

FORMAN, CARDONSKY, LAWRENCE & ANTONUCCI
701 Westfield Ave.
Elizabeth, New Jersey 07208
(908) 353-6500
Attorneys for Plaintiff

SUPERIOR COURT OF NJ
CIVIL DIVISION
ESSEX COUNTY

2013 SEP 20 P 1:51

Plaintiff,
ADRIANA M. BARRIENTOS

vs.

Defendants,
**UNION COUNTY ASSISTANT
PROSECUTOR, SUSAN GLEASON,
and/or UNION COUNTY PROSECUTOR,
THEODORE ROMANKOW,
and/or CITY OF ELIZABETH and/or
CITY OF ELIZABETH POLICE
DEPARTMENT, and/or DETECTIVE
THOMAS KOCZUR, and/or OFFICER J.
ESCALEIRA, and/or OFFICER E. COLON,
and/or JOHN DOES (1-10 whose
names are unknown to Plaintiff at this time)**

FINANCE DIVISION
SUPERIOR COURT OF NEW JERSEY / FILED
LAW DIVISION: ESSEX COUNTY 29

DOCKET NO. **ESX-L 7419-13**

CIVIL ACTION

COMPLAINT AND JURY DEMAND

SEP 20 2013
LAW DIVISION
ESSEX COUNTY
FINANCE DIVISION
RECEIVED FILED 4/28

Plaintiff, Adriana M. Barrientos, of age 19, born September 20, 1993, residing at 141 Race Street, in the City of Elizabeth, County of Union and State of New Jersey by way of this Complaint against the Defendants herein, says:

STATEMENT OF FACTS

1. On or about April 5, 2009, Troy and Edward Barrientos, brothers of Plaintiff, Adriana Barrientos, were allegedly robbed at gunpoint by Marcus Drake for a quarter-pound of marijuana at 644 Salem Avenue, Elizabeth, New Jersey.
2. Abraham Soliman accompanied Mr. Drake during his rendezvous with the Barrientos brothers, but allegedly did not assist in the robbery.

1 BATCH # **879** FILED **9.20.13**
CHECK/RECEIPT# **7421** AMT **200-**

3. Mr. Drake fled the scene, and left Mr. Soliman behind with Troy and Edward Barrientos.
4. Mr. Soliman, allegedly of his own volition, stayed with Troy and Edward Barrientos and tried to get the \$200 that was owed to them for the stolen marijuana.
5. Mr. Soliman contacted his sister, Ogini Soliman, in an attempt to get the money for him.
6. Ogini Soliman then called the Elizabeth Police Department and reported that her brother had been kidnapped.
7. Ogini Soliman allegedly dropped off \$200 in an envelope at an agreed upon location.
8. On or about the evening of April 5, 2009 or early morning of April 6, 2009, Plaintiff, Adriana Barrientos talked on the phone with Caroline Rodriguez. Plaintiff sent a text message to Caroline stating "don't go to sleep yet."
9. At or about 2:30 a.m. on April 6, 2009, Caroline Rodriguez allegedly went to the rendezvous point and picked up the envelope containing the \$200.
10. At or about 5:30 a.m. on April 6, 2009, the Rodriguez sisters and their mother, Patricia Rodriguez, were awoken by the SWAT team at 546 Magnolia Avenue, Elizabeth, New Jersey.
11. Patricia Rodriguez gave the officers consent to search the home. The officers found a white envelope containing \$200 in Caroline's room.
12. Thereafter, the police raided the Barrientos' aunt's home located at 644 Salem Avenue, Elizabeth, New Jersey in an attempt to locate Troy and Edward Barrientos.
13. Police did not find Troy and Edward Barrientos at 644 Salem Avenue but found their then 15-year-old sister, Plaintiff, Adriana Barrientos and arrested her without probable cause.

14. Plaintiff was escorted to the Linden Juvenile Correction Center and wrongfully detained from April 6, 2009 until April 16, 2009.
15. Plaintiff was charged with kidnapping and conspiring to commit a kidnapping.
16. At Plaintiff's Court date, the Union County Prosecutor stated that Plaintiff's parents would not get their daughter back until their sons, Troy and Edward Barrientos, turn themselves in. Plaintiff's lawyer, Mark Sperber, opined, "So, you're using her as bait?" To which the prosecutor replied, "Call it what you want."
17. In or about April 2009, Detective Kozcur allegedly threatened Plaintiff's father, Heriberto Barrientos, and promised him that he and his daughter would be exonerated as soon as Troy and Edward turned themselves in.
18. Troy and Edward turned themselves in on or about April 10, 2009.
19. Plaintiff continued to be detained at the Linden Juvenile Detention Center until April 16, 2009.
20. Plaintiff went to Court on May 18, 2009, and was told she would have to come back on June 15, 2009.
21. The criminal charges against Plaintiff were dismissed on or about June 15, 2009.
22. Plaintiff hereby timely brings this claim within two years of her 18th birthday.

COUNT 1

1. Plaintiff repeats and re-alleges all of the allegations of the previous paragraphs as if the same were set forth herein at length.

2. This Count is brought pursuant to New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and Article I, Section 1 and Article I, Section 7 of the New Jersey State Constitution.
3. Defendants, Detective KOZCUR, Officer J. ESCALEIRA, and Officer E. COLON were at all times relevant hereto acting within the scope of their employment with Defendant, City of Elizabeth and/or Elizabeth Police Department and were at all times acting under color of State and Municipal Law.
4. Defendant Prosecutor Theodore ROMANKOW and Defendant Assistant Prosecutor Susan GLEASON were at all times relevant hereto acting within the scope of their employment and were at all times acting under color of State Law.
5. Defendants are "persons" within the meaning of New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and acted under color of State and Municipal Law.
6. Defendants, Detective KOZCUR, Officer J. ESCALEIRA, and Officer E. COLON violated Plaintiff's right to be protected against unreasonable seizure as guaranteed by Article I, Section 7 of the New Jersey State Constitution, in violation of her civil rights under Article 1, Section 1 of the New Jersey State Constitution and in violation the New Jersey Civil Rights Act (N.J.S.A. 10:6-2) by:
 - a) seizing Plaintiff's person without probable cause, or other legal justification, and/or
 - b) using excessive force to accomplish said seizure, and/or
 - c) filing a false report and swearing out a false complaint against Plaintiff.

7. As a direct and proximate result of the wrongful actions of the Defendants, as set forth aforesaid, Plaintiff Adriana BARRIENTOS, has in the past and will in the future endure pain and suffering; has in the past and will in the future be caused to incur medical expenses; has in the past and will in the future be caused to lose time from her usual pursuits and occupations; has in the past and will in the future suffer mental anguish and emotional distress; and was deprived of her liberties and caused to suffer permanent injuries.

8. Defendants' actions as described above were willful, wonton, and/or malicious.

WHEREFORE, the Plaintiff, ADRIANA BARRIENTOS, demands judgment against the Defendants pursuant to the New Jersey Civil Rights Act (N.J.S.A. 10:6-2) for compensatory and/or punitive damages, together with interest, costs of suit and counsel fees.

COUNT II

1. Plaintiff repeats and re-alleges all of the allegations of the previous paragraphs as if the same were set forth herein at length.
2. This Count is brought pursuant to New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and Article I of the New Jersey State Constitution.
3. Defendant, Detective KOZCUR, was at all times relevant hereto acting within the scope of their employment with Defendant, City of Elizabeth and/or Elizabeth Police Department and were at all times acting under color of State and Municipal Law.

4. Defendant Prosecutor Theodore ROMANKOW and Defendant Assistant Prosecutor Susan GLEASON were at all times relevant hereto acting within the scope of their employment and were at all times acting under color of State Law.
5. Defendants are "persons" within the meaning of New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and acted under color of State and Municipal Law.
5. Defendants violated Plaintiff's right to be free from unreasonable seizure of her person as guaranteed by Article I of the New Jersey State Constitution by continuing confinement of Plaintiff after Defendants knew or should have known that any probable cause or other legal justification had ceased to exist.
6. As a direct and proximate result of the foregoing Plaintiff was caused to suffer injury including but not limited to severe emotional and mental distress.

WHEREFORE, the Plaintiff, Adriana Barrientos, demands judgment against the Defendant, Detective Kozcur, pursuant to the New Jersey Civil Rights Act (N.J.S.A. 10:6-2) for compensatory and/or punitive damages, together with interest, costs of suit and counsel fees and such other relief as Plaintiff may be entitled to.

COUNT III

1. Plaintiff repeats and re-alleges all of the allegations of the previous paragraphs as if the same were set forth herein at length.
2. This Count is brought pursuant to New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and Article I, Section 1; Article I, Section 7 of the New Jersey State Constitution.

3. Defendants, CITY OF ELIZABETH and/or CITY OF ELIZABETH POLICE DEPARTMENT are vested by state law with the authority to make policy on the use of force, effectuating arrests and police-citizen encounters and were responsible for the training and supervision of the individual Defendants named herein. Specifically, CITY OF ELIZABETH and/or CITY OF ELIZABETH POLICE DEPARTMENT are responsible for training police officers in probable cause, the use of force and are responsible for conducting internal affairs investigations.
4. The individual Defendants herein were at all times relevant hereto acting under the direction and control CITY OF ELIZABETH and/or CITY OF ELIZABETH POLICE DEPARTMENT and were acting pursuant to the official policy, practice or custom of said Defendants.
5. Acting under color of state law, Defendants CITY OF ELIZABETH and/or CITY OF ELIZABETH POLICE DEPARTMENT intentionally, knowingly, recklessly and/or with deliberate indifference failed to screen prior to hiring, train, instruct, supervise, control, and discipline, on a continuing basis, the individual defendants herein in their duties to refrain from: (1) assaulting, restraining and harassing citizens; (2) falsifying police reports and/or other official records; (3) intentionally, recklessly and/or negligently misrepresenting the facts of arrests and/or other police-citizen encounters and/or (4) using unreasonable and excessive force.
6. Said Defendants had knowledge of, or, had they diligently exercised their duties to screen, instruct, train, supervise, control, and discipline the individual Defendants on a continuing basis, should have had knowledge that the wrongs which were done, as heretofore alleged, were about to be committed.

7. Said Defendants had the authority and responsibility to prevent or aid in preventing the commission of said wrongs, and could have done so by reasonable diligence, and intentionally, knowingly, recklessly and/or with deliberate indifference failed to do so.
8. Said Defendants directly or indirectly, under color of State law, approved or ratified the unlawful, deliberate, malicious, reckless, and wanton conduct of the individual Defendants heretofore described.
9. As a direct and proximate result of the acts and omissions of said Defendants as set forth herein, Plaintiff suffered physical and emotional injury, medical expenses, and mental anguish in connection with the deprivation of her constitutional rights.

WHEREFORE, the Plaintiff, demands judgment against the Defendants pursuant to the New Jersey Civil Rights Act (N.J.S.A. 10:6-2) for compensatory and/or punitive damages, together with interest, costs of suit and counsel fees.

COUNT IV

1. Plaintiff repeats and re-alleges all of the allegations of the previous paragraphs as if the same were set forth herein at length.
2. This Count is brought pursuant to New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and Article I, Section 1 and Article I, Section 7 of the New Jersey State Constitution.
3. Defendant Detective KOZCUR was at all times relevant hereto acting within the scope of their employment with Defendant, City of Elizabeth and/or Elizabeth Police Department, and were at all times acting under color of State and Municipal Law.

4. Defendant Prosecutor Theodore ROMANKOW and Defendant Assistant Prosecutor Susan GLEASON were at all times relevant hereto acting within the scope of their employment and were at all times acting under color of State Law.
5. Defendants are "persons" within the meaning of New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and acted under color of State and Municipal Law.
6. Defendants wrongfully arrested Plaintiff and initiated criminal judicial proceedings against her.
7. Plaintiff continued to be unlawfully confined and deprived of her liberty from April 6 to April 16, 2009.
8. Defendants KOZCUR, ROMANKOW and GLEASON were responsible for and/or caused the proceeding to be instituted against Plaintiff.
9. Defendants lacked reasonable or probable cause for the criminal prosecution against Plaintiff.
10. The criminal charges against Plaintiff were dismissed on June 15, 2009.
11. The aforementioned conduct deprived Plaintiff of rights, privileges, or immunities secure by the Constitution and/or laws of New Jersey.
12. Defendants' actions as described above were willful, wonton, and/or malicious.
13. As a direct and proximate result of the foregoing, Plaintiff was caused to suffer injury including but not limited to severe emotional and mental distress, discomfort, and loss of time and deprivation of society.

WHEREFORE, the Plaintiff, Adriana Barrientos, demands judgment against the Defendants, for compensatory and/or punitive damages, together with interest, costs of suit and counsel fees and such other relief as Plaintiff may be entitled to.

COUNT V

1. Plaintiff repeats and re-alleges all of the allegations of the previous paragraphs as if the same were set forth herein at length.
2. This Count is brought pursuant to New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and Article I of the New Jersey State Constitution.
3. Defendants, Detective KOZCUR, was at all times relevant hereto acting within the scope of their employment with Defendant, City of Elizabeth and/or Elizabeth Police Department and were at all times acting under color of State and Municipal Law.
4. Defendant Prosecutor Theodore ROMANKOW and Defendant Assistant Prosecutor Susan GLEASON were at all times relevant hereto acting within the scope of their employment and were at all times acting under color of State Law.
5. Defendants are "persons" within the meaning of New Jersey Civil Rights Act (N.J.S.A. 10:6-2) and acted under color of State and Municipal Law.
6. Defendants made an improper, illegal and/or perverted use of the legal procedure against Plaintiff, because their resort to the legal process was neither warranted nor authorized by law.

7. Defendants had an ulterior motive in initiating the legal process, specifically, using Plaintiff as bait to get her brothers to turn themselves in to the police.
8. Defendants' actions were a blatant misuse and/or misapplication of the legal procedure in a manner not contemplated by law.
9. The aforementioned conduct deprived Plaintiff of rights, privileges, or immunities secure by the Constitution and/or laws of New Jersey.
10. Defendants' actions as described above were willful, wonton, and/or malicious.
11. As a direct and proximate result of the foregoing Plaintiff was caused to suffer injury including but not limited to severe emotional and mental distress, discomfort, and loss of time and deprivation of society.

WHEREFORE, the Plaintiff, Adriana Barrientos, demands judgment against the Defendants, for compensatory and/or punitive damages, together with interest, costs of suit and counsel fees and such other relief as Plaintiff may be entitled to.

COUNT VI

1. Plaintiff repeats and re-alleges all of the allegations of the previous paragraphs as if the same were set forth herein at length.
2. Defendant, Detective Kozcur, was at all times relevant hereto acting within the scope of his employment with Defendant, City of Elizabeth and/or Elizabeth Police Department and was at all times acting under color of State Law.
3. The unlawful arrest and detention of Plaintiff by Detective Kozcur and John Doe Defendants constituted a violation of Plaintiff's civil rights.

- 4. The Defendant, Elizabeth Police Department, is liable for damages sustained by Plaintiff, under principles of vicarious liability and/or Respondeat Superior.
- 5. As a direct and proximate result of the foregoing Plaintiff was caused to suffer injury including but not limited to severe emotional and mental distress:

WHEREFORE, the Plaintiff, Adriana Barrientos, demands judgment against the Defendants, for compensatory and/or punitive damages, together with interest, costs of suit and counsel fees and such other relief as Plaintiff may be entitled to.

JURY DEMAND

PLEASE TAKE NOTICE that the Plaintiff hereby demands a trial by jury on all issues.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Mark C.G. Lawrence, Esq., is hereby designated as trial counsel of the within matter.

**FORMAN, CARDONSKY,
LAWRENCE & ANTONUCCI**
Attorneys for Plaintiff

By: 
SILVIA G. GERGES ESQ.

DATED: September 19, 2013

CERTIFICATION

I certify that there is no other action pending before any Court involving or regarding the subject matter in controversy set forth in the within Complaint, nor is there pending before any tribunal any arbitration proceeding involving said subject matter, nor is any such action or arbitration proceeding contemplated. There are no other parties to this action known to us who should be or might be joined in this action.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.

By: 
SILVIA G. GERGES, ESQ.

DATED: September 19, 2013

SUPERIOR COURT OF NJ
CIVIL DIVISION
ESSEX COUNTY
2013 SEP 20 P 1:50
TRAVEL DIVISION
RECEIVED/FILED
23