

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS**

JONATHAN DANIEL,)
)
 Plaintiff,)
)
 v.)
)
 THE CITY OF PEORIA, JIM ARDIS,)
 Mayor of Peoria, in his individual)
 capacity; PATRICK URICH, City)
 Manager of Peoria, in his individual)
 capacity; CHRISTOPHER SETTI,)
 Assistant City Manager of Peoria, in his)
 individual capacity; SAM RIVERA,)
 Chief Information Officer for the City of)
 Peoria, in his individual capacity;)
 STEVEN SETTINGSGAARD, former)
 Chief of Police of the Peoria Police)
 Department, in his individual capacity;)
 Peoria Police Detectives JAMES)
 FEEHAN and STEVIE HUGHES, JR., in)
 their individual capacities,)
)
 Defendants.)

Case No. _____

Judge _____

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Jonathan Daniel, by his attorneys, complains of Defendants as follows:

I. INTRODUCTION

1. This is a civil rights lawsuit. Mr. Daniel charges a conspiracy to violate and the violation of his rights under the First and Fourth Amendments to the United States Constitution and of Article I, Sections 4 and 6 of the Illinois Constitution and brings his action pursuant to 42 U.S.C. §§ 1983 and 1988, 28 U.S.C. §2201 et seq., and the laws and constitution of the State of Illinois. Mr. Daniel seeks declaratory and injunctive relief and monetary damages.

2. From March 9 through March 19, 2014, Mr. Daniel tweeted from a Twitter account, @peoriamayor, which used a picture of Jim Ardis (“Ardis”), the mayor of Peoria, as the account’s avatar. Displeased with the content of the tweets, Defendants embarked on a plan to shut down the account and identify and punish its creator in violation of his constitutional rights. As part of Defendants’ plan, Peoria Police Department officers searched Mr. Daniel’s residence, seized his personal property, reviewed personal information on Mr. Daniel’s electronic devices and in his mail, and arrested, detained, and interrogated Mr. Daniel purportedly for the crime of false personation of a public official.

II. JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

III. PARTIES

5. Plaintiff Jonathan Daniel is 29 years old. He is a U.S. Citizen and resident of Peoria, Illinois.

6. Defendant the City of Peoria (“the City”) is a municipal corporation under the laws of the State of Illinois and operates the Peoria Police Department.

7. Defendant Jim Ardis (“Ardis”) is now and at the time of the events complained of herein was Mayor of Peoria. He is sued in his individual capacity.

8. Defendant Patrick Urich (“Urich”) is now and at the time of the events complained of herein was City Manager of Peoria. The City has delegated to Urich as City Manager final policy making authority for all municipal departments, including the Peoria Police

Department. *See* Peoria Municipal Code §§ 2-281 and 24-35 to -37; 65 ILCS 5/5-3-7. He is sued in his individual capacity.

9. Defendant Christopher Setti (“Setti”) is now and at the time of the events complained of herein was Assistant City Manager of Peoria. He is sued in his individual capacity.

10. Defendant Sam Rivera (“Rivera”) is now and at the time of the events complained of herein was Chief Information Officer for the City of Peoria. He is sued in his individual capacity.

11. Defendant Steve Settingsgaard (“Settingsgaard”) was at the time of the events complained of herein Chief of Police of the Peoria Police Department. He is sued in his individual capacity.

12. Defendants James Feehan (“Feehan”) and Stevie Hughes, Jr. (“Hughes”) are now and at the time of the events complained of herein were detectives in the Peoria Police Department. They are sued in their individual capacities.

13. At all times relevant to this complaint, all Defendants were acting under color of state law and their conduct constituted state action.

IV. FACTS

Illinois’ False Personation Statute

14. Illinois’ false personation statute, 720 ILCS 5/17-2, prohibits various types of false personation, which the statute divides into five categories: false personation for the purpose of soliciting a material benefit, 720 ILCS 5/17-2 (a), false personation of public officials and employees, 720 ILCS 5/17-2 (b), fraudulent advertisement of a corporate name, 720 ILCS 5/17-2 (c), producing, selling, and distributing false law enforcement badges, 720 ILCS 5/17-2 (d), and

falsely representing oneself as having received a government medal, 720 ILCS 5/17-2 (e). The statute provides that false personation may be accomplished through the internet or electronic communication under 720 ILCS 5/17-2 (a)(1) through (a)(7) and (e) only. 720 ILCS 5/17-2 (g).

15. False personation of a public official, 720 ILCS 5/17-2 (b)(2), prohibits a person from “knowingly and falsely represent[ing] himself or herself to be . . . [a] public officer or a public employee or an official or employee of the federal government.”

16. Illinois’ provision for false personation of a public official criminalizes only representations made in person. Illinois courts require as an element of the offense that there be an intent to deceive the public that the impersonator is acting in the official capacity of a public official. Application of Illinois’ provision for false personation of a public official to speech made without such an intent violates the First Amendment and Article I, Section 4 of the Illinois State Constitution.

Events of March and April 2014

17. On or around March 9, 2014, Mr. Daniel began posting tweets to a Twitter account he created, @peoriamayor (“the Twitter account”), which used a picture of Ardis as the account’s avatar. The avatar’s Twitter biography read “I am honored . . . serve the citizens of our great city.”

18. On or before March 12, 2014, Mr. Daniel added the words “parody account” to the end of the Twitter account biography.

19. The Twitter account—which juxtaposed the mayor’s clean-cut image with a series of tweets conveying in a crude or vulgar manner an exaggerated preoccupation with sex, drugs, and alcohol—was a satiric form of expression protected by the First Amendment and the Illinois Constitution. The Twitter account was not reasonably believable as conveying the voice or

message of the actual mayor. Mr. Daniel had no intention of deceiving people into believing the account was actually operated by a representative of the mayor or the mayor himself, and no reasonable person could conclude such an intent from the content of the tweets or the Twitter account's profile page.

20. On or around March 11, 2014, Defendants Ardis, Urich, Setti, Rivera, Settingsgaard, Feehan, and Hughes, communicated about the Twitter account, came to a meeting of the minds, and agreed to shut it down and punish its creator. In furtherance of this conspiring agreement, Defendants engaged in the conduct set forth in paragraphs 21 through 49 below.

21. From March 11, 2014 through April 18, 2014, Defendants Ardis, Urich, Setti, Rivera, Settingsgaard, Brady, Feehan, and Hughes worked jointly and individually to have the Twitter account shut down and to punish the creator of the account because Ardis and the other defendants objected to the lawful, protected content of the tweets and because Ardis was personally offended by the Twitter account.

22. On March 11, 2014, Urich directed Rivera and Feehan to work to shut down the Twitter account and find out the identity of its creator. Rivera then contacted Twitter and ordered the account be shut down, or that control of the account be given to the City. In response, Twitter requested Rivera upload a copy of a government-issued photo identification of Ardis in order to demonstrate Rivera had authority to act on Ardis' behalf. Rivera then asked Setti to upload Ardis' driver's license, which he did.

23. Also on March 11, 2014, Feehan began investigating whether the account violated any criminal statutes, and concluded that it did not. He communicated his conclusions to Settingsgaard, who reported Feehan's findings to Ardis, Urich, and Rivera.

24. On March 12, 2014, Ardis directed Urich, Settingsgaard, and Rivera to act with a “sense of urgency” with respect to shutting down the Twitter account. Settingsgaard reported to Urich he thought Rivera was handling the matter. By the evening, Rivera had been unable to get a response from Twitter, so Setti asked Settingsgaard if the police department could continue working on shutting down the account and identifying who created it.

25. On March 13, 2014 Settingsgaard asked Feehan if there was anything he could do to speed up shutting down the account. Feehan then tried to contact Twitter and resumed investigating whether the account violated a criminal statute. Feehan erroneously claimed that the Twitter account violated Illinois’ criminal prohibition of false personation of a public official under 720 ILCS 5-17-2 (b)(2). Settingsgaard then reported to Ardis and Urich that Feehan had identified a statute which the Twitter account violated, the false personation statute, and asked Ardis if he wanted to file a formal complaint and pursue prosecuting the creator of the Twitter account. Ardis responded that he “absolutely” wanted to prosecute.

26. On or around March 14, 2014, Feehan, at Settingsgaard’s direction, applied in the Circuit Court of Peoria County for a warrant to obtain from Twitter evidence of the offense of false personation. Feehan did not have probable cause or any other lawful basis to apply for the warrant. A Peoria County Circuit Court judge issued the warrant and Defendants used the warrant to obtain the internet protocol address (“IP address”) used to connect to the Twitter account.

27. On March 17, 2014, Settingsgaard reported to Ardis and Urich that a warrant had been issued and sent to Twitter.

28. On March 20, 2014, Ardis and the City, in a letter to Twitter written by the Interim Corporation Counsel for the City, threatened to file a federal lawsuit seeking an

injunction against Twitter to terminate the Twitter account. Twitter suspended the Twitter account that same day.

29. On or around March 29, 2014, Hughes applied in the Circuit Court of Peoria County for a warrant to obtain from Comcast evidence of the offense of false personation. Hughes did not have probable cause or any other lawful basis to apply for the warrant. A Peoria County Circuit Court judge issued the warrant to obtain evidence of false personation. Defendants used the warrant to obtain the name and address of the subscriber associated with the IP address used to connect to the Twitter account.

30. On April 8, 2014, Ardis was informed that Comcast had returned information to the police department in response to the warrant.

31. On April 14, 2014, Ardis requested information from the police department on the status of the investigation of the Twitter account.

32. On or around April 15, 2014, Hughes applied in the Circuit Court of Peoria County for a warrant to search the premises identified by Comcast as the residence of the IP subscriber, 1220 N. University Street in Peoria (“the premises”), and seize evidence pertaining to the offense of false personation, including any electronic device which can store digital media, “books, papers, records, photographs, recordings, [and] documents,” and any “cocaine, heroin, [and] drug paraphernalia.”

33. On April 15, 2014, Defendants Hughes executed the search warrant for the premises. Two of Mr. Daniel’s roommates and two guests were at the premises when the police officers arrived to execute the search warrant. A number of pieces of mail, as well as computers, telephones, and other electronic devices were seized, including Mr. Daniel’s laptop, computer processor, and mail.

34. At the time the search warrant was executed, Mr. Daniel was at his place of employment.

35. Shortly after his work shift had ended, Mr. Daniel received a telephone call from Hughes, who told Mr. Daniel that he needed to come to the station. Mr. Daniel informed Hughes of his whereabouts and Hughes then directed two police officers to bring Mr. Daniel to the police station. Hughes did not have an arrest warrant, probable cause, or any other lawful basis to direct the arrest Mr. Daniel.

36. When the police officers arrived at Mr. Daniel's place of employment, they ordered Mr. Daniel to get in the police car, performed a pat-down search of Mr. Daniel, placed him into the car, and brought him to the police station. During this period, Mr. Daniel reasonably believed he was not free to leave the officer's presence.

37. At the police station, Mr. Daniel was told he had to take everything out of his pockets before entering an interrogation room. Mr. Daniel emptied the contents of his pockets, which included his cellular telephone, and placed the items on a chair in the station. He was then taken into an interrogation room. Mr. Daniel reasonably believed he was not free to leave the interrogation room or the police station.

38. In the interrogation room, Hughes told Mr. Daniel that he wanted to talk to Mr. Daniel about impersonating a public official on social media. Hughes then orally informed Daniel of his rights under *Miranda v. Arizona*. Mr. Daniel invoked his right to an attorney and Hughes then left the room.

39. Shortly thereafter Hughes returned to the room with Mr. Daniel's cellular telephone and ordered Mr. Daniel to power off the phone because it was being confiscated. Mr. Daniel objected to the confiscation of his only phone, particularly because he used it to

coordinate visits with his three and five year old sons and with his sick grandmother, who often called him when she needed help. Hughes told Mr. Daniel he could not have his phone back, but that he was now free to leave.

40. In the evening of April 15, 2014, and again on April 16, 2014, Ardis communicated with Settingsgaard and affirmed his desire to prosecute whoever created the Twitter account.

41. On April 17, 2014 Hughes applied in the Circuit Court of Peoria County for a warrant to search the contents of Mr. Daniel's cellular telephone for evidence of false personation and for a warrant to obtain from Google evidence of false personation in the email account associated with the Twitter account. Hughes did not have probable cause or any other lawful basis to apply for either warrant. A Peoria County Circuit Court judge issued both warrants.

42. On information and belief, Hughes and Feehan thereafter searched Mr. Daniel's electronic devices for records of communications and other data.

43. After being released from police custody, Mr. Daniel believed he would be charged and prosecuted for a crime for which he could serve up to a year in prison. His relationships with his roommates were strained because of the search of the premises and the seizure of his roommates' property. He worried police officers would view highly personal digital photographs, written electronic documents, and texts on his laptop, computer, and telephone.

44. Mr. Daniel was forced to not visit with his children on April 18 and 19 because he feared his children would witness his arrest. He believed he might have to leave Peoria because

Defendants had shown they would take illegal actions against him and he feared they would continue to do so in retaliation for the Twitter account.

45. Mr. Daniel learned he would not be charged with a crime when it was reported in the Peoria Journal Star on April 23, 2014. The Peoria Journal Star article stated that the State's Attorney of Peoria County decided not to prosecute Mr. Daniel for false personation of a public official. The State's Attorney stated that Mr. Daniel's conduct did not violate the statute because false personation of a public official under 720 ILCS 5/17-2(b)(2) had to be done in person and the statute could not be violated over the Internet or through electronic communication.

46. After learning he would not be charged with a crime, Mr. Daniel twice went to the police station to request the return of his property. His requests were denied. On April 24, 2014 Mr. Daniel's counsel made a demand by email to Ardis and Settingsgaard for the immediate return of Mr. Daniel's property. Mr. Daniel's personal property was returned to him on or around May 2, 2014.

47. Each of the Defendants personally participated in the unlawful conduct described herein which deprived Mr. Daniel of his constitutional rights, acted jointly and in concert with the other Defendants who participated in or acquiesced to the unlawful conduct, failed to intervene or stop other Defendants from engaging in the unlawful conduct though possessing the power to do so, or knew of and condoned or approved of the unlawful conduct.

48. Each Defendant acted knowingly and intentionally, willfully and wantonly, or with reckless or callous disregard for, or with deliberate indifference to Mr. Daniel's rights.

49. Defendants' unlawful conduct described herein directly and proximately caused Mr. Daniel's mental and emotional distress, loss of appetite, insomnia, anxiety, discomfort, damage to reputation, and deprivation of his constitutional rights.

50. Defendants' unlawful conduct described herein directly and proximately caused Mr. Daniel the loss of opportunity to engage in expression during the period when his cell phone and other electronic devices were confiscated.

51. Because Defendants Ardis, Urich, and Settingsgaard continue to maintain publicly that the actions taken against Mr. Daniel were lawful and proper, Mr. Daniel remains in danger of being punished for exercising his right to free expression if he engages in the future in speech that is derogatory towards the mayor.

52. Mr. Daniel has no adequate remedy at law and is irreparably harmed in that he wishes to be able to parody, satirize, and otherwise engage in humorous expression about the mayor and the City of Peoria in the future—including through the use of risqué language—but is chilled from doing so because he reasonably fears retaliation from Defendants if he engages in such protected expression.

VI. CLAIMS FOR RELIEF

COUNT ONE:

53. The allegations of paragraphs 1 through 52 are realleged and incorporated by reference as if fully set forth herein.

54. The actions of the Defendants described herein violate the rights of Mr. Daniel to freedom of expression as guaranteed by the First Amendment of the United States Constitution.

COUNT TWO:

55. The allegations of paragraphs 1 through 54 are realleged and incorporated by reference as if fully set forth herein.

56. The actions of the Defendants described herein violate the rights of Mr. Daniel to be free from unreasonable searches, seizures, and invasions of privacy guaranteed by the Fourth Amendment of the United States Constitution.

COUNT THREE:

57. The allegations of paragraphs 1 through 56 are realleged and incorporated by reference as if fully set forth herein.

58. The actions of the Defendants described herein violate the rights of Mr. Daniel to speak, write, and publish freely as guaranteed by Article I, Section 4 of the Illinois Constitution.

COUNT FOUR:

59. The allegations of paragraphs 1 through 58 are realleged and incorporated by reference as if fully set forth herein.

60. The actions of the Defendants described herein violate the rights of Mr. Daniel to be free from unreasonable searches, seizures, and invasions of privacy as guaranteed by Article I, Section 6 of the Illinois Constitution.

COUNT FIVE:

61. The allegations of paragraphs 1 through 60 are realleged and incorporated by reference as if fully set forth herein.

62. The actions of the Defendants described herein constitute a conspiracy that caused the violation of Mr. Daniel's right to freedom of expression and freedom from unreasonable searches, seizures, and invasions of privacy as guaranteed by the First and Fourth Amendments of the United States Constitution.

VII. PRAYER FOR RELIEF

WHEREFORE, Mr. Daniel respectfully requests the following relief:

A. A declaratory judgment that Defendants conspired to and violated Mr. Daniel's right to freedom of expression and his right to be free from unreasonable searches, seizures, and invasions of privacy guaranteed by the First and Fourth Amendments of the United States Constitution and Article I, Sections 4 and 6 of the Illinois Constitution.

B. Permanent injunctive relief prohibiting the City of Peoria from engaging in future efforts to suppress constitutionally protected speech that is derogatory towards the mayor.

C. Compensatory damages, in an amount to be ascertained at trial, for the unlawful suppression of Mr. Daniel's freedom of expression and the unlawful detention, arrest, searches and seizures complained of herein.

D. Punitive damages from individual defendants, in an amount to be ascertained at trial, for Defendants' reckless and callous disregard of Mr. Daniel's constitutional rights

E. Attorneys' fees, costs, and expenses, pursuant to 42 U.S.C. § 1988 and the Illinois Civil Rights Act of 2003, 740 ILCS 23/1 et seq.

F. Such other and further relief as this Court may deem just and proper.

DATED: June 11, 2014

Respectfully submitted:

/s/ Harvey Grossman
Lead counsel for plaintiff

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