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Clerk of Court
Superior Court of CA,
County of Santa Clara
22CV405055
Reviewed By: A. Tam

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SANTA CLARA

10 JOHN DOE,

11 Plaintiff,

12 v.

13 DEPARTMENT OF JUSTICE OF THE STATE
14 OF CALIFORNIA, STATE OF CALIFORNIA,
15 CITY OF SUNNYVALE, OFFICER JOHN
BOGNANNO, and DOES 1 to 50,

16 Defendants.

22CV405055
NO.:

(Limited Civil Case – Over \$10,000)

**COMPLAINT FOR CIVIL RIGHTS
VIOLATION**

1. **42 U.S.C. § 1983**
2. **False Arrest**
3. **Negligence**
4. **Information Practices Act – Civil
Code §1798 et seq**

18 Plaintiff alleges as follows:

19 1. Plaintiff John Doe is a resident of the County of Santa Clara, California. Because of the
20 nature of the allegations herein, plaintiff is identified by a pseudonym in order to preserve
21 confidentiality and to avoid any potential opprobrium, pursuant to applicable law, including
22 *Starbucks Corp. v. Superior Ct.* (2008) 168 Cal.App.4th 1436.

23 2. Defendant State of California is a constituent state in the United States of America and
24 has as one of its departments the Department of Justice.

25 3. The City of Sunnyvale is a municipal corporation in the State of California. The City of
26 Sunnyvale has, as one of its constituent parts, a Department of Public Safety which, among other
27 things, provides police services.

28 **COMPLAINT**

1 4. At all times relevant to this complaint, John Bognanno was a sworn officer employed by
2 the City of Sunnyvale in its Department of Public Safety.

3 5. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously
4 named defendants were in some manner legally responsible for the unlawful actions, unlawful
5 policies, and unlawful practices alleged in this complaint. Plaintiff will amend the Complaint to set
6 forth the true names and capacities of said defendants, along with the appropriate charging
7 allegations, when the same have been ascertained.

8 6. Venue is proper in this county because Plaintiff was wrongfully arrested and wrongfully
9 jailed in this county.

10 **ALLEGATIONS CONCERNING PLAINTIFF**

11 7. In October 2005, Plaintiff was convicted (via plea) of a misdemeanor violation of
12 California Penal Code §314.1 (indecent exposure) in a Santa Clara County Superior Court criminal
13 case. For the years 2005 through 2020 Plaintiff registered as per Penal Code §290 et seq. at the
14 Sunnyvale Police Department.

15 8. On March 17, 2021, the Santa Clara County Superior Court entered an order vacating
16 the judgment of conviction in said criminal case and dismissing the charges. Because Plaintiff was
17 no longer a person who had been convicted of an offense requiring registration under Penal Code
18 §290 et seq., Plaintiff had no ongoing legal duty to annually register at the police department.

19 9. In or about June 2021 Plaintiff was concerned that Plaintiff's criminal history record at
20 the California Department of Justice ("DOJ") was incorrect and erroneously continued to show a
21 conviction in said criminal case despite the fact that said conviction had now been vacated.
22 Plaintiff wrote a letter to the DOJ informing them that the criminal conviction had been vacated
23 and included a paper copy of the March 17, 2021, court order.

24 10. On or about July 2, 2021, the DOJ, in writing, acknowledged receipt of Plaintiff's June
25 2021 letter and stated that "Modification or deletion of this information can only occur at the
26 direction of the contributing agency or by order of the court having jurisdiction over the criminal
27 matter. As such, please be advised your claim of alleged inaccuracy or incompleteness is in

1 process.” A copy of the letter is attached as Exhibit A (with noted redactions for privacy). Plaintiff
2 received no further communication from the DOJ regarding the matter.

3 11. In or about October 2021, Plaintiff took a paper copy of the March 17, 2021, Order and
4 gave it to an officer at the Sunnyvale Police Department. Plaintiff explained to the officer on duty
5 that Plaintiff was no longer required to register. During this brief meeting, the officer did not
6 object or otherwise dispute Plaintiff’s explanation of the situation nor did the officer suggest that
7 Plaintiff did in fact have a continuing duty to register.

8 12. On or about January 9, 2022, Plaintiff went to the Sunnyvale Police Department to
9 obtain a police report related to a recent traffic incident. To Plaintiff’s great shock, Plaintiff was
10 arrested and put into jail on the charge of violation of Penal Code §290/§290.012 (failure to
11 register). Plaintiff is informed and believes that the police officer who arrested Plaintiff was John
12 Bognanno. Plaintiff was released many hours later that same day. To obtain release from jail,
13 Plaintiff had to sign a promise to appear at court. Plaintiff honored the commitment to appear and
14 in doing so missed work in the process, causing financial loss. Plaintiff is informed and believes
15 and thereon alleges that this Penal Code §290/§290.012 charge against Plaintiff was dismissed and
16 no further proceedings occurred.

17 13. Plaintiff is informed and believes and thereon alleges that Plaintiff was arrested by the
18 Sunnyvale Police partly, if not wholly, because the DOJ failed to promptly correct DOJ records
19 concerning Plaintiff after receiving credible information that the DOJ records were now incorrect,
20 and the unlawful practice of the Sunnyvale Police is to rely substantially (if not exclusively) on
21 DOJ records in determining whether a person has as duty to register as per Penal Code §290 et seq.
22 even if the police are presented with contrary information suggesting the DOJ records are incorrect.
23 It is also unclear as to whether the Santa Clara County Superior Court did or did not promptly
24 notify the DOJ of the March 17, 2021, reversal of Plaintiff’s conviction and subsequent dismissal.
25 If it did not then it, too, shares responsibility as well for Plaintiff’s harm.

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ALLEGATIONS CONCERNING TORT CLAIMS COMPLIANCE

14. In regard to the State of California, plaintiff has complied with the California Govt. Tort Claims Act. Plaintiff, through counsel, filed a Claim regarding these matters with the Cal. Dept. of General Services which noted the claim as being as received on April 8, 2022. Plaintiff, through counsel, filed an Amended Claim with the same department which was noted as being received on June 17, 2022. Plaintiff has not received any formal response from the State Dept. of General Services accepting or denying either the original Claim or the Amended Claim. Over 45 days have elapsed since said claims were submitted.

15. Also in regard to the State of California, plaintiff, through counsel, filed a Claim regarding these matters with the Judicial Branch on May 24, 2022, by presenting said claim to the Santa Clara County Superior Court. The Judicial Council of California rejected this claim on June 27, 2022.

16. In regard to the City of Sunnyvale, plaintiff filed a claim with the City regarding these matters on March 2, 2022. Plaintiff, through counsel, filed an Amended Claim on April 11, 2022. On May 6, 2022, the City of Sunnyvale gave formal notice that both claims were rejected in their entirety.

ALLEGATIONS CONCERNING

CRIMINAL OFFENDER RECORD INFORMATION

17. The DOJ is composed of various constituent parts, with one such part being called the “California Justice Information Services Division” (“CJIS”) which professes as its mission the responsibility “to provide accurate, timely, and comprehensive criminal history and analysis data to its client agencies, which include California’s local police and sheriff’s departments, district attorneys, and local and state regulatory agencies.” (<https://oag.ca.gov/careers/descriptions/cjis>).

18. The data kept by the CJIS is specifically defined in 22 Cal. Code of Regulations §100343.1 as follows:

“Criminal Offender Record Information” or “CORI” means records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial

1 proceedings, the nature and disposition of criminal charges, sentencing, incarceration,
2 rehabilitation, and release.

3 ***IMPORTANCE OF CORRECT CORI RECORDS***

4 19. The DOJ's CORI records are used in wide variety of settings which fundamentally
5 affect the ability of California residents to function in society. District Attorneys use CORI when
6 they charge criminal enhancements and also when making charging decisions for criminal suspects
7 based in part upon whether the suspect's CORI shows a checkered past. Police use CORI to
8 determine whether a subject has violated a registration requirement (such as wrongfully happened
9 with Plaintiff) and as a guide in investigating and questioning "likely suspects". Judges use CORI
10 to determine the severity of sentencing for apparent repeat offenders while state licensing bureau
11 administrators use CORI to determine whether an applicant is eligible for a license. Employers
12 may rescind job offers and landlords may deny housing to those whose CORI shows convictions.
13 In short, outdated or incorrect CORI can completely deny citizens the ability to effectively work or
14 live in California.

15 ***FAILURE TO MAINTAIN ACCURATE CORI RECORDS***

16 ***AND INSTITUTE REASONABLE PROCESSES FOR CORRECTIONS***

17 20. The California Legislature has recognized the importance of accurate CORI and in
18 Penal Code §11126 has set forth a detailed procedure for the DOJ to follow when someone
19 (deemed an "applicant") requests that their CORI record be corrected. Once the DOJ agrees that
20 the record is incorrect based upon the applicant's provided source material, the DOJ has 30 days to
21 inform the applicant of the correction. If the DOJ questions the applicant's source material it may
22 request that the outside agency clarify the record and respond within 30 days. Once the DOJ
23 refuses to alter the record it must notify the applicant within 30 days and offer him or her the right
24 to an administrative adjudication.

25 21. As comprehensive as this remedial CORI corrective scheme may appear, there are
26 several glaring omissions in these timelines such that there is no mention of:
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1 A) The length of time the DOJ has to begin, and then complete, its initial review of the
2 record review request and submitted material;

3 B) The length of time the DOJ has to make its final decision if records are not needed
4 from an outside agency;

5 C) The length of time the DOJ has to request that an outside agency clarify the record
6 and then process the outside agency's response and give a final decision.

7 22. The DOJ has neither allocated sufficient staff nor appropriate processes and policies to
8 carry out, in a reasonably timely fashion, its duty to maintain accurate CORI and to correct
9 inaccurate CORI. It is well aware of the unacceptable backlog times CJIS has in regards to
10 correcting clearly erroneous records and the harm that these incorrect records cause the public.

11 23. The DOJ's unacceptable handling time was amply demonstrated by the fact that the
12 DOJ, after being presented with a copy of a court order showing Plaintiff's conviction having been
13 reversed and the case dismissed, did not correct Plaintiff's CORI even after the elapse of seven
14 months. Given that the court order could have been verified as authentic by contacting the court
15 itself or the Deputy District Attorney who handled the matter (and whose email and phone contact
16 information was listed on the order), there was no legitimate reason for Plaintiff's CORI to remain
17 inaccurate for so long apart from lack of training, understaffing and/or unworkable bureaucratic
18 regulations and rules.

19 24. An obvious partial-solution to this problem would be to spend additional funds hiring
20 CJIS staff to clear the backlog. Assuming that the fully burdened cost of a document verification
21 clerk is \$125,000 per year, CJIS could hire 80 clerks for \$10 million. However, in the 2020-2021
22 budget, the governor *reduced* the CJIS budget by \$10 million and instead shifted the \$10 million to
23 the Bureau of Forensic Services (which provides DNA testing and on-site crime scene support).
24 (See 2020-2021 DOJ budget Analysis, <https://lao.ca.gov/handouts/crimjust/2021/DOJ-Budget-021021.pdf>, p. 3).

FIRST CAUSE OF ACTION
(VIOLATION OF 42 U.S.C. §1983)

(As Against City of Sunnyvale and Officer John Bognanno Only)

25. Plaintiff incorporates by reference all preceding paragraphs as if fully restated here.

26. The City of Sunnyvale and its police officers knew or should have known that Plaintiff was no longer required to register under Penal Code §290 et seq. once they were presented with the court order which vacated that conviction.

27. The unlawful seizure, arrest, and other actions and inactions of the defendants and their employees, representatives and agents constitute either intentional conduct and/or grossly negligent violations of the right to be free from unjust, arbitrary, unreasonable and capricious governmental action which violates the constitutional rights of the Plaintiff secured by the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.

28. The City of Sunnyvale failed to issue policies and supervise and train its enforcement officers to adequately document in the file and research the legal necessity of continuing §290 registration for residents whom the City had reason to believe may have been relieved of registration requirements.

29. Plaintiff suffered damage and is entitled to compensation therefore.

SECOND CAUSE OF ACTION

State Law (False Arrest and False Imprisonment)

(As Against All Defendants)

30. Plaintiff incorporates by reference paragraphs 1 to 24 as if fully restated here.

31. Plaintiff had previously provided documentary proof to both the Sunnyvale Police Department and the DOJ that, as of March 17, 2021, there was no lawful conviction against plaintiff for violation of any law requiring registration pursuant to Penal Code §290 et seq.

1 32. Nevertheless, the Sunnyvale Police Department falsely arrested and imprisoned
2 plaintiff, and plaintiff is informed and believes and thereon alleges that this was done partially or
3 wholly based upon incorrect information provided by the DOJ.

4 33. Plaintiff suffered damage and is entitled to compensation therefore.

5 **THIRD CAUSE OF ACTION**

6 **State Law (Negligence)**

7 **(As Against All Defendants)**

8 34. Plaintiff incorporates by reference paragraphs 1 to 24 as if fully restated here.

9 35. All Defendants had a legal responsibility for the receipt, retention, management,
10 correction, release, and usage of their records.

11 36. Defendants breached those these duties in numerous ways including, but not limited, to
12 the following: (a) keeping inaccurate records in their files concerning Plaintiff's criminal history
13 and P.C. §290 registration requirements when Defendants knew or should have known that the
14 records were inaccurate; (b) failing to implement policies and procedures to timely follow up on in
15 information which, on its face, showed that their records were incorrect; (c) failing to hire, train,
16 and monitor sufficient staff to ensure that inaccurate or changed records were corrected in a
17 reasonable amount of time; (d) immediately upon receipt of information which, on its face, showed
18 that Defendants' records concerning plaintiff were incorrect, to place some sort of note or flag on
19 the file which would clearly communicate to the receiver of those records that the accuracy of the
20 record was in question and should not be relied upon without independent verification; (e) delaying
21 in transmitting correct information to any state or local agency for whom a Defendant was
22 responsible to so transmit.

23 37. Plaintiff suffered damage caused by Defendants' breaches and is entitled to
24 compensation therefore.

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FOURTH CAUSE OF ACTION

State Law (Information Practices Act – Civil Code §1798 et seq.)

(As Against The State of California)

38. Plaintiff incorporates by reference paragraphs 1 to 24 as if fully restated here.

39. Under Civil Code §1798.18, all departments of the State of California have a duty to “maintain all records, to the maximum extent possible, with accuracy, relevance, timeliness, and completeness” and, when transferring someone’s record outside of state government, “shall correct, update, withhold, or delete any portion of the record that it knows or has reason to believe is inaccurate or untimely.”

40. The DOJ and the State of California (of which the DOJ is a constituent part) is liable under Govt. Code §815.6 for its failure to comply with Civil Code §1798.18.

41. Under Civil Code §1798.45(b), plaintiff may bring a civil action against the DOJ and the State for its failure to maintain its records concerning plaintiff with accuracy, relevancy, timeliness, and completeness because, as a proximate result of such failure, plaintiff was incorrectly and adversely determined to have a duty to register under Penal Code §290 et seq. and by consequence wrongfully arrested.

42. Plaintiff suffered damage caused by the Defendants' breach of this statutory duty and is entitled to compensation therefore.

WHEREFORE, Plaintiff prays that this Court:

ON THE FIRST CAUSE OF ACTION:

1. Award general and special damages to plaintiff;
2. Award costs, interest and attorneys' fees to plaintiff pursuant to 42 U.S.C. §1988 and other pertinent federal law;
3. Grant such other and further relief as the court deems just and proper.

ON THE SECOND CAUSE OF ACTION:

1 1. Award general and special damages to plaintiff;
2 2. Award costs to plaintiff;
3 3. Grant such other and further relief as the court deems just and proper.

5 **ON THE THIRD CAUSE OF ACTION:**

6 1. Award general and special damages to plaintiff;
7 2. Award costs to plaintiff;
8 3. Grant such other and further relief as the court deems just and proper.

10 **ON THE FOURTH CAUSE OF ACTION:**

11 1. Award general and special damages to plaintiff including those available under Civil
12 Code §1798.48(a);
13 2. Award costs and attorney's fees to plaintiff pursuant to Civil Code §1798.48(b);
14 3. Grant such other and further relief as the court deems just and proper.

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18 Dated: September 30, 2022



19 MICHAEL MILLEN, ESQ.
20 ATTORNEY FOR PLAINTIFF

JURY DEMAND

Plaintiff hereby requests a jury trial in this matter.

Dated: September 30, 2022

Miss Muller

MICHAEL MILLEN, ESQ.
ATTORNEY FOR PLAINTIFF



Bureau of Criminal Information and Analysis
Record Review and Challenge Section
P.O.Box 160207
Sacramento, CA 94203-4170

7/2/2021

REDACTED

Re: California Criminal History Information
CII # **REDACTED**

Dear **REDACTED**

This correspondence is in response to your written communication dated 6/25/2021, regarding your claim of alleged inaccuracy or incompleteness in your California state summary criminal history record as maintained by the California Department of Justice (DOJ).

Under California Penal Code Sections 11120-11126, the Record Review and Challenge Section assists individuals who would like to order a copy of their own California summary criminal history record, and dispute the material matter contained therein.

The DOJ is required, pursuant to California Penal Code section 11105(a)(2), to record specific arrest, disposition, and personal identification information when reported by a law enforcement agency or court of this state. Modification or deletion of this information can only occur at the direction of the contributing agency or by order of the court having jurisdiction over the criminal matter. As such, please be advised your claim of alleged inaccuracy or incompleteness is in process. Upon conclusion of the DOJ's findings, you will receive a written response.

If you have further questions or concerns regarding your record review, please direct your correspondence to the Record Review and Challenge Section at the address provided above.

Sincerely,

Record Review and Challenge Section
Record Quality Services Program
Bureau of Criminal Information and Analysis

For ROB BONTA
Attorney General