LEGISTAR NO.

150351

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Florida

SCOTT MEYER

Plaintiff(s)

v.

CITY OF GAINESVILLE
GAINESVILLE POLICE DEPARTMENT
FRANKLIN JAMES, POLICE OFFICER
MICHAEL PRESTON, POLICE OFFICER; et al

Defendant(s)

Civil Action No. 1:15-cv-00185-MW-GRJ

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* CITY OF GAINEVILLE
OFFICE OF THE CITY ATTORNEY
200 E. UNIVERSITY AVE, #425
GAINESVILLE, FL 32601

Date 9/10/15 Time: 4:40pm
Server:
Court Order Appointed
Gainesville Process Service

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: SCOTT MEYER
10431 SW 25TH PLACE
GAINESVILLE, FL 32608

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.

CLERK OF COURT

Date: 9/3/2015

Signature of Clerk or Deputy Clerk

Filed 08/28/15 USDC Fln 1 PM 1222

August 27, 2015

Scott Meyer
10431 SW 25th Place
Gainesville, FL 32608
858 254 1204
shm8636@yahoo.com

Scott Meyer, IN PRO PER

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF FLORIDA

GAINESVILLE DIVISION

SCOTT MEYER, Plaintiff, vs. 1.CITY OF GAINESVILLE, FLORIDA 2.GAINESVILLE POLICE DEPARTMENT 3.OFFICER FRANKLIN G JAMES #0882 4.OFFICER MICHAEL PRESTON 5.UNNAMED ADDITIONAL GAINESVILLE POLICE OFFICERS Defendants	US DISTRICT COURT CASE NO. 1. Violation of Constitutional Rights as Per 42 USC 1983 and Conspiracy to Violate 42 USC 1983: FALSE ARREST AND IMPRISONMENT 2. Conspiracy to Violate Constitutional Rights as Per 42 USC 1985: FALSE ARREST AND IMPRISONMENT 3. Action of Neglect to Prevent as Per 42 USC 1986 *SUPPLEMENTAL STATE CLAIMS UNDER* 28 USC § 1367 1. DEFAMATION-SLANDER PER SE VERIFIED COMPLAINT (REQUEST JURY TRIAL)

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I am the Plaintiff in the above case and declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge at this time:

I. JURISDICTION AND VENUE:

This court has jurisdiction over this case under United States Code Title 28 Sections 1331 and 1343 (1)(2)(3)(4). Venue is appropriate under United States Code Title 28 Section 1391 b (2).

II. PRO SE LITIGANT PLEADINGS:

Pleadings in this case are being filed by Plaintiff in Propria Persona, wherein pleadings are to be considered without regard to technicalities. Propria, pleadings are not to be held to the same high standards of perfection as practicing attorneys. See Haines v Kerner 92 Sct 594; Power 914 F2d 1459 (11th Cir 1990); Hulsey v Owens 63 F3d 354 (5th Cir 1995); In re: Hall v Bellmon 935 F.2d 1106 (10th Cir. 1991).

In Puckett v Cox, it was held that a pro-se pleading requires less stringent reading than one drafted by a lawyer (452 F2d 233

(1972 Sixth Circuit USCA). Justice Black in Conley v Gibson, 355 U.S. 41 at 48 (1957) wrote: "The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of the pleading is to facilitate a proper decision on the merits".

According to Rule 8(f) FRCP "all pleadings shall be construed to do substantial justice" (see Conley v Gibson, 355 U.S. 41 at 48 (1957)).

III. 42 USC 1983:

42 U.S. Code § 1983 - Civil action for deprivation of rights

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or

omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

IV. CONSPIRACY 42 USC 1985:

United States Code Title 42, Section 1985 (2) & (3) states that two or more persons will have conspired to impede, hinder, obstruct, or defeat, the due course of justice if such persons conspire to:

1. deny to any citizen the equal protection of the law; or
2. injure him/her or his/her property for lawfully enforcing the right of any person, or class of persons to the equal protection of the laws.
3. deprive a person of the equal protection of the law

"The party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators." (42 USC 1985).

A conspiracy only exists if there is both "(1) an express or implied agreement among defendants to deprive plaintiff of his constitutional rights and (2) actual deprivations of those rights in the form of overt acts in furtherance of the agreement." (*Scherer v. Balkema*, 840 F.2d 437, 442 (7th Cir. 1988)).

"A cause of action under § 1985(3) requires a plaintiff to allege (1) a conspiracy; (2) for the purpose of depriving a person or class of persons of the equal protection of the laws or equal privileges and immunities under the law; (3) an overt act in furtherance of the conspiracy; and (4) an injury to the plaintiff's person or property or a deprivation of a right or privilege of a citizen of the United States." *Traggis v. St. Barbara's Greek Orthodox Church*, 851 F.2d 584, 586-87 (2d Cir. 1988).

In Section 1985 cases, vague and conclusory allegations of a conspiracy state no claim upon which relief can be granted. *Amundsen v. Chicago Park District*, 218 F.3d 712, 718 (7th Cir. 2000); *Sampson v. Yellow Cab Company*, 55 F.Supp.2d 867, 869 (N.D.Ill. 1999); *Copeland v. Northwestern Memorial Hospital*, 964 F.Supp. 1225, 1235 (N.D. Ill. 1997).

Where a complaint asserts that the defendants conspired to deny the plaintiff his constitutional rights, that claim must be "supported by some factual allegations suggesting a 'meeting of the minds.'" *Amundsen v. Chicago Park District*, 218 F.3d 712 at 718, *quoting Kunick v. Racine County, Wisconsin*, 946 F2d 1574, 1580 (7th Cir. 1991).

Thus, a § 1985 plaintiff: "must satisfy the following: (1) allege the existence of an agreement; (2) if the agreement is not overt, the alleged acts must be sufficient to raise the inference of mutual understanding (*i.e.*, the acts performed by the members of a conspiracy are unlikely to have been undertaken without an agreement); and (3) a whiff of the alleged conspirators' assent . . . must be apparent in the complaint." *Amundsen v. Chicago Park District*, 218 F.3d at 718, quoting *Kunick v. Racine County, Wisconsin*, 946 F2d at 1580.

The facts of this case are not conclusory and support the existence of an "agreement" by inference of mutual understanding.

V. ACTION FOR NEGLECT TO PREVENT 42 USC 1986:

"Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

VI. DEFAMATION-SLANDER PER SE:

Defamation is generally defined as the unprivileged publication of false statements which naturally and proximately result in injury to another. Wolfson v. Kirk, 273 So. 2d 774 (Fla. 4th DCA 1973). To establish a cause of action for defamation, a plaintiff must show: (1) That the defendant published a false statement about the plaintiff; (2) To a third party; and (3) That the falsity of the statement caused injury to the plaintiff. See Razner v. Wellington Regional Med. Ctr., Inc., 837 So. 2d 437 (Fla. 4th DCA 2002). Only those statements that are false rise to the level of defamation. Id. Also, statements of pure opinion are not actionable. Florida Med. Ctr., Inc. v. New York Post Co., Inc., 568 So. 2d 454 (Fla. 4th DCA 1990). There are four categories of statements that constitute slander per se:

1. Imputing to another a criminal offense amounting to a felony;

2. Imputing to another a presently existing venereal disease or other loathsome and communicable disease;

3. Imputing to another, the other being a woman, acts of unchastity;

4. Imputing to another conduct, characteristics or a condition incompatible with the proper exercise of his lawful business, trade, profession, or office.

See Wolfson, 273 So. 2d at 777 (internal citations omitted). In a slander per se action, "punitive damages may be awarded even though the amount of actual damages is neither found nor shown, for in such a case, the requirement of a showing of actual damages as a basis of an award for exemplary damages is satisfied by the presumption of injury which arises from a showing of libel or slander that is actionable per se." Saunders Hardware Five and Ten, Inc. v. Low, 307 So. 2d 893 (Fla. 3d DCA 1974).

The application of the punitive damages rule above was recently made by the Fourth District Court of Appeal in Lawnwood Med. Ctr., Inc. v. Sadow, 43 So. 3d 710 (Fla. 4th DCA 2010), where a surgeon (Dr. Samuel H. Sadow) brought an action against a hospital for breach of contract and slander per se seeking compensatory damages for both claims and punitive damages for the slander per se action. In the trial court proceeding, the jury found the hospital liable on the breach of contract claim and fixed damages at $2,817,000, reduced to $1,517,000. In separate proceedings on the slander per se claim, the jury found Lawnwood liable for the slanders; that Lawnwood specifically intended to harm him by its per se slanderous statements; that, in fact, it had actually injured him by the statements; and that

he suffered no compensatory damages from the slanders but that he was entitled to punitive damages of $5,000,000 from the hospital. Id. at 712. The Fourth District Court of Appeal, affirmed the punitive damages award, and set forth the following interesting discussion in its supporting opinion.

…[W]hen the claim is defamation per se, liability itself creates a conclusive legal presumption of loss or damage and is alone sufficient for the jury to consider punitive damages. […] To sum up, Florida's unusually high protection of personal reputation derives from the common consent of humankind and has ancient roots. It is highly valued by civilized people. Our state constitution and common law powerfully support it. This is a value as old as the Pentateuch and the Book of Exodus, and its command as clear as the Decalogue: "Thou shall not bear false witness against thy neighbor." The personal interest in one's own good name and reputation surpasses economics, business practices or money. It is a fundamental part of personhood, of individual standing and one's sense of worth. In short, the wrongdoing underlying the punitive damages in this case has Florida law's most severe condemnation, its highest blameworthiness, its most deserving culpability. For slander per se, reprehensibility is at its highest.

Lawnwood, 43 So. 3d at 727-29, review denied, 36 So. 3d 84 (Fla. 2010), and cert. denied, 131 S. Ct. 905 (U.S. 2011) (footnotes omitted).

VII. FACTS OF THE CASE:

1. On November 8, 2014, I purchased a used car from Gainesville Nissan. A temporary tag was issued and I was told that the dealership, as is normal and routine in their course of business, would follow through on registering the car with the DMV and obtaining a permanent tag.

2. The registration fee, as is normal and routine in the course of business when buying a used (or new) car from a dealership, was paid within the purchase contract (exhibit 1), as was the "electronic filing fee/ETAG file" and the "PVT TAG AGENCY" fee.

3. Despite numerous attempts to find out where the permanent tag was, as of Dec 15, 2014, no response had been received to this inquiry from the dealership.

4. Upon visiting the DMV regarding this issue, I was told that without the information from the dealership, there was nothing the DMV could do.

5. On Dec 15, 2014, my 20 year old son was driving my car and was pulled over for an expired temporary tag, apparently having expired on Dec 7, 2014. I and my whole family had just recently moved from Southern California and we were unclear about the exact process of obtaining the registration and tags for a newly purchased car in Florida. My son explained this to the officer and a citation was given for operating a vehicle without proof of registration. My son was told by the officer to get the registration in the next 30 days and bring it to the court with the citation (exhibit 2). This was consistent with Florida Statute 320.02(13)(b). But even after 30 days, the statute calls for immobilization of the vehicle, not arrest.

6. Additional, numerous phone calls were made to the dealership about the registration and tags. On December 16, 2014, I eventually received some information from the dealership (Clovis) that reported the file had been misplaced and that they were "working on it now".

7. On Dec 17, 2014, I was driving the car and was pulled over by Officer James Franklin from the Gainesville Police Department. Officer Franklin was immediately rude, hostile, and aggressive. I explained the entire situation to the officer in

a calm manner and showed him the citation from Dec 15, 2014, my notes regarding my calls to the dealership and the DMV, the purchase contract for the car, among other documents. Officer Franklin continued to be rude, aggressive, threatening to arrest me repeatedly. I asked the officer why he was behaving in such a manner and why he continued to threaten to arrest me after I fully explained the situation and my vigorous attempts to rectify it.

8. Presumably feeling challenged or "talked back to", at this point, Officer Franklin told me to get out of the car in an even harsher tone and again threatened to arrest me repeatedly. I asked why I would be arrested and he said for "not having proof of registration".

9. When I asked Officer Franklin why he would treat people this way, he responded: "maybe it's the people".

10. Additional police officers arrived (Michael Preston and one other) and after private conversations with these officers and after approx 20 mins sitting in his police car on the radio, Officer Franklin told me I was under arrest. Again (as well as while I was being driven to jail), I asked Officer Franklin what

I was being charged with. I was told repeatedly that it was for "expired registration".

11. On December 17, 2014, I was arrested by Officer Franklin G James (ID Number 0882) and other Officers whose names I do not have yet, of the Gainesville Police Department. I later came to find out that I was charged with "TEMPORARY TAG-UNLAWFUL USE-KNOWINGLY", Florida Statute 320-131(5) (exhibit 3). Per the Florida Department of Law Enforcement Certificate of Eligibility to Expunge dated April 3, 2015 (exhibit 4), this charge was "FRAUD-FRAUD MISUSE OF TEMP TAG TO AVOID REGISTER VEH".

12. After being handcuffed and placed in the backseat of the police car, I told the officers that I was the neurosurgeon on call at North Florida Regional Medical Center and that someone needs to call and let the ER know that the neurosurgeon on call is not available. None of the officers did this despite my repeated requests and warning of potential life threatening risks to potential patients. They said I could call the hospital from the jail after I was booked (which turned out to be at least 3-4 hours later). At no time before this, did I mention that I was a doctor or surgeon.

12. At the jail, as soon as Officer Franklin walked in with me, numerous staff members commented: "another one?", surprised by the number of times Officer Franklin had been to the jail with arrestees that day. After reviewing my case, none of the staff at the jail could believe I was arrested for the charge that was filed nor the circumstances surrounding my arrest.

13. From jail, I was able to call the ER at North Florida Regional Medical Center and explain to the ER charge physician what had happened and that I was not available to cover the ER.

14. I was bailed out early the next morning. The next day at work, everyone knew about the arrest and had seen my mug shot on the computer website.

15. I hired an attorney and eventually the city attorney declined to file any charges and the arrest was expunged without resistance (exhibit 5).

16. The charge for which I was arrested was not relevant and obviously "found" after lengthy discussions with the other officers at the scene and with whomever Officer Franklin was on the radio with in his car before he formally arrested me. The charge against me was a fabrication, a pretext, and excuse for

Officer Franklin and the other officers to arrest me because, again, presumably, they did not like me or felt I was talking back to them.

17. Florida Statute 320.131 (5) is completely inapplicable to my situation that existed at the time of my arrest and the Officers knew that very well. Not only did they see the direct evidence (the purchase agreement) that the registration had already been paid at the time I was pulled over, but it is standard knowledge and procedure for ANYONE who has ever bought a car from a car dealership.

18. The only other statute that could have applied (but did not) would have been 320.131 (3), which at worst is a "noncriminal infraction, punishable as a moving violation as provided in chapter 318".

19. Even the Florida Statute 320.07(3)(b), ie a registration that is expired for greater than 6 months "upon a first offense", is only subject to a penalty provided in 318.14. But this did not apply either.

20. Despite the hard work of the Gainesville Police Department on the day of the arrest in an attempt to find a violation for

which they could arrest me, there is absolutely NO Florida Statute that would provide for my arrest on Dec 17, 2014. There was not even a Statute that would have justified a citation at that time given the citation from two days before allowing for 30 days to present current registration to the court.

VIII. CONCLUSIONS:

21. THERE WAS NO PROBABLE CAUSE UNDER ANY OF THE POSSIBLE CIRCUMSTANCES OR STATUTES TO ARREST ME AND IMPRISON ME. This is a prima facie case of false arrest and imprisonment, conspiracy to make a false arrest, neglect to prevent the false arrest, and defamation. There is no probable cause and therefore no qualified immunity.

22. My Fourth (unreasonable search and seizure) and Fourteenth Amendment (due process) Constitutional Rights were violated purposefully, knowingly, and maliciously. This was a case of Police Officers abusing the power with which they have been vested to fulfill a personal vendetta and satisfy a personal agenda.

23. Not only did they violate my Constitutional rights by falsely arresting me, but they and unnamed others, conspired to

violate my rights under 42 USC 1983 and 42 USC 1985 by trying to come up with a bogus charge for which they could justify a false arrest. And this was not an "honest mistake" by the police officers at the scene or on the radio. They had plenty of time to research the legal issues involved between the time I was pulled over and my arrest, though this should have been common knowledge to a police officer who deals with this every day. This was not negligence for the same reason as above. This was wanton and malicious abuse of police power.

24. The actions taken by these Police officers and the obvious lack of regulation, oversight, and training by the City of Gainesville and the Gainesville Police Department are directly responsible for my false arrest and imprisonment and have significantly harmed me and damaged my reputation in the Gainesville community. They impeded the successful development of a new neurosurgery practice in Gainesville for which I was recruited and began at the end of August 2014.

25. The actions taken by these Police officers and the obvious lack of regulation, oversight, and training by the City of Gainesville and the Gainesville Police Department are directly responsible for my false arrest and imprisonment, and severely traumatized my emotional and mental health.

26. The actions taken by these Police officers and the obvious lack of regulation, oversight, and training by the City of Gainesville and the Gainesville Police Department are directly responsible for my false arrest and imprisonment and caused a significant amount of embarrassment and humiliation, and the public published reports and mug shots were defamatory and damaging, and interfering with my ability to earn an living.

27. The actions taken by these Police officers and the obvious lack of regulation, oversight, and training by the City of Gainesville and the Gainesville Police Department are directly responsible for my false arrest and imprisonment and thus the costs associated for attorneys, fines, fees, lost wages, etc.

28. The actions taken by these Police officers to satisfy their own personal agenda and the obvious lack of regulation, oversight, and training by the City of Gainesville and the Gainesville Police Department are directly responsible for my false arrest and imprisonment which created a situation in a local emergency room that put the lives of the entire Gainesville and North Florida community at risk.

29. The actions taken by these Police officers to satisfy their own personal agenda and the obvious lack of regulation, oversight, and training by the City of Gainesville and the Gainesville Police Department are directly responsible for my false arrest and imprisonment which REQUIRED me to inform the doctors, staff, and administration in the emergency room and hospital at North Florida Regional Medical Center of the situation I was in to protect patient safety and thus was a direct and manifest cause of defamation and slander per se.

IX. PRAYER FOR RELIEF:

-Wherefore Plaintiff prays this Court for relief as it deems appropriate and just, including but not limited to injunctive relief, restitution, legal and other costs associated with this arrest.

-Lost wages in an amount to be determined.

-Punitive damages in the amount of ten million dollars ($10,000,000.00).

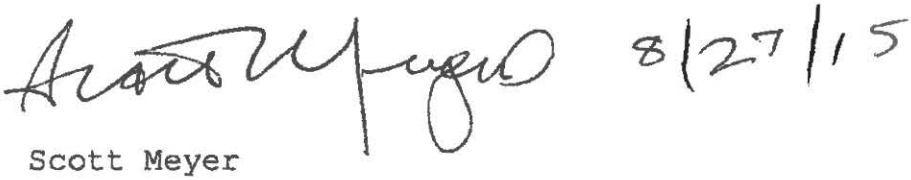
-Award costs and attorney's fees to Plaintiff for this suit.

Respectfully submitted,

Scott Meyer

X. STATEMENT OF VERIFICATION:

I have read the above complaint and I declare under penalty of perjury that it is true and correct.



Scott Meyer