description of his clothing to "something black and something brown". During that same *Wade* hearing, the Plaintiff Smith described his clothing as "a black hoodie and brown pants".

27. Completely illustrating the suggestiveness of the "show-up" identification, the unreliable nature of the finally at the criminal trial, and the willingness of the assistant Prosecutor Peter Benza to present testimony exploiting the suggestiveness of the impermissible

"show-up" identification and/or present willfully fabricated evidence in order to secure a conviction, Dimeglio's trial testimony, incredibly, parroted Plaintiff Smith's testimony at the Wade hearing, now identifying her attacker as an Afro-American who was tall and for the first time ever wearing a "black hoodie and brown pants".

28. As a direct result of violations of the rights of Plaintiff Smith, he was wrongfully arrested, wrongfully identified, wrongfully detained, subjected to falsified evidence and fabricated testimony, then improper conviction and continued unlawful detention for a crime he did not commit.

29. The unlawful and illegal incarceration of Plaintiff Smith continued from the time he was improperly apprehended in July 2009 until August 2014, when he was finally released. He was incarcerated for five horrific years despite that he had done nothing wrong, and as a direct result of the violation of his civil rights by the wrongful acts of the Defendants.

30. Moreover, the acts of the Defendants, including Defendant officer Edwards and Defendant Officer Marita, the Plainfield Police Department, and the Union County Prosecutor's Office were a part of an ongoing policy and practice of these various violations of civil rights, and/or were a natural and foreseeable consequence of the disregard for the civil rights of individuals in Plainfield and being prosecuted by the Union County Prosecutors Office, such that the City of Plainfield, the Plainfield Police Department and the Union County Prosecutor's Office had encouraged and condoned these civil rights violations and/or failed to establish a system to prevent them.

31. As a result of this failure, civil right violations occurred in the investigation and/or prosecution of crimes by the City of Plainfield, the Plainfield Police Department and the Union County Prosecutor's Office including the violations of the Plaintiff as set forth herein, and/or civil rights violations were likely or certain to take place due to the nature of the policies in place at the City of Plainfield, the Plainfield Police Department and the Union County Prosecutor's Office.

32. Plaintiff Smith, who maintained his innocence from the time he was arrested through his entire incarceration and every time thereafter, was clearly not guilty of the crime for which he was accused, arrested, impermissibly identified, tried and convicted, then incarcerated, and suffered financial losses and severe emotional distress, which has robbed him of years of his life, which will never be the same.

33. Plaintiff provided notices pursuant to N.J.S.A. 59:1-1, et seq.

COUNT I: WRONGFUL ARREST

34. All Defendants named herein were subject to 42 U.S.C. sec 1983, 1985, 1986, and 1988 at all times relevant hereto.

35. Defendants were acting under color of law and without probable cause when they denied the Plaintiff, Alfred Smith his right, privileges and immunities secured by the United States Constitution, Federal Law, and the law of the State of New Jersey by depriving him:

- a. Of his liberty and his rights to due process by taking him into custody without probable cause and where he was innocent of any crime;
- b. By making an unreasonable stop, search and seizure of his person;
- c. By conspiring for the purpose of impeding and hindering the due course of justice with the intent to deny him his right to equal protection and due process under the law;
- d. By refusing or neglecting to prevent deprivations and denials of his civil rights under the Fourth Amendment, Fifth Amendment, and the Fourteenth Amendments of the United State Constitution and also the New Jersey Constitution.

36. Defendants, with no probable cause, stopped, seized the person of and arrested Plaintiff Alfred Smith.

37. Defendants, knew that Plaintiff Alfred Smith did not match the description of the person who the victim of a robbery crime and/or that the description provided by Defendant Officer Jackson through victim Josephine DiMeglio's description of "a black male, wearing blue jeans and a dark shirt" was impermissibly and illegally vague in that it would have provided probable cause for the stop and arrest of a large portion of the population in Plainfield, New Jersey where Plaintiff Alfred Smith was arrested. Although Plaintiff is a black male, he was wearing a black hoodie and brown pants on that evening, was nevertheless was stopped, arrested and/or questioned by Defendant

Officer Martina, and then was detained with neither probable cause nor any reasonable suspicion, all violating his Constitutional Rights.

38. Defendants, in particular Defendant Officer Martina, knew that Plaintiff Alfred Smith was not in possession of any evidence indicating that he had done anything illegal, nor indicating that he had committed the crime of robbery for which he was arrested and detained, but was detained nevertheless.

39. Defendants ignored Plaintiff Alfred Smith's denial that he had done anything illegal and his denial that he was in any way connected to the robbery that was being investigated.

40. Plaintiff Alfred Smith at all times from the time of his first interaction with Plainfield police, maintained his innocence.

41. Defendants, with no reasonable grounds to arrest Plaintiff Alfred Smith, and no warrant to arrest Plaintiff Alfred Smith, knew they had no probable cause to arrest him, but nevertheless effectuated his arrest and detained him.

42. As a result of the unlawful arrest, Plaintiff suffered violations of his rights under 42 USC section 1983 and section 1988, and the Fourth, Fifth, and Fourteenth amendments to the United States Constitution, and the Constitution and laws of the State of New Jersey.

43. The City of Plainfield, Plainfield Police Department and the Union County Prosecutor's Office both actively engaged in unconstitutional behavior by encouraging and condoning a system of conducting arrests that would and did violate the rights of the public, and/or failing to properly train its employees regarding the

rights of individuals under Fourth, Fifth, and Fourteenth amendments to the United States Constitution, and the Constitution and laws of the State of New Jersey.

44. The Defendants aforesaid actions constitute a false arrest of the Plaintiff.

45. As a direct and proximate cause of the false arrest, Plaintiff suffered damages.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, for compensatory damages for pain, suffering, loss of enjoyment of life, statutory damages, punitive damages, interest, counsel fees, costs of suit and any other relief that the court deems just.

COUNT II: VIOLATION OF DUE PROCESS RIGHTS THROUGH SUGGESTIVE "SHOW-UP" IDENTIFICATION

46. Plaintiff restates the information in the foregoing paragraphs and fully incorporates same into this count as if stated fully herein.

47. Defendant Officer Edwards and Defendant Officer Martina were acting under color of law and without probable cause when they conducted a highly suggestive "show-up" identification of the Plaintiff, Alfred Smith, indicating and/or suggesting to the person presented to perform the identification that Plaintiff Smith was the person that had committed criminal activity against her, despite that this was not true, that there was no evidence that he had, when in fact he had not committed a crime, whereby his rights, privileges and

immunities secured by the United States Constitution, Federal Law, and the law of the State of New Jersey were deprived:

- a. Of his liberty and his rights to due process and equal protection by conducting an unduly suggestive "show up" identification of the Plaintiff Alfred Smith;
- b. By subjecting the Plaintiff, Alfred Smith to a highly suggestive identification procedure which had a substantial likelihood of and resulted in irreparable misidentification which would deny him due process through the entire process;
- c. By conspiring for the purpose of impeding and hindering the due course of justice with the intent to deny him his right to equal protection and due process under the law;
- d. By subjecting him to wrongful imprisonment and continued unlawful detention as a direct result of the deprivation of due process resulting from the irreparable misidentification;
- e. By refusing or neglecting to prevent deprivations and denials of his civil rights under the Fourth Amendment, Fifth Amendment, and the Fourteenth Amendments of the United State Constitution and also the New Jersey Constitution.

48. Defendants subjected Plaintiff Alfred Smith to a violation of the Due Process rights he was afforded by the Fourth, Fifth, and

Fourteenth amendments to the United States Constitution, and the Constitution and laws of the State of New Jersey.

49. Defendants knew that Plaintiff Alfred Smith did not match the description of the person who the victim of a robbery crime and/or that the description provided by Defendant Officer Jackson through victim Josephine DiMeglio's description of "a tall black male, wearing blue jeans and a dark shirt" was impermissibly and illegally vague in that it would have provided probable cause for the stop and arrest of a large portion of the population in Plainfield, New Jersey where Plaintiff Alfred Smith was arrested. Although Plaintiff is a black male, he was wearing a black hoodie and brown pants on that evening, was nevertheless was stopped, arrested and/or questioned by Defendant Officer Martina, and then was detained, all violating his Constitutional Rights. .

50. Defendants, in particular Defendant Officer Martina, knew that Plaintiff Alfred Smith was not in possession of any evidence indicating that he had done anything illegal, nor any evidence indicating that he had committed the crime of robbery for which he was arrested and detained, but was held and subjected to an illegal identification procedure nevertheless.

51. Defendants ignored Plaintiff Alfred Smith's denial that he had done anything illegal and his denial that he was in any way connected to the robbery that was being investigated. Defendants also ignored that he did not meet the description of the alleged assailant. Defendants also ignored that he did not have any of the allegedly stolen items on his person.

52. Plaintiff Alfred Smith at all times from the time of his first interaction with Plainfield police, maintained his innocence.

53. Defendants, with no reasonable grounds to arrest Plaintiff Alfred Smith and no warrant to arrest Plaintiff Alfred Smith, knew they had no probable cause to arrest him, but nevertheless effectuated his arrest and detained him then subjected him to the unduly suggestive identification procedure.

54. As a result of the unlawful identification procedure, Plaintiff suffered violations of his rights under 42 USC section 1983 and section 1988, and the Fourth, Fifth, and Fourteenth amendments to the United States Constitution, and the Constitution and laws of the State of New Jersey.

55. The City of Plainfield, Plainfield Police Department and the Union County Prosecutor's Office both actively engaged in unlawful and/or unconstitutional behavior by encouraging and condoning a system of conducting arrests that would and did violate the rights of the public, and/or failing to properly train its employees regarding the rights of individuals under Fourth, Fifth, and Fourteenth amendments to the United States Constitution, and the Constitution and laws of the State of New Jersey.

56. As a direct and proximate cause of the due process violations, Plaintiff suffered damages.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, for compensatory damages for pain, suffering, loss of enjoyment of life, statutory damages, punitive damages,

interest, counsel fees, costs of suit and any other relief that the court deems just.

COUNT III: FALSE IMPRISONMENT

57. Plaintiff restates the information in the foregoing paragraphs and fully incorporates same into this count as if stated fully herein.

58. Defendants' actions aforesaid constitute false imprisonment of the Plaintiff.

59. As a direct and proximate result of the Defendants' false imprisonment, Plaintiff suffered damages.

60. The City of Plainfield, Plainfield Police Department and the Union County Prosecutor's Office both actively engaged in unlawful behavior by encouraging and condoning a system of conducting arrests, identifications and false imprisonment that would and did violate the rights of the public, and/or failing to properly train its employees regarding the rights of individuals under the law.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, for compensatory damages for pain, suffering, loss of enjoyment of life, statutory damages, punitive damages, interest, counsel fees, costs of suit and any other relief that the court deems just.

COUNT IV: MALICIOUS PROSECUTION

61. Plaintiff restates the information in the foregoing paragraphs and fully incorporates same into this count as if stated fully herein.

62. Defendants' actions aforesaid constitute malicious prosecution of the Plaintiff.

63. As a direct and proximate result of the Defendants' malicious prosecution, Plaintiff suffered damages.

64. The City of Plainfield, Plainfield Police Department and the Union County Prosecutor's Office both actively engaged in unlawful behavior by encouraging and condoning a system of conducting arrests, identifications and false imprisonment that would and did violate the rights of the public, and/or failing to properly train its employees regarding the rights of individuals under the law.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, for compensatory damages for pain, suffering, loss of enjoyment of life, statutory damages, punitive damages, interest, counsel fees, costs of suit and any other relief that the court deems just.

COUNT V: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

65. Plaintiff restates the information in the foregoing paragraphs and fully incorporates same into this count as if stated fully herein.

66. Defendants acted recklessly and/or intentionally in deliberate disregard of a high degree of probability that the Plaintiff would suffer emotional distress.

67. Defendants' actions aforesaid were extreme and outrageous proximately causing Plaintiff to suffer severe emotional distress.

68. The City of Plainfield, Plainfield Police Department and the Union County Prosecutor's Office both actively engaged in unlawful

behavior by encouraging and condoning a system of conducting arrests, identifications and false imprisonment that would and did violate the rights of the public, and/or failing to properly train its employees regarding the rights of individuals under the law.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, for compensatory damages for pain, suffering, loss of enjoyment of life, statutory damages, punitive damages, interest, counsel fees, costs of suit and any other relief that the court deems just.

COUNT VI: ABUSE OF PROCESS

69. Plaintiff restates the information in the foregoing paragraphs and fully incorporates same into this count as if stated fully herein.

70. Defendants' actions aforesaid constitute abuse of process.

71. As a direct and proximate result of the Defendants' abuse of process, Plaintiff suffered damages.

72. The City of Plainfield, Plainfield Police Department and the Union County Prosecutor's Office both actively engaged in unlawful behavior by encouraging and condoning a system of conducting arrests, identifications and abuse of process that would and did violate the rights of the public, and/or failing to properly train its employees regarding the rights of individuals under the law.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, for compensatory damages for pain, suffering, loss of enjoyment of life, statutory damages, punitive damages,

interest, counsel fees, costs of suit and any other relief that the court deems just.

COUNT VII: NEGLIGENCE

73. Plaintiff restates the information in the foregoing paragraphs and fully incorporates same into this count as if stated fully herein.

74. Defendants' actions aforesaid were negligent in the investigation, indictment, identification process, prosecution and incarceration of the Plaintiff.

75. As a direct and proximate result of the Defendants' negligence, Plaintiff suffered damages.

76. The City of Plainfield, Plainfield Police Department and the Union County Prosecutor's Office both actively engaged in unlawful behavior by encouraging and condoning a system of conducting arrests, identifications and false imprisonment that would and did violate the rights of the public, and/or failing to properly train its employees regarding the rights of individuals under the law. This included a high degree of negligence and failure to meet the standard of care owed to the public, creating a serious risk and/or an inevitability of injury to individuals in the public.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, for compensatory damages for pain, suffering, loss of enjoyment of life, statutory damages, punitive damages, interest, counsel fees, costs of suit and any other relief that the court deems just.

COUNT VIII: NEW JERSEY CIVIL RIGHTS VIOLATION

77. Plaintiff restates the information in the foregoing paragraphs and fully incorporates same into this count as if stated fully herein.

78. At all times relevant hereto, Defendants deprived, interfered with and/or attempted to interfere by threats, intimidation and/or coercion with the exercise and/or enjoyment of Plaintiff of his substantive due process, equal protection rights, privileges and/or immunities secured by the Constitution and/or laws of the United States and/or State of New Jersey, in violation of N.J.S.A. 10:6-2.

79. As a direct and proximate cause of the Defendants' violations of the Plaintiff's civil rights guaranteed to him by N.J.S.A. 10:6-2, Plaintiff suffered damages.

80. The civil rights violations aforesaid were committed by Defendants with actual malice and/or will and wanton disregard of persons who foreseeably might be harmed by Defendants' actions.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, for compensatory damages for pain, suffering, loss of enjoyment of life, statutory damages, punitive damages, interest, counsel fees, costs of suit and any other relief that the court deems just.

COUNT IX: NEW JERSEY MISTAKEN IMPRISONMENT ACT, N.J.S.A. 52:4C-1, ET. SEQ. - AS TO THE NEW JERSEY DEPARTMENT OF THE TREASURY

81. Plaintiff restates the information in the foregoing paragraphs and fully incorporates same into this count as if stated fully herein.

82. Pursuant to N.J.S.A. 52:4C-2, the New Jersey Department of the Treasury is named as the Defendant for the Plaintiff's claim under the New Jersey Mistaken Imprisonment Act.

83. Plaintiff, Alfred Smith was convicted of the crimes of second-degree robbery, N.J.S.A. 2C:15-1 and third-degree hindering apprehension, N.J.S.A. 2C:29-3(b)(4) and sentenced to a term of imprisonment of 10 years on the charge of robbery and 5 years on the charge of hindering on May 25, 2012.

84. The Union County assistant prosecutor who tried the case for the State of New Jersey, Peter Benza, was new to the prosecutor's office and had little to no experience handling criminal trials.

85. The Plainfield police who investigated the underlying crimes violated the Plaintiff's due process rights in the course of arresting him and improperly identifying him as the perpetrator of the crimes. Specifically, they stopped, investigated and arrested an innocent man, the Plaintiff Alfred Smith, who was in a park with his friends, based upon an overly vague and even conflicting description from the alleged victim of the person who committed the crime: "black shirt, brown windbreaker, 6 feet tall and scar on mouth" then "tall black male, jeans and a dark shirt". Then, the police informed the victim that they had "apprehended him and he was across the street in the park..." and performed an improper "show-up" identification of the Plaintiff, who was wearing different clothing than either description given by the victim, who had no scar on his face and, in fact, had a beard. The identification was done by the police while the Plaintiff was surrounded by two police officers and standing by a police car,

further falsely implying his guilt. The victim was never even asked to exit the patrol car, nor was the rear window of the car where she was sitting rolled down. Plaintiff Smith, who made no attempt to flee from the police when they pulled up at the park where he was with his friends and who was not in possession of any stolen items, at all times maintained that he was innocent.

86. The inexperienced Union County prosecutor used the improper identification to obtain a guilty verdict against the Plaintiff Smith, who maintained that he was innocent through trial. Plaintiff Smith even shaved his beard, which he had worn for a decade, at the time of trial in order to demonstrate that he did not have the facial scar that the victim identified her actual attacker as having.

87. The charge and conviction on the crime of "hindering" was based upon the Plaintiff's refusal to be forthcoming while he was being illegally arrested and detained by the police, and the conviction for "robbery" which was obtained using a false identification, was obtained by violating his rights to due process and equal protection by the Defendants.

88. Plaintiff Smith did not commit the crimes for which he was convicted and did nothing but defend accusations that he had committed a crime, doing absolutely nothing by his own conduct to cause or bring about his conviction.

89. The Plaintiff was incarcerated from the date of his arrest, on July 10, 2009, which incarceration continued until September 18, 2014, when he was released after the Appellate Division found in the published decision State of New Jersey v. Alfred J. Smith, 436 N.J.

Super. 556 (App. Div. 2014) that the Defendants had violated his rights to Due Process under the law by performing the improper identification of him and using that identification at time of trial to obtain a conviction. In vacating the convictions, the Appellate Division found that the "only specific detail" that the victim, DiMeglio, offered to identify Plaintiff Smith as her attacker was his clothing and were the result of the fact that she "continued to add details as time passed and those details, inexplicably, corresponded with the other evidence the State presented on this issue". Further that the "only distinguishing feature she accurately offered was the color of his skin" which was black, as he is an African American. Finally, the Appellate Division found "no basis to conclude that she had an independent recollection of his appearance".

90. It was decided as a matter of law by the Appellate Court that Plaintiff Smith was denied due process.

91. After the Appellate Division had vacated the convictions against Plaintiff Smith which had been completely based upon the emergence at the May, 2012 criminal trial of a new and never before heard description which completely and "inexplicably" corresponded with the rest of the newly appointed Assistant Prosecutor Benza's case, Union County declined to retry the case, as there was no actual evidence that Plaintiff Smith had committed the crimes of which he had been falsely accused.

92. Therefore, it is both clear and convincing that there is no evidence that Plaintiff Smith committed the crimes of which he was convicted.

93. As a direct and proximate cause of the Mistaken Imprisonment, as under the act, Plaintiff suffered damages.

WHEREFORE, Plaintiff demands judgment against the Defendant, The New Jersey Department of the Treasury for statutory damages, interest, counsel fees, costs of suit, and for an order of the court requiring that the probation department evaluate the Plaintiff's family situation, educational history, vocational training, employment history, and financial resources, housing situation and insurance coverage, and provide non-monetary relief including vocational training, tuition assistance, emotional and career counseling, housing assistance and health insurance coverage in addition to any other relief that the court deems just.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial on all issues in the above-entitled cause of action.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, John H. Sanders, II, Esq., is hereby designated as trial counsel.

CERTIFICATION PURSUANT TO R.4:5-1

1. The matter in controversy is not the subject of any pending arbitration.
2. No other action or arbitration is contemplated herein.

3. All parties presently known by Plaintiff are named and identified in the action filed herein.

SHEBELL & SHEBELL, LLC

Counsel for Plaintiff

By: /s/ Thomas F. Shebell, III
THOMAS F. SHEBELL, III

Dated: September 18, 2015