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CONFIDENTIAL CERTIFIED MAIL 09/03/16 AND E-MAIL COMMUNICATION SUBMITTED FOR THE PURPOSES OF SETTLEMENT AND COMPROMISE PURSUANT TO O.C.G.A. § 24-4-408 AND TO PROVIDE NOTICE TO PRESERVE EVIDENCE IN ACCORDANCE WITH GEORGIA LAW

September 3, 2016

Mayor Eddie DeLoach
City of Savannah Mayor
Savannah City Hall, 2nd Floor
2 East Bay Street
Savannah, GA 31402

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City of Savannah Attorney
Savannah City Hall
2 East Bay Street
Savannah, GA 31402
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Email: jherman@savannahga.gov

Chief Joseph H. Lumpkin
Savannah-Chatham
Metropolitan Police Dept.
201 Habersham Street
Savannah, GA 31401

Albert J. Scott, Chairman
Chatham County Commission
P.O. Box 8161
Savannah, Georgia 31412

R. Jonathan Hart, County Attorney
Chatham County Attorney's Office
P.O. Box 8161
Savannah, Georgia 31412
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Meg Heap, District Attorney
Chatham County District
Attorney's Office
P.O. Box 2309
Savannah, Georgia 31402

RE NOTICE OF PROSPECTIVE CLAIMS AS FOLLOWS:

Federal and pendant State Civil Claims for Money Damages and Injunctive and Declaratory Relief for Malicious Prosecution and/or closely related causes of action;

Prospective Plaintiff Fabian Keith Notto;

Prospective Defendants City of Savannah and Chatham County, as the Savannah-Chatham Metropolitan Police Department;

Prospective Defendants Chatham County, as the Chatham County District Attorney's Office;

Prospective Defendants in individuals who were/are decision-makers, managers, agents of City of Savannah and Chatham County that directly or indirectly participated in Fabian Notto's prosecution during the relevant time period (hereinafter "Individual Defendants");

Reference Indictment No.: CR13-2673-J4, Superior Court of Chatham County, Georgia.

To Whom It May Concern,

This letter will serve as *ante litem* notice to the City of Savannah (hereinafter “City”) and Chatham County (hereinafter “County”), as the Savannah Chatham Metropolitan Police Department (hereinafter “SCMPD”), and County, as the Chatham County District Attorney’s Office (hereinafter “DA”), pursuant to O.C.G.A. §§ 36-33-5 & 36-11-1, respectively.

Introduction

I represent Fabian Keith Notto (hereinafter “Mr. Notto”) regarding claims for money damages, as well as declaratory and injunctive relief, for injuries and damages sustained and due as a result of violations of Mr. Notto’s Fourth Amendment rights by way of malicious prosecution, and/or closely related causes of action, against SCMPD and DA and Individual Defendants.

This correspondence is to serve as notice of the intended lawsuit and to make a formal demand and offer to compromise on behalf of Mr. Notto in an effort to avoid litigation, so that Mr. Notto might move forward, despite the unconscionable mistreatment of Mr. Notto and violations of his constitutional rights, resulting in a lengthy incarceration.

Mr. Notto is willing to compromise in order to move forward without the further burden of lengthy legal action, as well as to avoid burdening city and county governments with lengthy litigation and unfavorably publicity which may undermine an already weak public confidence. Please note that if required to file suit, Mr. Notto will make a timely offer of settlement pursuant to O.C.G.A. § 9-11-68.

In particular, Mr. Notto’s case would necessarily involve extensive discovery in order to correlate data and narratives pertaining to numerous law enforcement officers, arrests, and prosecutions, as well as internal investigations.

Although I will provide specifics sufficient for proper notice, it is noteworthy that the City and County have superior access to the relevant legal documents and court records related to this matter.

Violation of Mr. Notto’s Fourth Amendment Rights

The Chatham County Superior Court has already established that Mr. Notto’s Fourth Amendment rights were violated – see enclosed Order of Nolle Prosequi. *Montana v. United States*, 440 U.S. 147; *Cromwell v. County of Sac*, 94 U.S. 351; *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313; *Allen v. McCurry*, 449 U.S. 90 (1980).

Civil Rights Claims pursuant to 42 USC § 1983
and pendant State Claims pursuant to O.C.G.A. § 51-7-40

Mr. Notto intends to file suit in the United States District Court, Southern District, Savannah Division, pursuant to the Civil Rights Act, 42 USC § 1983 [*Strength v. Hubert*, 854 F.2d 421 (11th Cir.1988); *Uboh v. Reno*, 141 F.3d 1000 (11th Cir. 1998); *Whiting v. Traylor*, 85 F.3d 581, 584 (11th Cir. 1996); *Kelly v. Curtis*, 21 F.3d 1544, 1554-55 (11th Cir. 1994)], in that Mr. Notto claims a violation of his constitutional rights under the Fourth Amendment and complains of a malicious prosecution, and concurrently pursuant to O.C.G.A. § 51-7-40 et seq., in that Mr. Notto complains of a malicious prosecution and related wrongdoing.

While no *ante litem* notice is required for claims against municipalities, counties, or law enforcement officers under 42 U.S.C. § 1983, the purpose of this letter is to provide notice to the government parties of the pendant state law claims in this matter.

For the Purpose of Notice: Background and Individual Defendants' Wrongful Acts
Directly Resulting from City and County Failures (Policy, Custom/Practice, Training)

On October 8, 2013, in Chatham County, Georgia, Mr. Notto was arrested without probable cause, which began a sequence of malicious, negligent and wrongful actions by the SCMPD and DA and Individual Defendants, resulting in a malicious and unconstitutional prosecution of Mr. Notto, which resulted in an unjustified extended period of incarceration.

Among the wrongful acts, committed by the agents of SCMPD, in particular Officer Glenn Castro, and DA, in particular assistant district attorneys participating in the prosecution of Mr. Notto's case, the following occurred: arrest without probable cause (*Malley v. Briggs*, 475 U.S. 335), various acts of perjury, presentation of false testimony (*United States v. Agurs*, 427 U.S. 97; *Berger v. United States*, 295 U.S. 78), direct evidence of actual malice by Officer Castro, and the concealment of exculpatory evidence [*Brady v. Maryland*, 373 U.S. 83 (1963); *Gregoire v. Biddle*, 177 F. 2d, at 581; *Strength v. Hubert*, 854 F.2d 421, 425 (11th Cir.1988); *Giglio v. United States*, 405 U.S. 150].

The SCMPD and DA and Individual Defendants are responsible for the aforementioned acts and malicious prosecution in their direct actions and in their failures to implement policy, and/or properly train to adhere to policy, and/or for customs and practices, as relate to officers who have exhibited a propensity to violate constitutional rights of citizens and who are almost certain to violate such rights of citizens in the future, especially in the absence of penalty despite officer admissions and other instant circumstances. *Monell v. Dept. of Social Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362, 371 (1976).

It is Mr. Notto's position that the SCMPD and DA (and Individual Defendants) were on notice of a pattern of constitutional violations and exhibited a deliberate indifference for Mr. Notto's (and more generally citizens') constitutional rights. [*Griffin v. City of Opa-Loka*, 261 F.3d 1295, 1307 (11th Cir. 2001); *Grech v. Clayton County*, 335 F.3d 1326, 1329 (11th Cir. 2003); *Board of County Com'rs of Bryan County, Okl. v. Brown*, 520 U.S. 397, 403-04 (1997); *Garvie v. City of Ft. Walton Beach, Fla.*, 366 F.3d 1186, 1189 (11th Cir. 2004).]

Mr. Notto's 30-months of illegal incarceration, which began on October 8, 2013, and ended on April 5, 2016, with the issuance of the Orders of Nolle Prosequi and on Release, was only ended by Mr. Notto's persistence and tenacity to shed light on the wrongful and malicious prosecution. *McCord v. Jones*, 168 Ga. App. 891, 892 (311 SE2d) (1983); *Accord Smith v. Embry*, 103 Ga.App.75, 379-81 (119SE.2d 45)(1961). If the SCMPD and DA and Individual Defendants had not been persistently challenged by Mr. Notto, he would remain in prison today.

As a direct and proximate cause of the actions of the SCMPD and DA and Individual Defendants, Mr. Notto was injured in that he suffered loss of liberty and enjoyment of life, loss of earnings, loss of earning capacity, loss of familial relationships, loss of reputation, physical pain and suffering, mental pain and suffering, as well as attorney's fees and other expenses arising from or related to his arrest, prosecution, incarceration, and the instant action. *Heck v. Humphrey*, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1944).

For the Purpose of Notice: City and County Possess Records and Evidence

As previously noted, the City and County possess the bulk of the documents, records and other evidence related to Mr. Notto's claims. Regardless, I stand ready to assist with any inquiries that may assist the parties with a quick and complete pre-suit/pre-discovery investigation into Mr. Notto's claims.

Demand to Preserve Evidence Anticipating Litigation

Under Georgia Law, the City and County and Individual Defendants must begin to act to preserve electronic and tangible evidence related to this matter in anticipation of potential litigation. Mr. Notto will be steadfast in holding the parties to the highest standards regarding any spoliation of evidence.

If the business practices of the City and County and its employees, agents, contractors, carriers, bailees, or other nonparties who possess materials reasonably anticipated to be subject to discovery in this matter involve the routine destruction, recycling, relocation, repair, or mutation of such materials, you should, to the extent practicable for the pendency of this matter, either halt such business processes; sequester or remove such material from the business process; or arrange for the preservation of original documents, data, and tangible things, including electronic data and systems.

Offer to Compromise and Settle

Mr. Notto is entitled to substantial compensation. At this early stage, in order to avoid the stress of litigation, Mr. Notto is willing to settle this matter, for a full release for all parties, including Individual Defendants, for General Damages, for an amount which we assert is far less than what may be awarded ultimately in this case.

In an effort to resolve these matters without litigation, as a compromise, Mr. Notto will resolve his claims with all parties, including entities and individuals, for a total payment in the amount of Three-Hundred and Fifty Thousand dollars (\$350,000.00). This offer to compromise will remain open until 5PM, October 3, 2016.

All the information provided herein is for negotiation, settlement and compromise pursuant to O.C.G.A. § 24-4-408. Accordingly, it is known by all parties that no part of these materials will be used in any way in the event this matter is the subject of litigation.

If the City and/or County and/or Individual Defendants are willing to settle these potential claims, I look forward to our discussion. If we are unable to reach a settlement, please accept this notice that Mr. Notto will file a federal civil action, and pendant state claims, seeking any and all damages, which Mr. Notto is entitled to under Federal and Georgia law. Pursuant to statute, the City has 30 days to advise as to the probability of settlement in this matter.

Thank you for your time and attention regarding this matter. I look forward to hearing from you regarding this offer to compromise. At your earliest convenience, I am available at (770) 364-7237 to discuss a resolution.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark Adelman", with a long horizontal flourish extending to the right.

MARK ADELMAN, ESQ.
Attorney for Fabian Keith Notto
Email: markhadelman@mac.com
Mark Adelman, Attorney at Law, LLC
127 Abercorn Street, Suite 306
Savannah, Georgia 31401

Enclosure: Mr. Notto's Order of Nolle Prosequi

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<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
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Postage \$1.15

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