

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI, OHIO

GARY DRESSLER,
5742 Sidney Road
Cincinnati, Ohio 45224

Plaintiff,

vs.

BRADFORD RICE
7849 Martin Street
Cincinnati, Ohio 45231,
In his individual and
official capacity,

SAFE ENVIRONMENT BUSINESS
SOLUTIONS, INC.
c/o Statutory Agent
CSC-Lawyers Incorporating Service
50 West Broad Street, Suite 1800
Columbus, Ohio 43215,

JEFFREY M. ZUCKER,
c/o Cincinnati Police Department
310 Ezzard Charles Drive
Cincinnati, Ohio 45214
In his individual and
official capacity,

JERRY W. HODGES
c/o Cincinnati Police Department
310 Ezzard Charles Drive
Cincinnati, Ohio 45214
In his individual and
official capacity,

INTERIM CHIEF OF POLICE
PAUL H. HUMPHRIES
c/o Cincinnati Police Department
310 Ezzard Charles Drive
Cincinnati, Ohio 45214
In his individual and
official capacity,

Case # 1:15-cv-606

Judge SUSAN J. DLOTT

Magistrate _____

**Complaint for Violation of Civil Rights
and Pendant State Law Claims of
False Arrest, Illegal Search, False
Imprisonment, Malicious Prosecution
Conversion, Infliction of Emotional
Distress**

JURY ENDORSEMENT HEREIN

CHIEF OF POLICE
JEFFREY BLACKWELL
c/o Cincinnati Police Department
310 Ezzard Charles Drive
Cincinnati, Ohio 45214
In his individual and
official capacity,

UNKNOWN JOHN/JANE DOES
c/o Cincinnati Police Department
310 Ezzard Charles Drive
Cincinnati, Ohio 45214
In their individual and
official capacity,

CITY OF CINCINNATI
C/O City Solicitor of Cincinnati
801 Plum Street, Suite 214
Cincinnati, Ohio 45202,

LARRY NOSCHANG
20550 Sugar Ridge Lane
Lawrenceburg, Indiana 47025,
In his individual and
official capacity,

PIERCE BRYANT
c/o Kroger
Legal Department
1014 Vine Street
Cincinnati, Ohio 45202,

And

THE KROGER CO.
Legal Department
Corporate Headquarters
1014 Vine Street
Cincinnati, Ohio 45202,

Defendants.

Now comes the Plaintiff, Gary Dressler, through his counsel, and submits this complaint against the Defendants listed above. Plaintiff Gary Dressler avers on knowledge, information and belief as follows:

NATURE OF THE CASE

1. Plaintiff Dressler is suing under Sections 1983, 1985(3) and 1986 of the Civil Rights Act in Title 42 of the United States Code, which was passed by Congress to provide a remedy to persons who have been deprived of their federal constitutional rights under color of state law and under pendant jurisdiction for state actions of several common law torts under Ohio law.

42 U.S.C. §1983 CIVIL RIGHTS ACTION

2. This action arises under the Constitution of the United States, particularly the Second, Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States, and under the laws of the United States, particularly the Civil Rights Act, Title 42 of the United States Code sections 1983 through 1988, as well as under common law torts in Ohio.

JURISDICTION

3. The jurisdiction of this court is invoked under the provisions of Title 28 of the United States Code, Section 1331 and 1343 and under 42 U.S.C. §1988. The District Court has pendant jurisdiction over the state claims pursuant to 28 U.S.C. §1367.

VENUE

4. Venue is placed in the Southern District of Ohio because all of the parties reside, work, or are located therein, and it is where the events complained of occurred.

PARTIES

5. Plaintiff, Gary Dressler (Dressler), is now, and at all times mentioned, is a citizen of the United States of America, and a resident of Green Township, Hamilton County, Ohio, currently residing at 5742 Sidney Road, Cincinnati, Ohio 45233;
6. Defendant Bradford Rice (Rice) is a resident in the City of Mount Healthy, County of Hamilton and is located at the address of 7849 Martin Street, Cincinnati, Ohio 45231 and was on the date of the incident, September 20, 2013, an employee of Safe Environment Business Solutions, Inc. (SEB). Rice is currently an employee of The Kroger Co. as he started working for Kroger on September 23, 2013. His supervisor is Defendant Pierce Bryant, who is the loss prevention manager for The Kroger Co. responsible for execution of the company standards and initiatives to reduce asset loss throughout the division. Rice is named individually and in his official capacity as an employee of SEB, as well as his official capacity for The Kroger Co.;
7. Defendant Safe Environment Business Solutions, Inc. (SEB) is a foreign corporation from New York registered to do business in the State of Ohio since June 29, 2009 through Entity Number 1866804, whose registered agent is CSC-Lawyers Incorporating Service (Corporation Service Company) effective April 14, 2014 located at 50 W. Broad Street, Suite 1800, Columbus, Ohio 43215;
8. Defendants, Jeffrey M. Zucker (Zucker) and Jerry W. Hodges (Hodges) are now and at all times mentioned were duly appointed, employed, and acting as police officers of the City of Cincinnati, Hamilton County, Ohio, and residents of the county and State. Defendant Officers Zucker and Hodges are named individually and in their official capacities;

9. Defendant Interim Chief of Police Humphries was acting as the Chief of Police for the City of Cincinnati, Hamilton County, Ohio at all times between September 20, 2013 and September 30, 2013. Chief of Police Blackwell was the Chief of Police for the City of Cincinnati, Hamilton County, Ohio at all times between September 30, 2013 and July 22, 2015. Humphries directly supervised the activities of City of Cincinnati Police Officers, including Defendants Zucker and Hodges on September 20, 2013 through September 30, 2013, and Blackwell supervised their activities subsequent to September 30, 2013, and other police personnel, and both were responsible for their training, supervision, and conduct, enforcing the regulations of the Cincinnati Police Department, and ensuring that the officers obeyed the laws of the State of Ohio and the United States and the officers and police personnel complied with the Constitution of the United States. Humphries and Blackwell are liable because they implicitly authorized, approved, or knowingly acquiesced the unconstitutional conduct of the offending police officers and police personnel;
10. John/Jane Does were police officers and/or supervisory officers as well as police personnel of the City of Cincinnati, Hamilton County, Ohio. Their names are unknown. As police officers they communicated with Defendant Zucker and Hodges and furthered the violation of Dressler's constitution rights. As supervisors they directly supervised the activities of City of Cincinnati Police Officers, including Defendants Zucker and Hodges on September 20, 2013 and was responsible for their training, supervision, and conduct, enforcing the regulations of the Cincinnati Police Department, and ensuring that the officers obeyed the laws of the State of Ohio and the United States and complied with the

Constitution of the United States, as police personnel they were also responsible for the improper auctioning of Dressler's property;

11. Defendant, City of Cincinnati, is now, and at all times mentioned a duly incorporated city of the State of Ohio, located in the County of Hamilton within the jurisdiction of this Court and is capable of being sued pursuant to ORC §715.01. The City of Cincinnati is the employer of Defendants Zucker, Hodges, Interim Chief of Police Humphries, Chief of Police Blackwell and John/Jane Does and liable for the misconduct of its employees Zucker, Hodges, Interim Chief of Police Humphries, Chief of Police Blackwell and John/Jane Does. The City of Cincinnati is also liable for its policies and customs and/or failure to train, monitor and supervise employees of the Police Department;
12. Defendant Larry Noschang (Noschang) is a resident of Indiana and maintains a residence at 20550 Sugar Ridge Lane, Lawrenceburg, Indiana, 47025 and was on the date of the incident, September 20, 2013, an employee of The Kroger Co. working as a manager at the Glenway Kroger store in the City of Cincinnati, Ohio. Noschang is named individually and in his official capacity as an employee of The Kroger Co.;
13. Defendant Pierce Bryant is an employee of The Kroger Co. and is the manager of the loss prevention division of The Kroger Co. that is responsible for 119 Kroger stores. Bryant is named individually and in his official capacity as an employee of Kroger; and
14. Defendant The Kroger Co. (Kroger) is a corporation incorporated in Ohio since April 3, 1902, Entity Number 14931, whose home corporate office is located at 1014 Vine Street, Cincinnati, Ohio 45202.

FACTUAL ALLEGATIONS

15. Plaintiff Dressler realleges the allegations contained in paragraphs 1 through 14 as if fully restated herein;
16. The events alleged in this complaint all occurred in the afternoon and evening hours of September 20, 2013.
17. On September 20, 2013, sometime before 4:00 p.m., Plaintiff Dressler went to the Kroger store at 6165 Glenway Avenue, Cincinnati, Ohio 45238 to grocery shop;
18. As was his custom for many years prior September 20, 2013, Dressler openly carried his gun in a holster while shopping at Kroger and in particular for at least four years prior to September 20, 2013, he openly carried his holstered gun while shopping at the Kroger located at 6165 Glenway Avenue, Cincinnati, Ohio 45238;
19. When Dressler approached the Kroger store at Glenway, he did not see any posted sign that prohibited him from openly carrying a gun into the Kroger store;
20. The Kroger store at 6165 Glenway Avenue, Cincinnati, Ohio did not have a sign prohibiting individuals from carrying firearms into the store as suggested through Ohio law in ORC §2935.126(C)(3)(a);
21. The Kroger Co. also had a long standing policy of not interfering with persons open carrying firearms of which Dressler was aware;
22. Dressler walked through the vestibule and at the front entrance to the Kroger store Dressler was approached by an unknown and unidentified person;
23. Dressler had an extreme loss of hearing in his left ear;
24. The unidentified person, later identified as security guard, Bradford Rice, failed to gain Dressler's complete attention in that he approached Dressler on his left side;

25. Bradford Rice was a security guard employed by SEB;
26. SEB had a branch office in Hamilton County located at 8044 Montgomery Road, Suite 700, Cincinnati, Ohio 45236 that was not licensed by the director of public safety, nor was its branch office address reported to the Hamilton County Sheriff as required by ORC §4749.05;
27. Having no idea who Rice was, or what he was doing, Dressler continued to go into Kroger to do his shopping;
28. While Dressler was shopping Rice called the Cincinnati Police Department at, or about, 3:44 P.M. and advised the dispatch that there was a customer with a gun in “KROGERS-WEST HILL,” see attached Exhibit A, CAD report at page 1;
29. Rice further advised the dispatch that the man had a revolver of his left hip;
30. Rice also advised the dispatch that the customer had refused to stop when he, Rice, “TOLD HIM NO GUNS IN THE STORE,” see Exhibit A, CAD report at page 1;
31. Cincinnati Police Officers Zucker and Hodges arrived at Kroger to investigate the report telephoned in by Rice;
32. Officers Zucker and Hodges, accompanied by Rice, approached Dressler while he was shopping in the delicatessen area of the store;
33. The two officers asked Dressler if he had been advised to leave the store by the security guard Rice;
34. During the discussion the two police officers advised Dressler, and Zucker testified in an evidentiary hearing on August 4, 2014, there was a “sign that was posted on the outside of Kroger, it had a firearm with a circle and a line through it, saying no firearm in the business;”

35. Dressler wanted to see the sign and walked away and led the officers outside of Kroger to see the sign;
36. The two officers and Rice followed him and walked outside behind him;
37. Dressler could not find a sign described by the officers;
38. Even though there was no sign prohibiting firearms in Kroger, the two officers consulted with Rice and Kroger manger Larry Noschang and they agreed to have Dressler arrested and charged with criminal trespass. They did so maliciously, willfully, and with reckless indifference to the law, Kroger policy, and to Dressler's rights and welfare;
39. Upon information and belief one or both of the officers communicated with other John/Jane Doe police officers and/or supervisors immediately before and after the arrest of Dressler regarding his arrest;
40. Rice requested that the officers arrest Dressler for criminal trespass, a misdemeanor, even though Rice knew no crime had been committed. Rice did so maliciously, willfully, and with reckless indifference to the law, Kroger policy and to Dressler's rights and welfare;
41. At trial on May 29, 2013, during cross-examination Rice specifically stated why he approached Dressler, "He was walking very fast with his head down and he was in possession of a firearm. It's my duty to inquire about why a person is walking at a very fast pace through a crowded vestibule in possession of a firearm. Upon confronting him I found out that he was going to dismiss my instruction for him to leave after the second approach."
42. At trial on May 27, 2015 during direct examination Rice testified that Dressler refused to leave when he (Rice) approached him (Dressler) as he entered the store;

43. At trial on May 27, 2015 during cross-examination, Rice testified “At that point, when he dismissed my instruction for him to leave the property, he, at that point, was criminally trespassing because I asked him to leave the property, he dismissed my instruction;”
44. At trial during direct examination as a hostile witness on May 29, 2015, when asked if Dressler was doing anything illegal, Rice responded, “No, he was not doing anything illegal, that’s why I asked him if he could surrender to his vehicle, or if he is in possession of a concealed carry, possible to conceal it, in order to reduce anyone’s panic, based on his demeanor.”
45. Noschang sanctioned and agreed with Rice and the officers to the arrest of Dressler for criminal trespass;
46. Neither of the two police officers observed the crime of criminal trespass, because they did not see Rice request Dressler to leave, the two officers proceeded to arrest Dressler in violation of ORC §2935.03(A)(1). They did so maliciously, willfully, and with reckless indifference to the law, Kroger policy and to Dressler’s rights and welfare;
47. They searched him without a warrant and seized his gun and other property, including a holster and two pocket knives. They did so maliciously, willfully, and with reckless indifference to the law and to Dressler’s rights and welfare;
48. Neither Dressler’s arrest, search or the transport to the jail was audio or video recorded as required by police department policy;
49. The arrest report verified that the arrest was made because “ARR ENTERED ABOVE LOCATION AND WAS STOPPED BY UNIFORM SECURITY IN LOBBY AND TOLD HE (ARR) WAS NOT PERMITTED IN STORE WITH A FIREARM AND TO

SECURE SAME IN HIS VEHICLE IF HE WANTED TO ENTER. ARR REFUSED AND ENTERED THE STORE, REFUSING TO EXIST.” See Exhibit B, arrest report;

50. Dressler was arrested and transported to the Hamilton County Justice Center, where he was booked;

51. No complaint was filed by Rice or SEB as required by ORC §2935.09(D);

52. No complaint was filed by Noschang or Kroger as required by ORC §2935.09(D);

53. Police Officers Zucker and Hodges failed to follow the procedures mandated in ORC §§2935.09 and 2935.10 in obtaining complaints or affidavits from persons seeing the crime or obtaining a warrant for the arrest of Dressler. These actions were done maliciously, willfully, and with reckless indifference to the law and to Dressler’s rights and welfare;

54. As a result of Dressler being arrested without a warrant as required by ORC §§2935.09 and 2935.10 Dressler had to post bail before he could be released from custody;

55. Dressler was released from the custody of the Sheriff sometime between 8:00 P.M. and 9:00 P.M on September 20, 2013;

56. Kroger hired Rice who started working for Kroger on September 23, 2013;

57. Dressler had his initial appearance on September 23, 2013.

58. SEB was notified in April of 2014 of the criminal charge against Dressler and it failed to stop the criminal prosecution;

59. Kroger was notified in April of 2014 of the criminal charge against Dressler and it failed to stop the criminal prosecution;

60. Despite knowing that Rice was subpoenaed by the prosecution Kroger knowingly allowed him to testify for the prosecution;

61. Dressler subpoenaed an executive officer from Kroger to testify on his behalf;
62. Kroger sent one of its corporate officers, Pierce Bryant, who is the manager of the division of loss prevention responsible for 119 stores;
63. Dressler's trial started on May 27, 2015 before Judge Tyrone Yates;
64. Despite knowing that he was called as Dressler's witness, Defendant Pierce Bryant voluntarily testified on behalf of the prosecution without being subpoenaed by the prosecution;
65. Despite knowing that Rice was called as witness for the prosecution and knowing that Dressler had not committed a crime, Defendant Pierce Bryant allowed Rice, who was under his supervision at Kroger, to testify at trial against Dressler;
66. The actions of Bryant in testifying against Dressler and allowing Rice to testify against Dressler were done maliciously, willfully, and with reckless indifference to the law and to Dressler's rights and welfare and were in a conscious and reckless disregard to Kroger policy;
67. At trial on May 29, 2015, during further redirect examination Bryant admitted that Rice had no authority to approach Dressler;
68. At trial on May 29, 2013 during redirect examination by the defense attorney Bryant admitted that the Kroger policy was for the Kroger associates not to confront a customer legally carrying a firearm;
69. Yet, despite acknowledging the Kroger policy, Bryant testified during the recross-examination by the prosecution that a person carrying a firearm could be approached if he looked suspicious;

70. Then, when questioned by the defense attorney during further redirect examination

Bryant stated, “Well, disorderly can mean suspicious, too, a person’s behavior and demeanor.”;

71. Upon further redirect examination Bryant was asked if walking fast would be considered disorderly and his answer was “no.”;

72. Dressler was found not guilty of criminal trespass on June 1, 2015 after a twenty month ordeal;

73. At the conclusion the trial Judge Yates ordered Dressler’s property to be returned to him;

74. Dressler did not received his gun and holster until July 22, 2015, and even then it was not in the condition it was in when seized by the police on September 20, 2013, pursuant to ORC 2923.163(A);

75. Dressler has been denied his constitutional right to bear arms under the 2nd Amendment from September 20, 2013 through July 22, 2015;

76. Dressler has not yet received his other property back, having been told by police department personnel that it was released for auction in December, 2014;

77. These actions by Officers Zucker and Hodges were done under color of law and in agreement and in coordination with each other and in concert with Rice, SEB, Noschang and Kroger and were done with malice and wanton disregard to Dressler’s constitutional rights;

78. The actions of Officers Zucker and Hodges in concert with Rice, SEB, Noschang and Kroger humiliated Dressler and caused him public embarrassment, which left him with a strong feeling of distrust of the police;

79. As a result of these actions Plaintiff Dressler continues to suffer great emotional distress, physical and mental suffering, feeling of abuse and deprivation that continue through this date;
80. The inactions of SEB in failing to review the report of Rice, to properly instruct him as to his duties under the contract between SEB and Kroger, failing to train him regarding his ability to confront individuals not violating any law, and failing to supervise him cause it to be liable for his misconduct as its employee;
81. The actions and inactions of Kroger, through their legal department and through the actions of their employees Rice and Bryant in allowing the continued prosecution of Dressler against Kroger policy and allowing its employees to testify contrary to its policies cause it to be liable for the misconduct of its employees;
82. The City of Cincinnati has violated Plaintiff's 4th, 5th and 14th Amendment rights under the United States Constitution through its maintenance of an official policy, practice and/or custom to permit the deprivation of liberty and warrantless arrests without probable cause;
83. The City of Cincinnati has violated Plaintiff's 4th and 14th Amendment rights under the United States Constitution through its maintenance of an official policy, policy and/or custom to permit warrantless searches of persons without reasonable suspicion or probable cause;
84. The City of Cincinnati has violated Plaintiff's 2nd, 4th, 5th and 14th Amendment rights under the United States Constitution through its failure to train its police officers and through its maintenance of an official, practice and/or custom of lax supervision in the

area of the public's constitutional rights under the 2nd, 4th, 5th and 14th Amendments, especially regarding the public's right to bear arms; and

85. The City of Cincinnati has violated Plaintiff's 2nd, 4th, 5th and 14th Amendment rights under the United States Constitution through its failure to train its police officers in situations in the arresting of persons, who have been alleged to have committed a misdemeanor crime not in their presence.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

42 U.S.C. §1983 VIOLATION OF PLAINTIFF'S 2nd, 4TH, 5TH AND 14TH AMENDMENT RIGHTS

86. Plaintiff Dressler realleges the allegations contained in paragraphs 1 through 85 as if fully restated herein;

87. The acts of Defendants Officer Zucker, Officer Hodges, and John/Jane Does, in their individual and official capacities, Interim Chief of Police Humphries, Chief of Police Blackwell, through their implicit authorization, approval, or knowing acquiescence of the unconstitutional conduct of the offending police officers and police personnel, and the City of Cincinnati through its official policies and/or customs and its failure to properly train and supervise its police officers and employees constitute a violation of 42 U.S.C. §1983 and Plaintiff brings said claim to redress the deprivation and violation, under color of state law, of the rights, privileges and immunities guaranteed to Plaintiff by the Constitution of the United States of America, particularly for Plaintiff's 2nd Amendment right to bear arms; 4th Amendment rights to be free from unreasonable searches and seizure, by illegally arresting him, and searching him; his 5th Amendment right to due

process by depriving Dressler of his liberty through an arrest not made in accordance with law; and his 14th Amendment right to due process and equal protection of the law;

88. These rights were clearly established at the time and a reasonable person would have known of their existence. The Defendants Officer Zucker, Officer Hodges, Interim Chief of Police Humphries, Chief of Police Blackwell and John/Jane Does, and the City of Cincinnati violated Plaintiff's rights maliciously, willfully, and with reckless indifference to his rights and welfare; and

89. As direct and proximate result of the Defendants' actions, intentional, extreme and outrageous conduct and/or their reckless disregard for the rights of Plaintiff, Plaintiff Dressler has suffered the deprivation of his guaranteed rights under the 4th, 5th and 14th Amendments under the United States Constitution and damages for severe emotional distress, humiliation, loss of finances, and other damages.

SECOND CLAIM FOR RELIEF
42 U.S.C. §§1983, 1985(3) and 1986 CONSPIRACY TO VIOLATE
PLAINTIFF'S 2nd, 4th, 5th, AND 14TH AMENDMENT RIGHTS

90. Plaintiff Dressler realleges the allegations contained in paragraphs 1 through 89 as if fully restated herein;

91. In that Defendants Officer Zucker, Officer Hodges, Interim Chief of Police Humphries, Chief of Police Blackwell and John/Jane Does, in their individual and official capacities, and Bradford Rice, Larry Noschang, Pirece Bryant in their individual and official capacities, and SEB, The Kroger Co. and the City of Cincinnati entered into an agreement and conspired among themselves to engage in unlawful conduct, *i.e.* depriving Plaintiff of rights guaranteed to him under the 2nd, 4th, 5th and 14th Amendments to the United States Constitution, *i.e.* his 2nd Amendment right to bear arms; 4th Amendment

rights to be free from unreasonable searches and seizure, by illegally arresting him, searching him; his 5th Amendment right to due process by depriving Dressler of his liberty through an arrest not made in accordance with law; and his 14th Amendment right to due process and equal protection of the law; and his 14th Amendment right to due process and equal protection of the law, the conspiratorial acts of Defendants Officer Zucker, Officer Hodges, Interim Chief of Police Humphries, Chief of Police Blackwell and John/Jane Does, Bradford Rice, Larry Noschang, Pirece Bryant through their misconduct, SEB and The Kroger Co. through their ratification of the misconduct of their employees and failure to properly train their employees, Interim Chief of Police Humphries, Chief of Police Blackwell, through their implicit authorization, approval, or knowing acquiescence of the unconstitutional conduct of the offending police officers and police personnel, and the City of Cincinnati through its official policies and/or customs and its failure to properly train and supervise its police officers and employees constitute a violation of 42 U.S.C. §1985(3) and Plaintiff brings said claim to redress the deprivation and violation of said constitutional rights, privileges and immunities guaranteed to Plaintiff by the Constitution of the United States of America;

92. These rights were clearly established at the time and a reasonable person would have known of their existence. The Defendants Officer Zucker, Officer Hodges, Interim Chief of Police Humphries, Chief of Police Blackwell and John/Jane Does, the City of Cincinnati, Bradford Rice, Larry Noschang, Pirece Bryant, SEB and The Kroger Co. conspired to violate Plaintiff's rights maliciously, willfully, and with reckless indifference to his rights and welfare; and

93. In that Defendants Officer Zucker, Officer Hodges, Interim Chief of Police Humphries, Chief of Police Blackwell and John/Jane Does, Bradford Rice, Larry Noschang, Pirece Bryant, SEB, The Kroger Co. and the City of Cincinnati have each done and/or have caused to be done acts in furtherance of this conspiracy whereby Plaintiff has been injured and has been deprived of rights guaranteed to him under 2nd, 4th, 5th, and 14th Amendments to the United States Constitution;
94. In that Defendants Officer Zucker, Officer Hodges, Interim Chief of Police Humphries, Chief of Police Blackwell, and John/Jane Does, Bradford Rice, Larry Noschang, Pirece Bryant, SEB, The Kroger Co. and the City of Cincinnati each had actual knowledge of the conspiracies to deprive Plaintiff of his rights protected by §§1983 and 1985;
95. Each Defendant had the power and opportunity to prevent the violations from occurring and/or continuing from September 20, 2013, when Dressler was arrested through July 22, 2015, when Dressler firearm was returned to him, and failed to do so in violation 42 U.S.C. §1986;
96. Each Defendant, especially SEB, The Kroger Co., Interim Chief of Police Humphries, Chief of Police Blackwell, and the City of Cincinnati had notice or constructive notice of persistent patterns, policies, practices, and customs of their company and city and the misconduct of their respective officers and employees 1.) to deprive Dressler of his right to bear arms; 2.) to be free from an illegal arrest, imprisonment, and search, and 3.) to experience due process of law. The deliberate indifference of SEB, The Kroger Co. and the City of Cincinnati to the misconduct of their officers and employees constitutes an official policy, which was the moving force behind the deprivation of Plaintiff's rights.

By their indifference, these Defendants implicitly authorized, ratified, approved, and knowingly acquiesced in the unconstitutional conduct against Plaintiffs; and

97. As direct and proximate result of the Defendants' conspiratorial actions, intentional, extreme and outrageous conduct and/or their reckless disregard for the rights of Plaintiff, Plaintiff Dressler has suffered the deprivation of his guaranteed rights under the 2nd, 4th, 5th and 14th Amendments under the United States Constitution and damages for severe emotional distress, humiliation, loss of finances, and other damages.

**THIRD CLAIM FOR RELIEF
COMMON LAW TORTS**

98. Plaintiff realleges the allegations contained in paragraphs 1 through 97 as if fully restated herein;

99. The acts of Officer Zucker, Officer Hodges, Interim Chief of Police Humphries, Chief of Police Blackwell and John/Jane Does, in their individual and official capacities, and Bradford Rice, Larry Noschang constitute the common law tort of false arrest.

100. The acts of Officer Zucker, Officer Hodges, Interim Chief of Police Humphries, Chief of Police Blackwell and John/Jane Does, in their individual and official capacities, and Bradford Rice, Larry Noschang constitute the common law tort of false imprisonment;

101. The acts of Officer Zucker, Officer Hodges, Interim Chief of Police Humphries, Chief of Police Blackwell and John/Jane Does, in their individual and official capacities, and the City of Cincinnati in seizing Dressler's property and then auctioning it without notice to Dressler in December of 2014, while he was still awaiting trial, constitute the common law tort of conversion;

102. The acts of Officer Zucker, Officer Hodges, Interim Chief of Police Humphries, Chief of Police Blackwell and John/Jane Does, in their individual and official capacities, and Bradford Rice, Larry Noschang constitute the common law tort of malicious prosecution. The Defendants in concert instituted the arrest and continued the prosecution of Dressler without probable cause and allowed the proceedings to continue knowing that no crime had been committed. They did so with malice, because he was openly carrying a firearm. The prosecution ended with Dressler being found not guilty and he was damaged, emotionally, financially and constitutionally.

103. The acts of Officer Zucker, Officer Hodges, Interim Chief of Police Humphries, Chief of Police Blackwell and John/Jane Does, in their individual and official capacities, and Bradford Rice, Larry Noschang constitute the common law tort of infliction of emotional distress as their actions were designed to maliciously cause Dressler pain and suffering because of his legal exercising of his right to bears arms; and

104. As direct and proximate result of his false arrest, false imprisonment, malicious prosecution, the conversion of his property, the infliction of emotional distress Plaintiff Dressler has suffered damages.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff Dressler requests for judgment against the Defendants, jointly and severally, for:

- A. Compensatory damages emotional trauma, distress, humiliation, loss of finances, loss of use of his property, and other damages identified in the amount of \$1,000,000.00;

- B. Punitive damages in an amount of \$3,000,000.00, or an amount to be determined at trial for the willful, callous and malicious conduct of the Defendants which were done in wanton and complete disregard for the rights of Plaintiff;
- C. Equitable relief, including, without limitation, that the City of Cincinnati be ordered to adopt, implement and enforce appropriate policies and practices to prevent future instances of the type of misconduct described in this lawsuit;
- D. Attorneys' fees and the costs of this action and other costs that may be associated with this action, pursuant to 42 U.S.C. §1988; and
- E. Any and all other relief that this Court deems equitable, necessary, proper and just.

Dated this 18th day of September, 2015.

Respectfully submitted

/s/ Charles E. McFarland
Charles E. McFarland
Attorney at Law
Ohio Bar # 0031808
338 Jackson Rd.
New Castle, Kentucky 40050
(502) 845-2754
mcfarlandc@bellsouth.net

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 18th day of September, 2015, a copy of the foregoing Complaint along with a Notice of a Lawsuit and Request to Waive Service of a Summons and two copies Waiver of the Service of Summons form were served on each of the defendants named above by regular U.S. mail addressed to their respective addresses as listed in the above heading.

/s/ Charles E. McFarland
Charles E. McFarland (0031808)

JURY ENDORSEMENT

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff Gary Dressler does hereby demand a jury trial for all of the issues heretofore set forth.

/s/ Charles E. McFarland
Charles E. McFarland (0031808)

Call For Service

CAD Number: LCP130920001114
Received Date: 9/20/2013 3:44:08 PM

Exhibit "A"

Call For Service

CAD No.	LCP130920001114	Caller Name	BRAD RICE
Case No.		Address	
Evalis Case No.		City, State, Zip	
Console Position 1	CHARRON, SHIRLEY	Phone	432-9591
Console Position 2			
Source	Phone	Initial Call Type	GUN
Received	9/20/2013 3:44:08 PM	Final Call Type	GUN
Dispatched	9/20/2013 3:46:11 PM		
Arrived	9/20/2013 3:51:28 PM	Disposition	Arrest
Closed	9/20/2013 6:50:18 PM	Priority	PRIORITY 2
Dispatched to Arrived		Classification	
Arrived to Closed			
Location	6165 GLENWAY AV	Vehicle	
District	3	Vehicle License Plate	
Beat	3	Tow Company	
CAD Response Area	1	X Coordinate	1366882
Reporting Area	285	Y Coordinate	0423593

Officers

23423 - HODGES, JERRY W.
10477 - ZUCKER, JEFFREY M.

Notes

LCP130920001114 EU CP 14083 CHARRON, SHIRLEY IN FRM- TO-CP14083 PC10 F16 Incident Initiated By:

LCP130920001114 CM CP 14083 CHARRON, SHIRLEY Original Location : KROGERS-WEST HILLS PC10 F16
Original Location : KROGERS-WEST HILLS PC10

LCP130920001114 CM CP 14083 CHARRON, SHIRLEY CUST WITH GUN, MW 60-65 GRAY HAIR , REVOLVER ON LEFT HIP PC10 F16 CUST WITH GUN, MW 60-65 GRAY HAIR , REVOLVER ON LEFT HIP PC10

LCP130920001114 CM CP 14083 CHARRON, SHIRLEY REFUSED TO STOP WHEN SECURITY TOLD HIM NO GUNS IN STORE PC10 F16 REFUSED TO STOP WHEN SECURITY TOLD HIM NO GUNS IN STORE PC10

LCP130920001114 US CP 3211 CP 23423 HODGES, JERRY CP 10477 ZUCKER, JEFFREY CP 14137 BOIMAN, JEAN USDSKROGERS-WEST HILLS GUN CH03 DISPATCHED 538 227 D66 DS Location is KROGERS-WEST HILLS GUN CH03

LCP130920001114 EU CP 3211 CP 23423 HODGES, JERRY CP 10477 ZUCKER, JEFFREY CP 14137 BOIMAN, JEAN PU FRM- TO-CP/3211 CH03 538 227 D66 Primary Unit CHANGED From: To:

LCP130920001114 CM CP 14083 CHARRON, SHIRLEY BRAD IS TALKING TO OFFICERS NOW PC10 F16 BRAD IS TALKING TO OFFICERS NOW PC10

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LCP130920001114 US CP 3211 CP 23423 HODGES, JERRY CP 10477 ZUCKER, JEFFREY CP 14137 BOIMAN, JEAN US35KROGERS-WEST HILLS GUN CH03 ONSCENE 538 227 D66 35 KROGERS-WEST HILLS GUN CH03

LCP130920001114 US CP 3211 CP 23423 HODGES, JERRY CP 10477 ZUCKER, JEFFREY UT35 ONSCENE 538 227 Unit CP/3211 Timed out

LCP130920001114 US CP 3211 CP 23423 HODGES, JERRY CP 10477 ZUCKER, JEFFREY CP 14137 BOIMAN, JEAN Command: UO Operator: CP/14137 Console: CH03 Unit: CP/3211 CH03 AVAILABLE 538 227 D66 Command: UO Operator: CP/14137 Console: CH03 Unit: CP/3211 CH03

LCP130920001114 US CP 3211 CP 23423 HODGES, JERRY CP 10477 ZUCKER, JEFFREY CP 23423 HODGES, JERRY USERHCJC GUN 00 ENROUTE 538 227 538 ER HCJC GUN 00

LCP130920001114 US CP 3211 CP 23423 HODGES, JERRY CP 10477 ZUCKER, JEFFREY CP 23423 HODGES, JERRY ON111646 00 Unknown 538 227 538 ON111646 00

LCP130920001114 US CP 3211 CP 23423 HODGES, JERRY CP 10477 ZUCKER, JEFFREY CP 23423 HODGES, JERRY US35HCJC GUN 00 ONSCENE 538 227 538 35 HCJC GUN 00

LCP130920001114 US CP 3211 CP 23423 HODGES, JERRY CP 10477 ZUCKER, JEFFREY CP 23423 HODGES, JERRY ON111654 00 Unknown 538 227 538 ON111654 00

LCP130920001114 US CP 3211 CP 23423 HODGES, JERRY CP 10477 ZUCKER, JEFFREY UT35 ONSCENE 538 227 Unit CP/3211 Timed out

LCP130920001114 US CP 3211 CP 23423 HODGES, JERRY CP 10477 ZUCKER, JEFFREY CP 14137 BOIMAN, JEAN Command: UO Operator: CP/14137 Console: CH03 Unit: CP/3211 CH03 AVAILABLE 538 227 D66 Command: UO Operator: CP/14137 Console: CH03 Unit: CP/3211 CH03

LCP130920001114 CM CP 18959 CONLEY, JIM DUPCALL: KROGERS-WEST HILLS CINC PC02 E53 DUPCALL: KROGERS-WEST HILLS CINC PC02

LCP130920001114 CM CP 18959 CONLEY, JIM BLDG: APT: LOC: 6165 GLENWAY AV PC02 E53 BLDG: APT: LOC: 6165 GLENWAY AV PC02

LCP130920001114 CM CP 18959 CONLEY, JIM TYPE: CONTACT COMP: N FAS: N SS: PC02 E53 TYPE: CONTACT COMP: N FAS: N SS: PC02

LCP130920001114 CM CP 18959 CONLEY, JIM PRI: SRC: 0 MC: DISPO: PC02 E53 PRI: SRC: 0 MC: DISPO: PC02

LCP130920001114 US CP 3211 CP 23423 HODGES, JERRY CP 10477 ZUCKER, JEFFREY CP 14137 BOIMAN, JEAN US35D3 GUN CH03 ONSCENE 538 227 D66 35 D3 GUN CH03

LCP130920001114 US CP 3211 CP 23423 HODGES, JERRY CP 10477 ZUCKER, JEFFREY UT35 ONSCENE 538 227 Unit CP/3211 Timed out

LCP130920001114 US CP 3211 CP 23423 HODGES, JERRY CP 10477 ZUCKER, JEFFREY CP 14137 BOIMAN, JEAN Command: UO Operator: CP/14137 Console: CH03 Unit: CP/3211 CH03 AVAILABLE 538 227 D66 Command: UO Operator: CP/14137 Console: CH03 Unit: CP/3211 CH03

LCP130920001114 US CP 3211 CP 23423 HODGES, JERRY CP 10477 ZUCKER, JEFFREY CP 29162 MILLER,

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JOSHUA US26 GUN CH03 AVAILABLE 538 227 D33 26 GUN CH03

LCP130920001114 EU CP 3211 CP 23423 HODGES, JERRY CP 10477 ZUCKER, JEFFREY CP 29162 MILLER, JOSHUA D FRM- TO-ARR 1 CH03 538 227 D33 Disposition CHANGED From: To:

LCP130920001114 EU CP 3211 CP 23423 HODGES, JERRY CP 10477 ZUCKER, JEFFREY CP 29162 MILLER, JOSHUA Incident Closed: 13/09/20 18:50 CH03 538 227 D33 Incident Closed: 13/09/20 18:50 CH03

ARREST & INVESTIGATION REPORT

CINCINNATI POLICE

CAD INCIDENT #: LCP

ITN: 1514939 ACE ☐ YES ☐ NO DNA COLLECTED ☐ YES ☐ NO ☒ REFUSED ☐ DNA ON FILE
HAM. CO. CASE NO. 56496 CONTROL NO. 56496 ARREST REPORT NO.NAME OF ARRESTEE - LAST, FIRST, MIDDLE DRESSLER, GARY TITLE --- ADDRESS - NUMBER, STREET, APT. NO., CITY, STATE, ZIP CODE 5742 SIDNEY RD. CINTI, OH. 45224
TELEPHONE NO. (513) 739-1290 NICKNAME OR ALIAS --- SEX M RACE W HEIGHT 506 WEIGHT 160 HAIR BRO EYES BLU AGE 63 DATE OF BIRTH 2-20-50 PLACE OF BIRTH OHIO
MARITAL STATUS M SOCIAL SECURITY NO. (LAST 4) --- DESCRIPTION OF CLOTHING AT TIME OF ARREST BLUE JEANS, BLUE SHIRT MARKS, SCARS, DEFORMITIES, TATTOOS ---
DRIVER'S LICENSE NO. / STATE / YEAR OF EXPIRATION --- VEHICLE - YEAR, MAKE, MODEL, COLOR --- VEHICLE LICENSE NO. / STATE / YEAR OF EXPIRATION ---DOES ARRESTEE HAVE ANY HEALTH PROBLEMS, ILLNESSES, INJURIES, OR MENTAL DISORDERS ☒ YES, EXPLAIN --- MENTAL HEALTH COURT SCREENING RECOMMENDED ☐ YES ☒ NO
NAME OF SPOUSE / NEXT OF KIN / EMERGENCY NOTIFICATION PHONE NO. NANCY DRESSLER 513- NAME AND ADDRESS OF EMPLOYER (IF MINOR, NAME OF SCHOOL) RETIRED EMPLOYER'S TELEPHONE NO. ---PLACE OF ARREST (NUMBER, STREET, APT. NO., CITY, STATE, ZIP CODE) 6165 GLENWAY AV. CINTI, OH. 45238 DISTRICT 3 DATE OF ARREST 9-20-13 TIME OF ARREST 1600 VICE ACTIVITY ARREST ☐ YES ☐ NO
LOCATION OF OFFENSE (NUMBER, STREET, APT. NO., CITY, STATE, ZIP CODE) 6165 GLENWAY AV. CINTI, OH. 45238 DISTRICT 3 DATE OF OFFENSE 9-20-13 TIME OF OFFENSE 1540 TYPE OF PREMISES GROCERY STORECHARGES (INCLUDE SECTION NUMBER, DEGREE OF OFFENSE, AND WARRANT OR CAPIAS NUMBER) 1. CRIMINAL TRESPASS - 2911.21-M4 CONFIRMED BY --- FORFEITURE APPLICATION DIS-94 ☐ YES ☒ NO2. ~~ENTRANCE TO STORE~~ MEANS OF ARREST PHYS. COMPLAINANT'S NAME ---3. PRISONER SEARCHED BY P.O. ZUCKER TRIAL PREPARATION REPORT F527B ☐ YES ☒ NOARRESTING OFFICER(S) BADGE NO. EMPL. ID. # AGENCY / DISTRICT / UNIT NEEDED FOR COURT JACKET NUMBER
1. HODGES P538 23423 3 ☐ YES ☐ NO ---2. ZUCKER P227 10477 3 ☐ YES ☐ NO --- OTHER REPORTS MADE --- DRUG COURT ☐ OPPOSED ☒ NOT OPPOSEDCODEFENDANT'S NAME CONTROL # CHARGE(S) ARREST MADE STATEMENT TAKEN ☐ NO ☐ YES (IF YES, ATTACH A COPY TO FORM 527B) ☐ ORAL ☐ WRITTEN ☐ TAPEDCODEFENDANT'S NAME CONTROL # CHARGE(S) ARREST MADE STATEMENT TAKEN ☐ NO ☐ YES (IF YES, ATTACH A COPY TO FORM 527B) ☐ ORAL ☐ WRITTEN ☐ TAPED

FOR H.C.J.C. USE ONLY FACTS OF ARREST (USE TRIAL PREPARATION REPORT FOR ADDITIONAL INFORMATION, IF NECESSARY)

Fast ID YES ☒ NO ☐ Checked by --- Imposter YES ☐ NO ☒
F
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T
S
ARR ENTERED ABOVE LOCATION AND WAS STOPPED BY
UNIFORM SECURITY IN LOBBY AND TOLD HE (ARR) WAS NOT
PERMITTED IN STORE WITH A FIREARM AND TO SECURE
SAME IN HIS VEHICLE IF HE WANTED TO ENTER. ARR REFUSE
AND ENTERED STORE, REFUSING TO EXIT. UPON POLICE
ARRIVAL, ARR BECAME ARGUMENTATIVE WITH SECURITY &
ARR POLICE & WAS PLACED UNDER ARREST.ARRESTEE RELEASED TO (AGENCY / OFFICER) --- DATE / TIME --- SUPERVISOR --- BADGE NO. --- EMPL. ID. NO. ---I AGREE TO APPEAR IN COURT
☐ ROOM A ☐ ROOM B ☐ ROOM 121 (DUI) ☐ O.R. BOND
☐ HAMILTON CO. MUNICIPAL CT. ☐ HAMILTON COUNTY JUVENILE CT.
1000 SYCAMORE ST. 800 BROADWAY
CINCINNATI, OHIO CINCINNATI, OHIO
☐ OTHER --- ☐ WHEN NOTIFIED BY COURTON: --- DATE --- TIME --- DEFENDANT'S SIGNATURE ---
FAILURE TO APPEAR WILL CAUSE A WARRANT TO BE ISSUED FOR YOUR ARRESTEVIDENCE INFORMATION (IF MORE THAN ONE ARREST, INCLUDE EVIDENCE FROM THIS ARRESTEE ONLY)
DRUGS WEIGHT PKG WGT PAGE LINE
--- --- --- --- ---
CURRENCY (ENTER DOLLAR AMOUNT) --- PAGE --- LINE ---
OTHER PROPERTY ---