

**LEGISTAR NO.**

**160597**

ans cas de jure  
D/2011/16  
+ tick US for  
12/15/16

AO 440 (Rev. 12/09) Summons in a Civil Action

16 DEC -1 PM 1:50 UNITED STATES DISTRICT COURT  
for the CITY ATTORNEY  
Northern District of Florida

JEROME FULLER

DEC - 1 2016

----- )  
Plaintiff )  
v. )  
THE CITY OF GAINESVILLE, FLORIDA )  
a municipal corporation )  
----- )  
Defendant )

RECEIVED  
Civil Action No. 1:16-cv-00304-MW-GRJ

SUMMONS IN A CIVIL ACTION

A True Copy

To: (Defendant's name and address) Lauren Poe  
Mayor of The City of Gainesville Florida  
City Hall  
200 East University Avenue  
Gainesville, Florida 32601

SADIE DARNELL, SHERIFF  
ALACHUA COUNTY, FLORIDA  
Served at 1:45 PM on the 1 Day  
of Dec 2016  
BY [Signature] AS DEPUTY SHERIFF

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 officer 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:

N. Albert Bacharach, Jr.  
N. Albert Bacharach, Jr., P.A.  
4128 NW 13th Street  
Gainesville, Florida 32609

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.



JESSICA J LYUBLANOVITS  
CLERK OF COURT

Date: 9/16/2016

s/JUDY STONE  
Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**IN THE UNITED STATES DISTRICT COURT,  
NORTHERN DISTRICT OF FLORIDA  
(Gainesville Division)**

JEROME FULLER,

Plaintiff,

CASE NO.:

vs.

THE CITY OF GAINESVILLE, FLORIDA  
a municipal corporation

Defendant.

---

**PLAINTIFF'S COMPLAINT  
AND JURY TRIAL DEMANDED**

Plaintiff, Jerome Fuller, ("Plaintiff") by and through his undersigned counsel, sues Defendant, The City of Gainesville, Florida, and states:

**CAUSE OF ACTION**

1. This action is brought pursuant to 42 U.S.C. § 1983 and § 1988, the IV and XIV Amendments to the United States Constitution, Florida Statute §768.28, Florida common law, and the State of Florida Constitution, Article I §§ , §2, 9 and 12.

**JURISDICTION AND VENUE**

2. This is an action for damages in excess of \$75,000, exclusive of interest, costs and attorney's fees.

3. This court has jurisdiction of this action pursuant to 28 U.S.C. § 1331, and supplemental jurisdiction of Plaintiff Fuller's pendant state claims pursuant to 28 U.S.C. § 1367.

4. Venue is proper in the Gainesville Division of the Northern District of Florida as the allegations below show all relevant events occurred in Gainesville, Alachua County Florida which is in and within the Northern District of Florida.

**PARTIES**

5. At all times material to this Complaint, Plaintiff Fuller was a citizen of the United States of America, residing in Alachua County, Florida.

6. At all times material to this Complaint, the City of Gainesville was a municipal corporation established under the laws of the State of Florida.

7. At the time of the incident that is the subject of the instant cause, the Defendant City of Gainesville was responsible for the Police Department including being responsible for ensuring that all of the Gainesville police officers conducted themselves properly and received appropriate training and supervision.

8. At all times referenced herein, the Defendant The City of Gainesville and the police officers in its employ were acting under the color of the law, statute, ordinances, regulations, policies, customs, and usages of the State of Florida, and the City of Gainesville, Florida.

#### GENERAL ALLEGATIONS

9. The events alleged below chronologically in paragraphs 10- 21 all took place on or about Saturday, September 21, 2013.

10. Plaintiff Fuller entered the convenience store portion of the Kangaroo Gas Station located at the north west corner of the intersection of Waldo Road and East University Avenue (20 Northeast Waldo Road) in Gainesville, Florida Alachua County.

11. After entering the convenience store, Plaintiff Fuller walked to the rear right hand corner of the store and chose a 16 oz can of Natural Light beer from the cooler.

12. Plaintiff Fuller walked over to check out and waited in line at the check out counter to purchase the item.

13. When it was Plaintiff Fuller's turn at the check out counter, he approached the counter and placed the beer and his cash on the counter to pay the cashier for the can of beer.

14. The convenience store clerk, Serena Rae Dykstra, was the only employee on duty; Ms. Dykstra told Plaintiff Fuller that it was not the correct amount of money to purchase the beer he had chosen.

15. Plaintiff Fuller picked up the can of beer then walked back to the cooler, returned the 16 oz can of beer, and picked up a 24 oz can of Natural Light which was on sale for less than the cost of the 16 oz can of beer he had originally chosen.

16. As Plaintiff Fuller was walking back to the checkout counter, the convenience store clerk, Serena Rae Dykstra, approached Plaintiff Fuller holding out Plaintiff Fuller's money and stated that he should leave the store.

17. Plaintiff Fuller took the money from the convenience store clerk's right hand and dropped the can of beer on the floor to the left of the cashier, and walked out of the store.

18. Shortly after Plaintiff Fuller left the Kangaroo Store, Gainesville Police Officer Jeffrey S. Bailey (Officer Bailey) arrested Plaintiff Fuller at 1303 East University Avenue in Gainesville, Florida, Alachua County approximately two (2) blocks east of the Kangaroo Store.

19. Plaintiff Fuller was charged with having committed Aggravated

Battery (Florida Statute § 784.03 ) of the Kangaroo convenience store clerk, Serena Rae Dykstra (the victim), while she was working at the convenience store located at 20 Northeast Waldo Road Gainesville, Alachua County, Florida.

20. Officer Bailey completed an arrest report which stated: he observed “slight redness on the right shoulder of the victim” and that he arrested Plaintiff Fuller three blocks away from the convenience store where the battery occurred.

21. Officer Bailey then took Plaintiff Fuller to the Alachua County Sheriff’s Office, Department of the Jail (Alachua County Jail) located at 3333 Northwest 39<sup>th</sup> Avenue in Gainesville, FL Alachua County.

22. On or about September 23, 2013, at first appearance, the Court set Plaintiff Fuller’s bond at \$10,000.

23. On October 3, 2013, William Cervone, State Attorney for the Eighth Judicial Circuit of Florida, charged Plaintiff Fuller with Battery pursuant to Florida Statute §784.03 based on Officer Bailey’s arrest report.

24. On or about October 3, 2013, Plaintiff Fuller received his monthly Social Security Disability check and used those funds to bond out of jail.

25. On January 16, 2014, William Cervone, State Attorney for the Eighth Judicial Circuit of Florida dismissed all charges against Plaintiff Fuller.

26. Officer Bailey failed to complete a proper investigation from the



moment he detained Plaintiff Fuller.

27. Officer Bailey falsely arrested Plaintiff Fuller for aggravated battery on the convenience store clerk.

28. Despite Plaintiff Fuller being innocent of any crime, Officer Bailey arrested Plaintiff Fuller and took him to the Alachua County jail.

29. At no time on September 21, 2013, did Plaintiff Fuller strike the convenience store clerk Serena Rae Dykstra with a beer can or any other object.

30. A full, fair and complete investigation including review of the Saturday, September 21, 2013 security video tape from the convenience store shows that Plaintiff Fuller did not commit a crime by touching Serena Dykstra with his hand or any object and that at the time of his arrest, there was no probable cause to charge Plaintiff Fuller with battery or any other crime.

31. As a direct and proximate result of Plaintiff Fuller's arrest for Aggravated Battery by Defendant City of Gainesville, Plaintiff Fuller was forced to spend 12 nights in the Alachua County jail, and lost his Section 8 housing through The Gainesville Housing Authority.

**COUNT I**

**VIOLATION OF CIVIL RIGHTS , PURSUANT TO  
U.S.C. § 1983 BY DEFENDANT  
CITY OF GAINESVILLE**

32. Plaintiff Fuller incorporates paragraph 1 through 31 above as if set forth fully herein.

33. Defendant City of Gainesville, by and through the actions of Officer Bailey of the Gainesville Police Department, were taken with deliberate indifference to Plaintiff Fuller's rights and freedom in violation of the Fourth and Fourteenth Amendments to the United States Constitution.

34. As a direct and proximate result of the false arrest and imprisonment of Plaintiff Fuller, without probable cause, by Defendant The City of Gainesville by and through Officer Bailey of the Gainesville Police Department under the color of state law and under his authority as a Gainesville Police Officer, Plaintiff Fuller was deprived of his freedom and deprived of his constitutional right to be secure in his person against unreasonable seizures of his person in violation of the Fourth and Fourteenth Amendments of the Constitution of the United States.

35. As a direct and proximate result of the outrageous unconstitutional conduct of Defendant The City of Gainesville as set forth above, Plaintiff Fuller

suffered economic injuries, pain and suffering, embarrassment, humiliation, and loss of the capacity for the enjoyment of life.

WHEREFORE, Plaintiff Fuller, demands trial by jury and judgment for compensatory damages, punitive damages, costs of suit including Plaintiff Fuller's statutory attorneys' fees, and for other such relief as this Court deems just and proper.

## COUNT II

### STATE LAW CLAIM FOR FALSE ARREST AND FALSE IMPRISONMENT AGAINST CITY OF GAINESVILLE

36. Plaintiff Fuller incorporates paragraph 1 through 31 above as if set forth fully herein.

37. Plaintiff Fuller was falsely imprisoned for 12 nights at the Alachua County Jail without competent investigation and without probable cause by Defendant The City of Gainesville.

38. As a direct and proximate result of the false arrest, Plaintiff Fuller suffered economic losses, pain and suffering, humiliation, mental anguish, and other lawful damages, then and continuing into the future.

WHEREFORE, Plaintiff Fuller, demands trial by jury judgment for compensatory damages, and costs of suit, including Plaintiff Fuller's statutory

attorney's fees in this case, and for other such relief as the Court deems just and proper.

Dated this 15<sup>th</sup> day of September 2016.

Respectfully Submitted,

/s/ N. Albert Bacharach, Jr.

N. Albert Bacharach, Jr.

Florida Bar Number: 209783

**N. ALBERT BACHARACH, JR., P.A.**

Attorney for Plaintiff Fuller

4128 NW 13<sup>th</sup> Street

Gainesville, Florida 32609-1807

(352) 378-9859 Fax (352) 338-1858

E-mail: N.A.Bacharach@att.net

pcd@nabjr.com

courtdocuments@nabjr.com