

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

| | | |
|-----------------------------------|---|----------------------------|
| KELLY PICKENS, |) | |
| |) | |
| Plaintiff, |) | Civil Action |
| |) | File No. _____ |
| v. |) | |
| |) | |
| MARC LOFTON, individually, |) | |
| STATHAM POLICE CHIEF |) | JURY TRIAL DEMANDED |
| ALLAN JOHNSTON, individually |) | |
| and in his official capacity, and |) | |
| THE CITY OF STATHAM, |) | |
| |) | |
| Defendants. |) | |

COMPLAINT

COMES NOW Plaintiff Kelly Pickens and brings this action against Defendants under 42 U.S.C. § 1983 and the First, Fourth, and Fourteenth Amendments of the United States Constitution, the Americans with Disabilities Act, and Georgia law, stating as follows:

INTRODUCTION

1. This is a case about whether law enforcement can arrest, for Driving Under the Influence (“DUI”), any person who takes commonly prescribed medicines for ailments such as depression, anxiety, and attention deficit disorder without regard to whether that person poses any appreciable threat to themselves or anyone else.

2. More specifically, this is a case about a police officer, Defendant Marc Lofton, who made a staggering number of arrests for DUI in a short period. The vast majority of these arrests were in the middle of the day, and use of alcohol was not suspected or found. Instead, the officer made these arrests for driving under the influence of commonly prescribed medicines not generally known to impact driver safety. The officer made these arrests knowing that arrestees had taken their drugs as prescribed. The arrests were made despite the officer having failed the coursework designed to familiarize officers with roadside impairment and never having received the more advanced training that would allow him to, perhaps, accurately determine whether a person is too impaired by substance to safely drive. Most significantly, these arrests were also made based on the officer's readily demonstrable falsehoods and fabricated evidence. Taken as a whole, a large number of these arrests were made without probable cause.

3. Chief of Police Allan Johnston personally signed off on almost every one of these arrests. He has repeatedly and publicly stated that his officer Marc Lofton has done nothing wrong in the course of these arrests despite public outcry. The City of Statham has taken no corrective action despite a clear pattern of bad arrests.

4. This suit is about one such arrest – of Plaintiff Kelly Pickens who was falsely arrested for DUI without probable cause as she drove down from the

shop where she was helping out to the gas station to get water. This suit is also about the effects this arrest has had on Ms. Pickens and about her hard fought pursuit of justice.

JURISDICTION AND VENUE

5. This is a civil and constitutional rights action arising under 42 U.S.C. § 1983 and the First, Fourth, and Fourteenth Amendments to the United States Constitution, the Americans with Disabilities Act, and Georgia law. This Court has jurisdiction of federal claims under 28 U.S.C. §§ 1331 and 1343 and jurisdiction of state law claims pursuant to 28 U.S.C. § 1367.

6. Venue in this Court is proper under 28 U.S.C. § 1391 because the events giving rise to Plaintiff's claims arose in this district and division and because the City of Statham is located within this district and division.

PARTIES

7. Plaintiff Kelly Pickens is a United States citizen and resident of Georgia.

8. Defendant Statham Police Officer Marc Lofton ("Officer Lofton") is sued in his individual capacity. At all times relevant to the complaint, Lofton acted under the color of law.

9. Defendant Police Chief Johnston ("Chief Johnston") is sued in his individual capacity, for the personal participation he had in Kelly Pickens' arrest,

as well as in his official capacity, as Chief of Police of the City of Statham. At all times relevant to the complaint, Chief Johnston acted under the color of law.

10. Defendant City of Statham ("Statham") is a Georgia municipality subject to suit.

FACTUAL ALLEGATIONS

Lofton Arrests Kelly Pickens

11. On August 1, 2015, Kelly Pickens got in her car to drive the two tenths of a mile from the Southern Roots antique shop where she was helping her friend load antiques into her car to the gas station to get water.

12. As Kelly Pickens drove by the police station, Officer Lofton followed behind her and initiated a traffic stop after she parked in front of the gas station.

13. Officer Lofton originally claimed to have stopped her for not having a license plate displayed, but after discovering that Kelly Pickens was entitled to have no plate, he wrote in his report that she was driving too fast for conditions.

14. Officer Lofton did not mention he thought Kelly Pickens driving too fast for conditions at any time during the traffic stop.

15. Kelly Pickens was not travelling in excess of the speed limit.

16. August 1, 2015 was a bright, hot day in Statham.

17. Officer Lofton claimed that there was a festival in town, which was a condition that made her speed of travel too fast.

18. There was no festival in the City of Statham on the day in question.

19. No significant number of persons can be seen in the roadways, sidewalks, or other areas on either Lofton's dashboard or body-worn cameras.

20. At the time that Officer Lofton arrested her, he did not believe Kelly Pickens was for driving too fast for conditions and no reasonable officer would have so believed.

21. After initiating the stop, Officer Lofton quickly learned that the vehicle was recently purchased and that Kelly Pickens had the proper paperwork such that there was no longer any legal basis to believe the vehicle was in violation of rules governing the display of license plates.

22. Officer Lofton then asked Kelly Pickens what kinds of prescription medications she took.

23. There was no legitimate reason for Officer Lofton to ask this question.

24. Kelly Pickens' speech was not thick, slurred, or otherwise abnormal; instead, she spoke quickly and clearly.

25. Officer Lofton returned to his vehicle after making first contact with Kelly Pickens and used the laptop computer in his vehicle for several minutes.

26. Officer Lofton then ordered Kelly Pickens out of her car to perform field sobriety tests.

27. Kelly Pickens explained that she had been taking the medications she was prescribed for over four years and that she could drive while taking them according to her doctor.

28. Officer Lofton, before performing any field sobriety tests, stated that he had come to a different medical conclusion about what effects the drugs Kelly Pickens took had on her ability to drive.

29. Officer Lofton wrote in his report that: "The suspect stated that she had proscriptions [sic] for all the medications she was on and the doctor told her she could drive on them. I explained to her that she was given the wrong information and her statements were not accurate."

30. At no time did Officer Lofton ask Kelly Pickens what doses of the medications she took or when she last took them.

31. Officer Lofton did not appreciate or consider that taking medications of the type prescribed would make Kelly Pickens a *safer* driver, rather than a more dangerous driver.

32. Officer Lofton then performed a series of tests designed to measure Kelly Pickens' eyes' reaction to stimuli: Lofton purported to measure (1) equal tracking of her eyes, (2) whether her eyes smoothly pursued the stimuli, (3) whether distinct and sustained nystagmus was observed at maximum deviation, (4)

whether there was onset of nystagmus prior to 45 degrees, and (5) whether there was vertical nystagmus.

33. At least four of these tests were performed improperly according to the standards set forth by the National Highway Traffic Safety Administration (“NHTSA”), which governs the standardized field sobriety tests (“SFST”) used by all law enforcement across the country.

34. Because these tests were performed so poorly, their results are of no probative value for purposes of finding probable cause.

35. In any event, Officer Lofton’s statements claiming to observe signs of nystagmus were recklessly or deliberately false.

36. One additional standardized eye test was not performed.

37. Officer Lofton then began to administer the walk and turn test.

38. Officer Lofton gave improper instructions for this test, both orally and in demonstrating the test, which renders the results of the test wholly unreliable.

39. Kelly Pickens was not medically cleared per NHTSA standards, based on her explained conditions which included bad balance and a knee problem, as well as the observed condition that Kelly Pickens was overweight.¹

¹ Studies which purport to validate the SFSTs as a means by which to detect the presence of alcohol in a person’s system note that persons with leg or balance problems and persons who are overweight will have difficulty performing the

40. Because Kelly Pickens was not medically qualified to take the walk and turn test, it should not have been administered.

41. Nevertheless, Officer Lofton administered the walk and turn test.

42. Kelly Pickens told Officer Lofton that she would not be able to successfully complete the testing due to her medical conditions, but she attempted the test.

43. Kelly Pickens grew frustrated with being accused of being too drugged to drive, at one point turning away from Officer Lofton and saying “Oh, God damn.”

44. At this point, Lofton stopped the tests and arrested her for DUI, O.C.G.A. § 40-6-391, and for disorderly conduct, O.C.G.A. § 16-11-39.

45. Officer Lofton stated, “I’m not going to let you sit here and say ‘G. D.’”

46. After her arrest, the charge of driving too fast for conditions was added.²

47. Kelly Pickens’ words – on their own or read in their the proper context – cannot possibly be deemed “fighting words,” so as to allow her arrest.

walk and turn test while sober. *See* DWI Detection and Standardized Field Sobriety Testing, NHTSA, Participant Manual, Session 8 (2015), at 55.

² In the Uniform Traffic Citation, Summons, and Accusation Officer Lofton issued to Kelly Pickens, he wrote that she had violated § 58-5-1520(A). There is no such Georgia statute. There does appear to be a South Carolina statute with that name that proscribes conduct similar to “driving too fast for conditions.”

48. The complete battery of SFSTs was never performed on Kelly Pickens by Officer Lofton or anyone else.

49. None of the tests or steps used for Drug Evaluation and Classification were performed by Officer Lofton or by anyone else.

50. At the time Kelly Pickens was arrested, the Statham Police Department included officers who had undergone the Drug Recognition Expert training.

51. These officers would be in a better position than Officer Lofton to determine whether Kelly Pickens was unsafe to drive.

52. These officers were not asked to examine Kelly Pickens.

53. Officer Lofton fabricated evidence and made numerous recklessly and deliberately false statements in justifying his arrest and prosecution of Kelly Pickens.

54. As examples of the evidence Officer Lofton fabricated, Officer Lofton stated that there was a festival in town when there was not, he stated that small children were nearby when Kelly Pickens said "God damn" when there were no children within earshot, and he stated that he observed nystagmus in her eyes when there was not.

55. After placing Kelly Pickens under arrest, Lofton put her into the back of his car without incident.

56. Officer Lofton refused to give Kelly Pickens water despite repeated requests and despite earlier telling her that he would do so.

57. With Barrow EMS employees, Officer Lofton maintained that there was nothing wrong with Kelly Pickens, other than that she was “nutting up” and had “an acute case of incarceritis.”

Background Facts Regarding SFSTs, ARIDE, DRE and Applicability to DUI for Prescription Medications

58. There are multiple levels of certification law enforcement officers nationwide can obtain to help them detect impaired drivers.

59. The most basic is standardized field sobriety testing, which is commonly taught in the police academy.

60. Basic SFSTs – when done properly – are designed and validated to measure the presence of alcohol in a person’s system.

61. SFSTs were not designed and have never been validated as a tool to detect the presence of prescription drugs in a person’s system or impairment, if any, which may result.

62. After standardized field sobriety testing training, the next level is Advanced Roadside Impairment Driving Enforcement (“ARIDE”). ARIDE is a two-day course designed to enhance officers’ ability to detect the presence and

effects of alcohol and other drugs' impairment of driving ability and is characterized by an emphasis on proper SFST procedures.

63. At the time of Kelly Pickens' arrest, Lofton did not have ARIDE certification.

64. Prior to Kelly Pickens' arrest, Lofton enrolled at least once in the ARIDE course, and on at least one occasion failed the ARIDE course.

65. The most advanced level of widespread certification for drug detection is known as Drug Recognition Expert ("DRE") training. DRE coursework requires at least 160 hours of class time and field training above and beyond ARIDE certification.

66. In order to possibly be competent to make the kind of sophisticated arrests based on prescribed medicines where an officer explicitly or implicitly overrules medical doctors – such as was the case in the arrest of Kelly Pickens – an officer should, at minimum, be certified as a Drug Recognition Expert.

67. The Prosecuting Attorneys' Council of Georgia ("PAC") recognized that Officer Lofton was not capable of making legal arrests for DUI-drugs, writing of Lofton that there were "significant errors" in his "DUI-Drugs investigations." In a December 20, 2016 letter to Brad Smith, the District Attorney for the Piedmont Judicial Circuit in which Statham sits, PAC officials wrote:

DUI-Drugs cases are significantly more complex than alcohol cases, especially where prescription drugs are involved. Considerable training is required to recognize which drugs have the potential to cause impairment, and how to conduct a DUI investigation designed to ascertain whether a subject is genuinely less safe to drive as a result of consumption. From a review of Officer Lofton' training records as well as observations of his investigations, he does not appear to have the training required to regularly make effective DUI cases involving prescription drugs.

68. At the time of Kelly Pickens' arrest, the City of Statham Police Department employed two certified Drug Recognition Experts among its few police officers.

69. Because making DUI arrests based on suspected intoxication from any drug other than alcohol is recognized as complicated and difficult, DRE standards require a twelve-step examination in a controlled atmosphere by a certified Drug Recognition Expert other than the arresting officer whenever feasible.

70. Officer Lofton did not call any officer certified as a Drug Recognition Expert to examine Kelly Pickens.

71. Officer Lofton could have taken a number of simple and straightforward steps to determine with greater accuracy whether Kelly Pickens was too intoxicated to drive, but he unreasonably failed to do so.

72. Officer Lofton chose to ignore innocent and innocuous information showing that he lacked probable cause to arrest Kelly Pickens.

73. Officer Lofton conducted his investigation into Kelly Pickens in a biased fashion with the outcome predetermined.

74. Officer Lofton elected not to obtain easily discoverable facts about Kelly Pickens that would have shown there was no probable cause to arrest her.

75. Officer Lofton chose not to have Kelly Pickens examined by another Statham Police Department officer with DRE training and did not complete the battery of tests associated with a DRE examination.

76. Such tests would have shown that Kelly Pickens was not intoxicated or unable to drive safely.

Chief Johnston and Statham's Responsibility for the Harms Suffered by Kelly Pickens

77. Chief Johnston is the Chief of Police for the City of Statham.

78. Chief Johnston is the final policymaker for the City of Statham with regard to police policies.

79. The Statham Police Department Standard Operating Procedure and Guidelines Manual provides that the Chief of Police shall formulate agency policies, administer rules and regulations, and ensure that all policies are followed.

80. Chief Johnston is the final policymaker for the City of Statham with regard to police officer training, supervision, and discipline.

81. Chief Johnston was also responsible for promulgating informal agency policies.

82. Chief Johnston personally reviewed, signed off on, and explicitly approved dozens of Lofton's DUI arrests, including the arrest of Kelly Pickens.

83. Chief Johnston viewed the dash camera and/or body camera video of Kelly Pickens' arrest by Lofton and found no fault with Lofton's decision to arrest Kelly Pickens and charge her with DUI, disorderly conduct, and driving too fast for conditions.

84. Chief Johnston wrote multiple public memoranda which dismissed Kelly Pickens' complaints about her arrest and approved of Lofton's arrest of Kelly Pickens and the reasons Officer Lofton gave for arresting her.

85. In one such letter, Chief Johnston explicitly authorized "[i]ndividual and personal civil litigation by any officer of this department against Ms. Pickens."

86. Chief Johnston said that "none whatsoever" of the more than fifty arrests for DUI that Officer Lofton made were unlawful, despite knowing that a large number of these arrests were made without probable cause.

87. Chief Johnston was made aware by officers within his department who had greater training and expertise than Officer Lofton in the detection of impairment from drugs and alcohol that many of Officer Lofton's arrests were unlawful.

88. Chief Johnston had actual and constructive knowledge that Lofton had failed ARIDE at the time he arrested Kelly Pickens.

89. Chief Johnston had actual and constructive knowledge that Lofton did not call in Statham's officers certified as Drug Recognition Experts to conduct a controlled twelve-step inquiry into Kelly Pickens' intoxication.

90. Chief Johnston had actual and constructive knowledge that not calling in Statham's officers certified as Drug Recognition Experts was Lofton's modus operandi when making non-alcohol DUI arrests.

91. Chief Johnston did not ask his officers who were certified as Drug Recognition Experts to review the arrests made by Lofton.

92. Chief Johnston had actual and constructive knowledge that not calling in Statham's officers certified as Drug Recognition Experts was contrary to generally accepted police practices.

93. Chief Johnston terminated the employment of the officers with DRE training.

94. Chief Johnston had actual and constructive knowledge that allowing an insufficiently trained officer such as Lofton to make DUI arrests for prescription drugs without evidence of the drugs having been misused, and without having his conclusions appropriately scrutinized by someone with appropriate training

per generally accepted police practices, had led to unconstitutional arrests prior to Kelly Pickens' arrest.

95. Chief Johnston had actual and constructive knowledge that Lofton was making an improbably high number of DUI arrests based on prescription drugs, relative both to other officers and to his training.

96. Chief Johnston had actual and constructive knowledge that the obvious consequence of allowing an insufficiently trained officer such as Lofton to make DUI arrests for prescription drugs, without having his conclusions appropriately scrutinized by someone with appropriate training per generally accepted police practices, was a significant number of unconstitutional arrests.

97. Chief Johnston either directed Officer Lofton to act unconstitutionally or knew that he would act unconstitutionally with regard to the arrest of persons such as Kelly Pickens and failed to stop him from doing so.

98. Despite knowledge that Officer Lofton had failed the ARIDE course and was making a large quantity of unlawful arrests based on impairment by lawfully prescribed medications without evidence that drugs were being misused, Chief Johnston deliberately and consciously did not give Officer Lofton appropriate training.

99. Chief Johnston had actual and constructive knowledge that Lofton acted unlawfully in making DUI arrests for prescription drugs and failed to stop him from doing so in the future and failed to take corrective action.

100. Chief Johnston decided not to suspend Marc Lofton for his pattern of making illegal DUI arrests, despite requests from city government to do so.

101. Statham officials, including city attorney Thomas Mitchell and Chief Johnston, were aware that Lofton made numerous arrests of persons who were “not legally intoxicated.”

102. Chief Johnston failed to take any corrective action against Lofton despite knowing that a substantial number of his arrests for DUI were not legally supported by probable cause.

103. Chief Johnston failed to take any corrective action in favor of persons falsely accused of DUI despite knowing that these persons were innocent of DUI, that their arrests for DUI were not legally supported by probable cause, and that their criminal charges were pending.

104. Chief Johnston’s inaction in response to conspicuous misconduct is evidence of a pattern, practice, or custom of permitting arrests without probable cause for DUI.

105. Chief Johnston’s approval of the investigation conducted into Officer Lofton’s arrest of Kelly Pickens, even though such investigation was

exceedingly cursory and was conducted with a preordained outcome, constitutes ratification of Officer Lofton's unconstitutional conduct.

106. Chief Johnston was deliberately indifferent to the need for more or different training and supervision for Lofton to make constitutionally adequate arrests for DUI.

107. Chief Johnston was deliberately indifferent to the need for more or different policies governing arrests for DUI.

108. The actions and inactions of Chief Johnston, were a moving force and a direct cause of the constitutional injuries Kelly Pickens suffered.

109. The actions and inactions of Chief Johnston represent negligent supervision and negligent training of Officer Lofton.

COUNT I

Unlawful Seizure under 42 U.S.C. § 1983 (against all Defendants)

110. After Officer Lofton established that Kelly Pickens was permitted to drive without a license plate, the purpose for the stop had been fulfilled and there was no cause to prolong the stop.

111. Officer Lofton continued to detain Kelly Pickens despite a lack of reasonable or articulable suspicion.

112. Such legal justification was required prior to continued and extended detention.

113. Every reasonable person in Kelly Pickens position would believe that they were not free to leave after Officer Lofton had concluded his investigation into the license plate.

114. During, and after the seizure of Plaintiff, Officer Lofton had no reasonable articulable suspicion that Plaintiff committed, or would commit, any crime whatsoever.

115. Based upon the information known to Officer Lofton at the time of the seizure of Plaintiff, no reasonable officer could have believed a reasonable articulable suspicion existed to justify Plaintiff's detention.

116. The illegal seizure of Plaintiff was the proximate cause of Officer Lofton's decision to arrest and prosecute Plaintiff because it foreseeably caused Plaintiff to tell Lofton that she had taken prescription drugs, to perform field sobriety tests, and to become frustrated by continued unlawful detention.

COUNT II

False Arrest under 42 U.S.C. § 1983 (against all Defendants)

117. In arresting Plaintiff, Officer Lofton falsely accused her of committing the offenses of driving too fast for conditions, driving under the influence of drugs, and disorderly conduct.

118. No reasonable officer in Officer Lofton's position could have believed that Plaintiff committed these – or any other criminal offenses.

119. Based upon the facts known by Officer Lofton, no reasonable officer could have believed that probable cause existed to arrest Plaintiff, and there was no arguable probable cause for her arrest.

120. As a result of Plaintiff's arrest, she suffered a loss of liberty, extensive monetary losses, reputational damages, humiliation, and emotional distress.

COUNT III

Malicious Prosecution under 42 U.S.C. § 1983 (against all Defendants)

121. Plaintiff's criminal prosecution was initiated by Defendants via a series of three Uniform Traffic Citation, Summons, and Accusation forms issued by Officer Lofton.

122. Plaintiff was detained pursuant to this initiation of legal process, suffering a loss of liberty.

123. Plaintiff further had her blood seized and searched pursuant to initiated legal process.

124. Plaintiff's criminal prosecution was made without probable cause or arguable probable cause.

125. Such prosecution terminated in Plaintiff's favor when the Barrow County prosecutors dropped her charges and submitted a motion to enter nolle prosequi on April 6, 2017.

126. As a result of her prosecution, Plaintiff suffered a loss of liberty, extensive monetary losses, reputational damage, humiliation, and emotional distress.

COUNT IV

Free Speech Retaliation under 42 U.S.C. § 1983 (against Defendant Lofton)

127. Officer Lofton arrested Kelly Pickens because she said “Oh, God damn.”

128. Kelly Pickens’ speech was constitutionally protected.

129. Kelly Pickens did not threaten Officer Lofton or anyone else.

130. Kelly Pickens’ language did not create a clear and present threat of imminent danger.

131. Officer Lofton then retaliated against Kelly Pickens by arresting her.

132. Such retaliation adversely affected Kelly Pickens protected speech, chilling her and punishing her for engaging in protected activity.

COUNT V

Punitive Damages under 42 U.S.C. § 1983 and Georgia Law (against Defendant Lofton and Chief Johnston in his individual capacity)

133. Defendants Lofton and Chief Johnston acted with conscious indifference, reckless disregard for the consequences of their actions, an intent to injure, and malice such that an award of punitive damages is authorized under federal and Georgia law.

COUNT VI

Other Individual State Law Claims (against Defendants Lofton and City of Statham)

134. By placing Plaintiff under arrest and instituting prosecution, Officer Lofton subjected Plaintiff to an unlawful detention in violation of O.C.G.A. § 51-7-20, and committed an assault and battery against Plaintiff in violation of O.C.G.A. §§ 51-1-13 and 51-1-14 and malicious prosecution under O.C.G.A. § 51-7-40.

135. As the facts alleged indicate, Officer Lofton acted with actual malice toward Plaintiff. In making the decision to arrest Plaintiff, Officer Lofton possessed the deliberate intent to do wrong.

136. Officer Lofton's actions were malicious, reckless, and callously indifferent to Plaintiff's clearly established rights, and they are not entitled to official immunity under Georgia law.

137. Plaintiff sent ante-litem notice to the Mayor of Statham.

138. Plaintiff sent ante-litem notice on August 4, 2015, which was received on August 6, 2015.

139. Plaintiff, via counsel, sent another ante-litem notice on April 28, 2017, which was received on April 29, 2017.

140. Statham has purchased comprehensive liability coverage for its law enforcement officers' activities.

141. This purchase of liability coverage for law enforcement acts as a waiver of sovereign immunity for state law claims, making the City of Statham liable for Lofton's conduct under vicarious liability and *respondeat superior* theories.

142. The City of Statham is also liable under state law for its negligent supervision and negligent training of Officer Lofton.

COUNT VII

Americans with Disabilities Act, 42 U.S.C. § 12132 (against the City of Statham)

143. The Americans with Disabilities Act ("ADA") provides, in relevant part that: "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

144. The City of Statham is a public entity under the ADA.

145. Plaintiff is a qualified individual under each of the three definitions set forth in 42 U.S.C. § 12102(1)(A)-(C). Plaintiff suffers from, *inter alia*, depression, which is a "mental impairment that substantially limits one or more major life activities," including her ability to "concentrat[e], think[], communicat[e], and work[], 42 U.S.C. § 12102(2)(A);" she has a record of such

impairment; and, after Lofton questioned her about her medications, she was a person “regarded as having such an impairment,” 42 U.S.C. § 12102(1)(C).

146. Officer Lofton believed that Kelly Pickens was disabled because of the illnesses that commonly cause the medications she was taking to be prescribed.

147. Officer Lofton believed that Kelly Pickens was disabled because of the fact that she took the medications she was prescribed.

148. Plaintiff was “subjected to discrimination” because of her disability in that she was arrested without probable cause and subjected to rude comments because of her disability.

149. Plaintiff was excluded from participation in the right to drive in the City of Statham because of her disability status.

150. Plaintiff was denied reasonable modifications when, for example, she was forced into, and ultimately arrested after, performing a walk and turn test that she told Officer Lofton she would not be able to perform well because of disability.

151. Evidence of discriminatory motive is abundant and clear from Officer Lofton’s belief that a person who takes prescription medications is not safe to drive and Defendants’ willingness to arrest many persons who take

medications for ailments such as depression and anxiety on less than probable cause.

152. Further evidence of discriminatory motive can be found in comments that Plaintiff was “nutting up” and suffering from “incarceritis.”

WHEREFORE, Plaintiff demands the following:

- a) That this action be tried by a jury;
- b) That judgment be entered in favor of Plaintiff and against Defendants in an amount to be determined by the enlightened conscience of fair and impartial jurors to the extent allowed by law;
- c) That Plaintiff be awarded punitive damages against Defendants Lofton and Chief Johnston in his individual capacity;
- d) That Plaintiff be awarded attorneys’ fees under 42 U.S.C. § 1988 and Georgia law;
- e) That all costs of this action be taxed against Defendants; and
- f) That the Court award any additional or alternative relief as may be deemed appropriate under the circumstances.

Respectfully submitted this 28th day of July, 2017.

/s/ Zack Greenamyre

Zack Greenamyre
Georgia Bar No. 293002

MITCHELL & SHAPIRO LLP
3490 Piedmont Road, Suite 650
Atlanta, Georgia 30305
404-812-4747
zack@mitchellshapiro.com