

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

MARLON KAUTZ,)
)
 Plaintiff)
)
 vs.)
)
 CITY OF ATLANTA, STAN TUCKER,)
 SHAREESE SHY, AND JEFFREY)
 BROWN, and John Doe)
)
 Defendants)

Civil Action File No.

COMPLAINT

NOW COMES Plaintiff, **MARLON KAUTZ**, and files this Complaint,
showing the Court as follows:

1.

Defendant **CITY OF ATLANTA** is a governmental entity in the State of Georgia that is the governing body over the Police Department and Code Enforcement in the City of Atlanta and is subject of the jurisdiction of this Court. Its Mayor is Keisha Lance Bottoms and may be served through her at 55 Trinity Avenue, Atlanta Georgia 30303.

2.

Defendant **JEFFREY BROWN** ("**Brown**"), in his individual capacity, is one of the City of Atlanta code enforcement officers who individually harmed

Plaintiff in this matter and may be served at work at through the Code Enforcement Section of the City of Atlanta police department at 818 Pollard Blvd SW, 3rd floor, Atlanta GA 30315.

3.

Defendant **STAN TUCKER (“Tucker”)** in his individual capacity, is one of the code enforcement officers who individually harmed Plaintiff in this matter and may be served at work at through the Code Enforcement Section of the City of Atlanta police department at 818 Pollard Blvd SW, 3rd floor, Atlanta GA 30315.

4.

Defendant **SHAREESE SHY (“Shy”)** in her individual capacity, is one of the code enforcement officers who individually harmed Plaintiff in this matter and may be served at work at through the Code Enforcement Section of the City of Atlanta police department at 818 Pollard Blvd SW, 3rd floor, Atlanta GA 30315.

5.

Defendant **John Does 1** is or are other yet unknown Defendants that are or may be liable to Plaintiff due to his injuries. They may be employees, contractors, or legal entities related to other Defendants or related governmental or private organizations or people and are each subject the jurisdiction and venue of this Court. Specifically, it is any person who may have authority to create the unconstitutional

policies at issue in this matter.

6.

All ante-litem notice requirements have been complied with.

7.

Venue is proper in this Court.

8.

All state agencies have waived immunity to liability as provided in O.C.G.A. § 51-21-20, related sections of the Georgia Tort Claims Act, and/or Georgia or Federal law.

COMMON COUNTS

9.

On or about 2010, Plaintiff's Constitutional rights were violated by police officers working for Defendant City of Atlanta, when they took a camera he was using to record government activities, and Plaintiff received a monetary settlement due to the rights violation.

10.

Plaintiff owns the home ("**Plaintiff's Residence**") located on or about 80 Mayson Avenue, Atlanta GA 30307.

11.

Plaintiff's Residence has various political messages, symbols, and slogans (**"Artwork"**) displayed on it, with the full permission of the Plaintiff.

12.

Some of the Artwork painted on Plaintiff's Residence could be seen as extreme, but none of the Artwork on Plaintiff's Residence is constitutionally impermissible.

13.

All of the Artwork is protected speech under the First and Fourteenth Amendments to the United States Constitution.

14.

The Artwork is critical of the government and law enforcement.

15.

On or about March of 2016, Defendants Tucker and Brown requested that Plaintiff remove the Artwork from his property.

16.

After Plaintiff refused to comply with removing the Artwork from his property, Plaintiff was cited by Defendant Brown for a violation of Atlanta housing code 74-174(b) dealing with Graffiti on or about April 18, 2016.

17.

Plaintiff incurred the expense of hiring an attorney, and the citation was dismissed in his favor on or about August 3, 2016.

18.

On or about October 6, 2016, Plaintiff sent an ante-litem notice and settlement demand to the City of Atlanta, which was denied on or about December 11, 2017. During this period, any statute of limitation was tolled pursuant to Georgia law.

19.

On or about September 7, 2017, Defendant Shy gave Plaintiff a “Violation Notice”, again alleging Graffiti on the property.

20.

At no time relevant herein did was Plaintiff or Plaintiff’s Residence in violation of any law regarding Graffiti.

21.

Defendant City of Atlanta has an unconstitutionally vague law, 74-174(b), against Graffiti, and/or the law is being applied against disfavored content by Defendants, as shown by the discrimination against the Artwork on Plaintiff’s Residence.

42 U.S.C. 1983, 1988 Individual Damages

22.

Plaintiff realleges all preceding paragraphs.

23.

Defendants' actions, including but not limited to citing Plaintiff using legal process, as well as verbal requests to remove the Artwork, were due to the content and message of the Artwork on Plaintiff's Residence, including but not limited to the statements "CopWatch", "Build Up Resistance Tear Down Oppression", "NO COPS", "Black Lives Matter", a symbol of A with a circle around it, "Burn the Prisons", "No Borders", "Fight Gentrification", and "Make My Day, Pig".

24.

Plaintiff was told verbally by Defendants and their agents that the content of the Artwork was the problem, and that specific slogans and words had to be removed due to their content.

25.

As a direct result of Defendants' actions and policies, Plaintiff suffered an unconstitutional deprivation of his rights under the First and Fourteenth Amendments to the United States Constitution.

26.

Defendants' statements to Plaintiff and citations constituted an unlawful prior restraint and attempt to chill Plaintiff's speech.

27.

Defendants acted intentionally and with complete disregard for Plaintiff's clearly established statutory and constitutional rights.

28.

Defendants' actions were willful and knowing, as they were warned via the October 6, 2016 ante-litem notice to the City of Atlanta of their policy and practice of harassing Plaintiff by law enforcement due to the speech on the building was unconstitutional, and Plaintiff had already had the charges dismissed once before, yet Defendant Shy sent a violation notice to Plaintiff in late 2017 which included the Artwork as a reason for violation.

29.

As a direct and proximate result of Defendants' violations of Plaintiff's statutory and constitutional rights, Plaintiff has suffered monetary damages, damage to reputation, humiliation, mental and emotional anguish and distress, and the damage intrinsic to a violation of his rights. Plaintiff is entitled to attorney's fees, costs, as well as general and special damages.

30.

Plaintiff's speech was on matters of public concern, and his right to his speech and Artwork outweighed any possible interest by Defendants in suppressing that speech.

31.

Plaintiff has been retaliated against for his past civil rights legal action against the City of Atlanta, and/or the content of his Artwork on his property, Artwork which is clearly constitutionally protected.

42 U.S.C. 1983, 1988 Equitable Relief and Monell

32.

Plaintiff incorporates all preceding paragraphs.

33.

Plaintiff has been targeted and stands a strong chance of continuing to be targeted for the Artwork on his property and his speech.

34.

Defendant City of Atlanta's policies and laws, including but not limited to 74-174(b), directly leads to rights violations such as the ones suffered by Plaintiff at two different times over the past two years.

35.

Plaintiff respectfully requests injunctive relief against Defendants, prohibiting them from targeting Plaintiff's Residence for Code Enforcement action based on the Artwork or alleged "Graffiti" on the property.

36.

Assuming arguendo that the Court holds that Defendants were properly following City Code 74-174(b), Plaintiff respectfully requests declaratory relief against the City of Atlanta, declaring 74-174(b) unconstitutionally vague.

37.

Assuming arguendo that the Court holds that Defendants were properly following City Code 74-174(b) or internal policy, procedure, and practice, Plaintiff requests that this court hold Defendant City of Atlanta liable pursuant to *Monell*, as Defendants' policies, procedures, laws, practice, and/or customs directly led to the violation of Plaintiff's First Amendment rights.

STATE LAW CLAIMS

38.

Plaintiff reincorporates all previous paragraphs.

39.

Defendants, and their agents and employees, had a ministerial, mandatory duty to only cite people who were violating the law of the City of Atlanta, not due to

personal opinions on content of speech or Artwork.

40.

Defendants, and their agents and employees, have a duty to adopt policies, training, and procedures that protect citizens' Constitutional rights, and to ensure that their employees and agents do the same.

41.

Defendants, and their agents and employees, have a duty to follow Georgia and Federal law.

42.

Defendants, and their individual agents and employees under their control, breached their duty to Plaintiff by adopting policies, practices, and procedures that target people with Code Enforcement citations, under the color of law, based on the content of speech or Artwork on their property.

43.

Defendants, and their individual agents and employees under their control, breached their duty to Plaintiff by adopting policies and procedures that fail to adequately protect citizens' rights to due process and free speech under Federal and State Law.

44.

Defendants, and their individual agents and employees under their control, breached their duty to Plaintiff by failing to train and supervise employees and other agents in a manner that ensured Defendants' rights were protected.

45.

Defendants, and their individual agents and employees under their control, breached their duty to Plaintiff by failing to cease citing him after they learned that Plaintiff's "Graffiti" was not Graffiti, but voluntary artwork on Plaintiff's property.

46.

Defendants' actions and inactions caused Plaintiff general and special damages, including significant physical pain and distress, a loss of liberty, and lost money-earning opportunities.

47.

Based on all of the allegations above, the actions of Defendants, as set forth, show willful misconduct, wantonness and that entire want of care which raises the presumption of a conscious indifference to the consequences of their actions.

Accordingly, Plaintiff seeks punitive damages pursuant to O.C.G.A. § 51-12-5.1 or any other applicable law.

WHEREFORE, Plaintiff prays:

- (a) That Summons issue requiring Defendants to be and appear in this

Court within the time provided by law to answer this Complaint;

- (b) That Plaintiff have a Jury Trial;
- (c) That Plaintiff has Judgment against Defendants for Compensatory Damages and General Damages as provided by law;
- (d) That Plaintiff be awarded Punitive Damages and Attorney's Fees as provided by law;
- (d) That Plaintiff be awarded injunctive and declaratory relief, *and*,
- (e) That Plaintiff have such other additional relief as the Court may consider equitable and/or appropriate given the circumstances of this case.

Respectfully Submitted, this 5th day of April 2018.

/s/Jordan Johnson

Jordan Johnson

Georgia State Bar No. 673643

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