

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

STEVEN F. COX, KELLY FREEMAN, RUFUS)
IRVING, KEITH FASON, ERNIE KIRK and)
DAVID NAGI Individually and on behalf of all)
similarly situated persons,)
)
Plaintiffs,) NO. 1:19-cv-01026-JDB-jay
) JURY TRIAL DEMANDED
vs.) Rule 23 Class Action
)
CITY OF JACKSON, TENNESSEE,)
)
Defendant.)

FIRST AMENDED CLASS ACTION COMPLAINT

I. JURISDICTION AND VENUE

1. This is an individual and class action for damages, declaratory and injunctive relief, both preliminary and permanent, to redress the violation of rights secured by the Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is invoked pursuant to 42 U.S.C. § 1983, 1988 and 28 U.S.C. § 1331. Declaratory injunctive relief is authorized pursuant to 28 U.S.C. § 2201 and 2202. All of the actions complained of herein occurred in the City of Jackson, Madison County, Tennessee, within the jurisdiction and venue of this Court.

II. PARTIES

2. Plaintiff, Steven F. Cox, was arrested by police officers employed by the Defendant on March 1, 2018 and charged in Jackson City Court with Aggravated Assault and Kidnapping and detained until March 2, 2018 without having an arrest warrant or Affidavit of Complaint issued upon a finding of probable cause that he had committed a crime, after being sworn to before a

magistrate or a neutral and detached clerk, as required by the Fourth Amendment to the Constitution of the United States of America. Plaintiff Cox is and was a resident of Jackson, Tennessee, at all times relevant to the matters at issue herein.

3. Plaintiff, Kelly Freeman, was arrested by police officers employed by the Defendant on January 8, 2017 and charged in Jackson City Court with Driving Under the Influence and detained until January 9, 2017 without having an arrest warrant or Affidavit of Complaint issued upon a finding of probable cause that she had committed a crime, after being sworn to before a magistrate or a neutral and detached clerk, as required by the Fourth Amendment to the Constitution of the United States of America. Plaintiff Freeman is and was a resident of Jackson, Tennessee, at all times relevant to the matters at issue herein.

4. Plaintiff, David Nagi, was arrested by police officers employed by the Defendant on January 11, 2017 and charged in Jackson City Court with Driving on a Revoked or Suspended License and detained until February 17, 2017 without having an arrest warrant or Affidavit of Complaint issued upon a finding of probable cause that he had committed a crime, after being sworn to before a magistrate or a neutral and detached clerk, as required by the Fourth Amendment to the Constitution of the United States of America. Plaintiff Nagi is and was a resident of Jackson, Tennessee, at all times relevant to the matters at issue herein.

5. Plaintiff, Rufus Irvin, was arrested by police officers employed by the Defendant on January 11, 2017 and charged in Jackson City Court with Public Intoxication in the Jackson City Court and detained until January 23, 2017 without having an arrest warrant or Affidavit of Complaint issued upon a finding of probable cause that he had committed a crime, after being sworn to before a magistrate or a neutral and detached clerk, as required by the Fourth Amendment

to the Constitution of the United States of America. Plaintiff Irvin is and was a resident of Jackson, Tennessee, at all times relevant to the matters at issue herein.

6. Plaintiff, Keith Fason, was arrested by the Defendant on March 8, 2016 and charged in Jackson City Court with Driving on a Revoked or Suspended License and Evading Arrest and detained until March 24, 2016 without having an arrest warrant or Affidavit of Complaint issued upon a finding of probable cause that he had committed a crime, after being sworn to before a magistrate or a neutral and detached clerk, as required by the Fourth Amendment to the Constitution of the United States of America. Plaintiff Fason is and was a resident of Jackson, Tennessee, at all times relevant to the matters at issue herein.

7. Plaintiff Ernie Kirk was arrested by the Defendant on April 8, 2017 and charged in Jackson City Court with Driving on a Revoked or Suspended License and detained until April 17, 2017 without having an arrest warrant or Affidavit of Complaint issued upon a finding of probable cause that he had committed a crime, after being sworn to before a magistrate or a neutral and detached clerk, as required by the Fourth Amendment to the Constitution of the United States of America. Plaintiff Kirk is and was a resident of Jackson, Tennessee, at all times relevant to the matters at issue herein.

8. Defendant, City of Jackson, Tennessee, is a governmental entity duly incorporated under the laws of the State of Tennessee. Defendant City of Jackson is responsible for the policies, practices, and customs of its police department, City Court Clerk's office, as well as the training, supervision and control of its officers, deputies, clerks and officials. Defendant City of Jackson is and was the employer of all members of the Jackson Police Department and City Court Clerk's Office, both named and unnamed herein. The agent for service of process of the Defendant City

of Jackson is Jerry Gist, City Mayor, who may be served at 121 East Main Street, Suite 301, Jackson, Tennessee 38301.

III. DUTY

9. At all times pertinent hereto, Plaintiffs allege that the Defendant in this matter owed them a duty to realize, prevent, and/or protect Plaintiffs from the harm that City of Jackson officials, employees, and/or agents presented to and inflicted upon them. Plaintiffs further allege that the Defendant owed them a duty to appropriately/adequately hire, supervise, and train City of Jackson officials, employees, and/or agents in order to prevent and protect them from the harm inflicted in this matter.

IV. STATEMENT OF FACTS

10. Plaintiff, Steven Cox was arrested by police officers employed by the Defendant on March 1, 2018 and charged in Jackson City Court with Aggravated Assault and Kidnapping and detained until March 2, 2018 without having an arrest warrant or Affidavit of Complaint issued upon a finding of probable cause that he had committed a crime, after being sworn to before a magistrate or a neutral and detached clerk, as required by the Fourth Amendment to the Constitution of the United States of America.

11. Plaintiff, Kelly Freeman was arrested by police officers employed by the Defendant on January 8, 2017 and charged in Jackson City Court with Driving Under the Influence and detained until January 9, 2017 without having an arrest warrant or Affidavit of Complaint issued upon a finding of probable cause that she had committed a crime, after being sworn to before a magistrate or a neutral and detached clerk, as required by the Fourth Amendment to the Constitution of the United States of America.

12. Plaintiff, Rufus Irvin, was arrested by police officers employed by the Defendant on January 11, 2017 and charged with Public Intoxication in the Jackson City Court and detained until January 23, 2017 without having an arrest warrant or Affidavit of Complaint issued upon a finding of probable cause that he had committed a crime, after being sworn to before a magistrate or a neutral and detached clerk, as required by the Fourth Amendment to the Constitution of the United States of America.

13. Plaintiff Keith Fason was arrested by the Defendant on March 8, 2016 and charged in Jackson City Court with Driving on a Revoked or Suspended License and Evading Arrest and detained until March 24, 2016 without having an arrest warrant or Affidavit of Complaint issued upon a finding of probable cause that he had committed a crime, after being sworn to before a magistrate or a neutral and detached clerk, as required by the Fourth Amendment to the Constitution of the United States of America.

14. Plaintiff Ernie Kirk was arrested by police officers employed by the Defendant on April 8, 2017 and charged in Jackson City Court with Driving on a Revoked or Suspended License and detained until April 17, 2017 without having an arrest warrant or Affidavit of Complaint issued upon a finding of probable cause that he had committed a crime, after being sworn to before a magistrate or a neutral and detached clerk, as required by the Fourth Amendment to the Constitution of the United States of America.

15. Plaintiff, David Nagi was arrested by police officers employed by the Defendant on January 11, 2017 and charged in Jackson City Court with Driving on a Revoked or Suspended License and detained until February 17, 2017 without having an arrest warrant or Affidavit of Complaint issued upon a finding of probable cause that he had committed a crime, after being

sworn to before a magistrate or a neutral and detached clerk, as required by the Fourth Amendment to the Constitution of the United States of America.

16. At the time of Plaintiffs' arrests and for some unknown period of time prior to and after their arrests, the Defendant engaged in a pattern and practice of failing to have arrest warrants and/or Affidavits of Complaint sworn to before a magistrate or a neutral and detached clerk upon a finding of probable cause that the accused had committed a crime as required by the Fourth Amendment to the Constitution of the United States of America. Pursuant to said pattern and practice, there was no finding of probable cause by a neutral and detached magistrate that Plaintiffs had committed a crime prior to their arrests and detention or promptly thereafter as required by *Gerstein v. Pugh*, 420 U.S. 103 (1975) and its progeny on the above Jackson City Court charges, thus rendering their pre-trial detention unlawful under the Fourth and Fourteenth Amendments of the United States Constitution.

17. It is impossible to determine from the face of the arrest warrant/Affidavit of Complaint that the Defendant failed to have them sworn to before a magistrate or detached and neutral clerk and a finding of probable cause made as required by the Fourth and Fourteenth Amendments. Plaintiffs and the putative class members were not aware of the constitutional deficiency, nor could they have discovered it through the exercise of reasonable diligence, until the District Attorney for the 26th Judicial District of Tennessee issued a press release to the local media about the deficiency on January 18, 2018.

18. Plaintiffs aver that according to the above-referenced press release from the District Attorney these deficiencies in the arrest warrant procedure have potentially been ongoing for several years and have affected a number of putative class members prosecuted in the Jackson City

Court. The existence of the deficiency was not known to any of the putative class members until after the press release by the District Attorney.

V. CLASS ALLEGATIONS

19. The named Plaintiffs bring this as a Class Action pursuant to Rule(23)(a) of the Federal Rules of Civil Procedure, and pursuant to both Rule 23(b)(3) for monetary damages and Rule (23)(b)(2) for injunctive relief as defined by the following:

For some time prior to January 8, 2017 and after March 11, 2018, Plaintiffs and all similarly situated persons to whom Defendants have subjected (or intended to subject) the practice of arresting and detaining without obtaining a properly sworn and executed arrest warrant or Affidavit of Complaint supported by a proper finding of probable cause by a magistrate or detached and neutral or authorized clerk. Excluded from this Class are the named Defendant, their agents, affiliates, and employees, the Judge assigned to this matter, and his or her staff.

20. **Numerosity:** The requirements of Rule 23(a)(1) are satisfied in that there are too many class members for joinder of them all to be practicable. Upon information and belief, Defendant caused numerous citizens to be arrested and detained without meeting the requirements of the Fourth and Fourteenth Amendments. Each of these citizens has been separately injured by the Defendant's wrongful and unlawful policies and practices. Because each of these citizens has been injured by the imposition of aforementioned unlawful practices, each of these citizens is entitled to assert a cause of action against the Defendant. Upon information and belief, these

citizens potentially exceed 1,000 individuals. This Class, as defined above, meets the numerosity requirement.

21. **Commonality**: The claims of the Class Members raise numerous common issues of fact and/or law, thereby satisfying the requirements of Rule 23(a)(2). These common legal and factual questions, which may be determined without the necessity of resolving individualized factual disputes concerning any Class Member, include, but are not limited to, the following questions:

QUESTIONS OF FACT

(i) Whether Defendant has adopted a policy, practice, and/or custom of failing to meet the requirements of the Fourth and Fourteenth Amendments before arresting and/or detaining individuals prosecuted in the City Court of Jackson, Tennessee.

QUESTION OF LAW

(ii) Whether the Defendant has violated the Fourth and Fourteenth Amendments by arresting and detaining individuals charged with crimes in the Jackson City Court without having an arrest warrant or Affidavit of Complaint sworn to before a magistrate or neutral and detached authorized clerk upon a finding of probable cause.

22. **Typicality**: The claims of the named Plaintiffs are typical of the unnamed Class Members because they have a common source and rest upon the same legal and remedial theories, thereby satisfying the requirements of Rule 23(a)(3). In this case the named Plaintiffs' claims are typical of the claims of the Class because Plaintiffs and Class Members were all injured and/or damaged by the same wrongful practices in which the Defendant engaged, namely the failure to have an arrest warrant or Affidavit of Complaint sworn to before a magistrate or neutral and

detached, authorized clerk, upon a finding of probable cause, at the time of the arrest or immediately as possible thereafter.

23. **Adequacy of Representation:** The requirements of Rule 23(a)(4) are satisfied in that the named Plaintiffs have a sufficient stake in the litigation to vigorously prosecute their claims on behalf of the Class Members and the named Plaintiffs' interests are aligned with those of the proposed Class. There are no defenses of a unique nature that may be asserted against named Plaintiffs individually, as distinguished from the other members of the Class, and the relief sought is common to the Class. Named Plaintiffs do not have any interest that is in conflict with or is antagonistic to the interests of the members of the Class and have no conflict with any other member of the Class. Named Plaintiffs have retained competent counsel in the area of class litigation to represent them and the Class Members in this action.

24. **Declaratory and/or Injunctive Relief:** Additionally, all the requirements for Rule 23(b)(2) also are satisfied in that the Defendant's actions affected all Class Members in the same manner, making appropriate final declaratory and injunctive relief with respect to the Class as a whole. For example, Plaintiffs seek with respect to the Class as a whole a declaration that the Defendant's practices violate the Fourth and Fourteenth Amendments Amendment. Furthermore, injunctive relief is necessary to prevent other Class Members from becoming future victims of Defendant's unlawful practices.

25. **Predominance and Superiority:** All of the requirements for Rule 23(b)(3) are satisfied because the common factual and legal issues identified above are sufficiently cohesive to warrant adjudication by representation. In particular, the Plaintiffs and the Class Members have suffered a common cause of injury, namely being arrested and/or detained without obtaining a properly sworn and executed arrest warrant or Affidavit of Complaint supported by a proper

finding of probable cause by a magistrate or detached and neutral, authorized clerk. The Class Members' legal claims arise exclusively under federal law and, therefore, do not involve the application of other states' laws which may have varying degrees of liability and proof. Class action treatment is also superior to other available methods for the fair and efficient adjudication of this controversy, because individual litigation of the claims of all Class Members is economically unfeasible and procedurally impracticable. The likelihood of individual Class Members prosecuting separate claims is remote and, even if every Class Member could afford individual litigation, the court system would be unduly burdened by individual litigation in such cases. To Plaintiff counsel's knowledge, no other putative Class Member has filed an individual action or putative class action against Defendant for any type of claim, including the allegations set forth in this Class Action Complaint. Additionally, individual litigation would also present the potential for varying, inconsistent or contradictory judgments while magnifying the delay and expense to all parties and to the court system, thus resulting in multiple trials of the same legal issue and creating the possibility of repetitious litigation. As a result, the desirability to concentrate litigation in this forum is significantly present. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance of a class action. Relief concerning Plaintiffs' rights under the laws herein alleged and with respect to the Class would be proper.

26. **Dispositive Adjudication and/or Limited Fund:** Plaintiffs reserve the right to bring this Class action pursuant to Rule 23(b)(1)(B) because it does appear that adjudication of individual Class Members' claims involving the wrongful and unlawful practice would be, as a practical matter, dispositive of other Members not actual parties to this matter. Additionally, individual adjudications of these allegations will substantially impair or impede the ability of

absent Class Members to protect their interest because the unrestricted assets of the Defendant will most likely be insufficient to satisfy all claims. Upon information and belief, there may not be any available insurance to cover the wrongful acts and practices alleged herein. As a result, Plaintiffs hereby reserve the right to request certification under the limited fund doctrine.

VI. CAUSES OF ACTION

CLAIMS PURSUANT TO 42 U.S.C. § 1983

27. Plaintiffs incorporate by reference the factual statements contained in Paragraphs 1 through 26 of the First Amended Complaint.

28. Plaintiffs aver that the actions described herein of the employees and policy makers of Defendant, acting separately and/or conspiring together, under color of law, in either or both their individual and/or official capacities for the City of Jackson and the Jackson Police Department amounted to a deprivation of Plaintiffs and the class members constitutional and/or statutory rights protected under the United States Constitution, Statutes of the United States, resulting in the damages listed below.

29. At all times pertinent hereto, Plaintiffs aver that the Defendant owed them a duty to realize, prevent, and/or protect Plaintiffs from the harm that City of Jackson officials, employees, and/or agents presented to and inflicted upon Plaintiffs. Plaintiffs further aver that Defendant owed them a duty to adequately and appropriately hire, supervise, discipline and train City of Jackson officials, employees, and/or agents in order to prevent and protect Plaintiffs from the harm inflicted in this matter.

FOURTH AMENDMENT DUE PROCESS

30. Plaintiffs incorporate by reference the factual statements contained in Paragraphs 1 through 29 of the First Amended Complaint.

31. Plaintiffs aver that the policy makers, officers, employees, agents, and officials, named and unnamed herein, were all employees of the Defendant City of Jackson, a municipality and governmental entity duly incorporated under the laws of the State of Tennessee, and during all relevant time periods, and acting under the color of state law.

32. Plaintiffs aver that the Defendant City of Jackson, acting through its agents, representatives, officers and/or employees, acting under color of law, violated the Plaintiffs' and class members' rights under the Fourth Amendment as made applicable to the Defendant by the Fourteenth Amendment to the United States Constitution by failing to obtain a properly sworn arrest warrant and/or Affidavit of Complaint, with a finding of probable cause prior to arresting and/or detaining the Plaintiffs and the other class members. Plaintiffs aver that the Defendant City of Jackson, acting through its agents, representatives, officers and/or employees, regularly engaged in the ongoing practice, policy and custom of failing to obtain a properly sworn arrest warrant and/or Affidavit of Complaint prior to arresting and/or detaining individuals charged with crimes in the Jackson City Court rendering the Defendant liable to the Plaintiffs and class members for all damages caused by the deprivation of their constitutional rights.

33. Plaintiffs aver that the Defendant City of Jackson, by and through its officers, employees, agents, and officials, performed under color of law failed to adequately/appropriately train and/or supervise its officials, employees, and/or agents including those involved in arresting and charging the Plaintiffs and class members in the appropriate procedures to be utilized in obtaining arrest warrants and/or Affidavits of Complaint. As a result of this actual knowledge, the Defendant could have taken steps to protect Plaintiffs from the harm inflicted herein which they failed to do.

34. Plaintiffs aver that the Defendant, by and through City of Jackson's officers, employees, agents, and officials, performed under color of law, because of its deliberate indifference as set out above, failed to adequately/appropriately supervise and train its agents, officers and employees and failed to take steps to protect Plaintiffs from the harm inflicted herein.

35. Plaintiffs aver that the Defendant, and/or its officers, agents, officials, and employees, because of its deliberate indifference as set out above, had in place a policy, custom or practice that caused the constitutional violations set out herein.

36. Plaintiffs aver that as a result of the deliberate indifference of the Defendant, by and through City of Jackson's officers, employees, agents, and officials, in their official capacities, performed under color of law, Plaintiffs' and the class members' constitutional right to be free from unlawful seizures under the Fourth and Fourteenth Amendment of the United States Constitution was violated which resulted in the damages set out herein.

37. As a direct and proximate cause of the foregoing deprivations of constitutional freedoms and statutory rights committed by Defendant and its policy makers, officers, employees, and officials, Plaintiffs and the other class members were illegally detained by the Defendant and have suffered, physical and mental injuries, severe emotional distress, humiliation, inconvenience and embarrassment, other pecuniary and non-pecuniary losses, and have had to retain legal counsel to defend and prosecute their rights.

VIII. PRAYER FOR RELIEF

WHEREFORE PREMISES CONSIDERED, Plaintiffs respectfully request that the court:

a. Issue an Order certifying that this action may be maintained as a class action appointing named Plaintiffs and their counsel to represent the Class, and directing that reasonable notice of this action be given by Defendants to all Class Members;

b. Declare Defendant's practices as complained of herein to be in violation of the United States Constitution.

c. Award compensation for named Plaintiffs and Class Members suffering for the unlawful detention;

d. Grant named Plaintiffs and Class Members any compensatory and/or punitive damages to which he or she is entitled to as a result of the actions complained of herein, including but not limited to damages for his or her severe embarrassment, humiliation and emotional and physical pain and suffering;

e. Grant Plaintiffs and the Class Members a trial by jury;

f. Grant Plaintiffs and the Class Members their costs incurred herein, including a reasonable attorney's fees under 42 U.S.C. §1988;

g. Issue a declaratory judgment declaring that Defendant's unconstitutional practice and policy as set forth above violates the Fourth and Fourteenth Amendments;

h. Issue a prospective preliminary and permanent injunction prohibiting Defendant from future unlawful acts;

i. Grant Plaintiffs and class members such other further relief both general and specific as the court deems necessary and proper in this case.

Dated: May 31st, 2019.

Respectfully submitted,

s/J. Russ Bryant
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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of May 2019, I electronically filed the foregoing document (Amended Complaint) with the Court's ECF system.