

March 25, 2022

By U.S. Priority Mail and email to dcalta@mggmlpa.com; pasch.james@gmail.com; sscalise@oaesv.org; nathalie.supler@beachwoodohio.com

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Mansour Gavin, LPA
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Cleveland, Ohio 44114

James Pasch
Anti-Defamation League
P.O. Box 22185
Beachwood, Ohio 44122

Nathalie Supler
City of Beachwood
25325 Fairmount Boulevard
Cleveland, Ohio 44122

Stephanie Scalise
OAESV
6111 Oak Tree Blvd., Ste. 140
Independence, Ohio 44131

Re: Mike Burkons

Ms. Calta, Mr. Pasch, Ms. Scalise, and Ms. Supler,

I'm writing to offer you the opportunity to avoid litigation over the infamous malicious prosecution that you engineered against Mike Burkons for the bargain price of simply compensating him for the attorneys' fees he incurred in defending against the retaliatory charges. Those fees amount to \$44,378.10.

If you do not agree to make this reimbursement voluntarily we will seek to hold you liable in a lawsuit for this amount, as well as for the other damage caused by your malicious and unconstitutional actions, including compensatory damages for mental anguish and loss of enjoyment of life, punitive damages, and an award for the additional attorneys' fees incurred in pursuing these civil claims that would be mandatory under 42 U.S.C. § 1983. *See Hartman v. Moore*, 547 U.S. 250, 252, 126 S.Ct. 1695, 164 L.Ed.2d 441 (2006) ("A retaliatory motive on the part of an official urging prosecution combined with an absence of probable cause supporting the prosecutor's decision to go forward are reasonable grounds to suspend the presumption of regularity behind the charging decision, and enough for a prima facie inference that the unconstitutionally motivated inducement infected the prosecutor's decision to bring the charge. ... This Court has held that the First Amendment prohibits government officials from subjecting an individual to retaliatory actions, including criminal prosecutions, for speaking out.").

The basis for these claims has been amply set forth in my correspondence to you since you first instituted the retaliatory charges against Burkons, which I trust that you understand, and which leaves no doubt as to Burkons' ability to meet the elements of a malicious prosecution claim under § 1983 as to all four of you. *See, e.g., Wilson v. City of Shaker Hts.*, 741 F.App'x 312, 316-317 (6th Cir.2018) ("First, the plaintiff must show that a criminal prosecution was initiated against the plaintiff and that the defendant made, influenced, or participated in the decision to prosecute. Second, because a § 1983 claim is premised on the violation of a constitutional right, the plaintiff

must show that there was a lack of probable cause for the criminal prosecution. Third, the plaintiff must show that, as a consequence of a legal proceeding, the plaintiff suffered a deprivation of liberty, as understood in our Fourth Amendment jurisprudence, apart from the initial seizure. Fourth, the criminal proceeding must have been resolved in the plaintiff's favor.”); *Miller v. Maddox*, 866 F.3d 386, 389 (6th Cir. 2017) (“[C]onditions of pretrial release represent a sufficient deprivation of liberty”); *Jones v. Clark County*, 959 F.3d 748, 765 (6th Cir. 2020) (“[A] showing that the government abandoned the prosecution because acquittal became ‘improbable’ is enough to meet this element ... The fact that the government recognized its error and moved to dismiss charges before a trial could be conducted or completed should not bar a subsequent malicious prosecution claim. A contrary holding would punish would-be plaintiffs for having a weak case brought against them.”).

We will file suit by May 24 if this matter is not resolved by then, which is the date on which the statute of limitations for Burkons’ state-law claims for malicious prosecution expire.

I therefore hope to hear from you or a representative shortly. I’m best reached by phone at 330.836.8533, or by email at peter@pattakos.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter Pattakos', with a stylized, cursive script.

Peter Pattakos