UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 12-60138-CIV-Williams

PAUL GOZALOFF,

Plaintiff

v.

CITY OF HOLLYWOOD, et. al.,

Defendants
_____/

MOTION TO DISMISS
BY DEFENDANT MICHAEL J. SATZ

DEFENDANT, MICHAEL J. SATZ (SATZ), by and through his undersigned counsel, pursuant to Rules 12(b)(1), and 12(b)(6), Fed. R. Civ. P., and Rule 7.1, S.D. Fla. L.R., files this his Motion to Dismiss the complaint (DE 1) for failure to state a claim under which relief may be granted, and in support thereof, states as follows:

Introduction

Pro se Plaintiff PAUL GOZALOFF (GOZALOFF) brings an action against the CITY OF HOLLYWOOD (HOLLYWOOD), several individual police officers employed by the city[1], and Michael J. SATZ, individually and in his official capacity as the State Attorney for the 17th Judicial Circuit.[2] The Complaint consists of 101 paragraphs,[3] which attempt to assert 11 counts and 7

[1] The individual police officers are Co-Defendants Joseph SIPLE, Alexander CHANG, Matthew PETTY, Travis Schuller, and William CASH.
[2] DE 1, Parties at Para. 8
[3] DE 1 consists of a rambling collection of statements numbered 1-7 on pages 2-3. Page 3

demands for relief against 7 defendants,[4] predicated on Civil Rights violations, and Florida common law negligence, of which only Count II (Failure to implement appropriate policies, customs and practices) and Count IX (Negligent supervision) appear to involve any allegations directed to Defendant SATZ.[5] Notably, every single count in the Complaint is predicated on the identical factual allegations contained in paragraphs 1-21 of the Statement of Facts. Although some of the remaining counts are ostensibly directed at "Each Defendant" or "the Defendants" they include no factual allegations to identify any involvement on the part of Defendant SATZ to bring him within the coverage of those claims. However, in the event that the court finds that those claims arguably extend to Defendant SATZ, they too are being addressed herein.

I. Allegations in the complaint

1. The events giving rise to this action stem from the Plaintiff's arrest on January 27, 2008 when he went looking for a friend and became involved in a police-involved traffic investigation.[6] He alleges that the officers used undue force,[7] planted evidence of narcotics,[8] and then contrived their reports of the incident to fabricate charges against him.[9] This altercation was

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begins a re-numbered section with 8 items describing the defendants, followed by a Statement of Facts which are numbered 1-21. The individual counts begin on page 10, and are numbered with paragraphs 22-79. The Complaint concludes with a section entitled "Prayers for Relief" which contains 7 demands. The prayers for Relief do not identify which relief is requested as to which Count.

[4] Although the counts are numbered up to Count XII, there are only 11counts; there is no Count VI.

[5] Count II is based on allegations involving the failure to implement appropriate policies, customs and practices; and Count IX which is predicated on negligent supervision and an alleged two-tiered prosecution system. Count VIII is ostensibly predicated on common law negligence and is directed to "Each Defendant" is asserted against Hollywood and SATZ.

[6] DE 1, Statement of Facts, at ¶¶ 1 and 4

[7] DE 1, Statement of Facts at ¶4

[8] DE 1, Statement of Facts at ¶5

[9] DE 1, Statement of Facts at ¶ 7

witnessed by the citizen who was being issued a traffic citation.[10]

2. When his case reached court, Judge Cohen suppressed the evidence, having discredited the police officers' testimony as contradictory, while having found the Plaintiff's testimony quite credible.[11]

3. The Plaintiff obtained a favorable resolution in the criminal case when Defendant SATZ's office entered a *nolle prosequi*.[12] Notwithstanding this outcome, Plaintiff alleges that Defendant SATZ utilizes a two-tiered system of justice" whereby he refuses to prosecute police officers and other "connected" individuals absent those rare instances of public outcry, but that minority and everyday citizens who are "powerless", must instead bear the brunt of selective prosecution, including cases that are based on false evidence.[13]

4. Plaintiff's Complaint vaguely alleges that he has suffered damages and demands various forms of relief, including but not limited to damages for punitive damages.[14]

II. Memorandum of Law

A. Standard for review

On a motion to dismiss, the Court must assume the truth of the factual allegations in a complaint and construe them in the light most favorable to the plaintiff.[15] The complaint must be dismissed if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."[16]

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10 DE 1, Statement of Facts at ¶ 6
11 DE 1, Statement of Facts at ¶¶ 7 and 8
12 DE 1, Statement of Facts at ¶ ¶14 and 48
13 DE 1, Statement of Facts, at 8
14 DE 1, Prayers for Relief at 3 and 4
15 *Harper v. Thomas*, 988 F.2d 101, 10 3 (11th Cir. 1993)
16 *Sheuer v. Rhodes*, 416 U.S. 232, 236 (1974) (quoting *Conley v. Gibson*, 355 U.S. 41, 45 –

The Court must indulgently examine a *pro se* pleading, holding it to a less stringent standard than an attorney-drafted pleading.[17] But "conclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal."[18] In addition, a Court may not expand the claims pleaded by a *pro se* plaintiff nor infer claims other than those that plainly appear on the face of the complaint.[19]

Notwithstanding the latitude afforded *pro se* litigants, the basic pleading requirements of Rule 8, Fed.R.Civ.P., cannot be ignored. Notably, that Rule 8(a)(1) requires, "a short and plain statement of the grounds for the court's jurisdiction", and subsection (a)(2), which requires, "a short and plain statement of the claim showing that the pleader is entitled to relief". Given these requisites, the Plaintiff's Complaint must be dismissed.

As to Counts II and IX

B. Plaintiff's Complaint fails to demonstrate the threshold requirement of an actual case or controversy which is needed to invoke the court's jurisdiction

The caption of Count II clearly indicates it is directed to Co-Defendant City of Hollywood, and to Defendant SATZ. However, beyond the re-alleged and incorporated general allegations that support every single other count, Count II contains no further mention of Defendant SATZ and is instead focused on alleged training and supervision deficiencies of Co-Defendant City. Therefore, the only allegations supporting Count II against Defendant SATZ are those alleging the "two-tiered" justice system that favors the powerful and unduly burdens the every-day person. Included in the Plaintiff's definition of the favored powerful class are corrupt police officers and

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46 (1957))

[17] *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

[18] *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002).

[19] *GJR Invs., v. County of Escambia*, 132 F.3d 1359, 1369 (11th Cir. 1998)

the wealthy and politically connected, who easily escape prosecution.[20] The non-favored class consists of,

> All others, including the homeless, the poor, the black, and those without power will be subject to prosecution, even though the prosecution is known to have been brought upon false and altered evidence, and in that event, the police and the agencies bringing such charges on such corrupt evidence will be protected by the secreting of any exculpatory evidence.[21]

What is notable about these classifications is that the Plaintiff does not fall within his own self-described victimized class of everyday citizens, because as clearly stated in his Complaint, the Plaintiff's criminal case was *nolle prossed* by Defendant SATZ's office. Thus the Plaintiff lacks standing because there is no actual case or controversy.

It is well-established in American jurisprudence that a plaintiff seeking to invoke the jurisdiction of a federal court must demonstrate the existence of an actual case or controversy in order to establish standing.[22] This requires that the plaintiff show "he has suffered an 'injury in

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[20] DE 1, at Parties Para. 8, Statement of Facts at Para 17, 18 and 19

[21] DE 1, at III.B. Para. 8

[22] *O'Shea v. Littleton*, 414 U.S. 488, 94 S.Ct. 669 (1974)(a complaint from 19 residents failed to meet the threshold requirement of Art. III, because none of the individual plaintiffs had sustained nor were in danger of sustaining the injuries alleged in the complaint. They brought suit against a county magistrate and an associate judge, alleging the defendants were engaged in a pattern and practice of illegal bond setting, sentencing and jury fee practices, but none of the named plaintiffs had themselves suffered the specified injuries. Thus the alleged harm was too remote to satisfy the requirement of an actual case or controversy.); *Whitmore v. Arkansas*,495 U.S. 149, 110 S.Ct. 1717 (1990) (third-party death row inmate could not meet his burden of demonstrating the court's jurisdiction where he had only a generalized interest in another death row inmate's sentence, and therefore lacked standing to challenge the other inmate's sentence.); *Miccosukee Tribe of Indians of Florida v. Florida State Athletic Commission*, 226 F.3d 1226 (11th Cir. 2000) (Indian tribe failed to allege a particularized injury to itself and therefore lacked standing where it challenged the Florida Commission's threats to boxing officials if they declined a state assignment to accept an assignment with the Miccosukee Commission. However, the tribe did have standing to challenge the state Commission's attempt to tax promoters on revenues gained from boxing matches that were conducted on the reservation because it implicated the tribe's right of self-governance.)

fact', which is concrete in both a qualitative and temporal sense."[23] "[T]o satisfy the injury prong of Article III standing, a plaintiff must 'present specific, concrete facts showing that the challenged conduct will result in a demonstrable, particularized injury to the plaintiff."[24] This requires that the plaintiff show *that he, himself, has suffered* a "distinct and palpable" injury, that is not merely abstract.[25]

Applying this standard to the case at hand, it is clear that Plaintiff does not, and cannot, meet the basic requirement of standing because there is no actual case or controversy regarding the "two-tiered" justice system he accuses Defendant SATZ of maintaining. By his own admission, the State Attorney's Office *nolle prossed* his case.[26] Therefore, the Plaintiff was never subjected to the "two-tiered system" of which he complains. To the contrary, he received the very benefit (non-prosecution) that he complains is only afforded to police officers, the wealthy and other "connected" individuals. Having not suffered the very injury of which he complains, Plaintiff has no "distinct and palpable" injury on which to confer standing.

Plaintiff arguably tries to bolster his position by bootstrapping a reference to some other case involving Co-Defendant HOLLYWOOD (*Donald Baker v. City of Hollywood*). He claims that the *Baker* case similarly involved the presentation of false evidence in the cases of "countless numbers of innocent criminal defendants in Broward".[27] However, aside from the lack of any citation to this case or judicial findings that would be remotely persuasive herein, simply on the comparison Plaintiff tries to make, his claim must fail for the reasons set forth in *Whitmore v.*

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[23] *Whitmore*, 110 S.Ct. at 1720
[24] *Miccosukee Tribe*, 226 F.3d at 1229 (internal citations omitted)
[25] *Whitmore*, 110 S.Ct. at 1723 (internal citations omitted)
[26] DE 1, Statement of Facts at 14; see also, Count V at ¶¶ 48 and 52
[27] DE 1, Statement of Facts at Para. 19

Arkansas. In *Whitmore*, one inmate on death row sought to challenge the sentence of another death row inmate. In its ruling, the Supreme Court explained that the plaintiff did not have standing because the Article III "case or controversy" requirement was not met.[28] Simply put, one inmate's sentence was not a "distinct and palpable" injury to another inmate. The same applies here. Plaintiff Gozaloff lacks standing to assert his claim as to any alleged "two-tiered" justice system from which he was not injured. Plaintiff never suffered any injury from this alleged system, nor can he bootstrap an argument from anyone else.

C. Defendant SATZ is entitled to absolute prosecutorial immunity

The law is well-established that prosecutors performing their prosecutorial duties are entitled to absolute immunity from suit under § 1983.[29] Prosecutorial duties are determined by using a functional approach to determine whether the actions fall within those that are integral to the judicial process. One such integral component is the prosecutorial decision of which cases to bring forward for prosecution. The determination of which cases to prosecute and which cases to decline falls squarely within a prosecutor's duties and is protected by absolute immunity from civil rights claims.[30]

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[28] *Whitmore*, 110 S.Ct. 1717, 1723

[29] See, *Imbler v. Pachtman*, 424 U.S. 409, 96 S.Ct. 984 (1976)(prosecutor who acted within scope of his duties in presenting a case was absolutely immune from § 1983 action); *Fullman v. Graddick*, 739 F.2d 553 (11th Cir. 1984)(dismissal of civil rights action affirmed where action alleged improprieties of perjured testimony and withholding evidence by prosecutor during initiation of prosecution and presentation of state's case). See also, *Koubriti v. Convertino*, 593 F.3d 459 (6th Cir. 2010)(those functions that are integral to the judicial process, such as the use of false testimony or the non-disclosure of exculpatory evidence, have absolute immunity from civil suit)

[30] See, *Bryant v. Mostert*, 636 F.Supp.2d 1303 (M.D. Fla. 2009)(a prosecutor's actions as to whether or not prosecute a case is within the prosecutor's scope of duties therefore providing absolute immunity from an individual capacity suit under §1983); see also, *Botello v. Gammick*, 413 F.3d 971 (9th Cir. 2005)(prosecutors had absolute immunity for refusal to prosecute a case or

The "two-tiered system" alleged in the Complaint is nothing more than an attack on the decision of which cases to bring forward for prosecution. Even taking the substance of Plaintiff's allegations as true, this claim is completely devoid of legal merit.

In support of his claim Plaintiff also argues that prosecutions are undertaken based on fabricated evidence, perjured testimony and the willful suppression of exculpatory evidence.[31] On this basis as well, Defendant SATZ is entitled to absolute immunity. The allegations concerning the presentation of improper evidence involve actions that fall explicitly within the judicial function that gives rise to prosecutorial immunity from a civil rights suit.[32]

Therefore on these allegations, Plaintiff cannot prevail, and Defendant SATZ is entitled to absolute immunity.

D. Eleventh Amendment immunity bars any damage claims against Defendant SATZ in his official capacity

The complaint presents official capacity claims for monetary relief to which Defendant SATZ is entitled to 11th Amendment immunity. Plaintiff included his demand for relief in a general section entitled Prayers for Relief, which demands, *inter alia*, damages for physical and mental pain, suffering and treatment, legal expenses, and punitive damages.[33] However, the 11th Amendment is an absolute bar to a suit for damages against a State or its agencies in federal court when the action "is in essence one for the recovery of money from the state."[34]

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class of cases); *Beck v. Plymouth County Superior Court*, 511 F.Supp. 2d 203 (Mass. D.C. 2007)(prosecutorial immunity includes decisions as to whether or not to initiate a prosecution and such claims were properly dismissed)

[31] DE 1, Statement of Facts at ¶¶ 17 and 19

[32] *Fullman*, 739 F.2d 553; *Koubriti*, 593 F.3d 459

[33] DE 1 at pages 17-18

[34] *Edelman v. Jordan*, 415 U.S. 651, 672 (1974) (citations omitted). *See also, Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 65 (1996) (Eleventh Amendment reflects the "fundamental

Defendant SATZ, as the state attorney, is an arm of the state and as to official capacity claims seeking money damages under § 1983, he is entitled to 11th Amendment immunity.[35]

Therefore, on this basis as well, Defendant SATZ is entitled to immunity.

E. Individual capacity claims

Plaintiff brings suit against Defendant SATZ in both his individual and his official administrative capacity as Broward County's State Attorney.[36] However, there are no allegations setting forth any claims that would give rise to a claim against Defendant SATZ in his individual capacity. Given the complete dearth of any allegations supporting a claim against Defendant SATZ in his individual capacity, the Complaint is properly dismissed for failure to state a cause of action in compliance with the pleading requirements of Rule 8(a)(1) and (2).

On a substantive level, the individual capacity claims against Defendant SATZ must be dismissed to the extent they rely on a theory of *respondeat superior*. The Complaint fails to articulate a single action by Defendant SATZ demonstrating any personal participation in the actions giving rise to this Complaint. Thus it would appear that the Complaint is premised on Defendant's SATZ's role as a supervisor overseeing a staff that includes assistant state attorneys. However, the Eleventh Circuit has made it clear that supervisory officials are not liable under 42 U.S.C. § 1983 for unconstitutional acts of subordinates on the basis of *respondeat superior* or vicarious liability.[37] A supervisory defendant is liable only if he "personally participated in the

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principle of sovereign immunity [that] limits the grant of judicial authority in Article III of the U.S. Constitution"); *Manders v. Lee*, 338 F.3d 1304, 1308 n.8 (11th Cir. 2003) (en banc) (Eleventh Amendment bars damage suits brought in federal court against an "arm of the State" (citations omitted).

[35] *Cyber-Zone E-Café, Inc., v. King*, 782 F.Supp.2d 1331 (M.D. Fla. 2011)

[36] DE 1 at page 1

[37] *Cottone v. Jenne*, 326 F.3d 1352, 1360 (11th Cir. 2003).

allegedly unconstitutional conduct or if there is 'a causal connection between [her] actions . . . and the alleged constitutional deprivation.'"[38]

Given the lack of any such allegations, on this basis as well, the Complaint must be dismissed to the extent that it attempts to impose vicarious liability on Defendant SATZ for the actions of subordinates in his office.

F. Plaintiff's claim of Negligent Supervision under Florida tort law fails to state a claim on which relief can be granted

As to a claim based on Defendant SATZ's official capacity

Plaintiff's Count IX is premised on negligent supervision under Florida's Governmental Tort Liability Act. Although no statutory reference is provided in the Complaint, Florida's limited waiver of sovereign immunity is found at § 768.28, Florida Statutes. It is only within this statutory framework that an action in tort may be brought against a state agency.

Notably, Florida also recognizes its own absolute immunity afforded to state prosecutors engaged in the performance of their functions. As explained in *Berry v. State*, a state attorney's "exercise of his prosecutorial duties qualifies as a discretionary governmental function the performance of which is not affected by the statute waiving sovereign immunity."[39] Accordingly, on the negligence claim as well, Defendant SATZ is immune from suit because sovereign immunity has not been waived.

In the alternative, even if Plaintiff were to assert that sovereign immunity had been waived for prosecutorial functions, the claim for Negligent Supervision must still be dismissed. To the extent that the action is alleged against Defendant SATZ in his official capacity, the Negligent

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[38] *Cottone*, 326 F.3d at 1360

[39] *Berry v. State*, 400 So.2d 80, 84 (Fla. App. 4th DCA 1981)

Supervision claim of Count IX under Florida's common law fails to allege compliance with the pre-suit notice provisions of Section 768.28(6)(a), Florida Statutes. A negligence claim against a state attorney in his official capacity must be dismissed when the plaintiff has failed to comply with this condition precedent.[40]

Furthermore, to the extent that Plaintiff is asserting this claim based on Defendant SATZ's official capacity, he still fails to state a claim as the Complaint does not allege any facts (nor can it) of a particularized duty owed to Plaintiff. Absent such duty, there is only a general duty of care which does not create a cause of action in tort.[41]

As to a claim based on Defendant SATZ's individual capacity

Conversely, the Complaint also fails to articulate any basis for suit against Defendant SATZ in his individual capacity. Notably, no individual officer, employee or agent "shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event or omission of action in the scope of her or his employment or function, unless … [he or she] acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property".[42] Plaintiff fails to assert any factual allegations against Defendant SATZ that would support individual liability as to this claim.

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[40] *Hansen v. State*, 503So.2d 1324 (Fla. App. 1st DCA 1987)(claims against state agents in their official capacity were barred by the failure to comply with the pre-suit written notice of claim)

[41] *State, Office of the State Attorney for 13th Judicial Circuit, v. Powell*, 586 So.2d 1180 (Fla. App. 2d DCA 1991)(witness who appeared in court under subpoena at insistence of state attorney's office and was set on fire by her husband, was not owed a particularized duty of care that would give rise to a cause of action in tort)

[42] Section 768.28(9)(a)

G. The remaining claims which are directed in general to "the Defendants" or to "all Defendants" fail to state a claim on which relief can be granted as to Defendant SATZ

As to the remaining counts that vaguely reference "the Defendants" or "all Defendants", the Complaint fails to allege any facts whereby those claims would apply to Defendant SATZ. Notably, those counts all seem to relate to the circumstances surrounding the Plaintiff's initial arrest and detention. However, to the extent Plaintiff argues that Defendant SATZ was nevertheless included in those claims, they are properly dismissed because they fail to comply with the pleading requirements of Rule 8(a)(2) which requires, "a short and plain statement of the claim showing that the pleader is entitled to relief". Without any factual allegations setting forth Defendant SATZ's involvement in the underlying situation, the Complaint fails to demonstrate any entitlement to relief and is therefore properly dismissed.

As noted in the Introduction, every single Count of the Complaint is premised on the identical factual allegations found in paragraphs 1-21 which are incorporated into each Count, regardless of the nature of the Count or the defendant involved. Furthermore, the Complaint begins with two pages of text consisting of a rambling collection of statements with no known purpose, and is concluded with seven demands for relief with no indication as to which defendant or which cause of action they apply. This type of pleading is deficient as a "shotgun pleading" which has been condemned by the 11th Circuit.[43] Therefore on this basis as well, the Complaint against Defendant SATZ is properly dismissed.

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[43] *PVC Windoors, Inc., v. Babbitbay Beach Constr., N.V.,* 598 F.3d 802 (11th Cir. 2010)(where each count incorporated the allegations of each of the prior counts amounting to an "amalgamation of all counts", it was a typical shotgun pleading which contains factual allegations that are not material to the various causes of action being asserted). But see, *Innocent v. Wachovia Mortgage Corp.*, 2012 WL 602129 (N.D. Ga. 2012)(an amended complaint with only 2 counts and 2 requests for relief, that was not rambling or incomprehensible, was not a prohibited shotgun pleading)

WHEREFORE, for the foregoing reasons, Defendant Michael J. SATZ moves to dismiss the complaint.

Respectfully Submitted,

PAMELA JO BONDI
FLORIDA ATTORNEY GENERAL

/s/ *Mimi V. Turin*
Mimi V. Turin (Fla. Bar. 846351)
Assistant Attorney General
Board Certified in City, County & Local Government Law
OFFICE OF THE ATTORNEY GENERAL
110 S.E. 6th Street, 10th Floor
Fort Lauderdale, Florida 33301
Telephone: (954) 712-4600
Facsimile: (954) 527-3702
Mimi.Turin@myfloridalegal.com

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are authorized to receive electronically Notices of Electronic Filing.

/s/ *Mimi V. Turin*
Mimi V. Turin
Assistant Attorney General

SERVICE LIST
Paul Gozaloff v. City of Hollywood, et al,
Case No.: 0:12-CV-60138-kmw
United States District Court, Southern District of Florida

Jeffrey Shefnel
City Attorney
Tracy A. Lyons
Assistant City Attorney
City of Hollywood
2600 Hollywood Boulevard
Suite 407
Hollywood, FL 33020
[Via CM/ECF]

Paul Gozaloff
Pro Se Plaintiff
4157 SW 4th Street
Plantation, FL 33317
[Via U.S. Mail]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FILED BY ... D.C.
2012 JUL 27 PM 4:17
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA-FTL

Case No. 12-60138 **-CV-** **Williams / Seltzer**

Paul Gozaloff ,

Plaintiff

vs.

CITY OF HOLLYWOOD, et. al.,

Defendants.

_____/

RESPONSE

~~RESONSE~~ TO MOTION TO DENY THE CITY OF HOLLYWOOD

MOTION TO DISMISS PLANTIFF'S COMPLAINT

~~Introduction~~

INTRODUCTION

The Plaintiff has worked incessantly on his response to The City of Hollywood's (HOLLYWOOD) motion to Dismiss Plaintiff's complaint. The Plaintiff has read and re-read HOLLYWOOD's motion and believes each and every point The City Attorney has made to be moot and or frivolous.

I Compliant should be dismissed for failure to perfect service in a timely manner pursuant

to the Rules of Civil Procedure.

The Plaintiff requested after his complaint was in fact dismissed to be reinstated, which this Court graciously granted. HOLLYWOOD contends that the Plaintiffs motion did not state a viable claim of excusable neglect. The Plaintiff has exhausted and made every effort to meet the time limitations and will continue to diligently meet all time requirements now that the complaint has been reinstated. The Plaintiff believes point one of the Cities motion to be moot because this Court has already ruled and issued the order to reinstate.

II Answer to argument Federal Claims to 42 U.S.C – 1983 should be dismissed as a matter of law

The Plaintiff stands on Count II and III of his compliant against the City of Hollywood. The plaintiff has shown using his case primarily. HOLLYWOOD implicitly **or explicitly. adopted a careless and reckless policy, custom, or practice** allowing employees of the Hollywood Police Department (HPD) to confront any person thought to be homeless and to exercise any brutality without lawful justification and falsely arrest them to justify their beatings.

I was falsely arrested and beaten within inches of my life, as I head a serious blow to my head, demonstrated by officers own sworn testimony before the Circuit Court Judge, illustrated by the puddle of blood at the scene. This has also been true of Dennis Shelter, Donald Baker, and a multitude of other homeless, near homeless, and apparent homeless.

HOLLYWOOD is notoriously thought to be to be corrupt from top to bottom. HOLLYWOOD has accepted and condoned the rouge behavior by these defendant officers and its employees. This bad behavior is unfortunately recognized nation-wide. The Plaintiff believes his complaint

against HOLLYWOOD meets all requirements of law and should be preserved to forward for hearings and trial.

III Plaintiff's Complaint Fails to Comply with Federal Rule of Civil Procedure 8 (a) and 10 (b)

Plaintiff contents he has in fact met the criteria and satisfied the requirements of Federal Rule of Civil Procedure 8(a) and 10 (b). Counsel for the Defendant asserts the allegations made by the Plaintiff direct testimony and or sworn statements were submitted from DOCKERY, the young African American being ticketed and eye witness to the false arrest and beating visited upon the Plaintiff. DOCKERY, the eye-witness motorist, testified to the false arrest and beating visited upon the Plaintiff. The witness being ticketed was asked by the arresting officers "if I wanted this to happen to me". In his deposition DOCKERY testified "he answered that question and he told the Police Officers that he just wanted to go home I did not want any problems"

Plaintiff believes his statements enlighten and show what blatant bullies these Police Officers were to accost and terrify the witness. Had the witness not acted and answered timidly to the satisfaction of Officer he too would have been beaten and falsely arrested just as I was.

The Plaintiff also contends 6-7 and 6-8 of his complaint there is additional much evidentiary support, where by the Circuit Court Judge, in his order of the suppression of the planted and false evidence proclaimed the officers contradicted each other as far as what the other was saying, how loud he was and everything the police officers said was in total contradiction among themselves.

Furthermore the Circuit Court Judge found the Plaintiff testimony "very credible"***the District

Court believed his testimony in its entirety" and found that the court believed his entire testimony and found the Plaintiff did not do anything wrong" and contends he has met the criteria required with FRCP 8(a) and 10 (b).

I pray my response has adequately shown my complaint should not be dismissed and allowed to move forward. I am in dire need of legal assistance and I have and will continue to seek a Civil Attorney who will represent my case on consignment.

I was falsely arrested beaten "and had evidence planted pon my person. I am one of the fortunate who could eventually afford a civil attorney."

I was falsely arrested, beaten, andd evidence planted upon my person. I am grateful to be blessed as one who could fight back via the Court system to expose this grave transgression. I was also fortunate to be given a Circuit Court Judge who recognized these were rouge police officers and believed the claims against their reprobate behavior. I hope in the very near future to retain representation or to find some means or persons who can assist me.

I have worked very hard all of my life and have paid taxes. My rights as a citizen were flagrantly violated and I should be entitled to my day in court and to hold the Defendants accountable. I think about what has happened to me.

Whereby I pray the motion of The City of Hollywood would be dismissed.

The Planitiff believes the witness and Judges Statement lend credence to the Plaintiffs complaint with regard to the allegations made.

I hereby swear under oath and penalty of perjury the truthfulness of the above filing.

Paul Gozaloff
Dated: **July 27, 2012**

Respectfully submitted,

Paul Gozaloff

Name of Filer

Attorney Bar Number *(if applicable)*

Party or Attorney Name

ALEXANDER CHANG
3250 HOLLYWOOD BLVD.
HOLLYWOOD, FL 33021

JOESPH SIPLE
3250 HOLLYWOOD BLVD.
HOLLYWOOD, FL 33021

WILLIAM CASH
3250 HOLLYWOOD BLVD.
HOLLYWOOD, FL 33021

MATHEW PETTY
3250 HOLLYWOOD BLVD.
HOLLYWOOD, FL 33021

TRAVIS SCHULLER
3250 HOLLYWOOD BLVD
HOLLYWOOD, FL 33021

Office of the Attorney General MICHAEL J. SATZ
Represented By Mimi Vivien Turin

Firm Name *(if applicable)*

Street Address: 110 SE 6th St 10th Floor

City, Ft. Lauderdale State, FL Zip Code 33301

Telephone: 954-712-4600
Facsimile: 954-527-3702

Attorneys for Defendant
/The City of Hollywood
Represented By Tracy Ann Lyons

Firm Name *(if applicable)*

Street Address: 2600 Hollywood BLVD Suite 407 PO Box 229045

City, Hollywood State, FL Zip Code 33022-9045

Telephone: 954-921-3435
Facsimile: 954-921-3081

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 12 - 60138 **-CV-** WILLIAMS / SELTZER.
(Judge's Last Name/Magistrate's Last Name)

PAUL GOZALOFF

(Full Name of Plaintiff/s),

Plaintiff (s)

vs. City of Hollywood ET AL.

(Full Name of Defendant/s),

Defendant(s).

FILED BY ____ D.C.
2012 JUL 27 PM 4:29
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA.-FTL

RESPONSE MOTION TO DENY DEFENDANT MICHAEL SATZ MOTION TO ~~DENY~~ ~~RESPONSE TO MOTION TO DISMISS BY~~ DEFENDANT ~~TITLE OF DOCUMENT~~ DISMISS PLAINTIFF'S COMPLAINT

I, PAUL GOZALOFF [plaintiff or ~~defendant~~], in the above styled cause, REPLY TO DEFENDANTS MOTION TO DISMISS BY HUMBLY ASKING THE COURT TO DENY THE DEFENDANTS MOTION TO DISMISS.

AS DEMONSTRATED BY THE ~~MA~~ MOTIONS OF LAST WEEK <DE32> + REFER TO PRAYER FOR RELIEF ON MOTION TO DISMISS HOLLYWOOD MULTI BRADY HEARING AND TESTMONY WILL PROVE THIS CASE.

Dated: Month, day, year

Respectfully submitted,

Name of Filer

Attorney Bar Number *(if applicable)*

Attorney E-mail Address *(if applicable)*

Firm Name *(if applicable)*

Street Address

City, State, Zip Code

Telephone: _____

Facsimile: _____

Attorneys for Plaintiff/Defendant *[Party name(s)] (if applicable)*

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served by

_____ [specify method of service] on _____[date]

on all counsel or parties of record on the Service List below.

Signature of Filer

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 12-60138-CIV-Williams

PAUL GOZALOFF,

Plaintiff

v.

CITY OF HOLLYWOOD, et. al.,

Defendants
_____/

REPLY MEMORANDUM

COMES NOW, Defendant MICHAEL J. SATZ (SATZ), by and through undersigned counsel, and pursuant to Local Rule 7.1(c), Fed.R.Civ.P., hereby files this his REPLY MEMORANDUM to Plaintiff GOZALOFF's RESPONSE MOTION TO DENY DEFENDANT MICHAEL SATZ MOTION TO DISMISS PLAINTIFF'S COMPLAINT ("Response"), as follows:

1. On or about July 27, 2012, Plaintiff GOZALOFF filed (but never served) his undated Response to Defendant SATZ's Motion to Dismiss. The Response was received by undersigned counsel via CM/ECF on July 30, 2012.[1]

2. Notwithstanding the court's Instruction to Pro Se Litigants on January 27, 2012, reminding Plaintiff, *inter alia*, that he must abide by the Federal Rules of Civil Procedure and the Court's Local Rules,[2] Plaintiff's Response fails to comply with the requirements of Rule 7.1(c), S.D.L.R. Local Rule 7.1(c) provides that, "Each party opposing a motion shall serve an

1 DE 39
2 DE 4

opposing memorandum of law .... Failure to do so may be deemed sufficient cause for granting the motion by default."

3. Plaintiff's Response fails to include a memorandum of law or to articulate any legal authority to rebut the arguments raised in SATZ's Motion to Dismiss. Instead, Plaintiff attempts to avoid these legal arguments by vaguely referring to the bases cited in support of his Motion for Enlargement of Time [DE 32]. Even if one incorporates his Motion for Enlargement of Time into his Response, the assertions contained therein are not material to the arguments raised by Defendant SATZ and do not defeat those arguments.

4. It should be noted that although Plaintiff's *pro se* status may allow his pleadings to be held to a less stringent standard, his *pro se* status does not excuse mistakes regarding procedural rules.[3]

5. It should be further noted that the bases underlying Defendant SATZ's motion are constrained by the four corners of the Complaint and simply assert applicable law as applied to those allegations. It is improper for Plaintiff GOZALOFF to now try and assert additional factual allegations in response to the motion; any allegations supporting his claims must be found within the Complaint that he drafted.[4] There is no outstanding information cited in his Response (nor in the Motion for Enlargement of Time) that satisfy his obligations under rules.

6. When similarly faced with a *pro se* Plaintiff's non-compliance in responding to a Motion to Dismiss, the Middle District in *Correa v. BAC Home Loans Servicing LP*, took into

---

[3] *Stone v. Dewey*, 2011 WL 2784595 (N.D. Fla.)(In a civil rights action brought by an inmate, there was no obligation on the part of the Court to advise the Plaintiff that the failure to properly respond to a motion to dismiss could result in the court's granting the motion. The rule placed the plaintiff on notice and his pro se status would not excuse compliance with the rules.)

[4] *See generally, Lee v. Security Check, LLC*, 2009 WL 3790455 (M.D. Fla.)(Plaintiff's attempt to avoid dismissal by asserting additional factual allegations not contained in the complaint could not support denial. A motion to dismiss tests the sufficiency of the complaint and cannot be avoided by a party's attempt to insert new facts not contained in the pleading under review.)

consideration the need for judicial efficiency and proceeded to address the motion to dismiss on the merits.[5]

WHEREFORE, Defendant SATZ respectfully requests this Court enter an Order granting his Motion to Dismiss.

Respectfully Submitted,
PAMELA JO BONDI
FLORIDA ATTORNEY GENERAL

/s/ *Mimi V. Turin*
Mimi V. Turin (Fla. Bar. 846351)
Assistant Attorney General
Board Certified in City, County & Local Government Law
OFFICE OF THE ATTORNEY GENERAL
110 S.E. 6th Street, 10th Floor
Fort Lauderdale, Florida 33301
Telephone: (954) 712-4600
Facsimile: (954) 527-3702
Mimi.Turin@myfloridalegal.com

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ *Mimi V. Turin*
Mimi V. Turin
Assistant Attorney General

[5] *Correa v. BAC Home Loans Servicing* LP, 2012 WL 1176701 *1 (M.D. Fla) ("Because Plaintiff failed to respond properly to the motion to dismiss, the Court could deem that Plaintiff is not opposing the motion. However, because Plaintiff is appearing *pro se* and for sake of judicial efficiency, the Court will give her the benefit of the doubt and reach the merits of the motion to dismiss."

SERVICE LIST
Paul Gozaloff v. City of Hollywood, et al
Case No.: 12-60138-CIV-KMW
United States District Court, Southern District of Florida

Jeffrey Shefnel
City Attorney
Tracy A. Lyons
Assistant City Attorney
City of Hollywood
2600 Hollywood Boulevard
Suite 407
Hollywood, FL 33020
[Via CM/ECF]

Paul Gozaloff
4157 S.W. 4th Street
Plantation, FL 33317
[Via U.S. Mail]

Bruce Jolly, Esq.
Purdy, Jolly, Giuffreda & Barranco, P.A.
2455 East Sunrise Boulevard, Suite 1216
Ft. Lauderdale, FL 33304
[Via CM/ECF]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 12-60138-CV-WILLIAMS/SELTZER

PAUL GOZALOFF
Individually,

Plaintiff,

v.

CITY OF HOLLYWOOD, et. al.,

Defendants

_____/

DEFENDANT CITY OF HOLLYWOOD'S REPLY TO DEFENDANT'S RESPONSE IN OPPOSITION TO HOLLYWOOD'S MOTION TO DISMISS

Defendant, City of Hollywood, ("HOLLYWOOD"), hereby submits its Reply to Plaintiff's Response to its Motion to Dismiss pursuant to S.D.Fla. L.R. 7.1 and would state as follows:

1. Plaintiff, throughout his Response fails to address the fact that he did not served HOLLYWOOD until after this Honorable Court dismissed the case and has further failed to provide any information which would establish good cause for his untimely service on HOLLYWOOD. Plaintiff throughout the complaint alleges that his Constitutional rights were violated in January, 2008, yet he did not file his Complaint until January 26, 2012, some four (4) years after the alleged incident. Moreover, Plaintiff now claims in his Response that he spent over one week attempting to serve the municipality. HOLLYWOOD submits that that is not an excuse as to why he served the municipality after the courts' order. Plaintiff also fails to acknowledge that he let a period of five (5) months expire before he attempted to serve

HOLLYWOOD and therefore has failed to establish good cause for violating Fed.R.Civ.Proc. Rule 4(m).

2. Moreover, Plaintiff summarily mentions HOLLYWOOD in his Response with allegations of a history of brutality attributed to the city police officers. HOLLYWOOD would submit that said allegations fail to formulate a response to its pending Motion to Dismiss.

3. Plaintiff has failed to allege any policy adopted and implemented by HOLLYWOOD that was the moving force of his alleged Constitutional violations in either the original Complaint or in his Response in Opposition to HOLLYWOOD'S Motion. "Conclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal." *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188(11th Cir. 2002).

Thus, Plaintiff has failed to satisfy the requirements outlined in *Monell v. Dept. of Soc. Serv. Of City_of New York,* 436 U.S. 658, 690-691, 98 S. Ct. 2018, 2035-36, 56 L.Ed.2d 611 (1978) and *Brown v. City of Fort Lauderdale,* 923 F.2d 1474, 1481 (11th Cir.). Moreover, regardless of whether a plaintiff attempts to state a claim under section 1983 by alleging a policy or custom, he must also identify an official who speaks with "final policymaking authority for [the municipality] concerning the act alleged to have caused the particular constitutional violation in issue." *Grech v. Clayton County, Ga.,* 335 F.3d 1326, 1330 (11th Cir. 2003). Plaintiff's complaint is silent as to any final policymaking that implemented such customs and/or practices. Therefore, HOLLYWOOD submits that Plaintiff has failed to state a claim for relief pursuant to Title 42 §1983.

4. In addition, Plaintiff has failed to articulate any authority within his Response that would assist the court to determine that *Monell* is not controlling law in the instant matter. As

such, HOLLYWOOD respectfully request that this Honorable Court dismiss Plaintiff's Complaint in its entirety as it pertains to HOLLYWOOD.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 6, 2012, I electronically filed the forgoing document with the Clerk of the Court, using CM/ECF. I also certify that the foregoing document is being served this day by U.S. mail to Paul Gozaloff, Plaintiff, 4157 S.W. 4th Street, Plantation, FL 33317, and Mimi V. Turin, Assistant Attorney General., Attorney for Defendant, Michael Satz, at the Office of the Attorney General, 110 S. E. 6th Street, 10th Floor, Ft. Lauderdale, FL 33301 and Bruce W. Jolly, Esq. Purdy, Jolly, Giuffreda & Barranco, P.A., Attorney for Defendant Officers.

Respectfully submitted,
JEFFREY SHEFFEL
CITY ATTORNEY
City of Hollywood
2600 Hollywood Boulevard,
Suite 407
Hollywood, FL 33020
Telephone: (954) 921-3435
Telecopier: (954) 921-3081

By: /s/ Tracy A. Lyons
Tracy A. Lyons
Assistant City Attorney
tlyons@hollywoodfl.org
Fla. Bar No. 0141585

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60138-CV-WILLIAMS

PAUL GOZALOFF,

Plaintiff,

vs.

THE CITY OF HOLLYWOOD, et al.,

Defendants.
_____/

DEFENDANTS' (CASH, PETTY, SIPLE, CHANG & SCHULLER) ANSWER/AFFIRMATIVE DEFENSES

The Defendants, WILLIAM CASH, MATTHEW PETTY, TRAVIS SCHULLER, ALEXANDER CHANG AND JOSEPH SIPLE, through their undersigned attorneys, file this their Answer/Affirmative Defenses to the Complaint and in support thereof would state as follows:

COMPLAINT FOR: CIVIL RIGHTS VIOLATIONS

Denied.

JURISDICTION

Denied

III. PARTIES

A. Plaintiff

1. Without knowledge.

B. Hollywood Defendants

2. Admitted.

3. Admitted.

4. Admitted.

5. Denied.

6. Denied.

7. Denied as being an incomplete and inaccurate description of the responsibilities of the Defendant law enforcement officers vis-a-vis the Defendant City, and strict proof thereof is demanded.

8. It is admitted that the Defendant Satz is the State Attorney, but all of the rest and remainder of the allegations contained in Paragraph 8 are denied.

STATEMENT OF FACTS

1. Denied.

2. Denied.

3. Denied.

4. Denied.

5. Denied.

6. Denied.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Without knowledge and strict proof thereof is demanded.

14. Admitted.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

CAUSES OF ACTION

COUNT I

Violation of Civil Rights Pursuant to Title 42 U.S.C. §1983 (General Allegations)

22. Admitted.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

COUNT II

Violation of Civil Rights Pursuant to Title 42 U.S.C. §1983 (Failure to Implement Appropriate Policies, Customs and Practices) (Defendant City of Hollywood, and Defendant, Michael Satz)

28-34. The Defendants, WILLIAM CASH, MATTHEW PETTY, TRAVIS SCHULLER, ALEXANDER CHANG AND JOSEPH SIPLE, file no response to the allegations contained

in Count II as Count II does not seek to obtain relief against them.

COUNT III

Violation of Civil Rights Pursuant to Title 42 U.S.C. §1983 (Use of Excessive Force)

35-38. The Defendants, WILLIAM CASH, MATTHEW PETTY, TRAVIS SCHULLER, ALEXANDER CHANG AND JOSEPH SIPLE, file no response to the allegations contained in Count III as Count III does not seek to obtain relief against them.

COUNT IV

Violation of Civil Rights Pursuant to 42 U.S.C. §1983 (False Arrest)

39. Admitted.

40. Denied.

41. Denied.

COUNT V

Violation of Civil Rights Pursuant to Title 42 U.S.C. §1983 (Malicious Prosecution)

42. Admitted.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Admitted.

49. Without knowledge and strict proof thereof is demanded.

50. Denied.

51. Denied.

52. Denied.

COUNT VII

Florida Governmental Tort Liability Act (False Imprisonment) 42 U.S.C. §1983

53. Admitted.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

VIII

Florida Governmental Tort Liability Act

Florida Common Law (Negligence)

59. Admitted.

60. Denied.

61. Denied.

COUNT IX

Florida Governmental Tort Liability Act

Florida Common Law (Negligent Supervision)

62. Admitted.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

COUNT X

Title 42 U.S.C. §1983 Conspiracy;

Florida Governmental Tort Liability Act

Florida Common Law (Conspiracy)

68. Admitted.

69. Denied.

70. Denied.

COUNT XI

Title 42 U.S.C. §1983

Florida Common Law (Assault)

71. Admitted.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

COUNT XII

Title 42 U.S.C. §1983

Florida Common Law

Art. I, §23, Fla. Const.

INVASION AND DEPRIVATION OF RIGHT OF PRIVACY

76. Denied.

77. Admitted.

78. Denied.

79. Denied.

PRAYERS FOR RELIEF

1-7. Denied.

GENERAL DENIAL

All allegations to which a specific response has not been provided are denied and strict proof thereof is demanded.

AFFIRMATIVE DEFENSES

I. As a first and separate affirmative defense, the Defendants, WILLIAM CASH, MATTHEW PETTY, TRAVIS SCHULLER, ALEXANDER CHANG AND JOSEPH SIPLE, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, would assert that the Plaintiff has failed to state a claim for relief by failing to make sufficient allegation of ultimate fact demonstrating that this Court has subject matter jurisdiction over the claims.

II. As a further and separate affirmative defense, the Defendants, WILLIAM CASH, MATTHEW PETTY, TRAVIS SCHULLER, ALEXANDER CHANG AND JOSEPH SIPLE, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, would assert that the Plaintiff has failed to make sufficient allegations of ultimate fact from which it can be determined that a claim for relief has been stated.

III. As a further and separate affirmative defense, the Defendants, WILLIAM CASH, MATTHEW PETTY, TRAVIS SCHULLER, ALEXANDER CHANG AND JOSEPH SIPLE,

would assert that any and all injuries or damages suffered by Plaintiff were caused by reason of Plaintiff's negligence and/or wrongful acts and/or misconduct.

IV. As a further and separate affirmative defense, with specific reference to the constitutional claim which Plaintiff asserts, the Defendants, WILLIAM CASH, MATTHEW PETTY, TRAVIS SCHULLER, ALEXANDER CHANG AND JOSEPH SIPLE, would assert that they are immune from any and all liability through application of the concept of qualified immunity as they, at no time, committed any act in derogation of any of Plaintiff's civil rights of which a reasonable law enforcement officer would have had knowledge and, otherwise, at all times, acted in good faith relying upon existing statutes, policies and procedures as authority for their actions.

V. As a further and separate affirmative defense, the Defendants, WILLIAM CASH, MATTHEW PETTY, TRAVIS SCHULLER, ALEXANDER CHANG AND JOSEPH SIPLE, would assert that as to the state law claims, that any and all actions taken by them were taken within the course and scope of their employment, and, consequently, they are not properly subject to suit pursuant to Florida's statutory waiver of sovereign immunity, Section 768.28, et. seq., Florida Statutes (2011).

VI. As a further and separate affirmative defense, the Defendants, WILLIAM CASH, MATTHEW PETTY, TRAVIS SCHULLER, ALEXANDER CHANG AND JOSEPH SIPLE, would assert that any and all actions taken by them were taken:

a. without malice;

b. with probable cause;

c. in pursuit of lawful and legal duties;

d. with such force as was reasonable and necessary under the

circumstances.

VII. As a further and separate affirmative defense, the Defendants, WILLIAM CASH, MATTHEW PETTY, TRAVIS SCHULLER, ALEXANDER CHANG AND JOSEPH SIPLE, would assert that to the extent that Plaintiff was injured as a consequence of the incident about which he complains they are entitled to a set-off for any collateral sources of compensation for Plaintiff's alleged injuries and/or damages.

VIII. As a further and separate affirmative defense, as to Plaintiff's state law claims, the Defendants, WILLIAM CASH, MATTHEW PETTY, TRAVIS SCHULLER, ALEXANDER CHANG AND JOSEPH SIPLE, would assert the alcohol and drug defense as set forth in Section 768.36, Florida Statutes (2011).

DEMAND FOR TRIAL BY JURY

The Defendants, WILLIAM CASH, MATTHEW PETTY, TRAVIS SCHULLER, ALEXANDER CHANG AND JOSEPH SIPLE, hereby demand trial by jury on all issues so triable.

I HEREBY CERTIFY that a copy of the foregoing was sent via the Clerk's CM/ECF electronic filing system this **30th** day of August, 2012, to: MIMI TURIN, Esquire, Assistant Attorney General, Counsel for Defendant SATZ, 110 S.E. 6th Street, 10th Floor, Fort Lauderdale, Florida 33301; TRACY A. LYONS, Esquire, Assistant City Attorney, City of Hollywood, Counsel for Defendant HOLLYWOOD, 2600 Hollywood Boulevard, Suite 407,

Hollywood, Florida 33020; and by U.S. Mail to: PAUL GOZALOFF, Plaintiff, 4157 S.W. 4th Street, Plantation, Florida 33317.

PURDY, JOLLY, GIUFFREDA & BARRANCO, P.A.
Attorneys for Defendants, CASH, CHANG, PETTY, SCHULLER & SIPLE
2455 East Sunrise Boulevard, Suite 1216
Fort Lauderdale, Florida 33304
Telephone (954) 462-3200
Telecopier (954) 462-3861
E-mail: bruce@purdylaw.com.

BY ***/s/ Bruce W. Jolly***
BRUCE W. JOLLY
Fla. Bar No. 203637

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60138-CIV-WILLIAMS/Snow

PAUL GOZALOFF,

Plaintiff,

vs.

THE CITY OF HOLLYWOOD,
a Political Subdivision of the State
of Florida, et al.,

Defendants.
_____/

REPORT AND RECOMMENDATION

THIS CAUSE is before the Court on Defendant, City of Hollywood's, Motion to Dismiss Plaintiff's Complaint (DE 20) and Defendant, Michael Satz', Motion to Dismiss (DE 21), which were referred to United States Magistrate Judge, Lurana S. Snow, for a Report and Recommendation. The motions are fully briefed and ripe for consideration.

I. THE COMPLAINT

The Plaintiff, proceeding *pro se*, filed the instant Complaint alleging civil rights violations by Defendant, City of Hollywood (hereinafter "Hollywood"); Defendant, Michael Satz (hereinafter "Satz") in his individual capacity as well as his official capacity as the Broward County State Attorney, and five police officers. (DE 1) The allegations of the Complaint arise out of the Plaintiffs' arrest on January 27, 2008 and subsequent criminal charges filed against him, which ultimately were dropped. The Complaint contains a Statement of Facts, consisting of 21 paragraphs, which are re-alleged and incorporated into each count.

The Plaintiff alleges that on January 27, 2008, while he was putting up campaign posters, he went to the scene of a traffic stop while trying to locate a friend who also was putting up posters. He contends that without reason or provocation, the City of Hollywood police officers at the scene of the traffic stop, severely beat him and, after planting drugs on him, placed him under

arrest. According to the Complaint, the officers then prepared false reports to justify their actions. On December 3, 2008, Broward Circuit Judge Dale C. Cohen suppressed the evidence against the Plaintiff based on the contrast between the Plaintiff's testimony, which the Judge found to be credible, and the conflicting versions of the events provided by police officer witnesses. Thereafter, the State Attorney nolle prossed the case.

The Complaint contains eleven counts (numbered I-XII, with no Count VI), as follows: general allegations against all Defendants, in violation of civil rights pursuant to 42 U.S.C. § 1983 (Count I); failure to implement appropriate policies, customs and practices, in violation of § 1983, against Defendants, Hollywood and Satz (Count II); use of excessive force, in violation of § 1983, against Defendant, Hollywood (Count III); false arrest, in violation of § 1983, against police Defendants (Count IV); malicious prosecution, in violation of § 1983, against police Defendants (Count V); false imprisonment, in violation of § 1983 and the Florida Governmental Tort Liability Act, against all Defendants (Count VII); negligence, in violation of the Florida Governmental Tort Liability Act and Florida common law, against all Defendants (Count VIII); negligent supervision, in violation of the Florida Governmental Tort Liability Act and Florida common law, against Defendants, Hollywood and Satz (Count IX); conspiracy to make false statements against the Plaintiff, in violation of § 1983 and Florida Governmental Tort Liability Act, against all Defendants (Count X); assault, in violation of § 1983 and Florida common law, against all Defendants (Count XI), and invasion and deprivation of the right to privacy, in violation of § 1983, Florida common law and the Florida Constitution, against all Defendants (Count XII).

Thus, Defendants, Hollywood and Satz, are included in the six Counts which are directed toward all Defendants: Count I (general civil rights violations); Count VII (false imprisonment); Count VIII (negligence); Count X (conspiracy to make false statements); Count XI (assault), and Count XII (deprivation of right to privacy). Defendants, Hollywood and Satz, also are named in two additional accounts: Count II (failure to implement appropriate policies, customs and

practices) and Count IX (negligent supervision). Defendant, Hollywood, is the only Defendant named in Count III (excessive force).

The specific allegations against Defendant Hollywood in the Statement of Facts are:

> 9. The City of Hollywood has condoned the illegal actions of its police officers for many years, and has refused to even attempt remediation. The city has utterly failed to train, supervise, or punish such acts of corruption as were demonstrated in this case.
>
> 10. . . . [T]he City of Hollywood maintains a policy of allowing their officers to exercise any force desired to inflict pre-judgment/pre-arrest punishment upon any citizen sought to be arrested, or arrested. Internal Affairs chief, Forrest Jeffries, testified at the trial of Donald Baker and proclaimed the **policy of the City of Hollywood,** stating that a citizen does not have a right to resist excessive force by a Hollywood police officer and must fall down and curl up as the only means available to him to portect himself. . . . Additionally, when a complainant files an Internal Affairs Complaint, the City of Hollywood Mirandizes the complainant and uses the IA process as a back-door means of gathering and then suppressing exculpatory evidence. The procedure employed by Hollywood as to an Internal Affairs inquiry, in reality, is an interrogation of the complaining person directed toward the prosecution of the victim, complainant, and to protect the corrupt police officer who has used his badge to perfect his sadistic and unconstitutional attacks on the public, and this Plaintiff.
>
> 11. . . . For more than a year after the attack, the Defendant City of Hollywood, secreted the identity of the Eye-Witness[1] by tendering false information relating to the citation, and rejecting the Brady Evidence requests from the State Attorney's Office. . . .
>
> 20. . . . The City maintains a policy of protecting corruption, also, and when they are caught red-handed in effecting a false arrest, the city has a policy of falsifying evidence; the City ascribes a nomenclature of such falsification as, "**Doing a Little Walt Disney on the Evidence.**"

(DE 1 at 6-7, 9) (Emphasis in original.)

As to Defendant, Satz, the Complaint's Statement of Facts makes the following allegations:

---

[1] The eye-witness to which the Plaintiff refers is the individual who was the subject of the traffic stop.

> 11. . . . The State Attorney failed and refused to compel the production of the identity of the Brady witness,[2] because of the State Attorney's continuing policy of refusing to prosecute corrupt police officers . . . .
>
> 14. The criminal proceedings subsequent to the Plaintiff's arrest were terminated in his favor without a plea of guilt or a "bargained for" resolution with the entry of a *nolle prosequi* by the Defendant State Attorney, Michael Satz. . . .
>
> 17. Defendant Michael Satz, the State Attorney for the Seventeenth Judicial Circuit of Florida, well knew that the Defendant police officers initiated this malicious prosecution upon false evidence; that they had falsified their police reports, and that they perjured their testimony to falsely convict this Plaintiff and to deny him meaningful access to the courts. Defendant Satz has refused to prosecute corrupt police officers for and during the past 30 years. Because of that policy, which has encouraged and protected such corrupt practices as in the instant case, corruption has flourished in Broward County, Florida. . . .
>
> 19. The effect of the refusal to prosecute such corruption has resulted in the State Attorney knowingly and deliberately suppressing Brady material. . . . Countless numbers of innocent criminal defendants in Broward have been wrongfully deprived of their lives and liberties as a direct result of that policy, which would prosecute the innocent in order to preserve the non-prosecution policy. . . .

(DE 7-9)

Defendants, Hollywood and Satz, are named in Count II of the Complaint, which alleges failure to implement appropriate policies, customs or practices. However, the specific allegations of this Count (other than those contained in the Statement of Facts), name only Defendant, Hollywood, making no mention of Defendant, Satz:

> 29. Defendant, City of Hollywood, implicitly or explicitly adopted and implemented careless and reckless policies, customs, or practices, that included, among other things, allowing employees of the Hollywood Police Department to confront any person thought to be homeless and to exercise any brutality without lawful justification, and to use excessive force and cruelty when dealing with persons thought to be homeless.
>
> 30. Defendant, City of Hollywood, implicitly or explicitly adopted and implemented a careless and reckless policy, custom, or practice

[2] This also refers to the person who was the subject of the traffic stop.

> of allowing employees of the Hollywood Police Department to confront homeless, or apparent homeless people, with the use of excessive lethal force where less severe alternatives existed, and has protected such brutality by a policy that holds that a "Citizen does not have a right to resist excessive force by a Hollywood Police officer and must fall down and curl up – " as the only means of protecting himself, and failing that, the citizen is to be arrested upon a charge of resisting arrest or obstruction with violence and prosecuted upon false evidence as may be contrived by the police department, including "Doing a Little Walt Disney on the Evidence."
>
> 31. The failure of the City of Hollywood to adequately train and supervise the Defendant police officers named herein amounts to deliberate indifference to the rights of the Plaintiff to be free from excessive force and unreasonable seizures under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States.
>
> 32. The failure of the City of Hollywood to adequately train and supervise Defendant police officers, named herein, amounts to deliberate indifference to the rights of the Plaintiff to be free from excessive force and unreasonable seizures under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States. . . .

(DE 1 at 11-12)

Defendants, Hollywood and Satz, also are named in Count IX (negligent supervision), which contains the following allegations against them:

> 64. Defendant, City of Hollywood, Florida negligently supervised the named Defendants by failing to provide proper training and outline proper procedure in confronting the citizenry with civility.
>
> 65. Michael J. Satz has implemented the two-tiered system of justice in Broward County, and maintained and maintains a policy and practice of refusing to prosecute police officers for their criminal acts of brutality and corruption, and within that policy is the concomitant necessity of suppressing exculpatory evidence to insure that the corruption will not be prosecuted.

(DE 1 at 16)

Specific allegations against Defendant, Hollywood, also are contained in Count III, dealing with excessive force:

> 36. The Defendant, City of Hollywood, Florida, has adopted policies, procedures, practices of customs within the Hollywood Police Department that allow, among other things, the use of excessive force

> even though other more reasonable and less drastic methods are available.
>
> 37. The actions of Defendant City of Hollywood, Florida amount to deliberate indifference to the rights of the Plaintiff to be free of excessive force and unreasonable seizures under the Fourth and Fourteenth Amendments to the Constitution of the United States.

There are no specific allegations against Defendants, Hollywood or Satz, in any of the counts directed at all Defendants.

II. DISCUSSION

Defendants, Hollywood and Satz, seek to dismiss the Complaint against them, but each advances different grounds for the relief sought. Under the Federal Rules of Civil Procedure, no motion to dismiss for failure to state a claim should be granted unless it appears to be a certainty that the plaintiff would not be entitled to recover under any set of facts which could be proved in support of its claim. Jackam Hospital Corp. of America Mideast, Ltd., 800 F.2d 1577, 1581 (11th Cir. 1986). In deciding a motion to dismiss, all well-pleaded facts in the Complaint and all reasonable inferences drawn from those facts are taken as true. Stephens v. Dept. of Health and Human Services, 901 F.2d 1571, 1573 (11th Cir. 1990).

A. DEFENDANT HOLLYWOOD'S MOTION TO DISMISS

The Complaint alleges that Defendant, Hollywood, violated the Plaintiff's rights by condoning the illegal actions of its police officers; by failing to train, supervise or punish its police officers who engage in corrupt acts; by adopting a policy of allowing the police to use any force they desire in inflicting punishment on citizens, particularly the homeless, at the time of arrest (as articulated by Internal Affairs Chief, Forrest Jeffries, who testified that a citizen does not have the right to resist excessive force by the police); by using the Internal Affairs Complaint procedure as a means of gathering evidence against victims of excessive force, and by protecting corruption through the use of false evidence and the suppression of exculpatory evidence.

Defendant ,Hollywood, argues that the Complaint should be dismissed because it (1) was not timely served pursuant to Fed.R.Civ. P. Rule 4(m); (2) fails to state a claim upon which

relief may be granted under §1983, requiring dismissal under Rule 12(b)(6) and (3) fails to comply with Rules 8(a) and 10(b), requiring a short and plain statement of ultimate facts and the use of numbered paragraphs for the various claims alleged.

1. Timeliness of Service

The Defendant first contends that the Complaint was not timely served upon it, pointing out that Rule 4(m) requires service within 120 days of filing the Complaint. The instant Complaint was filed on January 26, 2012, requiring service no later than May 25, 2012. The Complaint was not served on Defendant, Hollywood, until May 31, 2012.

The record reflects that on May 25, 2012, the Plaintiff moved for an extension of time to serve the Complaint. (DE 7) On May 29, 2012, the case was dismissed without prejudice for failure to perfect service within the period authorized by Rule 4(m). (DE 6) On June 5, 2012, the Court denied the Plaintiff's motion for extension of time, noting that although the motion had been filed prior to the entry of the Court's Order dismissing the case, its docketing was "unusually delayed." (DE 8) Defendant, Hollywood, was, as noted above, served on May 31, 2012. (DE 13) On June 18, 2012, the Plaintiff moved to vacate the Court's Order of dismissal and to reinstate the action. (DE 11) On June 21, 2012, the date on which the instant motion was filed, the Court vacated its prior Order of dismissal, reopened the case and directed the Plaintiff to serve the Complaint on the Defendants on or before July 27, 2012. (DE 19)

Defendant, Hollywood, was served after the case was dismissed without prejudice. However, because the Court vacated its Order of dismissal and Defendant, Hollywood, was served within the extended time period authorized by the Court, the service was timely under Rule 4(m). Therefore, the Complaint should not be dismissed on this ground.

2. Statement of a Claim Under § 1983

Defendant ,Hollywood, next contends that the Plaintiff has failed to state any claim upon which relief may be granted under 42 U.S.C. § 1983. Defendant, Hollywood, notes that the Complaint alleges that the Plaintiff was denied his constitutional rights to (a) be free from

unreasonable searches and seizures; (b) not to be deprived of liberty without due process of law; (c) not to be deprived of property without due process of law; (d) be free from the excessive use of force by persons acting under color of state law; (e) be free from false arrest, and (f) just compensation for the taking of property. Defendant, Hollywood, argues that the Complaint fails to allege that a custom or policy it implemented in the training and supervising of its police officers, would have resulted in the alleged violations.

Defendant ,Hollywood, relies on the seminal case of Monnell v. Department of Social Services of the City of New York, 436 U.S. 658, 694 (1978), where the Supreme Court held:

> [A] local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.

Defendant, Hollywood, also cites Brown v. City of Fort Lauderdale, 923 F.2d 1474 (11th Cir. 1991), although that case reversed the trial court's dismissal of the municipal defendant. The Brown court noted that for purposes of § 1983, a municipal act is not "limited to decisions made by the city's official legislative body or in written agreements" because "policy may also be implicated by the acts of individual policymaking officials or by pervasive city custom." Id. at 1480. Thus, "a municipal official who has 'final policymaking authority' in a certain area of the city's business may by his or her action subject the government action to § 1983 liability when the challenged action falls within that authority." Id. Also, municipal liability based on custom exists where there is "a widespread practice that, 'although not authorized by written law or express municipal policy, is 'so permanent and well settled as to constitute a "custom or usage" within the force of law." Id. at 1481. (Citations omitted.)

Defendant, Hollywood, contends that the allegations of the instant Complaint are conclusory, and fail to establish a causal connection between the acts or inactions of any person which led to the alleged constitutional deprivations, citing Williams v. Bennett, 689 F.2d 1370, 1380

(11th Cir. 1982), *cert. denied*, 464 U.S. 932 (1983), a case which was decided on appeal after an adverse verdict. Defendant, Hollywood, also argues that the Plaintiff has failed to identify any official with final policymaking authority for Defendant Hollywood concerning the acts alleged to have caused the violation. It relies Grech v. Clayton County, Georgia, 335 F.3d 1326 (11th Cir. 2003), where the court upheld a grant of summary judgment, finding that while the sheriff was a policymaker, under Georgia law, the sheriff was not a policymaker for the county.

Defendant, Hollywood, has not cited any cases where a complaint was dismissed on these grounds. Moreover, Defendant, Hollywood, incorrectly cites GJR Investments, Inc. v. County of Escambia, Florida, 132 F.3d 1359, 1367 (11th Cir. 1998) and Swann v. Southern Health Partners, Inc., 388 F.3d 834, 838 (11th Cir. 2004) for the proposition that a heightened pleading standard applies to the instant action. In fact, both of these cases recognize that the Eleventh Circuit's heightened pleading requirement in § 1983 cases was limited by Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163 (1993), which held that "[w]here a § 1983 claim is asserted against a municipality, only the liberal pleading standards of Rule 8(a)(2) apply." Swann, 388 F.3d at 836, citing Leatherman, 507 U.S. at 168. (Emphasis added.)

The undersigned concludes that Defendant, Hollywood'sarguments should be raised at a later stage of the proceedings. At this juncture, the Court cannot state with certainty that the Plaintiff would not be entitled to recover under any set of facts which could be proved in support of his claims. Accordingly, no Rule 12(b)(6) dismissal should be granted.

3. Rule 8(a) and 10(b)

Defendant, Hollywood, also contends that the Complaint should be dismissed because it fails to provide a short and plain statement of the ultimate facts showing that the Plaintiff is entitled to the requested relief, as required by Fed.R.Civ. P. 8(a), and fails to comply with Fed.R.Civ. P. 10(b), which states, in pertinent part:

> A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. . . If doing so would promote clarity, each claim founded on a separate

> transaction or occurrence--and each defense other than a denial--must be stated in a separate count or defense.

There is room for improvement in the organization of the instant Complaint, as there is even in most pleadings filed by counsel. Nevertheless, the Complaint sufficiently complies with the cited rules to withstand a motion to dismiss.

Accordingly, Defendant Hollywood's Motion to Dismiss should be denied.

B. DEFENDANT SATZ' MOTION TO DISMISS

The Complaint alleges that Defendant, Satz, violated the Plaintiff's rights by failing to compel the production of a Brady witness, pursued the case against the Plaintiff knowing that it was based on false evidence and perjured testimony and establishing a two-tiered system of justice in which corrupt police officers are not prosecuted. Defendant, Satz, advances several grounds on which he contends the Complaint against him must be dismissed.

1. Official Capacity Claims

Defendant, Satz, argues that he is entitled to absolute immunity from § 1983 violations which are alleged to have arisen from performance of his prosecutorial duties, defined as actions "intimately associated the judicial phase of the criminal process." Imbler v. Pachtman, 424 U.S. 409, 430 (1976). In Imbler, absolute prosecutorial immunity was held to cover allegations that a prosecutor knowingly used false testimony and suppressed material evidence at trial. This Circuit has included other actions within the ambit of absolute prosecutorial immunity, including filing an information without an investigation; filing charges without jurisdiction; filing a baseless detainer; offering perjured testimony; suppressing exculpatory evidence; refusing to investigate complaints about a prison, and threatening a defendant with further prosecution. Fullman v. Graddick, 739 F.2d 553, 558-59 (11th Cir. 1984); Henzel v. Gerstein, 608 F.2d 654, 657 (5th Cir. 1979). A prosecutor clearly is absolutely immune from § 1983 liability for actions associated with initiating a prosecution and presenting the state's case. Fullman, 739 F.2d at 559.

Defendant, Satz, also asserts that all of the state and federal claims against him in his official capacity are barred by the Eleventh Amendment, which precludes a suit for damages in federal court against a state or its agencies when the action ". . . . is in essence one for the recovery of money against the state." Edelman v. Jordan, 415 U.S. 651, 672 (1974); Courts have held that Eleventh Amendment immunity applies to suits against prosecutors acting within the scope of their official duties. *See*, *e.g.*, Cyber Zone E-Café, Inc. v. King, 782 F. Supp. 2d 1331, 1337 (M.D. Fla. 2011).

Finally, Defendant, Satz, points out that Count IX is brought under the Florida Governmental Tort Liability Act, F.S.A. § 768.28, and is based on allegedly negligent supervision. The Defendant notes that actions under this statute may be brought only where Florida has waived sovereign immunity The Defendant cites Berry v. State, 400 So.2d 80, 84 (Fla. 4th DCA 1981) for the proposition that a state attorney's "exercise of his prosecutorial duties qualified as a discretionary governmental function the performance of which is not affected by the statute waiving sovereign immunity."

Additionally, Defendant, Satz, notes that even if sovereign immunity had been waived, the allegations in Count IX must be dismissed because the Plaintiff has failed to allege compliance with the pre-suit notice of provisions of § 768.28(6)(a) or any facts with establish that he owed a particularized duty of care to the Plaintiff, as required by law. Hansen v. State, 503 So.2d 1324 (Fla. 1st DCA 1987) (claims against state agents in their official capacities were barred by the failure to provide written notice of the claims); State, Office of the State Attorney for the Thirteenth Judicial Circuit v. Powell, 586 So.2d 1180 (Fla. 2nd DCA 1991) (witness not owed a particularized duty of care by state attorney which would give rise to an action in tort).

Based on the well-established case law cited by Defendant, Satz, he is absolutely immune from liability for the actions alleged against him in his official capacity. Therefore, all counts of the instant Complaint directed at Defendant Satz in his official capacity must be dismissed.

2. Individual Capacity

The Complaint also states that Defendant, Satz, is sued in his individual capacity. However, as Defendant, Staz, points out, there are no allegations in the Complaint which would support against him individually. The only arguable premise for an individual capacity claim would be the theory of *respondeat superior,* since Defendant, Satz, is not alleged to have personally participated in any action against the Plaintiff. This Circuit squarely has held that supervisory officials are not liable under § 1983 for the unconstitutional acts of their subordinates based on the doctrines of *respondeat superior* and vicarious liability. Cottone v. Jenne, 326 F. 3d 1352, 1360 (11th Cir. 2003).

As to Count IX, negligent supervision under the Florida Governmental Tort Liability Act, the Defendant notes that § 728.28(9)(a) provides, "No officer, employee or agent shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event or omission of action in the scope of her or his employment or function unless . . . [the individual] acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property." In the instant case, the Plaintiff has made no factual allegations of bad faith which fulfill this statutory requirement.

Accordingly, for the reasons advanced by Defendant, Satz, all counts of the Complaint directed against him in his individual capacity likewise must be dismissed.

3. Standing

Defendant, Satz, also asserts that Counts II and IX, the only counts in which he is explicitly named, fail to establish an actual case or controversy because the criminal case against the Plaintiff was nolle prossed, thereby removing the Plaintiff from the class of victimized citizens the Complaint describes. Defendant, Satz, argues that as a result, the Plaintiff has not shown that he has suffered an actual injury and lacks standing to sue, citing Whitmore v. Arkansas, 495 U.S. 149 (1990) (death row inmate lacks standing to challenge the sentence of another death row inmate because he had only a generalized interest in the other inmate's sentence) and Miccosukee Tribe of

Indians of Florida v. Florida State Athletic Commission, 226 F.3d 1226 (11th Cir. 2000) (tribe lacked standing to challenge the state's attempt to tax non-Indian boxing promoters on revenues from matches conducted on the tribe's reservations).

The undersigned notes that the Plaintiff arguably suffered injury as the result of the initial prosecution, even though the charges later were nolle prossed. However, the Court need not address this issue, since all counts of the Complaint against Defendant, Satz, must be dismissed for the reasons set forth above.

III. CONCLUSION

This Court having considered carefully the pleadings, arguments of counsel, and the applicable case law, it is hereby RECOMMENDED that:

1. Defendant, City of Hollywood's, Motion to Dismiss Plaintiff's Complaint (DE 20) be DENIED, and

2. Defendant, Michael Satz', Motion to Dismiss (DE 21) be GRANTED.

The parties will have 14 days from the date of being served with a copy of this Report and Recommendation within which to file written objections, if any, with The Honorable Kathleen M. Williams, United States District Judge. Failure to file objections timely shall bar the parties from attacking on appeal factual findings contained herein. LoConte v. Dugger, 847 F.2d 745 (11th Cir. 1988), cert. denied, 488 U.S. 958 (1988); RTC v. Hallmark Builders, Inc., 996 F.2d 1144, 1149 (11th Cir. 1993).

DONE AND SUBMITTED at Fort Lauderdale, Florida, this 26th day of November, 2012.

Lurana S. Snow

LURANA S. SNOW
UNITED STATES MAGISTRATE JUDGE

Copies to:

All Counsel of Record