

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Daniel McGowan :
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 Plaintiff, :
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 -v- :
 :
 United States of America; Tracy Rivers, :
 Residential Reentry Manager; Unknown :
 United States Marshals; Community First :
 Services, Inc.; Core Service Group, Inc.; :
 Grace Terry, Facility Director; Massiel :
 Suriel, Case Manager; :
 :
 :
 Defendants. :
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**COMPLAINT AND
DEMAND FOR A
JURY TRIAL**

PRELIMINARY STATEMENT

1. On April 4, 2013, Plaintiff Daniel McGowan was taken from the halfway house in Brooklyn in which he was serving out the last months of his prison sentence to a federal detention center by United States Marshals as punishment for publishing an article on the *Huffington Post* website. Instead of being placed with the general population, he was placed in solitary confinement in the Special Housing Unit (SHU) of the Metropolitan Detention Center (MDC) in Brooklyn.
2. Mr. McGowan’s article described how the Federal Bureau of Prisons (BOP) had previously placed him in a Communications Management Unit (CMU), where he was not allowed any physical contact with visitors, in retaliation for his First Amendment protected speech. Daniel McGowan, *Court Documents Prove I Was Sent to a Communications Management Unit (CMU) For My Political Speech,*

Huffington Post (Apr. 1, 2013, 8:36 AM), http://www.huffingtonpost.com/daniel-mcgowan/communication-management-units_b_2944580.html.

3. Mr. McGowan was subsequently released from MDC on April 5, 2013, after the Defendants became aware that imprisoning him for exercising his First Amendment rights violated BOP regulations, a federal court order, the Constitution of the United States, is a tort under the Federal Tort Claims act, and violated various New York State Laws.
4. The Plaintiff brings this action under New York law, the Federal Torts Claim Act, and the First, Fourth and Fifth Amendments to the United States Constitution. Mr. McGowan requests monetary compensation to redress the damages caused to him.

Jurisdiction and Venue

5. This Court has jurisdiction over the subject matter of this Complaint under 28 U.S.C. §§ 1331, 1346(b) & 1367.
6. On September 17, 2013, the Plaintiff submitted an administrative tort claim to the Bureau of Prisons, demanding damages in the amount of \$200,000. The Bureau of Prisons denied this claim on March 19, 2014. Therefore, the Plaintiff has exhausted all administrative remedies.
7. Venue is properly within the Eastern District of New York under 28 U.S.C. §1402(b) as the Plaintiff resides in this district, and the acts or omissions that are the subject of this Complaint occurred within this district.

Jury Trial Demand

8. Plaintiff demands a trial by jury of all issues in this action that are so triable.

Parties

9. Daniel McGowan is a resident of Brooklyn, New York, and resided there at all times relevant to this Complaint.
10. Defendant United States of America is the appropriate Defendant under the Federal Torts Claim Act (FTCA).
11. Defendant Tracy Rivers, Residential Reentry Manager at the New York Residential Reentry Management Office; was at all times relevant to this Complaint employed by the BOP, which is part of the Department of Justice. The Plaintiff is suing her in their individual capacity.
12. Defendants Unknown United States Marshals were at all times relevant to this Complaint employed by the United States Marshals Service, which is part of the Department of the Justice. The Plaintiff is suing them in their individual capacity.
13. Defendants Grace Terry, Facility Director at the Brooklyn House Residential Reentry Center (RRC); and Massiel Suriel, Case Manager at the Brooklyn House RRC were at all times relevant to this complaint employed by Community First Services, Inc., and/or Core Services Group, Inc. The Plaintiff is suing them in their individual capacity.
14. Defendants Community First Services, Inc., and/or Core Services Group, Inc. were at all times relevant to this complaint the corporate entities under contract with the United States of America to run Brooklyn House RRC. The Plaintiff is suing them in their corporate capacity.

15. At all times relevant to this Complaint, the individual defendants listed in paragraphs 11 and 12 were acting in the scope and course of their employment with the Department of Justice.
16. At all times relevant to this Complaint, the individual defendants listed in paragraph 13 were acting in the scope and course of their employment with Community First Services, Inc., and/or Core Services Group, Inc.

Factual Allegations

17. On June 4, 2007, Mr. McGowan was sentenced to eighty-four months of imprisonment.
18. On December 11, 2012, Mr. McGowan was released from federal prison to a halfway house, the Brooklyn House RRC, where he was to serve out the remainder of his sentence.
19. During this period, Mr. McGowan was given daily work passes. He was and is employed full-time as a receptionist. He was also allowed home visits every weekend.
20. On April 1, 2013, Mr. McGowan published an article on the Huffington Post website. *See Daniel McGowan, Court Documents Prove I Was Sent to a Communications Management Unit (CMU) For My Political Speech*, Huffington Post (Apr. 1, 2013, 8:36 AM), http://www.huffingtonpost.com/daniel-mcgowan/communication-management-units_b_2944580.html.
21. Ms. Rivers directed Grace Terry, Facility Director at the Brooklyn House RRC, to issue Mr. McGowan an incident report for publishing an article. She also decided that Mr. McGowan should be remanded to a federal detention center.

22. An incident report was prepared at 9:50 AM on April 4, 2013, for the supposed violation of a condition of a community program by Mr. McGowan. This report was prepared by Bryan Acosta, Information Systems Specialist, and states that Mr. Acosta became aware of Mr. McGowan's article at approximately 1:00 PM on April 3, 2014.
23. As a result, on April 3, 2013, Mr. McGowan was not issued a work pass. This was the first time during his stay at the Brooklyn House RRC that he was not issued a work pass.
24. When Mr. McGowan asked his case manager, Massiel Suriel, why he was not being issued a work pass, he was told the order not to issue him a work pass was issued by the Bureau of Prisons administration.
25. Subsequently, on the morning of April 4, 2013, Mr. McGowan was taken from the Brooklyn House RRC by Unknown United States Marshals, who brought him to a federal detention center. Mr. McGowan was placed in MDC's SHU.
26. Upon information and belief, two halfway house residents were transported with Mr. McGowan to MDC for violating BOP and/or halfway house rules.
27. Upon information and belief, these two individuals were placed in the general population, not in the SHU. Mr. McGowan was the only one of the three individuals transported to MDC to be placed in solitary confinement.
28. On April 5, 2013, Mr. McGowan was released from MDC, and returned to the Brooklyn RRC. He arrived back at the Brooklyn House RRC at approximately 6:05 PM.

29. Upon his return to Brooklyn House RRC on April 5, 2013, Mr. McGowan was given a written warning, or “case note,” by his case manager, Ms. Suriel. This case note prohibited the Plaintiff from having any “contact with the media without approval from BOP’s Residential Reentry Manager.”
30. As a direct and proximate result of the above-described conduct, Mr. McGowan suffered damages including emotional distress and harm, embarrassment, loss of enjoyment of life, lost wages, and lost liberty.
31. The actions of the Defendants were taken in retaliation for Mr. McGowan’s exercise of his right to free speech in violation of his constitutional rights.
32. The actions of the Defendants deprived Mr. McGowan of his liberty, constituting a seizure of his person in violation of his constitutional rights.
33. The actions of the Defendants failed to provide Mr. McGowan with due process in violation of his constitutional rights.
34. The actions of the Defendants failed to provide Mr. McGowan with the equal protection of the laws in violation of his constitutional rights.
35. At all times relevant to this complaint, the Defendants acted in reckless, willful, callous and/or negligent disregard of Mr. McGowan’s rights under federal and state law.
36. At all times relevant to this complaint, the Defendants acted jointly and in concert and conspiracy to violate Mr. McGowan’s rights under federal and state law.
37. At all times relevant to this complaint, the Defendants listed in paragraphs 13 and 14 were delegated a public function by the United States of America.

38. At all times relevant to this complaint, the Defendants listed in paragraphs 13 and 14 acted as a willful participant in joint activities with the United States of America or its agents.

39. At all times relevant to this complaint, the Defendants listed in paragraphs 13 and 14 were funded or paid, directly or indirectly, by the United States of America.

40. At all times relevant to this complaint, the United States of America was entwined in the management or control of the Defendants listed in paragraphs 13 and 14.

Causes of Action
Count I
False Imprisonment and False Arrest

41. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.

42. By the actions described above, the Defendants committed the tort(s) of false imprisonment and false arrest under New York law.

43. The acts and conduct of the Defendants were the direct and proximate cause of injury and damage to Mr. McGowan and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

44. Under the Federal Torts Claim Act, Defendant United States of America is liable for these actions.

45. Under New York law, Defendants Community First Services, Inc. and/or Core Services Group, Inc. are vicariously liable for these actions under the common law doctrine of respondeat superior.

Count II
Assault and Battery

46. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.
47. By the actions described above, the Defendants committed the torts of assault and battery under New York law.
48. The acts and conduct of the Defendants were the direct and proximate cause of injury and damage to Mr. McGowan and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.
49. Under the Federal Torts Claim Act, Defendant United States of America is liable for these actions.
50. Under New York law, Defendants Community First Services, Inc. and/or Core Services Group, Inc. are vicariously liable for these actions under the common law doctrine of respondeat superior.

Count III
Negligence

51. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.
52. The Defendants owed a duty of care to Mr. McGowan, breached their duty to Mr. McGowan, and, as such, were a direct and proximate cause and a substantial factor in bringing about Plaintiff's damages outlined above.
53. The actions of the Defendants constitute the tort of negligence under New York law.

54. The acts and conduct of the Defendants were the direct and proximate cause of injury and damage to Mr. McGowan and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.
55. Under the Federal Torts Claim Act, Defendant United States of America is liable for these actions.
56. Under New York law, Defendants Community First Services, Inc. and/or Core Services Group, Inc. are vicariously liable for these actions under the common law doctrine of respondeat superior.

Count IV
Intentional and Negligent Infliction of Emotional Distress

57. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.
58. By the actions described above, the Defendants engaged in extreme and outrageous conduct, which intentionally and/or negligently caused severe emotional distress to plaintiff.
59. The acts and conduct of the Defendants were the direct and proximate cause of injury and damage to Mr. McGowan and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.
60. Under New York law, Defendants Community First Services, Inc. and/or Core Services Group, Inc. are vicariously liable for these actions under the common law doctrine of respondeat superior.

Count V
Negligent Hiring, Screening, Retention, Supervision, and Retention

61. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.
62. Defendants United States of America, Community First Services, Inc., and/or Core Services Group, Inc. negligently hired, screened, retained, supervised, and trained the individual defendants listed in paragraphs 11, 12, and 13.
63. The acts and conduct of the Defendants were the direct and proximate cause of injury and damage to the plaintiff and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.
64. Under the Federal Torts Claim Act, Defendant United States of America is liable for these actions.

Count VI
Violation of Right to Equal Protection of the Laws

65. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.
66. The Defendants, acting under the color of law, violated plaintiff's right to the equal protection of the laws under Article I, § 11 of the New York State Constitution.
67. A damages remedy is necessary here to effectuate the purposes of Article I, § 11, of the New York State Constitution, and appropriate to ensure full realization of the Plaintiff's rights under that section.

68. The Defendants' violation of Mr. McGowan's right to equal protection of the law, as protected by Article I, § 11, of the New York State Constitution, is actionable under the laws of New York.
69. The acts and conduct of the Defendants were the direct and proximate cause of injury and damage to Mr. McGowan and violated the rights guaranteed to him by Constitution of the State of New York.
70. Under the Federal Torts Claim Act, Defendant United States of America is liable for these actions.
71. Under New York law, Defendants Community First Services, Inc. and/or Core Services Group, Inc. are vicariously liable for these actions under the common law doctrine of respondeat superior.

Count VII
Violation of Right to Due Process

72. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.
73. The Defendants, acting under the color of law, violated plaintiff's right to due process under Article I, § 6 of the New York State Constitution.
74. A damages remedy is necessary here to effectuate the purposes of Article I, § 6, of the New York State Constitution, and appropriate to ensure full realization of the Plaintiff's rights under that section.
75. The Defendants' violation of Mr. McGowan's due process rights, as protected by Article I, § 6, of the New York State Constitution, is actionable under the laws of New York.

76. The acts and conduct of the Defendants were the direct and proximate cause of injury and damage to Mr. McGowan and violated the rights guaranteed to him by Constitution of the State of New York.
77. Under the Federal Torts Claim Act, Defendant United States of America is liable for these actions.
78. Under New York law, Defendants Community First Services, Inc. and/or Core Services Group, Inc. are vicariously liable for these actions under the common law doctrine of respondeat superior.

Count VIII
Bivens Claims

79. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.
80. By the actions described above, the Defendants retaliated against Mr. McGowan for exercising his right to free speech, protected by the First, Fourth, and Fifth Amendments to the United States Constitution.
81. By the actions described above, the Defendants violated Mr. McGowan's right to be free of unreasonable searches and seizures under the Fourth Amendment to the United States Constitution.
82. By the actions described above, the Defendants deprived Mr. McGowan of liberty without due process of law in violation of the Fifth Amendment to the United States Constitution.
83. By the actions described above, the Defendants deprived Mr. McGowan of the equal protection of the laws in violation of the Fifth Amendment to the United States Constitution.

84. The actions and omissions of the Defendants were the direct and proximate cause of injury and damage to Mr. McGowan.

Requests for Relief

WHEREFORE, the Plaintiff respectfully requests that this Court:

- a. Assume jurisdiction over this matter;
- b. Award compensatory damages to Mr. McGowan;
- c. Award punitive damages to Mr. McGowan;
- d. Convene and empanel a jury to consider the merits of this claim;
- e. Award Mr. McGowan reasonable costs, interest, and attorney's fees; and
- f. Grant any other relief that the Court may deem appropriate and equitable.

Dated: August 19, 2014
New York, New York

Respectfully submitted,

/s/

By: _____

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