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FILED

OCT 01 2013

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

GABRIEL AL-KERNI

CIVIL ACTION

Plaintiffs

Vs.

No.: 13-CV- 3731

THE CITY OF PHILADELPHIA,
OFFICER THOMAS LICIADELLO, BADGE NO. 4383
OFFICER BRIAN REYNOLDS, BADGE NO. 4268
AND POLICE OFFICERS JOHN DOE NUMBERS 1
THROUGH TEN, BADGE NUMBERS UNKOWN

JURY TRIAL DEMANDED

Defendants

COMPLAINT

I. PRELIMINARY STATEMENT

1. Plaintiffs bring this action under 42 U.S.C. §1983 seeking redress for the extraordinary misconduct of Philadelphia police officers who used improper and unconstitutional means to secure search warrants by deception and misrepresentation, to forcibly enter private property, search persons and property, and subject citizens to unlawful arrest, unreasonable force, and unlawful detention. The actions and conduct of the defendant officers were the result of policies, practices, customs, and deliberate indifference on the part of defendant the City of Philadelphia, including the failure to take disciplinary and remedial action against the defendant officers and other Philadelphia police officers despite documented records of misconduct and abuses of authority.

II. JURISDICTION

2. This action is brought pursuant to 42 U.S.C. Sections 1983. Jurisdiction is founded upon 28 U.S.C. §§1331 and 1343(1), (3), (4) and the aforementioned statutory provision. Plaintiffs further invoke the supplemental jurisdiction of this Court under 28 U.S.C. §1367(a) to adjudicate state law claims.

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III. PARTIES

3. Plaintiff, Gabriel Al-Kerni, is an adult citizen of Philadelphia, Pennsylvania.

4. Plaintiff was at all times relevant to this action in the Eastern District of Pennsylvania.

5. Defendant the City of Philadelphia, is a municipality of the Commonwealth of Pennsylvania and owns, operates, manages, directs and controls the Philadelphia Police Department which employs Defendants Kapusniak, Spicer, Betts, Speiser, Otto, Jackson, Holts, and Haggans.

6. Defendants Liciardello and Reynolds ("the defendant officers") are police officer for the Philadelphia Police Department acting under color of state law. The defendant officers are being sued in their individual capacities.

7. Defendants, John Doe, Number One through Ten, are factitious names of individuals heretofore unascertained that were at all times relevant to this Complaint, Police Officers for the City of Philadelphia and acted under the color of state law. They are being sued in their individual capacity.

8. At all relevant times, all defendants were acting in concert and conspiracy and their actions deprived the plaintiffs of their constitutional and statutory rights.

9. At all times referred to herein, Defendants, acted under color of the laws, statutes ordinances, regulations, policies, customs, and usages of the Commonwealth of Pennsylvania, the City of Philadelphia and the Police Department of the City of Philadelphia, and pursuant to their authority as police officers of the City of Philadelphia and its police department.

IV. FACTS

10. For more than twenty years, Philadelphia police officers assigned to various narcotics units have engaged in a pattern and practice of securing search warrants based on fraud and misrepresentation, the misuse of informants, the improper execution of search warrants, the falsification of evidence, the destruction and theft of personal property, and related misconduct.

11. Defendant City of Philadelphia has failed to take appropriate remedial measures to prevent misconduct of this nature.

12. In fact, in January 2009, the Philadelphia Police Department adopted a written policy essentially covers up the type of misconduct at issue in this action. That policy requires supervisors to remove from all police paperwork the names of police witnesses who possess exculpatory information. In pertinent part, that policy states:

Platoon commanders will be required to review and initial all arrest and investigative reports, including PARS reports¹, to ensure that only those officers/investigators who are necessary for the successful outcome of the case are listed.

(See Memorandum (09-01)(the "Policy"), §III. A. (1), attached as Exhibit "A.")

The meaning of the phrase "successful outcome" is so obvious that it is not defined further. *Id.*

Pursuant to the Policy, Police supervisors are required to remove from all police paperwork the names of any police officer that witnessed events, which would be useful by a defendant in a criminal case, because such officers would not "ensure" a "successful outcome." In other words, the City of Philadelphia, by and through its Police Department, has adopted a written policy to enforce a code of silence or "blue code," which prohibits Officers from intervening or providing truthful information against constitutional violations and other unlawful misconduct committed by their fellow Officers.

13. On or about October 26, 2011, the defendant officers stopped plaintiff in a store and demanded that he "give up his people."

14. When plaintiff told the defendant officers that he did not know what they were talking about, the defendant officers physically assaulted plaintiff, dislocating his shoulder, and then placed plaintiff in the trunk of their vehicle and drove him around stopping every so often to open the trunk to ask plaintiff if he was ready to "give up his people."

15. One of the times the defendant officers stopped to ask plaintiff if he was ready, the defendant officers were eating a cheese steak that they had picked up while they were giving plaintiff "a ride."

¹ As the Court may be aware, the arrest and investigative reports, including PARS reports, are the police paperwork that is typically provided to an accused in a criminal case. It is this police paperwork that helps an accused identify, among others, police witnesses.

16. At some point in time, the plaintiff could hear his mom speaking with the defendant officers who told her that they had a warrant to search her house.

17. When the search of the house revealed no contraband, the defendant officers planted drugs on plaintiff and claim they recovered similar drugs from an old scooter that was parked in front of his mom's house.

18. This search warrant was issued by a Philadelphia Bail Commissioner and was predicated on an affidavit of probable cause sworn to by one of the defendant officers.

19. The affidavit of probable cause contained allegations that were false and the affiant and the other defendant officers knew or had reason to know of the falsity of these allegations.

20. The misrepresentations contained in the affidavit of probable cause were material to the probable cause determination made by the judicial officer who authorized the search; indeed, without these allegations, the affidavit of probable cause contains no cause or reason to search the premises.

21. The actions of the affiant in submitting materially false information in an affidavit of probable cause for a search warrant was part of a practice and custom of the defendant officers and other officers in the Philadelphia Police Department to secure search warrants based on false information.

22. The defendant officers disregarded proper police practices regarding the use of search warrants and these actions led to the improper conduct in this case.

23. Then, defendant officers, without cause or justification, arrested plaintiff, who was handcuffed and transported to a police station where he was unlawfully detained for an extended period.

24. The defendant officers, without cause or justification, and through the fabrication of evidence, caused plaintiff to be charged with possession with intent to deliver a controlled substance and related offenses.

25. As a result of the actions and conduct of the defendant officers, the plaintiff was compelled at considerable expense to retain the services of criminal defense attorney.

26. As a result of the actions and conduct of the defendant officers, plaintiff incurred other financial losses.

27. The defendant officers, acting in concert and conspiracy, caused the plaintiff to be unlawfully arrested, subjected to false criminal charges, malicious prosecution and prolonged detention by falsifying information in the search warrant affidavit, failing to disclose to prosecutors the fact that the information provided to the judicial officer in support of the search warrant was false and misleading, fabricating evidence to support the claim that the plaintiffs were involved in criminal activity, and failing to disclose other exculpatory evidence regarding these criminal charges.

28. On May 14, 2013, the criminal charges brought against plaintiff were withdrawn on the application of the District Attorney of Philadelphia County.

29. Plaintiffs did not commit any offenses against the laws of the Commonwealth of Pennsylvania, the United States or the City of Philadelphia, or engage in any action which justified the actions of all defendants.

30. The unlawful searches, use of force and detentions in this case were the direct result of all defendants' pattern, practice and custom of subjecting citizens such as the plaintiffs to search, force and detention in the absence of probable cause.

31. The defendant officers acted willfully, deliberately, maliciously or with reckless disregard of the plaintiff's constitutional and statutory rights.

32. As a direct and proximate result of the actions of all defendants, the plaintiff suffered and continues to suffer physical and psychological harms, pain and suffering, damage to reputation, some or all of which may be permanent, as well as financial losses.

33. All defendants engaged in the aforesaid conduct for the purpose of violating the plaintiff's constitution rights by subjecting the plaintiffs to unlawful searches, unreasonable force, and prolonged detention.

34. The actions and conduct of the defendant officers were caused by a policy, practice and custom of defendant City of Philadelphia of failing, with deliberate indifference, to supervise, monitor, and properly train narcotics officers with respect to (a) their duty to provide only truthful information in securing search and arrest warrants, (b) their duty to ensure that

relationships and dealings with confidential informants are in accord with Police Department policy and constitutional commands, (c) their duty to disclose exculpatory evidence in criminal cases, (d) their duty not to undertake arrests in the absence of lawful grounds, (e) their duty to provide accurate and truthful information to the prosecutor's office, (f) their duty to report and disclose misconduct and illegal actions of other police officers, (g) the proper execution of search warrants, and in particular prohibitions on searches that go beyond those authorized by warrant, and/or involve the destruction or theft of property or evidence, and (h) the fabrication of evidence against an accused to justify their illegal actions and conduct.

35. Defendant City of Philadelphia has failed to properly discipline the defendant officers and other officers in the Police Department in cases involving violations of rights of civilians, including cases of improper searches, seizures, arrests, and prosecutions, thereby causing the violations in this case.

36. Defendant City of Philadelphia has adopted an official written policy to ensure that civilians do not discover the names of police witnesses who possess exculpatory information and that those police witnesses do not come forward.

37. The above described actions of all of the defendants caused the violations of plaintiff's rights under the Fourth and Fourteenth Amendment as alleged in this Complaint.

FIRST CAUSE OF ACTION
FEDERAL CIVIL RIGHTS VIOLATIONS

38. The allegations set forth in paragraphs one through thirty-seven inclusive, are incorporated herein as if fully set forth.

39. As a direct and proximate result of all defendants' conduct, committed under color of state law, Defendants deprived Plaintiff of her rights, privileges and immunities under the laws and the Constitution of the United States; Plaintiff's right to be free from unreasonable searches and seizures, excessive force, false arrest, false imprisonment, verbal abuse, to be secure in ones' person and property, and to due process and equal protection of law. As a result, the plaintiffs suffered and continue to suffer harm in violation of his rights under the laws and Constitution of the United States, in particular the Fourth, and Fourteenth Amendments thereof, and 42 U.S.C. §1983.

40. As a direct and proximate result of the malicious and outrageous conduct of Defendants, the plaintiffs sustained injuries, emotional harm, loss of liberty and financial losses, all to their detriment and harm.

41. The acts of the defendant officers as aforesaid were wanton, malicious and oppressive, thus entitling plaintiff to an award of punitive damages against the defendants in their individual capacities.

42. Defendant City of Philadelphia has encouraged, tolerated, ratified and has been deliberately indifferent to the following patterns, practices and customs and to the need for more or different training, supervision, investigation or discipline in the areas of:

- a. Unlawful detentions and unlawful arrests by police officers;
- b. The proper exercise of police powers, including but not limited to the use of false information to obtain search warrants, fabrication of evidence, unlawful arrest, malicious prosecution and unlawful detention;
- c. The monitoring of officers whom it knew or should have known were suffering from emotional and/or psychological problems that impaired their ability to function as officers;
- d. The failure to identify and take remedial or disciplinary action against police officers who were the subject of prior civilian or internal complaints of misconduct;
- e. Police officers' use of their status as police officers to employ the use of unlawful arrest, or to achieve ends not reasonably related to their police duties;
- f. Police officers' use of their status as police officers to employ the use of unlawful arrest, invoke the Code of Silence, or to achieve ends not reasonably related to police duties;
- g. The failure of police officers to follow established policies, procedures, directives and instructions regarding the securing of search warrants and the use of arrest powers under such circumstances as presented in this case;

- h. The implementation of a policy that removes from police paperwork the names of police witnesses who possess exculpatory information;
- i. The refusal of police officers to intervene when other officers violate the rights of citizens in their presence;
- j. The failure to identify and take remedial or disciplinary action against units of officers assigned to narcotics investigations in light of repeated instances of misconduct over a period of many years as alleged in this Complaint; and
- k. The refusal of police officers to report or provide information concerning the misconduct of other police officers, a policy, custom, or practice known as the "Code of Silence."

43. Defendant City of Philadelphia failed to properly train, supervise or discipline officers assigned to narcotics units of the Philadelphia Police Department who have engaged over a period of many years in systemic abuses of authority, including but not limited to (a) the duty to provide only truthful information in securing search and arrest warrants, (b) the duty to ensure that relationships and dealings with confidential informants are in accord with Police Department policy and constitutional commands, (c) the duty to disclose exculpatory evidence in criminal cases, (d) their duty not to undertake arrests in the absence of lawful grounds, (e) the duty to provide accurate and truthful information to the prosecutor's office, (f) the duty to report and disclose misconduct and illegal actions of other police officers, (g) the improper execution of search warrants, and in particular prohibitions on searches that go beyond those authorized by the warrant, and/or involve the destruction or theft of property or evidence, and (h) the fabrication of evidence against an accused to justify their illegal actions and conduct.

44. Defendant City of Philadelphia failed to properly sanction or discipline officers, who are aware of and conceal and/or aid and abet violations of constitutional rights of individuals by other Philadelphia Police Officers and, in fact, adopted an official policy, which encourages such conduct, thereby causing and encouraging Philadelphia police, including the defendant officers in this case, to violate the rights of citizens such as plaintiff.

45. Defendant City of Philadelphia is deliberately indifferent to the need to train, supervise and discipline police officers. The Internal Affairs Division (IAD) of the Philadelphia Police Department (PPD) fails to provide an internal disciplinary mechanism that imposes meaningful disciplinary and remedial actions in the following respects;

- a. There are excessive and chronic delays in resolving disciplinary complaints;
- b. There is a lack of consistent, rational and meaningful disciplinary and remedial actions;
- c. There is a failure to effectively discipline substantial numbers of officers who were found to have engaged in misconduct.
- d. The PPD's internal investigatory process has fallen below accepted practices and is arbitrary and inconsistent;
- e. The PPD discipline, as practiced, is incident based rather than progressive. Thus, repeat violators are not being penalized in proportion to the number of violations.
- f. The conduct of IAD investigations demonstrates that PPD internal affairs personnel are not adequately trained and supervised in the proper conduct of such investigations;
- g. A global analysis of IAD's investigatory procedures indicates a pattern of administrative conduct where the benefit of the doubt is given to the officer rather than the complainant;
- h. There are serious deficiencies in the quality of IAD investigations and the validity of the IAD findings and conclusions;
- i. The PPD lacks an effective early warning system to identify, track and monitor "problem" officers;
- j. Despite the fact that several of the defendant officers had amassed an exceptionally large number of serious misconduct complaints, the officers stayed well below the radar of an early warning system;
- k. Despite numerous prior complaints against several of the defendant officers, the PPD took no meaningful disciplinary or remedial actions;
- l. Despite numerous prior complaints against several of the defendant officers, the PPD took no meaningful steps to more closely monitor, retrain and supervise the other officers;
- m. IAD frequently fails to interview available eyewitnesses to incidents involving citizen complaints of misconduct. The interviews that are conducted by IAD are below acceptable standards of police practice and fail to address key issues in the cases; and,

- n. IAD fails to acknowledge the disproportionate and extreme use of force used by police officers in the investigation of citizen complaints and fails to properly categorize the police officers' misconduct in those cases as an impermissible use of force.

46. Defendants have by the above described actions deprived the plaintiff of rights secured by the Fourth and Fourteenth Amendments to the United States Constitution in violation of 42 U.S.C. §1983.

**SECOND CAUSE OF ACTION
SUPPLEMENTAL STATE CLAIMS**

47. The allegations set forth in paragraphs one through forty-seven inclusive, are incorporated herein as if fully set forth.

48. The acts and conduct of all Defendants alleged in the above cause of action constitute false arrest/false imprisonment, malicious prosecution, negligent infliction of emotional distress, outrageous conduct causing emotional distress, defamation, and invasion of privacy—casting in false light under the laws of the Commonwealth of Pennsylvania, and this Court has supplemental jurisdiction to hear and adjudicate these claims.

WHEREFORE, the plaintiff respectfully requests the following relief:

- a. Compensatory damages as to all defendants;
- b. Punitive damages as to the individual defendants;
- c. Reasonable attorney's fees and costs as to all defendants;
- d. Such other declaratory and further relief as appears reasonable and just; and
- e. A jury trial as to each defendant and as to each count.

Dated: September 30, 2013



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