

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 15-CV-62071-BLOOM

LIVINGSTON MANNERS,

Plaintiff,

v.

RONALD CANNELLA, individually,
KARRIE SABILLON, individually, and
PAUL SCHEEL, individually, and the
CITY OF HOLLYWOOD, FLORIDA,

Defendants.

_____ /

AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, LIVINGSTON MANNERS (“Livingston”) (“Amelia”), files suit against Defendant, RONALD CANNELLA (“Officer Cannella”), KARRIE SABILLON (“Officer Sabillon”), PAUL SCHEEL (“Officer Scheel”) and the CITY OF HOLLYWOOD, FLORIDA (the “City”), and states:

JURISDICTION, VENUE AND PARTIES

1. This is an action for damages and further relief to redress the deprivation of Livingston’ constitutional rights by officials acting under color of State Authority and for damages arising from the deprivation of Livingston’ privileges and immunities secured by the Constitution, statutes, regulations, policies, practices, customs and usages of the United States, and pursuant to the Fourth and Fourteenth Amendments to the Constitution of the United States, and 42 U.S.C. §§ 1983 and 1988.

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.
3. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367.
4. The events resulting in the excessive use of force, intentional infliction of emotional distress and a violation of Livingston' civil rights pursuant to 42 U.S.C. §§ 1983 and 1988 occurred in Broward County, Florida. Accordingly, the Southern District of Florida is the proper venue.
5. Livingston has exhausted all available administrative remedies and satisfied all conditions precedent to the filing of this Complaint, including notice to the City pursuant to Florida Statutes § 768.28.
6. At all relevant times, Livingston was a resident of Broward County, Florida, *sui juris* and over 18 years of age.
7. Upon information and belief, Officer Cannella is a resident of Broward County, Florida, *sui juris*, over 18 years of age and a law enforcement officer for the State of Florida. At all relevant times, Officer Cannella was employed as a law enforcement officer for the City's Police Department.
8. Upon information and belief, Officer Sabillon is a resident of Broward County, Florida, *sui juris*, over 18 years of age and a law enforcement officer for the State of Florida. At all relevant times, Officer Sabillon was employed as a law enforcement officer for the City's Police Department.
9. Upon information and belief, Officer Scheel is a resident of Broward County, Florida, *sui juris*, over 18 years of age and a law enforcement officer for the State of Florida. At all relevant times, Officer Scheel was employed as a law enforcement officer for the City's Police Department.

10. The City is a beachfront community located in southeastern Broward County about midway between Miami and Fort Lauderdale. Founded by Joseph Young in 1925, Hollywood is approximately 30 square miles in size and is Broward County's third-largest municipality with a population of roughly 143,000 residents. The City consists of several departments, including its own police department.

BACKGROUND FACTS

11. On or about June 24, 2014, at around 2:30AM, Livingston was sitting in his vehicle to pick up his co-worker, Mr. Sylvester Peets, to ride to work together at FedEx.

12. Livingston was on his cellular phone speaking with Mr. Peets, who told Livingston at that time he (Mr. Peets) would not be going to work after all because his child was sick.

13. While on his cellular phone with Mr. Peets and looking in his rearview mirror, Livingston noticed a police vehicle traveling in his direction. The police vehicle merged towards him initially, and then merged away from Livingston while continuing to drive past Livingston until it reached the stop sign at Plunket Street.

14. After learning that Mr. Peet would not be riding to work with him, Livingston proceeded to work, driving in the same direction as the police vehicle, but now behind it.

15. The police vehicle, driven by Officer Cannella, drove through the stop sign and continued across 26th Avenue.

16. Livingston stopped at the stop sign, and then made a left, travelling south on 26th Avenue.

17. Livingston then saw the same police vehicle that had previously crossed 26th Avenue make a U-turn, and then drive behind Livingston.
18. Officer Cannella then activated the lights on top of the police vehicle while Livingston was driving.
19. Livingston decreased his speed when he saw the activate lights on top of the police vehicle, and continued to travel at a slow pace until he reached the Chevron gas station, which had much better lighting. Livingston stopped his vehicle at the Chevron gas station.
20. Officer Cannella exited his police vehicle, which was parked behind Livingston' vehicle, approached Livingston on the driver's side of Livingston' vehicle, and asked Livingston for his identification. Livingston provided Officer Cannella with his Florida Driver's License and his identification from FedEx.
21. Officer Cannella asked Livingston why was he in the area, and Livingston responded, stating that he had just left his co-workers' house, but because his co-worker (Mr. Peets) was not going to work that day (because his child was sick), he (Livingston) was going to work. Livingston remained seated in his vehicle while being interrogated by Officer Cannella.
22. With Livingston' driver's license in hand, Officer Cannella then walked back to his police vehicle, while Livingston remained seated in his vehicle.
23. After a lengthy period of time had passed, Livingston exited his vehicle to ask Officer Cannella how much longer would it be before he (Livingston) could leave for work because, at this point, Livingston believed that he would be late for work.

24. Officer Cannella then aggressively approached Livingston, and reached for Livingston.
25. Livingston fell backward into his vehicle, with his legs and feet hanging out of the driver's side of his vehicle and his buttocks in the driver's seat, while Officer Cannella lunged onto Livingston and, without reason, cause or provocation, punched Livingston in the face repeatedly.
26. Officer Cannelle then forcefully yanked Livingston out of his vehicle and forcefully slammed Manner onto the ground, falling onto Livingston with all of his weight.
27. Officer Cannelle then repeatedly and forcefully punched Livingston, even though Livingston neither resisted, retaliated nor displayed any form of aggression towards Officer Cannelle.
28. While Officer Cannelle was forcefully and repeatedly punching Livingston, and while Officer Cannelle rested his bodyweight on Livingston' stomach, Livingston repeatedly cried out to Officer Cannelle that he (Livingston) could not breathe.
29. At no point did Livingston resist Officer Cannelle. Instead, Livingston repeatedly stretched his arms out wide so that Officer Cannelle could see that Livingston was neither resisting, retaliating nor displaying any form of aggression towards Officer Cannelle.
30. When Officer Sabillon arrived on scene, Officer Cannelle was on top of Livingston, with a leg on each side of Livingston' torso.
31. When Officer Sabillon arrived on scene, Livingston still neither resisted, retaliated nor displayed any form of aggression towards Officer Cannelle or anyone else.

32. Despite Livingston' compliance, Officer Sabillon removed her electronic control device, commonly referred to as an "ECD" or "taser" from its holster and, without cause or reason, deployed the ECD, striking Livingston and discharging electrical pulses repeatedly into Livingston, causing Livingston extensive pain.
33. Officer Cannella then stood over Livingston, removed his ECD from its holster and, without cause or reason, deployed the ECD, striking Livingston and discharging electrical pulses repeatedly into Livingston, causing Livingston extensive pain.
34. After Officers Cannella and Sabillon repeatedly discharged their tasers on Livingston, Livingston was being placed in a position to be handcuffed, and Manner still could not breathe.
35. After Livingston was on his stomach, handcuffed and surrounded by other law enforcement officers from the City, Officer Sabillon tasered Livingston again in his back. One of the officers present was Officer Scheel, who witnessed Officer Sabillon remove her ECD from its holster and deploy it gratuitously onto Manner' back, but did nothing to prevent the gratuitous of her ECD.
36. Livingston was arrested a charged with battery on a law enforcement officer and resisting arrest without violence because of the incident involving Officers Cannella and Sabillon.
37. The criminal charges lodged against Livingston based on a false police report filed by Officer Cannella, which falsely stated that (i) Livingston repeatedly punched Officer Cannella in his head, body and face, and (ii) Livingston strangled Officer Cannella with his hands, causing Officer Cannella to not be able

to breathe and to momentarily lose consciousness, and to believe that he was “going to die.”

38. Officer Cannella did not seek medical treatment stemming from his arrest of Livingston, nor did Officer Cannella miss the following day of work.

39. Livingston and Amelia incurred loans in the amount of \$40,000 to retain an attorney to defend him in the criminal charges lodged against Livingston based on a false police report filed by Officer Cannella.

40. All criminal charges were dismissed after Livingston was acquitted by a jury of his peers; Livingston was found not guilty of battery on a law enforcement officer and resisting arrest without violence, primarily based on the gas station’s surveillance video, which captured the incident and proved that Officers Cannella’s and Sabillon filed false police reports.

41. All presuit requirements have been satisfied, including LIVINGSTON providing the City with notice pursuant to Florida Statutes § 768.28.

COUNT I

42 U.S.C. § 1983 EXCESSIVE USE OF FORCE BY DEFENDANT, RONALD CANNELLA

42. Livingston realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 41 above as if fully set forth herein.

43. The conduct of Officer Cannella was objectively unreasonable and resulted in the excessive use of force against Livingston, in violation of Livingston’ clearly established constitutional rights under the Fourth and Fourteenth Amendments and 42 U.S.C. § 1983.

44. As a direct and proximate result of the acts described above, in violation of 42 U.S.C. § 1983, Livingston has suffered grievously, has been brought into public scandal, and with great humiliation, mental suffering and damaged reputation.

45. As a further direct and proximate result of the conduct of Officer Cannella, Livingston suffered bodily injury, and resulting pain and suffering, mental anguish, loss of capacity for the enjoyment of life, medical care and treatment.

46. Livingston' losses are either permanent or continuing, and Livingston will suffer the losses in the future, in violation of Livingston' civil rights. Livingston has also agreed to pay the undersigned a reasonable fee for his services herein.

WHEREFORE, Livingston prays for:

- a. Judgment for any and all damages recoverable under law against Officer Cannella;
- b. Judgment for punitive damages against Officer Cannella;
- c. Cost of suit;
- d. Reasonable attorney's fees pursuant to 42 U.S.C. § 1988; and
- e. Such other relief as this Court deems just and proper.

COUNT II

42 U.S.C. § 1983 EXCESSIVE USE OF FORCE BY DEFENDANT, KARRIE SABILLON

47. Livingston realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 41 above as if fully set forth herein.

48. The conduct of Officer Sabillon was objectively unreasonable and resulted in the excessive use of force against Livingston, in violation of Livingston' clearly

established constitutional rights under the Fourth and Fourteenth Amendments and 42 U.S.C. § 1983.

49. As a direct and proximate result of the acts described above, in violation of 42 U.S.C. § 1983, Livingston has suffered grievously, has been brought into public scandal, and with great humiliation, mental suffering and damaged reputation.

50. As a further direct and proximate result of the conduct of Officer Sabillon, Livingston suffered bodily injury, and resulting pain and suffering, mental anguish, loss of capacity for the enjoyment of life, medical care and treatment.

51. Livingston' losses are either permanent or continuing, and Livingston will suffer the losses in the future, in violation of Livingston' civil rights. Livingston has also agreed to pay the undersigned a reasonable fee for his services herein.

WHEREFORE, Livingston prays for:

- a. Judgment for any and all damages recoverable under law against Officer Sabillon;
- b. Judgment for punitive damages against Officer Sabillon;
- c. Cost of suit;
- d. Reasonable attorney's fees pursuant to 42 U.S.C. § 1988; and
- e. Such other relief as this Court deems just and proper.

COUNT III

42 U.S.C. § 1983 FAILURE TO INTERVENE CLAIM AGAINST DEFENDANT, PAUL SCHEEL

51. Livingston realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 41 above as if fully set forth herein.

52. Officer Scheel was present when Officer Sabillon gratuitously deployed her ECD on Livingston.

53. Officer Scheel failed or refused to intervene when Officer Sabillon violated Livingston' constitutional rights in his presence.

54. As a result of Officer Scheel's failure to intervene, Officer Scheel is directly liable under 42 U.S.C. § 1983.

WHEREFORE, Livingston prays for:

- a. Judgment for any and all damages recoverable under law against Officer Scheel;
- b. Judgment for punitive damages against Officer Scheel;
- c. Cost of suit;
- d. Reasonable attorney's fees pursuant to 42 U.S.C. § 1988; and
- e. Such other relief as this Court deems just and proper.

IV.

42 U.S.C. § 1983 MALICIOUS PROSECUTION BY DEFENDANT, RONALD CANNELLA

52. Livingston realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 41 above as if fully set forth herein.

53. No reasonably cautious police officer in the position of Officer Cannella would have believed Livingston was guilty-in-fact of any criminal offense.

54. Officer Cannella proximately caused criminal proceedings to be instituted or continued against Livingston with malice and in the absence of probable cause that Livingston committed any criminal offense by creating facts and

manufacturing evidence for Officer Cannella to include in his probable cause affidavit and offense report to be submitted to prosecuting authorities.

55. At all times material hereto, Officer Cannella knew that the information he gave to the State Attorney's Office was materially false and, in fact, created and manufactured by Officer Cannella.

56. At all times material hereto, Officer Cannella knew that the information he gave to the State Attorney's Office to include in the probable cause affidavit would be relied upon by prosecuting authorities for the institution and continuation of criminal charges against Livingston.

57. The conduct of Officer Cannella was reckless and without regard to whether the institution or continuation of criminal proceedings against Livingston were justified.

58. The criminal proceedings instituted and continued by Officer Cannella reached a bona fide resolution in Livingston's favor – Livingston was acquitted of all charges.

59. As a direct and proximate result of the acts described above, in violation of 42 U.S.C. § 1983, Livingston has suffered loss of liberty and freedom, and has been brought into public scandal, with great humiliation, mental suffering and damaged reputation. Livingston also incurred significant attorney's fees to defend the heinous criminal charges, lost his job while awaiting trial *and* has also agreed to pay the undersigned a reasonable fee for his services herein.

WHEREFORE, Livingston respectfully requests that this Court:

- a. Judgment for any and all damages recoverable under law against Officer Cannella;
- b. Judgment for punitive damages against Officer Cannella;
- c. Cost of suit;
- d. Reasonable attorney's fees pursuant to 42 U.S.C. § 1988; and
- e. Such other relief as this Court deems just and proper.

COUNT V

FALSE ARREST CLAIM AGAINST CITY OF HOLLYWOOD

55. Livingston realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 41 above as if fully set forth herein.
56. The City's officers proximately caused Livingston's arrest on or about June 24, 2014, in the absence of probable cause that Livingston committed any criminal offense.
57. The actions of the City's officers in causing the arrest of Livingston in the absence of probable cause were taken in absence of lawful authority. The actions of the City's arresting officer constitute false arrest of Livingston.
58. The false arrest of Livingston by the City's officer was committed by said officer in the course and scope of his employment as a police officer for the City.
59. As a direct and proximate result of the acts described above, Livingston has suffered grievously and has been brought into public scandal, with great humiliation, mental suffering and damaged reputation.
60. As a further direct and proximate result of the conduct of the City, Livingston suffered loss of liberty and freedom, mental anguish, and loss of capacity for the

enjoyment of life. Livingston' losses are either permanent or continuing, and Livingston will suffer the losses in the future, in violation of Livingston' rights.

WHEREFORE, Livingston respectfully requests that this Court:

- a. Enter judgment for compensatory damages in his favor and against the City; and
- b. Enter judgment for such other relief as this Court deems just and proper.

Dated: April 28, 2016.

Respectfully submitted,

LOCKE LAW, P.A.
Attorney for Plaintiffs
8201 Peters Road, Suite 1000
Plantation, Florida 33324
(954) 382-8858 telephone
(954) 827-0998 facsimile

By: /s Wendell Locke
Wendell T. Locke, For the Firm
Florida Bar No. 119260

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on April 28, 2016, a true and correct copy of the foregoing was served via CM/ECF to: Tamatha S. Alvarez, Esq., Martin, Lister & Alvarez, Attorneys for Individual Defendants, 2893 Executive Park Drive, Suite 204, Weston, FL 33331, and Daniel L. Abbott, Esq., Anne K. Reilly, Esq., Weiss Serota et al., 200 East Broward Boulevard, Suite 1900, Fort Lauderdale, FL 33301.

/s Wendell Locke

