

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

16-CV-20001-FAM

WARREN REDLICH, pro se,

Plaintiff,

vs.

THE CITY OF CORAL GABLES, CRAIG LEEN, individually and as City Attorney for the City of Coral Gables, the CORAL GABLES POLICE DEPARTMENT, EDWARD HUDAK individually and as Police Chief, OFFICERS ALEJANDRO ESCOBAR, AUGUSTIN DIAZ, JOEL RIOS, and JOHN DOE #1-42, THE REYES LAW FIRM, PA, ISRAEL U. REYES and MANUEL A. GUARCH, KATHERINE FERNANDEZ RUNDLE, individually and as State Attorney of the 11th Judicial Circuit, and ASSISTANT STATE ATTORNEYS JAMES ROE #1-4 individually, and OFFICERS ROBERT MOE #1-4, of the MIAMI-DADE GABLES POLICE DEPARTMENT.

**DEFENDANT'S CRAIG LEEN, THE CITY OF CORAL GABLES, THE CITY OF
CORAL GABLES POLICE DEPARTMENT, EDWARD HUDAK, ALEJANDRO
ESCOBAR, AUGUSTIN DIAZ, JOEL RIOS, THE REYES LAW FIRM, PA, ISRAEL
REYES and MANUEL GUARCH
MOTION FOR RULE 11 SANCTIONS
[Safe Harbor Draft]**

Pursuant to Rule 11 (c)(1)(A), Fed. R. Civ. P., Defendants, CRAIG LEEN, THE CITY OF CORAL GABLES, THE CITY OF CORAL GABLES POLICE DEPARTMENT, EDWARD HUDAK, ALEJANDRO ESCOBAR, AUGUSTIN [sic] DIAZ, JOEL RIOS, THE REYES LAW FIRM, PA, ISRAEL REYES and MANUEL GUARCH ("the Coral Gables

Defendants"), for themselves and CITY OF CORAL GABLES, as the principal responsible for retaining outside legal counsel to provide a legal defense for its employees, former employees, retired employees, representatives and assigns, by and through their undersigned counsel, move for sanctions against the Plaintiff based upon the complaint filed in this cause. As grounds therefore, it is alleged as follows:

1. Plaintiff has sued the Coral Gables Defendants and other Defendants on account of events stemming from an encounter that occurred on August 19, 2015. The Complaint alleges that on that day Defendants conducted a "'sobriety checkpoint' on south Dixie Highway at or near Riviera Drive and the address 500 South Dixie Highway, in the city of Coral Gables, in the Southern District of Florida." Complaint, ¶ 30 [DE ____]. Further, Plaintiff states that he chose to test the "sobriety checkpoint" and drove through it with a weapon seeking to be stopped. Complaint ¶¶ 42, 43, 72 and 73.

2. Plaintiff claims that the checkpoint was conducted improperly, in an overbroad manner and beyond the limits allowed by the U.S. Supreme Court. Plaintiff claims that the City, through its City Attorney adopted an illegal policy directing the "city police officer defendants in this matter to arrest drivers who do not 'physically provide the license to the officer' for a misdemeanor, 'Resisting without violence,' under F.S. 843.02." The Complaint further alleges that "'Defendants' practice in this checkpoint was to check the license of every stopped driver at the initial stop, which does nothing to address the stated purpose of sobriety or impairment." Complaint. ¶¶ 31, 26 and 32.

3. The Complaint, seeking damages in an amount exceeding \$15,000.00 for the Plaintiff, against City officers individually and officially, is presented in 15 counts as follows:

- a. Count 1-A claim by Plaintiff for **Injunctive Relief** against the Coral Gables Defendants;
- b. Count 2-A claim by the Plaintiff for **False Arrest** against the Coral Gables Defendants;
- c. Count 3- A claim by the Plaintiff for **False Imprisonment** against the Coral Gables Defendants;
- d. Count 4- A claim by the Plaintiff for **Fourth Amendment False Arrest-42 U.S.C. §1983** against the Coral Gables Defendants;
- e. Count 5- A claim by the Plaintiff for **Fourth Amendment Excessive Force-42 U.S.C. §1983** against the Coral Gables Defendants;
- f. Count 6- A claim by the Plaintiff for **Battery** against the Coral Gables Defendants;
- g. Count 7- A claim by the Plaintiff for **First Amendment-42 U.S.C. §1983** against the Coral Gables Defendants;
- h. Count 8- A claim by the Plaintiff for **Second Amendment-42 U.S.C. §1983** against the Coral Gables Defendants;
- i. Count 9- A claim by the Plaintiff for **Fourth Amendment Stop-42 U.S.C. §1983** against the Coral Gables Defendants;
- j. Count 10- A claim by the Plaintiff for **Fourth Amendment Search-42 U.S.C. §1983** against the Coral Gables Defendants;
- k. Count 11- A claim by the Plaintiff for **Fifth Amendment Silent-42 U.S.C. §1983** against the Coral Gables Defendants;

l. Count 12- A claim by the Plaintiff for **Sixth Amendment Counsel-42 U.S.C. §1983** against the Coral Gables Defendants;

m. Count 13- A claim by the Plaintiff for **Malicious Prosecution** against the Coral Gables Defendants;

n. Count 14- A claim by the Plaintiff for **Punitive Damages** against Defendants Craig Leen, Manuel Guarch, Israel Reyes, and The Reyes Law Firm PA,;

o. Count 15- A claim by the Plaintiff under **Monell** against the Coral Gables Defendants (labeled under the City of Coral Springs);

4. Plaintiff claims that he was held "in custody for approximately three hours", "in handcuffs", "forced to sit in an uncomfortable chair...", "forced to sit in the back of an unpleasant 'paddy wagon'", "stand for a lengthy period...", and "issued a traffic ticket for 'failure to exhibit' under §322.15." Complaint ¶¶ 78,79,81,82, 83 and 89.

5. All of the allegations of wrongdoing against the Coral Gables Defendants arise from Plaintiff's, an attorney admitted in New York, Florida and the Southern District of Florida, recommended approaches to handling stops in his book "Fair DUI: Stay Safe and Sane in a World Gone MADD", his creation and use of a flyer entitled "Fair DUI Flyer" which he recommends be held up to a closed window which states;

I REMAIN SILENT

NO SEARCHES

I WANT MY LAWYER

at the checkpoint, and the Coral Gables Defendants requirements that Plaintiff hand over a driver's license pursuant to Florida Statutes §322.15. Complaint ¶¶ 13,16, 17, 18, 19 and 58.

The sign which Plaintiff held to the window of his car when first stopped is the only time he claims to "remain silent", "no searches" and "seeks counsel". Plaintiff argues a violation of his right to counsel. He never provides officers with these requests in a clear audible statement. He never states the name of the attorney he wants, and he never states in the complaint that he was under a custodial interrogation when he demanded counsel.

6. The City of Coral Gables is the principal responsible for retaining outside legal counsel in these proceedings for itself and to provide a legal defense for its employees and agents, Craig Leen, the Coral Gables Police Department, Edward Hudak, Officers Alejandro Escobar, _____ (sic) Diaz, Joel Rios, and John Doe #1-42, The Reyes Law Firm P.A., Israel U. Reyes and Manuel A. Guarch.

7. From the time the Complaint was filed, Plaintiff and Plaintiffs' yet unnamed co-counsel knew or should have known, and reasonable inquiry would and should have established, prior to the filing of the claims for damages in this case and continuing through the present time, the facts and circumstances regarding the procedures adopted by the city on the advice of its legal counsel, and the police actions taken on August 19, 2015, would not support the liability claims alleged by the Plaintiff in the Complaint and were in fact found to be legal in *Rinaldo v. State*, 787 So.2d 208 (Fla. 4th DCA 2001), *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990) (holding DUI checkpoints to be constitutional), and by Judge Leifman's guilty verdict of Plaintiff in the traffic court case filed herein. In all instances, Plaintiff testified under oath that he was aware of the *Rinaldo* and *Sitz* cases during the traffic court trial. pps. 101-102 and 113-114.

8. At the time the Complaint was filed with the Court, or at some time while the case has remained pending up through the present time, Plaintiff knew or should have known, and reasonable inquiry would and should have established:

a. that the policy researched and authored by Defendants Craig Leen, Israel U. Reyes and Manuel Guarch, is an legal appropriate and established policy in the State of Florida, federal law and the Coral Gables Code of Ordinances. See, *Rinaldo v. State*, 787 So.2d 208 (Fla. 4th DCA 2001) and Traffic Court Proceedings, filed separately in this matter; and

b. that the police actions taken on August 19, 2015, resulting in the stopping and detainment of Plaintiff, and subsequent issuance of a traffic ticket were based on lawful police conduct that complied with relevant state and federal statutory and constitutional standards, *Sitz, Id.* ; and

c. that there is no reasonable or credible evidence that the Plaintiff suffered a federal constitutional deprivation or sustained a tort cognizable under state law; and

d. that there was and is no reasonable, plausible or credible evidence of a municipal policy or practice that established grounds for liability against the City of Coral Gables under either federal or state law; and

e. that there was and is no reasonable, plausible or credible evidence of a municipal policy or practice that established grounds for liability against the City of Coral Gables Police Department under either federal or state law; and

f. that there was and is no federal or state law which provides for a cause of action against both the City of Coral Gables and the City of Coral Gables Police Department; and

g. that there was and is no federal or state law which provides for a cause of action against the municipal employees and agents acting in their official capacity; and

h. that there was and is no reasonable, plausible or credible evidence of an individual action by City Attorney Craig Leen, Police Chief Edward Hudak, Police Legal Advisors Israel U. Reyes or Manuel Guarch which demonstrates that their conduct rises to the level which would justify the filing of a claim or award of punitive damages under either federal or state law; and

i. that there was and is no reasonable, plausible or credible evidence that the City of Coral Gables or any of the Coral Gables Defendants or combination thereof, was a moving force behind any constitutional deprivation or the legal cause of any unlawful or unconstitutional action against Plaintiff.

9. At the time the claims were initially presented to the Court, or at some time while the case has remained pending up through the present time, Plaintiff knew or should have known that the claims would not be supported by the application of then-existing law to the material facts of those claims.

10. As to the allegations against the Coral Gables Defendants, Plaintiff knew and admitted that he was aware of existing state and federal case law which supported Defendants' actions and which held against Plaintiff and therefore Plaintiff filed his case in federal court. See, Notice of Filing, Traffic Court Case at pg. 101-102 and 113-114.

11. As to the allegations against Coral Gables Defendants, City Attorney Craig Leen, Police Chief Edward Hudak, Police Legal Advisors Israel U. Reyes or Manuel Guarch, sued in their individual capacity, the case of *Rinaldo v. State*, Id., as well as Judge Leifman's finding of guilty in the Traffic Court Case, the transcript which has been filed herein, and which Plaintiff has now appealed, both bear out that none of these defendants acted in such a manner as to

establish a separate claim for punitive damages. A letter demanding that Plaintiff dismiss these claims accompanied this Motion and is incorporated herein and attached hereto as Exhibit "A".

12. As to the allegations against the Coral Gables Police Department, Plaintiff knew or should know that such a claim cannot stand under federal or state law, in a case where the City is also a defendant.

13. It is on the foregoing factual contentions and the claims alleged in the Complaint against the Coral Gables Defendants and the City of Coral Gables that entitle the City and the Coral Gables Defendants to an award of sanctions in that the factual allegations in support of any claims alleged have no evidentiary support and are not likely to have evidentiary support after reasonable opportunity for further investigation or discovery, contrary to Rule 11 (b) (2), Fed. R. Civ. P.

14. It is on the foregoing basis that the claims alleged in the Complaint against the Coral Gables Defendants and City of Coral Gables are subject to an award of sanctions in that the claims alleged are not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of a new law, contrary to Rule 11 (b) (2), Fed. R. Civ. P.

15. Rule 11 (c)(2)(A) Fed. R. Civ. P. establishes safe Harbor and provides that this motion shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service, the challenged claims, contentions, allegations, and pleadings are not withdrawn or appropriately corrected. A letter demanding that Plaintiff dismiss these claims accompanied this Motion and is incorporated herein and attached hereto as Exhibit "A".

Counsel for City of Coral Gables Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Defendant's Craig Leen, The City of Coral Gables, The City of Coral Gables Police Department, Edward Hudak, Alejandro Escobar, [sic] Diaz, Joel Rios, The Reyes Law Firm, PA, Israel U. Reyes and Manuel Guarch Motion for Rule 11 Sanctions* was filed via CM/ECF and served via U.S. Mail on March 29, 2016 on all counsel or parties of record on the Service List below.

s/ Elizabeth M. Hernandez

SERVICE LIST

Warren Redlich,
Plaintiff *Pro Se*
12345 Riverfalls Court
Boca Raton, FL 33428