

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

ESCV

VICTOR ROSARIO,

Plaintiff

v.

COMMONWEALTH OF MASSACHUSETTS,

Defendant

**COMPLAINT FOR WRONGFUL CONVICTION**

NOW COMES Plaintiff VICTOR ROSARIO, by and through his counsel Chauncey Wood and Loevy and Loevy, and hereby brings this complaint against the Commonwealth pursuant to G.L. c. 258D seeking compensation for his wrongful conviction and incarceration. In support of this Complaint, Plaintiff states as follows:

**Introduction**

1. Plaintiff Victor Rosario was convicted of arson and eight murders in 1982. He is totally innocent of these crimes. In fact, evidence strongly supports that

the fire that caused the eight deaths was not an arson at all, but instead was an accidental fire.

2. Mr. Rosario's conviction was based primarily on incriminating statements that Lowell police and fire officers forced from Mr. Rosario through lies, coercion, threats, intimidation, sleep deprivation, manipulating a language barrier, and taking advantage of Mr. Rosario's weakened mental state.

3. On May 11, 2017, the Massachusetts Supreme Judicial Court ordered that Plaintiff was entitled to a new trial based on questions calling into doubt the voluntariness of the confession and on evidence that the fire was not caused by arson. *Commonwealth v. Rosario*, 477 Mass. 69, 477 Mass. 6974 N.E.3d 599 (2017). On September 8, 2017, the prosecution entered a *nolle prosequi*, finally resolving the matter.

4. Plaintiff had served 32 years in prison for a crime he did not commit, and another three years in an excruciating wait as he prepared for a second trial. He spent the prime years of his life incarcerated in harsh conditions, either in solitary confinement or facing near constant physical attacks as a result of the nature of the crime of which he was wrongly convicted. He lost invaluable time and experience with his daughters as they grew up and with his parents as they aged. Indeed, shortly after Plaintiff's release from prison, Plaintiff's father, with whom he was extremely close, passed away. The harms his wrongful conviction have caused him—emotional, physical, and otherwise—have been profound.

5. The Massachusetts legislature offers people in Plaintiff's position the extraordinary but necessary remedy that Plaintiff seeks in the filing of this Complaint: compensation for the damage caused by the conviction of a crime for which Plaintiff is innocent. Plaintiff meets the statutory requirements of GL c. 258D and is entitled to the relief sought in this Complaint.

### **Jurisdiction and Venue**

6. This action is brought pursuant to G.L. c. 258D to seek compensation for Plaintiff for the harms caused by his wrongful conviction.

7. In accordance with G.L. c. 258D, § 3, Suffolk County is a proper venue for this action.

### **Parties**

8. At all times relevant to this claim, Plaintiff Victor Rosario, has resided in or been incarcerated in the Commonwealth of Massachusetts. He is now 61 years old. At the time of his arrest in this case he was 24 years old and the father of four young children.

9. The Commonwealth of Massachusetts is the defendant in this case pursuant to G.L. c. 258D.

### **FACTS**

#### **A. An Accidental Fire Killed Eight People in Lowell, MA**

10. At approximately 1:00 a.m. on March 5, 1982, a fire occurred at 32-36 Decatur Street, Lowell, Massachusetts. Eight people died in the fire.

11. It is virtually indisputable by forensic science that the fire was accidentally caused, and not the result of arson.

12. The Lowell Police and Fire Departments responded to the scene of the fire, investigated the scene, gathered evidence, and spoke to neighbors.

**B. Plaintiff Tried to Rescue Victims of the Fire**

13. Plaintiff had absolutely nothing to do with starting the fire. Instead, he tried to rescue the people in the building.

14. On his way home, Plaintiff and a friend passed by 32-36 Decatur Street and saw that the house was on fire.

15. Hearing screams of people inside, Plaintiff broke a window and tried to go into the building to rescue the families. He was unable to do so, and was injured in the process of trying to get into the building.

16. After trying to help the victims, Plaintiff voluntarily introduced himself to police and medical professionals on the morning of the fire. He was treated for cuts to his hand and arms that were caused by him trying to get people out of the fire.

**C. The Physical Evidence did not Support Plaintiff's Involvement in the Fire**

17. The evidence always supported that it was an accidental fire.

18. To this day, there is no evidence that a fire was deliberately set and, if there were such evidence, who the culprit might be.

19. Instead, all of the evidence at the crime scene showed that the fire was accidental. For example, the burn patterns were entirely consistent with a fire that started without the use of an accelerant.

20. In fact, there was no physical evidence at all of an accelerant being the source of the fire. The FBI tested the building material at the source of the fire and expressly told police that it found no accelerant.

21. In addition, police were made aware of other identified possible accidental sources of the fire, which they investigated and either failed to document or documented and failed to disclose to Plaintiff.

**D. False Physical Evidence was Developed to Support the Arson Theory**

22. There was never any evidence supporting that the fire was caused by arson, specifically, arson using a Molotov cocktail, which was the police theory.

23. To get around this obvious problem, police and fire officials manufactured false evidence about the use or presence of a Molotov cocktail or other incendiary device, the presence of a fuel accelerant, and/or multiple location points of the source of the fire. This fabricated evidence was inconsistent with the crime scene and all legitimate conclusions that could be drawn from it.

24. For example, if a Molotov cocktail had been used, fire science demonstrates that some traces of it would be available for evidence.

25. Yet, there was no glass found at the scene from such a device, no wicks, no ignitable liquid residue, and all tests for accelerants came back negative.

26. Similarly, the Defendants fabricated findings that there were multiple places where the fire started because there was “lesser burning” in one of the two areas.

27. But the scientific evidence demonstrated the exact opposite; that the fire progression and damage were normal and consistent with an accidental (non-accelerated fire).

28. Finally, police failed to document investigations related to possible accidental sources of the fire such as the presence of a space heater or that a woman who died in the fire used a lot of devotional candles and had been recently drinking a lot of alcohol.

#### **E. Police Elicit a False Confession from Plaintiff**

29. After convincing themselves that they were dealing with an arson, police and fire officials set about manufacturing evidence of the nonexistent crime.

30. Police focused on Plaintiff as the culprit of the nonexistent crime because they knew Plaintiff had hurt himself while trying to enter the building and help the victims of the fire, and because he had volunteered his name as being present at the fire. In short, Plaintiff was an easy target.

31. The fire was a high-profile incident, and police were under pressure to quickly arrest a suspect.

32. On March 6, 1982, police and fire officials took Plaintiff to the Lowell Police Department to interrogate him. They used brutal tactics to generate a false confession from Plaintiff.

33. From the night of March 6 through the early morning of March 7, 1982, Police held Plaintiff alone in custody and wrote a fabricated, incriminating written statement in English that they forced Plaintiff to sign even though Plaintiff did not read, write, or understand English and nobody explained the statement to him in his native language.

34. Police obtained this involuntary statement using outright lies, coercion, threats, mistreatment, sleep deprivation, exploiting a known and obvious mental health breakdown, and manipulation of a language barrier.

35. At the time that police fabricated this confession against Plaintiff, he was in the midst of a psychotic episode and particularly susceptible to intimidation and threats. His fragile condition was obvious to police.

36. But police took no steps to adapt their questioning of Plaintiff in response to his known psychological vulnerabilities.

37. Instead, they did the opposite: they acted to exploit Plaintiff's vulnerabilities to secure a confession, regardless of whether it was true or false.

38. In particular, before police took Plaintiff into custody, Plaintiff was traumatized by seeing the fire—seeing and hearing so many people suffering caused him intense psychological distress. At the time of his interrogation, Plaintiff was crying hysterically and his eyes and face were red from crying and anxiety. Plaintiff was reliving the trauma of the fire—hearing voices, and smelling the smoke.

39. In addition to the trauma of the fire, Plaintiff was suffering from Delirium Tremens as a result of alcohol withdrawal. The effects of this condition,

including Plaintiff's vulnerable mental state, were readily apparent and obvious to police.

40. During the interrogation, Plaintiff began to hear demons saying to him, "death, death," and was hearing voices generally, and saying, "I am Victor Rosario, the Son of God. Jesus Christ is in me." He also said that, "the devil" was in him. Indeed, Plaintiff's unstable psychological condition was obvious to police throughout the entirety of their interactions with him.

41. Nonetheless, for at least six continuous hours in the very early morning of March 7, 1982, police interrogated Plaintiff, depriving him of sleep during the night of March 6 and morning of March 7, 1982. The police kept him locked inside a room and told him he was not free to leave.

42. The police questioning was aggressive and they threatened Plaintiff on multiple occasions throughout the night.

43. As police preyed on Plaintiff's weakened psychological condition during the lengthy interrogation in the early hours of the morning, Plaintiff began yelling and screaming, knelt down, grabbed the chair, cried and screamed, "no," "Oh God, Oh God," and "please stop." He also was hallucinating and saying, "Get it off me."

44. Plaintiff was obviously delusional during the interrogation and showed no signs of comprehension.

45. Rather than stop the interrogation, police continued to coerce Plaintiff to incriminate himself by preying on his mental health breakdown.

46. Police also failed to give Plaintiff any effective *Miranda* warnings. Further ensuring that Plaintiff's constitutional rights were violated, police engaged in coercive, deceptive, and diversionary tactics that would have deprived *Miranda* warnings of any force, even if effective warnings had been given. At no point did Plaintiff knowingly or voluntarily waive his right to remain silent or his right to have counsel present at the interrogation.

47. At no point did police heed Plaintiff's request and stop their physically and psychologically abusive questioning. At no point did police permit Plaintiff to terminate the questioning. Police uninterrupted accusations and questioning continued as if Plaintiff had said nothing at all.

48. Police also made false promises to Plaintiff to induce him to sign the statements, saying that he would be allowed to leave if he signed them. It was clear that Plaintiff was incapable of understanding either statement because of his mental health condition and language barrier.

49. After hours of early morning interrogation, the police misconduct finally broke Plaintiff down. Plaintiff suffered a complete psychological collapse and, in order to stop the relentless assaults, he signed two false, incriminating statements that were fabricated by police.

50. Police wrote both statements in English. The statements falsely implicated a third person, Gardo Garcia, in addition to Plaintiff and Felix Garcia, as co-conspirators to make and use Molotov cocktails to burn the building.

51. Plaintiff did not speak English fluently and did not understand written English in 1982. Moreover, the statements were never read to Plaintiff in English or in Spanish before police forced Plaintiff to sign them

52. It was obvious to police that Plaintiff did not understand written or spoken English—they had used Spanish-English translators when they spoke to Plaintiff earlier at his home, and at the police station.

53. The statements contained admissions written by police and falsely attributed as verbal statements by Plaintiff, though Plaintiff had never made those statements during the interrogation or at any other time.

54. Rather, police officers provided all of the information contained in the written statements.

55. Since the evidence establishes that there was no arson generally and no Molotov cocktail specifically, Plaintiff's written statements (in English) admitting those nonexistent facts is simply based on falsehoods. There was no reason for Plaintiff to voluntarily make the false statements attributed to him. They were fabricated by police and fire officials.

56. The statements were used against Plaintiff during the criminal case.

57. Police lied and wrote false reports about the circumstances of their interrogation of Plaintiff and about how they obtained the written statements that they attributed to him.

58. Similarly, police wrote false reports stating that Plaintiff verbally confessed to the crime and described his involvement in it. But the statements they reported were never said by Plaintiff.

59. Moreover, the false police reports included lies about the manner in which they had questioned Plaintiff in order to make the statements appear voluntary and true, when in fact Plaintiff had been forced to sign the false statement that he did not understand.

60. Police also fabricated evidence in the form of a photograph, which they falsely reported that Plaintiff had identified as the window through which he threw a Molotov cocktail. This was a complete lie.

61. Moreover, police drafted a false report that included false statements about the Molotov cocktail that they attributed to Plaintiff.

#### **F. Police Fabricated False Physical Evidence**

62. Police also made false reports about physical evidence allegedly obtained during search warrants, which falsely suggested a tie between physical evidence at Plaintiff's apartment building and physical evidence from the fire.

63. Along with Plaintiff's landlord, police went to the apartment building where Plaintiff lived.

64. In the basement of the apartment building were a gas can and a can of Red Devil paint remover.

65. Plaintiff's landlord told police that the gasoline can was his for use in a space heater to keep pipes from freezing and that he had been using the paint remover as part of a drywall project.

66. Police never disclosed that the landlord said that the items were his. Instead, police buried this exculpatory evidence from the prosecution and defense, and falsely attributed the gas can and paint thinner as being owned and used by Plaintiff to start the fire.

67. To bolster that fabrication, and the theory of Molotov cocktails being used, police staged the basement to look like there were Miller beer bottles with the gas can and paint remover (tipped over) and took photographs of that staged scene. In fact, when the landlord took police to the basement, he did not see a beer bottle near his gas can and paint remover, nor did the landlord see the scene that was photographed to make it look like it could have been used to make Molotov cocktails.

68. Police suppressed from the prosecution and defense the information they learned from the landlord, the fact that the photographs had been staged, and the circumstances of the search.

69. Police bolstered the staged physical evidence by drafting a false report after-the-fact. In that false report, the Defendants alleged that days before, Plaintiff had said that he used Red Devil paint remover to create the Molotov cocktail. This was a total fabrication.

70. Police fabricated that detail to support their fictional story. Plaintiff's landlord showed police his Red Devil paint remover can in the common basement area at Plaintiff's apartment building.

#### **G. Police Fabricated Eyewitness Evidence**

71. Police also manufactured eyewitness evidence to implicate Plaintiff in setting the fire.

72. The false evidence included a fabricated eyewitness identification.

73. In particular, on March 6, 1982, police interviewed Edward Evans, who lived across the street from the fire.

74. They showed Mr. Evans a photo array that included Plaintiff's photograph. Mr. Evans did not identify Plaintiff as being present the night of the fire.

75. Moreover, Mr. Evans provided a physical description of someone that he allegedly saw, at about 1:00 a.m. (after the fire was reported and fire department personnel had already responded).

76. Nonetheless, on March 13, 1982 (despite having initially not identified Plaintiff's photo and giving a description that did not match Plaintiff after many interactions with police), police manipulated Mr. Evans into falsely identifying Plaintiff as being present at the scene before the fire started. Police then falsely reported that Evans had identified Plaintiff five days earlier, on March 8, 1982, after seeing his picture in the newspaper.

77. Police did not document that the identification of Plaintiff was fabricated.

78. Police further fabricated a witness statement from Elisa Quinones, who was present the night of the fire.

79. On or about March 11, 1982, police wrote a statement in English and told Ms. Quinones to sign the statement.

80. Ms. Quinones did not read or speak English and nobody read or translated the statement to her in her native language, Spanish.

81. There were numerous false statements attributed to Ms. Quinones in her English-language written statement, including that she saw a man she knew with two other Spanish guys standing in front of the burning building; that those men were throwing small glass bottles, which looked like seven ounce beer bottles; that as soon as they threw in the bottles, the flames got bigger; and that she saw the photograph of the man she knew in the newspaper along with the two other men that were with him in the fire. None of this information was true; it was all fabricated by police to shore up false evidence against Plaintiff.

82. The actual evidence in the case, including from witnesses at the scene, excluded Plaintiff as a suspect. But the police and fire officials' myopic focus on Plaintiff meant that that evidence was ignored or buried.

#### **H. Plaintiff Is Convicted of Eight Murders from the Nonexistent Arson**

83. The fabricated evidence was used against Plaintiff at his criminal trial.

84. Plaintiff was tried by a jury in 1983 and faced charges of eight murders and arson. The fabricated evidence described above was the only evidence used against him.

85. On March 28, 1983, Plaintiff was convicted of eight murders and arson. On April 4, 1983, Plaintiff was sentenced to eight concurrent life sentences for the murders and a concurrent sentence of 18 to 20 years in prison on the arson charge.

86. Plaintiff never admitted any guilt for setting the fire, and instead maintained his innocence. Plaintiff began to serve his sentence but continued to fight to have his conviction overturned.

#### **Plaintiff's Conviction Is Overturned and Future Charges Are Dismissed**

87. Plaintiff continued to fight against his wrongful conviction during the entirety of his incarceration. Counsel for Plaintiff ultimately filed a motion for a new trial arguing that there was real doubt about the justice of the conviction based on the lack of voluntariness of the purported confession and that there was substantial risk of injustice.

88. On July 7, 2014, the Middlesex County Superior Court granted Plaintiff's Motion for a New Trial. The order for new trial allowed Plaintiff to walk free more than 30 years after his wrongful conviction, though he remained on pretrial probation awaiting the new trial.

89. The Commonwealth of Massachusetts appealed the July 7, 2014-order, which tolled the running of the limitations period until the appeal was completed.

90. On May 11, 2017, the Supreme Judicial Court upheld the order granting Plaintiff a new trial.

91. Faced with the prospect of a trial without the fabricated evidence, and the overwhelming scientific evidence that there was no arson, on September 8, 2017, the Commonwealth of Massachusetts entered a *nolle prosequi*, dropping all charges against Plaintiff.

### **Damages**

92. Although he is now free, the damages to Plaintiff from his wrongful conviction are tremendous.

93. Plaintiff was taken into custody at age 24. As a result of his conviction, he spent nearly 32 years in harsh and dangerous prison conditions. Given the nature of the crime of which he was wrongly convicted, Plaintiff was branded a murderer in prison, and he suffered severe physical abuse and other harm. In addition, he experienced loneliness and extreme emotional and physical harm during his incarceration. He also spent many years in solitary confinement.

94. During the 32 years Plaintiff spent in prison, his children grew up without him being in their lives. Plaintiff missed out on the opportunity to raise them and be a meaningful part of their lives. His parents aged, and his father died. Plaintiff missed out on their lives and the lives of other family and friends.

95. Even during the time that Plaintiff spent on pretrial probation, he was not free. He was subjected to monthly check-ins and drug screens.

96. In addition, Plaintiff was deprived of opportunities to engage in meaningful labor, to develop a career, and to pursue his interests and passions.

97. In addition to the trauma of his imprisonment and his loss of liberty, Plaintiff continues to suffer extreme physical and psychological pain and suffering, humiliation, constant fear, anxiety, inability to sleep, deep depression, despair, rage, and other physical and psychological effects.

### **Plaintiff's Claim For Relief Under G.L. c. 258D**

98. Plaintiff incorporates each paragraph of this Complaint as if fully restated here.

99. Plaintiff is entitled to compensation for his wrongful conviction under G.L. c. 258D.

100. Plaintiff did not commit the crimes for which he was charged in this case, or any other felony arising out of or reasonably connected to the facts supporting the charges against him.

101. Plaintiff was convicted of felonies for which he did not plead guilty.

102. He was sentenced to eight concurrent life sentences, and served 32 years in prison before he was ultimately released, including additional months on pretrial probation.

103. Plaintiff was granted judicial relief by a Massachusetts state court of competent jurisdiction on grounds which tend to establish his innocence.

104. After his conviction was overturned, prosecutors entered an order of *nolle prosequi* ending the case.

105. At the time of the filing of this action, no criminal proceeding is pending, and no criminal proceeding may be brought against Plaintiff for any act associated with this felony conviction.

106. A certified copy of the documents supporting this claim are attached to this Complaint.

### **Request for Relief**

WHEREFORE, for all the reasons stated in this Complaint, Victor Rosario prays that this Court:

- A. Enter judgment in favor of Victor Rosario finding that he meets the requirements of 258D and awarding him compensation for damages in the amount of \$1,000,000;
- B. Hold a hearing and order expunged Mr. Rosario's conviction and arrest from the Criminal History Systems Board, and Department of Probation;
- C. Grant Mr. Rosario any other just and appropriate relief to which he may be entitled.

### **Jury Trial Requested**

Plaintiff, VICTOR ROSARIO, hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

/s/ Debra Loevy  
One of Plaintiff's Attorneys

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