

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

DAVID LIPPMAN

CASE NO. 06-21124-CIV-MARRA

Plaintiff

Magistrate Judge: Seltzer

v.

**The CITY OF MIAMI, et al
Defendants.**

THIRD AMENDED COMPLAINT

INTRODUCTION

1. This is a civil rights action brought by a freelance reporter against local law enforcement officers and FBI agents for violating his First, Fourth, Fifth and Fourteenth Amendment rights, as well as his civil rights under Florida and federal law, when he traveled to Miami, Florida to cover the Free Trade Area of the Americas (“FTAA”) demonstrations in November 2003. After spying upon and following this reporter from North Carolina to Miami because he was a “known protestor w/ history,” FBI agents recruited local officers to use brute force to break into his vehicle and then, after damaging the vehicle and disturbing the personal possessions he kept within it, to haul the vehicle and his possessions away. As a result of these actions, plaintiff suffered violations of his rights to free press, speech, and assembly, to be free of unreasonable searches and seizures and to not be deprived of his property without due process of law. Plaintiff also suffered damage to his physical property as well as emotional and other compensable injuries.

2. This action for money damages is brought pursuant to 42 U.S.C. §§1983 and 1988, the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution, the laws of

the State of Florida and the Federal Tort Claims Act, against the City of Miami, the Broward Sheriff's Office, the United States of America and individual police officers and FBI agents.

3. Plaintiff alleges that the FBI agents violated his rights to free press, speech and assembly and, along with the individual police officers, also violated his rights to be free from unreasonable searches and seizures and to not be deprived of his property without due process of law. Plaintiff further alleges that these violations of his rights resulted from policies, practices and customs of the City of Miami and the Broward Sheriff's Office.

JURISDICTION AND VENUE

4. This action arises under the U.S. Constitution and laws of the United States, particularly the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

5. This court has jurisdiction under, and by virtue of, 28 U.S.C. § § 1331, 1343 and 1346(b). Also, this Court has supplemental jurisdiction to entertain claims arising under state law pursuant to 28 U.S.C. Section 1367.

6. Venue is founded in this judicial district based on 28 U.S.C. § 1391 (e) (2) and §1402 (b), as the acts complained of occurred in this district.

7. This action against the City of Miami, the Sheriff of Broward County, and individual officers of the Miami Police Department and the Broward Sheriff's Office is brought pursuant to 42 U.S.C. § 1983, the First, Fourth, and Fourteenth Amendments to the United States Constitution and the laws of State of Florida.

8. This action also arises under FL. Stat. § 768 as against the City of Miami and the Sheriff of Broward County.

9. Plaintiff timely filed a Notice of Claim with the City of Miami, on February 5, 2004,

and with the Sheriff of Broward County, on January 28, 2005, pursuant to FL .Stat. § 768.28, to which there has been no adequate response. Accordingly, all conditions precedent to the maintenance of this action against the City of Miami and Sheriff of Broward County have been fulfilled.

10. [Deleted pursuant to Court Order [DE 226] dismissing the United States of America from this action.]

11. [Deleted pursuant to Court Order [DE 226] dismissing the United States of America from this action.]

12. This action, as against the individual FBI agents, is brought pursuant to the case of *Bivens v. Six Unnamed Agents of the Federal Bureau of Investigation*, 403 U.S. 388 (1971).

PARTIES

13. Plaintiff DAVID LIPPMAN (“LIPPMAN”) was at all times relevant to this Complaint a citizen of the United States and a resident of North Carolina.

14. Defendant CITY OF MIAMI (“CITY OF MIAMI”) is a political subdivision of the State of Florida, a Florida municipal corporation. It is responsible for the conduct of the officers of the Miami Police Department (“MPD”) and for ensuring that those officers obey the laws of the State of Florida and the United States.

15. Defendant Alfred T. Lamberti is the Sheriff of Broward County, and as such, is responsible for the conduct of the deputies in his employ and for ensuring that his deputies and agents obey the laws of the State of Florida and the United States. Defendant Broward Sheriff Lamberti is being sued in his official capacity as Sheriff of Broward County and, as such, is synonymous with the Broward County Sheriff’s Office (“BSO”).

16. [Deleted pursuant to Court Order [DE 226] dismissing the United States of America from this action.]

17. Defendant police officer SGT. RAFAEL MASFERRER (“MASFERRER”) was at all times relevant to this Complaint duly appointed and acting as officers of the MPD, acting under color of law, to wit, under color of statutes, ordinances, regulations, policies, customs and usages of the State of Florida and/or the MPD.

18. Defendant police officers SGT. FRANK CORNETTA (“CORNETTA”), JOHN MELBOURNE (“MELBOURNE”) were at all times relevant to this Complaint duly appointed and acting as officers of the BSO, acting under color of law, to wit, under color of statutes, ordinances, regulations, policies, customs and usages of the State of Florida and/or the BSO. At all times relevant to this Complaint, these individual defendants comprised the FTAA Bomb Squad Team #13.

19. Defendant federal agents JACQUES BATTISTE (“BATTISTE”), DARRELL TOMLIN (“TOMLIN”) and CHRISTIAN HILL (“HILL”) were at all times relevant to this Complaint, employed by Defendant UNITED STATES as FBI agents. At all times relevant to this Complaint, these individual federal defendants were members of the FBI Operational Support Team (FBI OST) and acted in their individual capacities. City of Miami records indicate that “FBI OST BRAVO” was involved in this incident, but Plaintiff, at this time, is unable to ascertain the meaning or identity of “FBI OST BRAVO.”

20. Defendant federal agents JOHN/JANE DOES 1 through 8 (“DOES”) were at all times relevant to this Complaint, employed by Defendant UNITED STATES as FBI agents. At all times relevant to this Complaint, these individual federal defendants acted in their individual capacities.

STATEMENT OF FACTS

21. The FTAA summit meetings were held in Miami, Florida from November 18 through November 23, 2003. During the weeks and months leading up to these FTAA meetings, the CITY OF MIAMI and the MPD, including its officers and officials, undertook the planning of operations to control any demonstrations by individuals who, it was anticipated, would be protesting against the FTAA.

22. As part of the planning leading up to the FTAA demonstrations, the MPD recruited federal, state, county and municipal police departments from throughout south Florida to be part of a security force. Ultimately, the MPD assembled a multi-agency police/security force in which nearly forty (40) different law enforcement agencies participated ("participating agencies"). Some of the participating agencies, including the BSO, signed a " mutual aid agreement" with the CITY OF MIAMI which allowed the signatory department to exercise police powers outside its own jurisdiction and within the City of Miami. (A true and accurate copy of the Mutual Aid Agreement is attached hereto as Exhibit A).

23. The BSO was a participating agency in the multi-agency police/security force led by the MPD. The BSO signed a mutual aid agreement with the CITY OF MIAMI which read: "The personnel and equipment that are assigned by the assisting agency [BSO] shall be under the immediate command of a supervising officer designated by the agency head of the assisting agency. Such supervising officer shall be under the direct supervision and command of the agency head and or his/her designee of the agency requesting assistance [MPD]." The Miami City Manager, the City Attorney and the Police Chief, John Timoney, signed the contract with Broward Sheriff JENNE.

24. The MPD's security policy for the FTAA demonstrations ("FTAA security policy")

served as an umbrella policy under which all participating agencies acted. This FTAA security policy required the participating agencies to submit to a single plan, with the MPD assuming the leadership role among the participating agencies. As part of this plan, the MPD made extensive plans for, and conducted training in the use of force, including the preemptive search, seizure and damage of property considered suspicious.

25. As part of its FTAA security policy, the MPD, in conjunction with the representatives of the participating agencies, devised “rules of engagement” which each of these agencies was required to follow. According to the “FTAA After-Action Report” prepared by the MPD, each of the participating agencies “put aside their independence for one week and operated as a single entity.”

26. The MPD’s FTAA security policy was designed to present a massive, omnipresent and overwhelming show of police authority so as to discourage people from coming to downtown Miami to demonstrate against the FTAA summit meetings. The central premise of the policy was that by restricting political protest and other lawful public expression, the potential for civil disturbance, violence, arrests, and property damage would be minimized. It was a policy designed to limit public expression to preempt wholly speculative violence.

27. Miami Police Chief Timoney, as the final policy maker for police matters for the CITY OF MIAMI in connection with the FTAA demonstrations, was deliberately indifferent to the rights of those protesting against the FTAA and otherwise and participating in FTAA related events. Chief Timoney set the tone for the policy by personally participating in police operations designed to clear the downtown area of demonstrators. After the FTAA summit had begun, when asked on the evening of November 19 whether he thought demonstrators would violate the law the next day,

Timoney commented, “If they don’t do anything by tomorrow night, pardon the expression, but they look like pussies.” During the summit, Chief Timoney set the example for the officers under his command by publicly: illegally detaining and searching the backpack of a person who was walking on the street; running up to another individual who was being taken into police custody, putting his finger in the person’s face and yelling, “You’re bad. Fuck you!”; and, referring to demonstrators as “punks” and “knuckleheads.”

28. The FBI was one of the federal agencies that worked in conjunction with the CITY OF MIAMI of Miami during the FTAA demonstrations. The FBI has a history of tracking down and surveilling individuals who participate in protests or who express dissenting views. The FBI keeps secret records and files on such individuals, which are sometimes referred to as “spy files”.

29. At the time of the FTAA summit meetings, LIPPMAN was working as a freelance reporter for Free Speech Radio News—an organization which broadcasts a national daily news program on 65 radio stations. His residence was in North Carolina, but he traveled extensively outside of North Carolina for his journalism work.

30. On or about November 19, 2003, LIPPMAN traveled from North Carolina to Miami to cover the FTAA demonstrations, forums and educational events as a freelance reporter. According to documents produced by the CITY OF MIAMI pursuant to a public records request, LIPPMAN was surveilled from North Carolina to Miami by the FBI because he was a “known protestor w/ history.” (A true and accurate copy of this document is attached as Exhibit B). On information and belief, up to eight FBI agents whose identities are unknown and are thus included among the defendants named as “FBI Agents John/Jane Does 1-8” (“FBI DOE DEFENDANTS”) conducted, participated in conducting, and/or supervised the surveillance.

31. The FBI DOE DEFENDANTS who surveilled LIPPMAN had no probable cause or other legal justification to conduct the surveillance of LIPPMAN. As a result of the surveillance conducted by FBI DOE DEFENDANTS, Lippman's vehicle was subsequently searched and seized in violation of his constitutional rights.

32. On November 19, 2003, LIPPMAN arrived in Miami and parked his 1991 Nissan pickup truck, North Carolina tag NY 3509, VIN # 1N6SD115XMC396832, in parking lot no. 3 at NE 2nd St. and NE 2nd Ave. He disembarked from his vehicle so that he could approach the FTAA demonstrations on foot. He left his computer, clothing and guitar in his vehicle, taking his recording equipment with him.

33. Later that day, around 3 p.m., LIPPMAN returned to the parking lot and saw his vehicle being towed away. LIPPMAN approached two police officers (who did not have name tags or badge numbers visible) and asked them what had happened and why, but they did not provide him any answers.

34. An employee of the parking facility advised LIPPMAN that the MPD had reported that the FBI had instructed them to check LIPPMAN's vehicle for a bomb. This employee also stated that the MPD had broken the windows of LIPPMAN's vehicle.

35. The CITY OF MIAMI's FTAA After-Action Report revealed that officers from three agencies – a Bomb Squad Team from BSO, an OST Team from the FBI and officers from MPD — performed the search and seizure which inflicted damage upon LIPPMAN's property.

36. According to a CITY OF MIAMI report entitled "MPD Special Investigations Section, E.O.D. response," prepared by Defendant FBI Agent BATTISTE, the FBI "Miami Intell Unit" reported that the "vehicle was surveilled from North Carolina and driver was known protestor

w/ history. It was then decided to conduct 8 point vehicle check, which was clear, K-9 search which was clear, use HRM/ Pageresque - which was clear and finally the robot to remove the contents from the rear of the pick-up truck. All removed items were manually searched as was the interior of the cab. Vehicle cleared at [unintelligible].” Nothing in this report justified a search and seizure of LIPPMAN’s property.

36A. Affidavits by Defendants FBI Agent BATTISTE and City of Miami Sgt. MASFERRER indicate that the decision to search LIPPMAN’S vehicle for a bomb was initiated by request from a “Special Intelligence Unit” comprised of some or all of the FBI DOE DEFENDANTS who had surveilled LIPPMAN from North Carolina to Miami or comprised of law enforcement officers working directly along with or under the auspices of those FBI DOE DEFENDANTS (*see* attached Battiste Affidavit at ¶ 9 and Masferrer Affidavit at ¶¶ 12 and 14, *see* also Battiste’s report referenced in ¶ 36 above), and/or by request made directly by the FBI DOE DEFENDANTS who had conducted the surveillance of Lippman (*see* Masferrer Affidavit at ¶ 14).

36B. In requesting or causing others to request that LIPPMAN’S vehicle be searched for a bomb, the FBI DOE DEFENDANTS had no probable cause or other legal justification to believe that a bomb or any type of explosive was located in the vehicle. Rather, the request was the last step in the surveillance of LIPPMAN’S vehicle from North Carolina to Miami on the basis that Plaintiff LIPPMAN was a “known protestor w/history.” By causing Plaintiff LIPPMAN’S vehicle to be searched and seized based upon his status as a “known protestor w/history,” the FBI DOE DEFENDANTS violated LIPPMAN’S First Amendment rights to free press, speech and assembly.

37. According to a CITY OF MIAMI Incident report, after LIPPMAN’S vehicle was searched, MPD then towed the vehicle to the “Miami Auto Pound” “for further investigation”

38. Immediately after LIPPMAN saw his vehicle being towed away, he began attempts to track and recover it. Two days later, on November 21st, after much difficulty, LIPPMAN finally took possession of his vehicle from MPD. Both passenger-cab windows were broken out, and in the back, where the camper top closes, both padlocks were broken off. Inside the vehicle, all of LIPPMAN's personal belongings were turned upside down, opened and scattered: the computer was outside of its case, files were dumped out in all directions, glass was all over the seat, a flashlight and plastic drawers were broken, and the gas cap was missing.

39. In addition to the damage to his vehicle and to his personal property within the vehicle, LIPPMAN suffered consequential damages as a result of losing the use of his vehicle and the use of his personal property. Specifically, until he recovered his vehicle and its contents: he was unable to draft or file a story or otherwise do his work as a freelance reporter regarding the FTAA demonstrations; he was unable to change clothes, use his items of personal hygiene or play his guitar; and he experienced the anxiety of not knowing whether he would ever recover his vehicle, computer, guitar and other personal belongings.

40. No bomb, contraband or any illegal substance or material was ever found in LIPPMAN's vehicle. Rather, the vehicle and its contents were "cleared" by the police.

41. No criminal or any other charges were ever brought against LIPPMAN.

42. Defendants had no probable cause or other legal justification to search, seize or damage LIPPMAN's property and their actions in doing so violated his Fourth Amendment right to be free from unreasonable search and seizure.

43. Neither LIPPMAN's vehicle nor its contents posed any threat to persons or property in the area. Individual defendant officers of MPD, BSO and FBI knew or should have known that

LIPPMAN's vehicle and its contents posed no threat to them or to other persons or property in the area, and therefore their decision to damage the vehicle and its contents was unreasonable and in violation of the law of Florida.

44. The decision of MPD, BSO and FBI to search, seize and damage the property of LIPPMAN violated his Fifth and Fourteenth Amendment rights not to be deprived of his property without due process of law and was taken in retaliation for exercising his rights under the First Amendment.

45. As a result of learning that he was surveilled from North Carolina to Miami by FBI Agents DOES based on the allegation that he was a "known protestor w/ history" which then led to the search, seizure and damage to his property, LIPPMAN has been chilled in the exercise of his First Amendment rights. Specifically LIPPMAN feels intimidated by the police and now exercises caution and reservation before attending and/or participating in political demonstrations and worries about his vehicle and personal belongings because he fears that he will again be surveilled, and subjected to searches and seizures without legal justification and in retaliation for exercising his First Amendment rights.

46. The CITY OF MIAMI, as the entity responsible for law enforcement training for the FTAA demonstrations, failed to properly train its police officers and officers of BSO and FBI as to when and how to search and seize vehicles for bombs and how to prevent property damage in doing so.

47. The CITY OF MIAMI failed to train officers in how to protect and respect the constitutional rights of reporters, protesters and attendees during the FTAA demonstrations.

48. The CITY OF MIAMI failed to properly supervise, control and discipline the officers

and agents under its command and direction during the FTAA demonstrations.

49. During the FTAA events, which lasted three days, CITY OF MIAMI together with other participating agencies, illegally searched, seized and/or damaged personal property of multiple protesters, reporters, photographers, film makers and bystanders.

50. The CITY OF MIAMI and MPD's practice of searching, seizing and damaging property in retaliation for or in total disregard of constitutional rights was condoned, encouraged, permitted and tolerated by MPD Chief Timoney, and thereby constituted a policy, custom and practice of unjustified, unreasonable and illegal searches and seizures by officers under his command perpetrated upon members of the public, including LIPPMAN, which violated First, Fourth, and Fourteenth Amendment rights.

51. The above described actions were not an isolated incident. CITY OF MIAMI has a history of failing to respect the constitutional rights of large crowds of persons who peacefully demonstrate on the streets of the Miami, and was on notice prior to the FTAA summit meetings of systemic deficiencies within the MPD regarding the policing and managing of large crowds of individuals exercising their First Amendment rights.

52. In January and March of 2000, several thousand people demonstrated on the streets of Miami to protest the decision of the United States Government to send Elian Gonzalez back to Cuba. There were civil disturbances arising out of those demonstrations and the MPD was criticized for its actions against individuals who were not violating any law but were merely exercising their First Amendment rights.

53. As a result, the City of Miami Commission established the "Ad Hoc Committee To Investigate Police Community Relations" ("Ad Hoc Committee") to determine what had occurred

during the Elian Gonzalez demonstrations and to make recommendations for reforming MPD's policies, customs and practices.

54. The Ad Hoc Committee issued a report in October 2000 which made certain findings critical of MPD's handling of the demonstrations, and which included the following statement:

The [MP] department failed to establish policies and plans on how to arrest violators of the law without infringing on the constitutionally protected rights of demonstrators . . . The City [of Miami] management, specifically police administration, implemented and enforced a strict policy with an objective of clearing streets, sidewalks, and parking lots. The community's perception is that police officers were ordered to operate under a "zero tolerance" policy that forced officers to clear the streets and those who appeared in a public area near a demonstration or even a simple gathering. This policy interfered with the community's exercise of its constitutional right to assemble and voice its grievances against governmental action.

The [Miami] police department should implement a system which incorporates adequate managerial coordination and direction, and which provides the chain of command and/or rank and file with clear goals and objectives.

The City [of Miami] should implement a training program for both police management and rank and file with emphasis in the legal rights and duties, particularly the boundaries of constitutionally permissible conduct for both law enforcement and the public, and first amendment rights.

Report of the Ad Hoc Committee To Investigate Police Community Relations.

55. The report issued by the Ad Hoc Committee reveals that many of the problems and issues faced by the MPD during the Elian Gonzalez protests repeated themselves during the FTAA

demonstrations. Miami Police Chief Timoney, the person responsible for the design and implementation of the FTAA security policy, failed to consider the Ad Hoc Committee report in preparation for the FTAA demonstrations.

56. The CITY OF MIAMI failed to follow the recommendations for reform as issued by the Ad Hoc Committee and as a result, did not adequately train, supervise, control or discipline its officers and agents during the FTAA demonstrations.

COUNT I

42 U.S.C. §1983 against Defendant CITY OF MIAMI for failure to train and for policy to suppress speech

57. This cause of action is brought by Plaintiff LIPPMAN against Defendant CITY OF MIAMI for deprivation by its officers of LIPPMAN's constitutional rights.

58. The CITY OF MIAMI, as the entity responsible for law enforcement training for the FTAA demonstrations, failed to properly train its police officers and officers of the BSO and the FBI as to when and how to search and seize vehicles for bombs and how to prevent property damage in doing so.

59. The CITY OF MIAMI and MPD's policies and practices of damaging personal property without any reasonable basis to believe that the property posed an actual threat of harm to persons or property, violated Plaintiff LIPPMAN's First, Fourth, and Fourteenth Amendment to the United States Constitution.

60. The CITY OF MIAMI and MPD's practice of searching property in retaliation for or in total disregard of constitutional rights was condoned, encouraged, permitted and tolerated by Miami Police Chief Timoney, and thereby constituted a policy, custom and practice of unjustified,

unreasonable and illegal false arrests by officers under his command perpetrated upon members of the public, including LIPPMAN, which violated his First, Fourth, and Fourteenth Amendment rights.

61. Defendant CITY OF MIAMI had the duty of providing a safe and secure setting in downtown Miami during the FTAA summit meetings so that persons such as Plaintiff LIPPMAN could lawfully exercise their rights to free press, speech and assembly under the First Amendment and be free from unreasonable searches and seizures of his property as guaranteed by the Fourth Amendment. That duty included the training, supervising, controlling and disciplining of its police officers, and such duty extended to the officers of the participating agencies with whom it entered into an agreement, in furtherance of its FTAA security policy.

62. Defendant CITY OF MIAMI was deliberately indifferent to and violated Plaintiff LIPPMAN's rights under the First, Fourth, and Fourteenth Amendments by failing to train, supervise, control and discipline its police officers or agents under its control in the execution of their official duties during the FTAA summit meetings and, particularly, to ensure that such officers: a) respected the free press, speech and assembly rights of persons on the streets of Miami; b) refrained from conducting searches and seizures without probable cause; and c) refrained from damaging and depriving persons of property without due process of law.

63. Defendant CITY OF MIAMI'S failure to adequately train, supervise and control the officers under its command and direction, as specified above, is part of a pattern, practice and custom or omission that is tantamount to a policy of the defendant CITY OF MIAMI.

64. Defendant CITY OF MIAMI has a history of failing to respect the constitutional rights of large crowds of persons who peacefully demonstrate on the streets of Miami, and was on notice prior to the FTAA Summit meetings of systemic deficiencies within the MPD regarding the

policing and managing of large crowds of individuals exercising their First Amendment rights. The CITY OF MIAMI/MPD was specifically put on notice of such deficiencies by the report of the Miami Ad Hoc Committee but the MPD failed to follow and implement the recommendations of that report.

65. Such failure to train, supervise, control and discipline made it reasonably foreseeable and inevitable that persons such as Plaintiff LIPPMAN who was peacefully exercising his rights under the First Amendment would be subjected to violations of his rights under the Fourth, and Fourteenth Amendments to the U.S. Constitution.

66. The above described failure to train, supervise, control and discipline constituted a policy and practice of the Defendant CITY OF MIAMI that demonstrated a deliberate indifference to the constitutional rights of the public, including Plaintiff LIPPMAN's and were the direct and proximate cause of the violation of LIPPMAN's rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution.

67. In furtherance of its FTAA security policy – a policy designed to limit lawful public expression to preempt wholly speculative violence – Defendant CITY OF MIAMI violated Plaintiff LIPPMAN's rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution. In orchestrating and carrying out such policy, Defendant CITY OF MIAMI acted knowingly and willfully, the result being that Plaintiff LIPPMAN's property was searched, seized and damaged without probable cause in retaliation for exercising his rights under the First Amendment.

68. WHEREFORE, Plaintiff LIPPMAN respectfully requests this Court to award:

a) reasonable and appropriate compensatory damages;

- b) plaintiffs' costs, expenses and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988;
- c) such other and further relief as this Court deems necessary and proper.

COUNT II

State Tort Negligence against Defendant CITY OF MIAMI

69. This is a cause of action for negligence for damages in excess of fifteen thousand dollars, exclusive of costs and attorney's fees.

70. Defendant CITY OF MIAMI is responsible for the conduct of the officers in the employ of the MPD.

71. Officers Romero and Masferrer, employees of the MPD/CITY OF MIAMI and acting in the course and scope of their duties as police officers employed by Defendant CITY OF MIAMI, physically deprived Plaintiff LIPPMAN of his property without due process of law.

72. The search and seizure of Plaintiff LIPPMAN's property by employees of Defendant CITY OF MIAMI was unlawful and unreasonable in that it was not based upon lawfully issued process of the Court and said employees did not have probable cause to search and seize LIPPMAN's property.

73. The Defendant CITY OF MIAMI owed a duty of reasonable care to Plaintiff LIPPMAN, which was violated by its employees searching, seizing and damaging LIPPMAN's vehicle and his personal property inside the vehicle in a negligent and/or reckless fashion.

74. As a proximate result of said negligent and/or reckless conduct, Plaintiff LIPPMAN suffered added transportation expenses, loss of the use and value of his vehicle, loss of wages and earning capacity, inability to recoup business expenses, inconvenience, physical discomfort, loss of time, and emotional pain and suffering and mental anguish.

75. WHEREFORE, Plaintiff LIPPMAN demands judgment against Defendant CITY OF MIAMI for actual and consequential damages in excess of \$15,000, plus interest and costs as provided by law, and such other and further relief as the Court deems just and proper. Plaintiff LIPPMAN further reserves the right to amend this Count to seek punitive damages pursuant to Fla. Stat. § 768.72.

COUNT III

Trespass to Chattels against Defendant CITY OF MIAMI

76. This is a cause of action for trespass to chattel against Defendant CITY OF MIAMI in excess of fifteen thousand dollars, exclusive of costs and attorney's fees.

77. Defendant CITY OF MIAMI is responsible for the conduct of the officers in the employ of the MPD.

78. Officers Romero and Masferrer, employees of the MPD/ CITY OF MIAMI and acting in the course and scope of their duties as officers employed by Defendant CITY OF MIAMI, damaged Plaintiff LIPPMAN's chattel, specifically, the vehicle owned by LIPPMAN and his personal property inside the vehicle, thereby interfering with LIPPMAN's rights to possess his chattel.

79. Defendant CITY OF MIAMI took possession of LIPPMAN's chattel without his consent and deprived him of the use of his chattel for a substantial period of time.

80. Said acts were done intentionally and caused damage to LIPPMAN's property and, thus, the interference referenced above.

81. Plaintiff LIPPMAN was damaged by the acts of the CITY OF MIAMI and its officers. As a result of said actions, LIPPMAN suffered added transportation expenses, loss of the use and

value of his vehicle, loss of wages and earning capacity, inability to recoup business expenses, inconvenience, physical discomfort, loss of time, and emotional pain and suffering and mental anguish.

82. WHEREFORE, Plaintiff LIPPMAN demands judgment against Defendant CITY OF MIAMI for actual and consequential damages in excess of \$15,000, plus interest and costs as provided by law, and such other and further relief as the Court deems just and proper. Plaintiff LIPPMAN further reserves the right to amend this Count to seek punitive damages pursuant to Fla. Stat. § 768.72.

COUNT IV

State Tort Negligence against Defendant Broward Sheriff Lamberti (BSO)

83. This is a cause of action for negligence for damages in excess of fifteen thousand dollars, exclusive of costs and attorney's fees.

84. Defendant Alfred T. Lamberti is the Sheriff of Broward County and is responsible for the conduct of the deputies in the employ of the BSO.

85. Officers Cornetta and Melbourne, employees of the BSO/ Defendant Broward Sheriff Lamberti and acting in the course and scope of their duties as deputies employed by Defendant Broward Sheriff Lamberti physically deprived Plaintiff LIPPMAN of his property without due process of law.

86. The search and seizure of Plaintiff LIPPMAN's property by Defendant Broward Sheriff Lamberti was unlawful and unreasonable in that it was not based upon lawfully issued process of the Court and said Defendant did not have probable cause to search and seize LIPPMAN's property.

87. The Defendant Broward Sheriff Lamberti owed a duty of reasonable care to Plaintiff LIPPMAN, which was violated by his employees searching, seizing and damaging LIPPMAN's vehicle and his personal property inside the vehicle in a negligent and/or reckless fashion.

88. As a proximate result of said negligent and/or reckless conduct, Plaintiff LIPPMAN suffered added transportation expenses, loss of the use and value of his vehicle, loss of wages and earning capacity, inability to recoup business expenses, inconvenience, physical discomfort, loss of time, and emotional pain and suffering and mental anguish.

89. WHEREFORE, Plaintiff LIPPMAN demands judgment against Defendant Broward Sheriff Lamberti for actual and consequential damages in excess of \$15,000, plus interest and costs as provided by law, and such other and further relief as the Court deems just and proper. Plaintiff LIPPMAN further reserves the right to amend this Count to seek punitive damages pursuant to Fla. Stat. § 768.72.

COUNT V

Trespass to Chattels against Defendant Broward Sheriff Lamberti (BSO)

90. This is a cause of action for trespass to chattel against Defendant Broward Sheriff Lamberti in excess of fifteen thousand dollars, exclusive of costs and attorney's fees.

91. Defendant Alfred T. Lamberti is the Sheriff of Broward County and is responsible for the conduct of the deputies in the employ of BSO.

92. Officers Cornetta and Melbourne, employees of the BSO/ Defendant Broward Sheriff Lamberti and acting in the course and scope of their duties as deputies employed by Defendant Broward Sheriff Lamberti damaged Plaintiff LIPPMAN's chattel, specifically, the vehicle owned by LIPPMAN and his personal property inside the vehicle, thereby interfering with LIPPMAN's

rights to possess his chattel.

93. Defendant Broward Sheriff Lamberti took possession of LIPPMAN's chattel without his consent and deprived him of the use of his chattel for a substantial period of time.

94. Said acts were done intentionally and caused damage to LIPPMAN's property and, thus, the interference referenced above.

95. Plaintiff LIPPMAN was damaged by the acts of the Broward Sheriff Lamberti and its officers. As a result of said actions, LIPPMAN suffered added transportation expenses, loss of the use and value of the vehicle, loss of wages and earning capacity, inability to recoup business expenses, inconvenience, physical discomfort, loss of time, and emotional pain and suffering and mental anguish.

96. WHEREFORE, Plaintiff LIPPMAN demands judgment against Defendants Broward Sheriff Lamberti for actual and consequential damages in excess of \$15,000, plus interest and costs as provided by law, and such other and further relief as the Court deems just and proper. Plaintiff LIPPMAN further reserves the right to amend this Count to seek punitive damages pursuant to Fla. Stat. § 768.72.

COUNT VI

97. [Deleted pursuant to Court Order [DE 226] dismissing the United States of America from this action.]

98. [Deleted pursuant to Court Order [DE 226] dismissing the United States of America from this action.]

99. [Deleted pursuant to Court Order [DE 226] dismissing the United States of America from this action.]

100. [Deleted pursuant to Court Order [DE 226] dismissing the United States of America from this action.]

101. [Deleted pursuant to Court Order [DE 226] dismissing the United States of America from this action.]

102. [Deleted pursuant to Court Order [DE 226] dismissing the United States of America from this action.]

103. [Deleted pursuant to Court Order [DE 226] dismissing the United States of America from this action.]

COUNT VII

42 U.S.C. §1983 Claim against Defendant MPD Officer MASFERRER, Individually

104. While Defendant MASFERRER were acting under color of law, he subjected Plaintiff LIPPMAN to deprivation of rights secured to him under the First, Fourth, and Fourteenth Amendments to the United States Constitution.

105. Defendant MASFERRER unlawfully and without probable cause searched, seized and damaged Plaintiff LIPPMAN'S vehicle and personal belongings and deprived him of his property without due process of law while LIPPMAN was engaged in, and/or in retaliation for, the lawful exercise of his rights under the First Amendment.

106. The conduct of said Defendants violated Plaintiff LIPPMAN'S clearly established rights to free press, speech, and assembly, to be free from an unreasonable search and seizure of his property, and not to be deprived of property without due process of law, as guaranteed by the First, Fourth, and Fourteenth Amendments to the Constitution of the United States and for which 42 U.S.C. § 1983 provides a remedy.

107. WHEREFORE, PLAINTIFF Lippman respectfully requests this Court to:

- a) declare that this individual Defendant has violated the Constitutional protections guaranteed by the First, Fourth, and Fourteenth Amendments to the United States Constitution;
- b) enter judgment in favor of Plaintiff and against this individual Defendant;
- c) award damages to compensate Plaintiff for his injuries;
- d) award punitive damages against this individual Defendant to punish and deter them, and others, from engaging in similar conduct in the future;
- e) award Plaintiff pre-judgment interest;
- f) award costs and attorneys' fees; and
- g) award Plaintiff any other relief deemed necessary and proper.

COUNT VIII

42 U.S.C. §1983 Claim against Defendant BSO Officers CORNETTA and MELBOURNE, Individually

108. While Defendants CORNETTA and MELBOURNE, were acting under color of law, they subjected Plaintiff LIPPMAN to deprivation of rights secured to him under the First, Fourth, and Fourteenth Amendments to the United States Constitution.

109. Defendants CORNETTA and MELBOURNE, unlawfully and without probable cause searched, seized and damaged Plaintiff LIPPMAN'S vehicle and personal belongings and deprived him of his property without due process of law while LIPPMAN was engaged in, and/or in retaliation for the lawful exercise of his rights under the First Amendment.

110. The conduct of said Defendants violated Plaintiff LIPPMAN'S clearly established rights to free press, speech, and assembly, to be free from an unreasonable search and seizure of his

property, and not to be deprived of property without due process of law, as guaranteed by the First, Fourth, and Fourteenth Amendments to the Constitution of the United States and for which 42 U.S.C. § 1983 provides a remedy.

111. WHEREFORE, PLAINTIFF respectfully requests this Court to:

- a) declare that these individual Defendants have violated the Constitutional protections guaranteed by the First, Fourth, and Fourteenth Amendments to the United States Constitution;
- b) enter judgment in favor of Plaintiff and against these individual Defendants;
- c) award damages to compensate Plaintiff for his injuries;
- d) award punitive damages against these individual Defendants to punish and deter them, and others, from engaging in similar conduct in the future;
- e) award Plaintiff pre-judgment interest;
- f) award costs and attorneys' fees; and
- g) award Plaintiff any other relief deemed necessary and proper.

COUNT IX

BIVENS claim against FBI AGENTS BATTISTE, TOMLIN, HILL, and JOHN/JANE

DOES 1 through 8

112. This is a claim for violation of the First, Fourth, and Fifth Amendments to the United States Constitution against Defendant FBI Agents BATTISTE, TOMLIN, HILL, and JOHN/JANE DOES 1-8, individually and jointly.

113. Defendant FBI Agents BATTISTE, TOMLIN, HILL, violated Plaintiff LIPPMAN's rights under the Fourth Amendment by illegally and without probable cause searching, seizing and damaging his vehicle and personal property inside the vehicle, thereby also depriving him of his

property without due process of law, in violation of his rights under the Fifth Amendment, while he was engaged in, and/or in retaliation for, the lawful exercise of his rights of free press, speech, and assembly under the First Amendment.

114. Defendant FBI agents JOHN/JANE DOES 1-8 violated LIPPMAN's First Amendment rights by causing the search and seizure of his vehicle based upon Plaintiff LIPPMAN'S status as a "known protester w/ history" and without reasonable or individualized suspicion.

115. Defendant FBI agents' conduct, in violation of the United States Constitution, is the direct and proximate cause of Plaintiff's damages of added transportation expenses, loss of the use and value of his vehicle, loss of wages and earning capacity, inability to recoup business expenses, inconvenience, physical discomfort, loss of time, and emotional pain and suffering and mental anguish.

116. Defendant FBI agents are, therefore, jointly and severally liable to Plaintiff LIPPMAN in this action.

117. WHEREFORE, Plaintiff LIPPMAN respectfully requests that this Court:

- a) declare that the Defendant FBI agents have violated Plaintiff's constitutional rights guaranteed by the First, Fourth and Fifth Amendments to the United States Constitution;
- b) enter judgment in favor of Plaintiff and against Defendant FBI agents;
- c) award damages to compensate Plaintiff for his injuries;
- d) award punitive damages against the Defendant FBI agents to punish and deter them, and others, from engaging in similar conduct in the future;
- e) award Plaintiff pre-judgment interest;
- f) award costs and attorneys' fees; and

g) award Plaintiff any other relief deemed necessary and proper.

DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands a jury trial as to all issues triable by a jury.

Date: August 12, 2008

Respectfully submitted,

s/ Rosalind J. Matos

Rosalind Matos
Florida Bar No. 474967
South Florida Staff Counsel
ACLU Foundation of Florida, Inc.
4500 Biscayne Boulevard, Ste. 340
Miami, Florida 33137-3227
786-363-2712(phone)
786-363-1106 (fax)
rmatos@aclufl.org

s/ Jeanne Baker

Jeanne Baker
Jeanne Baker, Attorney at Law, PA
Florida Bar No.0880700
Cooperating Attorney for the AmericanCivil
Liberties Union Foundation of Florida, Inc.,
Miami Chapter
Jeanne Baker, Esq.
2937 SW 27th Avenue
Miami, FL 33133
305-443-1600
305-445-9666 (fax)
jbaker@fourdefenders.com