

- b. Vehicle - \$20.00 per hour, minimum five hours, \$100.00
- c. Report copy, \$15.00

3. Plaintiff, through his counsel, in reliance upon § 52-260(b) informed Attorney Kolb that East Haven's demand for payment violated the law.

4. Section 52-260(b) provides:

When any regular or supernumerary police officer or any regular, volunteer or substitute firefighter of any town, city or borough is summoned to testify in any criminal proceeding pending before the Superior Court or the Department of Consumer Protection and the police officer or firefighter receives no compensation from the town, city or borough by which he is employed for the time so spent by him, the police officer or firefighter shall be allowed and paid one hundred dollars, together with the mileage allowed by law to witnesses in criminal cases, for each day he is required to attend the proceedings.

5. Not less than two months earlier, in *Luiz Rivera v. Vincent Nuzzo*, 61 Conn. L. Rptr. 296, 2015 WL 8488016, The Honorable Robin L. Wilson ruled that the fees demanded by East Haven for subpoenaed officers to testify and produce documents (Sergeant/Officer – five hour minimum, \$383.62 each officer; Vehicle - \$20.00 per hour, minimum five hours, \$100.00; Report copy, \$15.00) were contradicted by § 52-260 and unsupported by case and statutory law.

6. Regardless of state statute and a decision rendered by a state court judge, East Haven continued its attempts to extort money from individuals such as Plaintiff who possessed statutory and constitutional rights to subpoena police officers to testify in criminal court hearings.

JURISDICTION

7. This district court has original jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and 42 U.S.C. §§ 1983, 1988.

8. This district court has supplemental jurisdiction over Plaintiff's state law tort claim pursuant to 28 U.S.C. § 1367 as it is sufficiently related to the claims in this action over which the court has original jurisdiction.

9. Venue is proper in this district as all or nearly all the individual parties reside or work in this district and the events giving rise to the claims asserted herein occurred within this district.

PARTIES

10. Plaintiff Kyle Murphy is an adult resident of East Haven, Connecticut.

11. Defendant Joseph Maturo ("Mayor Maturo") has been the Mayor of East Haven continuously since his election in November 2011. East Haven is a municipality as defined and described in § 7-148. The Mayor is directly responsible for the administration of all East Haven departments, agencies, and offices and is mandated by the Town Charter to see that all governing laws and ordinances are faithfully executed. Mayor Maturo is sued in his official and individual capacities.

12. Defendant Ed Lennon ("Chief Lennon") is the current chief of the East Haven Police Department. In January 2016, Chief Lennon was a Deputy Chief of the East Haven Police Department. Chief Lennon is sued in his official capacity as the current chief and in his official and individual capacities as the former deputy chief.

13. Defendant David Emerman ("Lt. Emerman") is a lieutenant in the East Haven Police Department. In January 2016, Lt. Emerman was a sergeant in the East Haven Police Department. Lt. Emerman is sued in his individual capacity.

14. Defendant Stephen Paulsen (“Sgt. Paulsen”) is a sergeant in the East Haven Police Department and has held that position on dates relevant to this Complaint. Sgt. Paulsen is sued in his individual capacity.

15. Defendant Kershen Bisette (“Officer Bisette”) is an officer in the East Haven Police Department and held that position on all dates relevant to this Complaint. Officer Bisette is sued in his individual capacity.

16. Defendant Brent Larrabee (“Larrabee”) was the chief of the East Haven Police Department in January 2016. Larrabee is sued in his individual capacity.

17. Defendant Frank Gentileco (“Gentileco”) was an East Haven employee in the Office of the Mayor in January 2016. Gentileco is sued in his individual capacity.

18. Defendant Joseph Zullo (“Attorney Zullo”) is East Haven’s attorney and held that position on all dates relevant to this Complaint. Attorney Zullo is sued in his individual capacity.

19. Defendant Frank Kolb (“Attorney Kolb”) is East Haven’s attorney and held that position on all dates relevant to this Complaint. Attorney Kolb is sued in his individual capacity.

COLLECTIVE ACTION ALLEGATIONS

20. Plaintiff sues on behalf of himself and all other individuals who have issued subpoenas for the attendance of any East Haven regular or supernumerary police officer or regular, volunteer or substitute firefighter to testify in any criminal proceeding pending before the Superior Court or the Department of Consumer Protection and received a demand for fees not authorized by case or statutory law. Plaintiff and the other individuals are similarly situated in that they have all been subject to a violation of their rights guaranteed by the due process clause of the fourteenth amendment to the United States constitution by the common practice of East Haven to extort unlawful fees in exchange for providing subpoenaed officers and firefighters to testify.

ALLEGATIONS

A. Fourteenth Amendment Right to Hearing on Protective Order

21. The Connecticut Supreme Court held in *State v. Fernando A.*, 294 Conn. 1, 30 (2009) that “the trial court is required to hold, at the defendant's request made at arraignment, a subsequent hearing within a reasonable period of time wherein the state will be required to prove the continued necessity of [a protective] order by a fair preponderance of the evidence, which may include reliable hearsay, and the defendant will have the opportunity to proffer relevant evidence to counter the state's case in support of the criminal protective order through his own testimony or that of other witnesses.”

22. A defendant is entitled to such a hearing because the extended effects of a protective order may “well cause a defendant significant pretrial deprivations of family relations and/or property.” *Fernando A.*, 294 Conn. at 24-25.

23. The Connecticut General Assembly, in enacting Public Act 07-123, § 1 afforded defendants subject to a protective order the right to an evidentiary hearing “to satisfy the defendant's due process rights under the fourteenth amendment to the United States constitution.” *Fernando A.*, 294 Conn. at 24-25.

24. This desire of the legislature “to satisfy the defendant's due process rights under the fourteenth amendment to the United States constitution, is reflected in the comments of the sponsor of the bill enacted as P.A. 07–123, who viewed it as an attempt to ‘strike a very delicate balance here between the legitimate interests of law enforcement, and the important constitutional and civil liberty concerns that we would have [as] citizens....’” *Fernando A.*, 294 Conn. at 25, quoting 50 H.R. Proc., Pt. 12, 2007 Sess., at p. 3904, remarks of Representative Lawlor.

B. Plaintiff's Subpoenas for Testimony of Police Officers at Hearing

25. East Haven arrested Plaintiff on December 24, 2015, for failure to surrender his firearms after issuance of an *ex parte* civil restraining order in Massachusetts.

26. When East Haven arrested Plaintiff, Connecticut state law, consistent with federal law at 18 U.S.C. § 922(d)(8)(A), did not require individuals to surrender their firearms until they were afforded due process at a hearing.

27. Public Act 16-34, § 7, which became effective October 1, 2016, extended prohibitions for firearms possession to individuals subject to *ex parte* restraining orders prior to any opportunity to be heard.

28. Regardless, Sgt. Paulsen obtained a warrant on December 24, 2015, to arrest Plaintiff for violation of a civil *ex parte* restraining order when Plaintiff did not surrender his firearms.

29. The judge did not set a recommended bond on the arrest warrant.

30. Sgt. Paulsen and the East Haven Police Department set a bond of \$200,000 which provided Plaintiff the options of missing Christmas Eve and Christmas Day with his family and children or paying a bondsman.

31. Plaintiff paid a bondsman \$14,500 on Christmas Eve and was released with an arraignment date at the Superior Court in New Haven on December 28, 2015.

32. The East Haven Police Department issued an emergency protective order upon Plaintiff's release on Christmas Eve which did require him to surrender his firearms under state law.

33. At his arraignment on December 28, 2015, Plaintiff requested an evidentiary hearing to challenge the protective order issued by the East Haven Police Department.

34. The trial court set a hearing date for January 12, 2016.

35. Plaintiff subpoenaed Sgt. Paulsen and Officer Bissette to testify at the January 12, 2018, hearing and demanded that they produce:

- a. Any document and/or communication relied upon to support the allegation that Kyle Murphy was ever subject to a protective order as defined under Connecticut General Statutes, §§ 46b-38c(e), 53a-28(f), 54-1k, 54-82r.
- b. Record of training received from the Division of Criminal Justice regarding the difference between a restraining order and a protective order.
- c. Any document and/or communication pertaining to Assistant State's Attorney Denison's conduct and/or participation and/or assistance during the investigation that resulted in the arrest of Kyle Murphy.
- d. Any document and/or communication pertaining to Assistant State's Attorney Denison's conduct and/or participation and/or assistance in the decision to set the bond for Kyle Murphy's release at \$200,000.
- e. Any document and/or communication pertaining to the decision to set the bond in the amount of \$200,000.

36. Plaintiff received correspondence from Attorney Kolb on January 11, 2016, demanding payment for the officers' testimony as follows:

- a. Sergeant/Officer – five hour minimum, \$383.62 each officer
- b. Vehicle - \$20.00 per hour, minimum five hours, \$100.00
- c. Report copy, \$15.00

37. The January 11, 2016, correspondence from Attorney Kolb copied Mayor Maturo, Attorney Zullo, Chief Larrabee, Deputy Chief Lennon, Frank Gentileco, Sgt. Emerman, and Marsha Maldonado by email. A copy of the January 11, 2016, correspondence from Attorney Kolb to Attorney Baird is attached as Exhibit 1 and incorporated and alleged in this Complaint.

38. Attorney Kolb continued to copy Mayor Maturo, Attorney Zullo, Chief Larrabee, Deputy Chief Lennon, Frank Gentileco, Sgt. Emerman, and Marsha Maldonado on emails sent to and received from Plaintiff's counsel including correspondence to Plaintiff's counsel demanding payment. A copy of a January 12, 2016, email from Attorney Kolb to Attorney Baird, Frank

Gentilesco, Attorney Zullo, Mayor Maturo, Chief Larrabee, Deputy Chief Lennon, and Sgt. Emerman is attached as Exhibit 2 and incorporated and alleged in this Complaint.

39. Sgt. Paulsen and Officer Bisette appeared on January 12, 2016, for the hearing pursuant to Plaintiff's subpoenas.

40. The hearing did not proceed because the criminal case against Plaintiff was dismissed on January 12, 2016.

C. State Senator Len Fasano's Proposed Bill No. 366

41. Connecticut State Senator Len Fasano has represented residents in the 34th District towns of Wallingford, Durham, East Haven, and North Haven since 2003.

42. During the General Assembly's January Session 2017, Senator Fasano introduced Proposed Bill No. 366, *An Act Requiring a Party to Reimburse the State or a Municipality for the Wages of an Employee who is Subpoenaed to Testify in a Legal Proceeding*, which would have required a party who subpoenas a public employee to make payment to the public employee for the employee's time spent complying with the subpoena.

43. In opposing Senator Fasano's Proposed Bill No. 366, the Commission on Human Rights and Opportunities submitted testimony on March 6, 2017, through its Deputy Director, Cheryl Sharp, stating in part:

Where a state or municipal employee is called to testify in his or her official capacity, it is clearly job-related and the costs of that job-related work should be borne by the employer: the state or municipality. These costs should not be shifted to those who need the services of the state or municipalities in order to protect their rights.

44. In opposing Senator Fasano's Proposed Bill No. 366, the Division of Criminal Justice submitted testimony on March 6, 2017, stating in part:

In providing their testimony, these professionals are simply doing their jobs. The work of the police officer, state trooper, medical examiner or DNA analyst does not end when the arrest is made, autopsy completed or DNA sample analyzed. Their testimony is a critical element of the administration of justice and the pursuit of the truth. Yet this bill would, in effect, punish the Division of Criminal Justice at the expense of a municipal police department for simply carrying out its constitutional responsibility to protect the public safety through the effective prosecution of cases initiated by that police department.

45. Similarly, Sgt. Paulsen's testimony and Officer Bissette's testimony were critical elements of Plaintiff's right to an evidentiary hearing on the continuation of a protective order to satisfy his "due process rights under the fourteenth amendment to the United States constitution." *Fernando A.*, 294 Conn. at 24-25.

46. In opposing Senator Fasano's Proposed Bill No. 366, Rocky Hill resident John Chunis submitted testimony on March 6, 2017, stating in part:

Showing up at court to testify during a trial is part of the job, and should not be charged to someone who requested that testimony. That testimony was created by the act of performing the job. Are we to start charging people for an officer's time when a 911 call comes in to report a crime and he drives to the home to make an arrest?? It's part of the job, and so is going to court to report their findings or actions that may be pertinent in a trial.

47. Attorney Kolb submitted testimony on March 6, 2017, in support of Senator Fasano's Proposed Bill No. 366 but asked that the bill not apply to criminal proceedings:

I suggest this bill, if it becomes law should not apply to criminal proceedings which would allay and put to rest the opposition espoused by John Chunis and The Department of Criminal Justice whose collective opposition addressed criminal cases and not civil cases.

48. Attorney Kolb's submitted testimony in support of Senator Fasano's Proposed Bill No. 366 demonstrated an understanding of the history of § 52-260 and its provisions governing the maximum fees of \$100 for each day of attendance in court and mileage.

49. Attorney Kolb omitted from his testimony on March 6, 2017, that East Haven through Mayor Maturo, Attorney Zullo, Chief Larrabee, Deputy Chief Lennon, Sgt. Emerman, and Frank Gentileseco already had been demanding unlawful and extortionate fees in exchange for the subpoenaed testimony of East Haven police officers and firefighters in criminal cases as well as civil cases contrary to statutory law and in violation of the rights guaranteed under the due process clause of the fourteenth amendment to the United States constitution.

50. On April 27, 2017, Substitute Senate Bill No. 366, to repeal § 52-260, and substitute in lieu thereof a new § 52-260, included language providing:

When any state or municipal employee is summoned by a party other than the state to testify in his or her capacity as an employee of the state or the municipality in any civil proceeding pending before the Superior Court or in any administrative proceeding, the party issuing the subpoena shall be responsible for reimbursing the state or municipality, as the case may be, for the total amount of wages paid by the state or municipality to the employee for the time spent by the employee attending the proceeding pursuant to the terms of the subpoena.

51. Substitute Senate Bill No. 366 was not enacted.

VIOLATIONS AND CLAIMS

COUNT ONE

Due Process Clause of the Fourteenth Amendment

42 U.S.C. § 1983

Against Attorney Kolb, Attorney Zullo, Mayor Maturo, Chief Larrabee, Deputy Chief Lennon, Sgt. Emerman, Frank Gentileseco

52. Paragraphs 1-51 are hereby incorporated as alleged in Count One.

53. Plaintiff had the right guaranteed by the due process clause of the fourteenth amendment to the United States constitution to subpoena Sgt. Paulsen and Officer Bissette to testify at the hearing on January 12, 2016, on the continuation of the protective order issued by the officers on December 24, 2015.

54. Plaintiff's right was clearly established in Connecticut case law on November 3, 2009, in *State v. Fernando A.*, 294 Conn. 1 (2009).

55. Connecticut statutory law sets forth the fees associated with the attendance of police officers subpoenaed for criminal court proceedings.

56. Attorney Kolb, with notice to Attorney Zullo, Mayor Maturo, Chief Larrabee, Deputy Chief Lennon, Frank Gentilesco, Sergeant David Emerman, and Marsha Maldonado demanded that Plaintiff pay a minimum of \$967.24 for the testimony of Sgt. Paulsen and Officer Bissette when the statutory fees were limited to round-trip mileage between East Haven and New Haven and a \$100 fee for each officer only if the officer was receiving no compensation from East Haven.

57. Defendants, acting under color of state law, interfered with Plaintiff's right to an evidentiary hearing on the continuance of the protective order.

58. Plaintiff and others similarly situated have been damaged by the Defendants' violation of their constitutional rights.

COUNT TWO
Conspiracy to Violate Due Process Clause of the Fourteenth Amendment
42 U.S.C. § 1985
All Defendants

59. Paragraphs 1-57 are hereby incorporated as alleged in Count Two.

60. Two or more Defendants entered into an agreement that East Haven would interfere with Plaintiff's right to an evidentiary hearing on the continuance of the protective order by demanding unlawful fees in exchange for officers' testimony.

61. Two or more Defendants acted in concert through correspondence to Plaintiff's counsel demanding unlawful fees in exchange for officers' testimony.

62. Through the January 11, 2016, correspondence from Attorney Kolb which copied

Mayor Maturo, Attorney Zullo, Chief Larrabee, Deputy Chief Lennon, Sgt. Emerman, and Frank Gentilese, Defendants committed an overt act in furtherance of the conspiracy to violate Plaintiff's rights and inflict an unconstitutional injury.

63. Plaintiff and others similarly situated have been damaged by the Defendants' violation of their constitutional rights.

COUNT THREE
Abuse of Process
Common Law Tort Claim
Against Attorney Kolb, Attorney Zullo, Mayor Maturo, Chief Larrabee,
Deputy Chief Lennon, Sgt. Emerman, Frank Gentilese

64. Paragraphs 1-57 are hereby incorporated as alleged in Count Three.

65. Section 52-260 provides a process for payment of fees and mileage to subpoenaed police officers.

66. The January 11, 2016, correspondence from Attorney Kolb demanding unlawful fees in exchange for the testimony of subpoenaed East Haven police officers abused the regularly issued legal process of serving subpoenas.

67. Defendants acted with intent to violate Plaintiff's rights without excuse or justification using extortionate methods to demand fees that were outside the legitimate ends of the process.

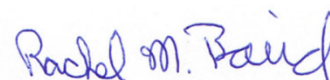
68. Plaintiff and others similarly situated have been damaged by Defendants abuse of process.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of others similarly situated seeks the following relief:

- A. Compensatory damages;
- B. Punitive damages;
- C. Attorney's Fees and Costs; and
- D. Such other relief as the claims merit.

PLAINTIFF
KYLE MURPHY



BY: _____

Rachel M. Baird (ct12131)
Attorney Rachel M. Baird
15 Burlington Road
Harwinton, CT 06791
Tel: (860) 605-9340
Fax: (860) 605-9342
Email: rbaird@rachelbairdlaw.com

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FRANK J. KOLB, JR., J.D., M.B.A. *
JOSEPH A. DISILVESTRO

*Also Admitted in Florida & Washington D.C.

VIA FACSIMILE 860-605-9343 and EMAIL rbaird@rachelbairdlaw.com

January 11, 2016

Rachel M. Baird, Esq.
15 Burlington Road
Harwinton, CT 06791

RE: State of Connecticut vs. Kyle Murphy

Dear Attorney Baird:

Kindly take this correspondence as notice of my representation of the Town of East Haven and its Police Department and in particular with reference to certain subpoenas that you caused to be served commanding the attendance of Sergeant Stephen M. Paulson and Officer Kershen Bissette at the New Haven Superior Court, G.A., 121 Elm Street, New Haven, Connecticut, on Tuesday, January 12, 2016 at 10:00 A.M.

In the aforesaid subpoenas you also required that they produce certain documents. Your request for these items is covered by the FOI Act and as such I suggest you contact the records department to obtain them at the appropriate cost to you.

There is a charge for the attendance of the sergeant/officer at the hearing and the charges are as follows:

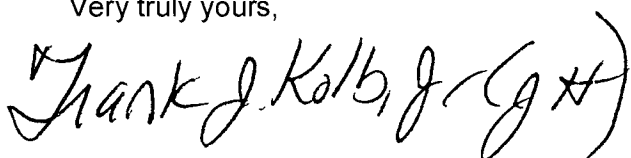
1. Sergeant/Officer – five hour minimum, \$338.62 each officer
2. Vehicle - \$20.00 per hour, minimum five hours, \$100.00.
3. Report copy, \$15.00.

Please communicate with me whether or not you still desire the sergeant and officer to attend or whether you just wish the report or videos or some combination thereof.

If I do not hear from you, the sergeant and officer will appear as subpoenaed with the documents and you will be billed accordingly.

Should you care to discuss the foregoing further, please feel free to contact me.

Very truly yours,



FRANK J. KOLB, JR., ESQ.

FJK:jh

Enclosure

cc: Sergeant David Emerman, Marsha Maldonado, Joseph Zullo, Frank Gentilesco, Mayor Joseph Maturo, Chief Brent Larrabee, Deputy Chief Lennon (via email)

**Dictated but
NOT READ**

From: [Frank J. Kolb, Jr.](#)
To: [Rachel Baird](#); [Frank Gentilesco \(EH.Gentilesco@att.net\)](#); [Joe Zullo \(jzullo@zulloandjacks.com\)](#); ["Joseph Maturo \(joe.maturo@snet.net\)"](#); [Brent Larrabee \(blarrabee@easthavenpolice.com\)](#); [Lennon, Edward \(elennon@easthavenpolice.com\)](#); [Emerman, David \(DEmerman@easthavenpolice.com\)](#)
Subject: State V. Murphy
Date: Tuesday, January 12, 2016 9:39:14 PM

I am out of the State of Conn. and have not spoken to the EHPD but, I assume that because the State Website shows there will be a hearing tomorrow that one did not occur today as I suspected it would not.

Please be advised that the position of the Town as outlined in my earlier correspondence remains unchanged. For each day the officers appear you will be billed accordingly and expected to pay same.

The Town will be seeking payment in accordance with my first letter to you.

Just as you get paid to attend court so too does the Town expect to be reimbursed its costs incurred for the officers to appear pursuant to the subpoenas served upon them.

Frank J. Kolb, Jr.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: East Haven Police Officers 'Extort' Payment from Citizens for Testimonies](#)
