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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Eugene Division

MICHAEL GARDNER,

Case No. 6:13-cv-2242

Plaintiff,

v.

TOMMY HO, JOHN DOE and UNITED
STATES BUREAU OF ALCOHOL,
TOBACCO, FIREARMS, AND
EXPLOSIVES,

COMPLAINT - VIOLATION OF 42
U.S.C. § 1983, CONVERSION,
INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS

(DEMAND FOR JURY TRIAL)

Defendants.

Plaintiffs allege:

JURISDICTION

1.

Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331 and 28 U.S.C. § 1367. Plaintiff requests a jury trial in this matter.

SUPPLEMENTAL JURISDICTION

2.

This Court has supplemental jurisdiction over Plaintiff's state law claim pursuant to 28 U.S.C. § 1367. Plaintiff's state law claim is so closely related to his federal law claim that they form part of the same case or controversy under Article 3 of the United States Constitution and the state law claim constitutes part of the same constitutional case as Plaintiff's federal claim.

VENUE

3.

Venue is appropriate in this Court under 28 U.S.C. § 1391 because a majority of the events giving rise to this complaint occurred in Lane County, Oregon.

4.

Plaintiff Michael Gardner ("Gardner") resides in Lane County, Oregon.

5.

Defendant United States Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") is an independent federal agency regulated by the United States Congress and employs field agents that work within Lane County, Oregon. Defendant Tommy Ho ("Ho") was at all relevant times employed by the ATF and was acting in the course and scope of his employment and was acting under color of law. Defendant John Doe ("Doe") was at all relevant times employed by the ATF and was acting in the course and scope of his employment and was acting under color of law.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

6.

On or about June 20, 2007, Defendants executed a search warrant on Plaintiff's home at 3980 Shenstone Drive, Eugene, Oregon. The search warrant was issued pursuant to a sworn affidavit by Defendant Ho.

7.

Defendant's claimed Plaintiff had in his possession evidence, contraband, fruits or instrumentalities of violations of 18 U.S.C. §§ 922(a)(2), 922(b)(3), and 922(b)(5).

8.

As a result of the search, Defendants seized various items of Plaintiff's property. The seized property included:

1. (2x) M1919A4 receiver plate, .30 caliber;
2. M37 receiver plate, .30 caliber;
3. FN30 receiver plate, .30 caliber;
4. M2 receiver plate, .50 caliber;
5. Sterling tube, 9mm; and
6. Cobray receiver, 9mm.

9.

On or about June 21, 2013, the statute of limitations for all potential criminal charges related to the 2007 search, and seizure of the above listed property, expired. No formal charges were ever filed.

10.

As of the date of this complaint, none of the above listed property has been returned to Plaintiff, nor has he received the value thereof. Defendants Doe and ATF continue to exercise dominion or control over Plaintiff's property and have refused to provide Plaintiff with adequate value for the property. The current state of the property, intact, damaged, destroyed, etc., is unknown.

11.

To replace the seized property listed above, Plaintiff would be required to obtain blueprints to draw, program, and build fixtures and parts for FN30 receiver plate, the M2 receiver plate, the

Sterling tube, and the Cobray receiver. Therefore, the value of the property at the time of conversion without due process was approximately \$10,000.

12.

On or about August 29, 2013, Plaintiff served Defendant ATF with a tort claims notice, demand for return of seized property, or the value thereof, and a Claim for Damage, Injury, or Death Standard Form 95.

13.

On or about October 4, 2013, Plaintiff received a response letter dated September 26, 2013 denying Plaintiffs claims and offering \$430, which Defendant ATF claimed “represents the value of the seven items that ATF seized.”

14.

As a result of the actions of Defendants described in this complaint, Plaintiff has sustained economic damages in the form of converted property valued at approximately \$10,000. Plaintiff has sustained non-economic damages in the form of emotional distress, embarrassment, worry, and anxiety, all to his non-economic damages in the amount of \$500,000. Plaintiff requests punitive damages for claims that provide for such damages in this Complaint.

**PLAINTIFFS - FIRST CLAIM FOR RELIEF CLAIM FOR RELIEF AGAINST
DEFENDANTS TOMMY HO AND JOHN DOE – VIOLATION OF 42 U.S.C. § 1983**

(Violation of Fourth Amendment Due Process Right Against Ho, Doe)

15.

Plaintiffs re-allege paragraphs 1 - 14. 42 U.S.C. § 1983 provides that a party shall be liable when it “subjects, or causes to be subjected, any person of the United States . . . deprivation of any rights, privileges, or immunities secured by the Constitution and laws of the United States.”

16.

At all times material to this complaint, Ho and Doe acted or purported to act in the performance of official duties under federal law, ordinances or regulations. Ho and Doe caused Plaintiff to be deprived of his right to due process under the law, as guaranteed to them by the Fourth Amendment of the U.S. Constitution. Their violation of Plaintiff's right was done during the performance of official duties.

17.

Plaintiff's Fourth Amendment due process right was violated by Ho and Doe when they continued to maintain dominion or control over Plaintiff's property after the statute of limitations expired for all criminal charges related to the property, without any formal charges having been filed.

18.

Plaintiff never surrendered his rights to the seized property and Defendant Ho and Doe have not established any prevailing purpose or reason for continuing dominion or control over the property following the expiration of the statute of limitations for any criminal charges related to the property. Defendant Ho and Doe have deprived, and continue to deprive, Plaintiff of his right to property without due process of law.

19.

As a result of Defendant Ho and Doe's violation of 42 U.S.C. § 1983, Plaintiff has incurred economic and non-economic damages as described in paragraph 14. Plaintiff seeks recovery of all compensatory and punitive damages provided by law, in addition to equitable relief, reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988.

PLAINTIFF'S SECOND CLAIM FOR RELIEF AGAINST ATF - CONVERSION

20.

Plaintiffs re-allege paragraphs 1 - 19. Defendant ATF had a duty to return Plaintiff's property once legal basis for retaining possession, dominion, or control ceased to exist, by way of expiration of statute of limitations deadlines for all potential criminal charges related to the property.

21.

Defendant ATF has, and continues to, exercise dominion or control over the property listed in paragraph 8 which so seriously interferes with the right of Plaintiff to control the property.

22.

Demand for return, or payment of the value of the property, has been refused by the ATF. Plaintiff is the true owner of the property at issue.

23.

As a result of Defendant ATF's action as described above, Plaintiff has incurred economic and non-economic damages as described in paragraph 14. Plaintiff seeks recovery of all compensatory and punitive damages provided by law.

**PLAINTIFF'S THIRD CLAIM FOR RELIEF AGAINST ATF - INTENTIONAL
INFLICTION OF EMOTIONAL DISTRESS**

24.

Plaintiffs re-allege paragraphs 1 - 23. Defendant ATF knew that the aforementioned conduct would cause severe mental or emotional distress or acted despite a high degree of probability that mental or emotional distress would result. Defendant ATF's conduct caused Plaintiff severe mental or emotional distress from the foreseeable highly unpleasant emotional reactions including anger,

worry, grief, embarrassment, disappointment, and humiliation. The aforementioned actions of Defendants were unreasonable, extreme, and shocking under the circumstances.

25.

As a result of Defendant ATF's conduct, Plaintiff requests non-economic damages in the amount of \$500,000.

WHEREFORE, Plaintiff requests the following for their claims for relief:

1. For Plaintiff's First Claim for Relief Against Ho and Doe: Plaintiff requests economic damages of approximately \$10,000, to be proven at trial and requests \$500,000 in non-economic damages. Plaintiff seeks recovery of all compensatory and punitive damages provided by law in addition to reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988.
2. For Plaintiff's Second Claim for Relief Against ATF: Plaintiff requests economic damages of approximately \$10,000, to be proven at trial and requests non-economic damages in the amount of \$500,000. Additionally, Plaintiff requests recovery of all compensatory and punitive damages provided by law.
3. For Plaintiffs' Third Claim for Relief Against ATF: Plaintiff requests non-economic damages in the amount of \$500,000.
4. Costs and disbursements incurred in this matter.

DATED this 18th day of December, 2013.

s/Kevin T. Lafky
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LAFKY & LAFKY
Of Attorneys for Plaintiffs