**Cause No. \_\_\_\_\_\_\_\_\_\_\_\_**

|  |  |  |
| --- | --- | --- |
| ENZO WEINBERG A/K/A MAURICE WILLIAMSv.TROY MCLEHANY, H-TOWN BAIL BONDS, BETTER NOW THAN LATER BAIL BONDS, BANKERS INSURANCE COMPANY, MARC A. METZE INDIVIDUALLY AND AS AGENT FOR BANKER’S INSURANCE COMPANY, AND JOHN A. MORITZ | §§§§§§§§§§§§§ | IN COUNTY CRIMINALCOURT AT LAW NO. 11HARRIS COUNTY, TEXAS |

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT,

 COMES NOW ENZO WEINBERG, Plaintiff, and brings this suit for wrongful surrender of a bail bond and for false imprisonment against Troy McLehany, H-Town Bail Bonds, Better Now Than Later Bail Bonds, Bankers Insurance Company, Marc A. Metze individually and as agent for Banker’s Insurance Company, and John A. Moritz.

# DISCOVERY CONTROL PLAN

1. Plaintiff intends to conduct discovery under Level 1 of Texas Rule of Civil Procedure 190.2 because this suit involves only monetary relief totaling $50,000 or less, excluding court costs, prejudgment interest, and attorney fees.

# PARTIES

1. Plaintiff Maurice Williams is an individual whose address in Harris County is P.O. Box 130363 Houston, Texas 77219. The last three digits of Plaintiff’s Texas Driver’s License are 282. The last three digits of Plaintiff’s Social Security Number are 241.
2. Defendant Troy McLehany is an individual residing at 15702 Seaside Ln, Houston, Harris County, Texas 77062-4231.
3. Defendant H-Town Bail Bonds is a sole proprietorship with its principal offices at 305 Caroline St., Houston, Harris County, Texas 77002.
4. Defendant Better Now Than Later Bail Bonds is a sole proprietorship with its principal offices at 1406 Southmore #2, Houston, Harris County, Texas 77004.
5. Defendant Bankers Insurance Company is a foreign corporation that may be served through its registered agent at 211 E. 7th Street, Suite 620, Austin, TX 78701-321.
6. Defendant Marc A. Metze is an individual residing at 2425 Southmore Blvd., Houston, Harris County, Texas 77004-7418.
7. Defendant John Moritz is an individual residing at 3305 New Garden View Ln., Houston, Harris County, Texas 77018-5327.

# JURISDICTION AND VENUE

1. Jurisdiction and venue are proper in County Criminal Court at Law Number 11 pursuant to the Texas Occupations Code, which provides that “If a principal is surrendered . . . and . . . an accused in the case determines that a reason for the surrender was without reasonable cause, the person may contest the surrender in the court that authorized the surrender.” Tex. Occ. Code Ann. § 1704.207 (West 2013).

# BACKGROUND

1. On June 17, 2014, Enzo Weinberg was charged with Assault—Family Member in Cause Number 1968263 in this Honorable Court. Mr. Weinberg had his name legally changed from Maurice Williams in 2013.
2. Mr. Weinberg made appearances in Cause Number 1968263 on the following occasions:

|  |  |
| --- | --- |
| 9/18/2014 | Arraignment |
| 9/19/2014 | Set for Bond Forfeiture |
| 10/16/2014 | Non-Trial Setting |
| 11/18/2014 | Disposition |
| 11/19/2014 | Jail Hearing |
| 12/18/2014 | Disposition |
| 12/19/2014 | Jail Hearing |
| 1/22/2015 | Pre-Trial Conference |
| 2/25/2015 | Pre-Trial Conference |

1. Prior to his Arraignment on September 18, 2014, Mr. Weinberg arranged to post a bond, selecting from the myriad bonding companies doing business in Harris County one called “Better Now Than Later Bail Bonds,” which provided Mr. Weinberg a bail bond in the amount of $50,000.00 through Bankers Insurance Company. Better Now than Later’s agent in the transaction was Mr. Marc A. Metze. This bond was issued on September 11, 2014. The bond was issued in the name of Maurice Williams because the charge was made against Mr. Weinberg under his former name of Maurice Williams.
2. On November 17, 2014, Bankers Insurance Company, through its agent Marc A. Metze filed an Affidavit of Surety to Surrender Principal, stating:

DEFENDANT HAS FAILED TO COMPLY WITH BOND TERMS; WEEKLY REPORTING, UPDATE CONTACT INFORMATION AND HAS FAILED TO PAY PREMIUM. SURETY HAS TRIED TO CONTACT DEFENDANT TO NO AVAIL. SURETY CAN NO LONGER GUARANTEE DEFENDANT’S ABILITY TO APPEAR IN COURT TO ANY FUTURE COURT DATES.

Accordingly, the surety asks the court to issue a warrant for the arrest of the defendant and to direct the Sheriff of Harris County to place the defendant in the Harris County Jail.

1. The Affidavit was signed by Mr. Marc A. Metze, as agent for Bankers Insurance Company. This Affidavit was filed one day before Mr. Weinberg’s next appearance date, on November 18, 2014. Because of the surety’s surrender of the bond, Mr. Weinberg was taken into custody on November 18, 2014.
2. On November 19, 2014, Mr. Weinberg posted a new $50,000.00 bond, this time choosing H-Town Bail Bonds, which is run by Mr. Troy McLehany. This bond was also made under the name of Maurice Williams.
3. On December 9, 2014, Mr. Troy McLehany filed an Affidavit of Surety to Surrender Principal with this Honorable Court, stating:

DEFENDANT HAS NOT CHECKED IN WITH BONDING COMPANY IN COUPLE OF WEEKS. ALSO INFORMATION ON APPLICATION IS NOT CORRECT.

Accordingly, the surety asks the Court to issue a warrant for the arrest of the defendant and to direct the Sheriff of Harris County to place the Defendant in the Harris County Jail.

1. This Affidavit was signed by Mr. Troy McLehany. Because of the surety’s surrender of the bond, Mr. Weinberg was taken into custody on December 18, 2014, his next appearance date.
2. Later on December 18, 2014, Mr. Weinberg posted a new bond with Blackwood Bail Bonds. This bond remains in effect.

# FACTS

1. When Mr. Weinberg was first arraigned, he had been told by Mr. Marc A. Metze of Better Now Than Later Bail Bonds that he would do a “walk-through” at the jail. Because of this, Mr. Weinberg drove himself to the courthouse that day. When it turned out that he could not do the walk-through, Mr. Weinberg gave the keys to his car to Mr. Metze so that he could keep the car safe. Instead of doing just that, Mr. Metze seriously damaged the vehicle while driving it. When Mr. Weinberg got the car back, Mr. Metze said that he would credit the damages that Mr. Weinberg incurred toward his bail bond. Thus, Mr. Weinberg was never behind on his payments to Better Now Than Later Bail Bonds, and Mr. Metze knew it.
2. Mr. Weinberg is in the process of ending his common-law marriage with Amethyst Kelly, better known as Iggy Azalea. Ms. Kelly hired John Moritz as a private investigator to assist her with the divorce. Mr. Moritz holds a reserve commission as a Constable with Harris County Precinct 4.
3. On November 18, 2014, the date after which the first bond was surrendered, counsel for Mr. Weinberg in the criminal charge, Mr. Jimmy Ardoin, was informed of the surrender and was told to speak to the two men waiting for him in the jury box. The first man introduced himself as John Moritz of the Precinct 4 Constable’s Office and the second man introduced himself as a Houston Police Officer. As noted above, Mr. Moritz is a *reserve* officer. It has since been learned that the other man is not a Houston Police Officer, but is an employee of Mr. Moritz in his private investigation practice. These men informed Mr. Ardoin that they had provided the information that caused Marc A. Metze, Bankers Insurance Company, and Better Now Than Later Bail Bonds to surrender the bond. Later that morning, Mr. Moritz and an attorney named Charles Johnson approached the bench, the Honorable Judge Diane Bull presiding, and attempted to have Mr. Weinberg held at no bond. The Court set a new bond at $50,000.00.
4. On December 18, 2014, Mr. Ardoin again learned that Mr. Weinberg’s bond had been surrendered. Although Mr. Moritz was not present at the December 18, 2014 setting, it appears that he had something to do with the decision by Mr. Troy McLehany and H-Town Bail Bonds to surrender Mr. Weinberg’s bond. The complaints in the affidavits are too similar to be coincidence. They are also false. Troy McLehany knew this and even tried to undo the bond surrender in court that morning, to no avail.

# SURRENDER OF BAIL BOND WITHOUT REASONABLE CAUSE

1. One of the requirements under the Code of Criminal Procedure and the Occupations Code is that a bonding company surrendering a bond *must* provide notice of the surrender under in a manner provided for by Texas Rule of Civil Procedure 21a. Tex. Code Crim. Proc. Ann. art. 17.19(a) (West 2007); Tex. Occ. Code Ann. §1704.207(a) (West 2003). This notice was not provided to Mr. Ardoin, Mr. Weinberg’s attorney of record.
2. Another requirement is that the reason for the surrender be reasonable. *See* Tex. Code Crim. Proc. Ann. art. 17.19(b) (West 2007); Tex. Occ. Code Ann. §1704.207(b) (West 2003). As noted above, Mr. Weinberg was not behind on his payments. Mr. Weinberg never missed a reporting date with either bonding company. After his first bond was revoked, he always took a friend on his weekly visits to the bonding company. Mr. Weinberg also called weekly, even if he had just visited in person. He met the letter of the requirement of his bonds. Both surrenders were unreasonable, as they were caused by the tampering of Mr. John Moritz.
3. “If the court finds that a contested surrender was without reasonable cause, the court may require the person who executed the bond to refund to the principal all or part of the fees paid for execution of the bond.” Tex. Occ. Code Ann. §1704.207(c) (West 2003). The court is directed to determine what “fees” were actually paid for the bond, whether or not they were formally described as fees. *Id*.
4. The actions of the Defendants directly led to the Plaintiff being imprisoned due to the wrongful surrender, without reasonable cause, of his bail bonds.

# FALSE IMPRISONMENT

1. “The essential elements of a cause of action for false imprisonment are: (1) willful detention; (2) without consent; and (3) without authority of law.” *Sears, Roebuck & Co. v. Castillo*, 693 S.W.2d 374, 375 (Tex. 1985).
2. “Although physical restraint is one way to establish a willful detention, it is not the only way.” *Grant v. Stop-N-Go Mkt. of Texas, Inc*., 994 S.W.2d 867, 872 (Tex. App.—Houston [1st Dist.] 1999, no pet.). Liability extends to any person who directs or requests an unlawful detention, including private citizens who request law enforcement officers to arrest a third party. “Although physical restraint is one way to establish a willful detention, it is not the only way.” *Id*. (citing *Randall's Food Mkts., Inc. v. Johnson*, 891 S.W.2d 640, 645 (Tex.1995)). Liability extends to any person who directs or requests an unlawful detention, including private citizens who request law enforcement officers to arrest a third party. *Lewis v. Cont'l Airlines, Inc.*, 80 F. Supp. 2d 686, 702 (S.D. Tex. 1999); *see* *Reicheneder v. Skaggs Drug Ctr.*, 421 F.2d 307, 311 (5th Cir. 1970). When a person identifies someone as the perpetrator of a crime and requests or directs police officers to arrest him, the person making the request or the direction is liable for subsequent false imprisonment even if he acted in good faith. *J.C. Penney Co. v. Reynolds*, 329 S.W.2d 104, 106-07 (Tex. Civ. App.—El Paso 1959, writ ref’d n.r.e.); *McDonald v. Henderson*, 250 S.W. 463, 463 (Tex. Civ. App.—Amarillo 1923, no writ); *Karner v. Stump*, 12 Tex. Civ. App. 460, 463, 34 S.W. 656, 657 (1896). The defendants, in using the language “Accordingly, the surety asks the Court to issue a warrant for the arrest of the defendant and to direct the Sheriff of Harris County to place the Defendant in the Harris County Jail,” requested that Mr. Weinberg be arrested, thus they are liable for false imprisonment.
3. None of the Defendants acted in good faith, and even if they did, they willfully detained Mr. Weinberg not once, but twice, depriving him of his liberty.
4. This deprivation was without Mr. Weinberg’s consent.
5. The requirement that the detention be made “without authority of law” is a necessary one. *Martinez v. Goodyear Tire & Rubber Co*., 651 S.W.2d 18, 21 (Tex. App.—San Antonio 1983, no writ). The cases analyzing this element involve shoplifting. *See, e.g*. *Gibson Discount Center v. Cruz*, 562 S.W.2d 511, 513 (Tex. Civ. App.—El Paso 1978, writ ref'd n.r.e.). The holdings can be analogized, however.
6. In *Gibson*, a store detained one Mr. Cruz for (they believed) shoplifting a hat. Producing a receipt, Mr. Cruz proved at the criminal trial that he had purchased the hat at the same store one month earlier. The jury in the civil trial for false arrest and malicious prosecution found for Mr. Cruz, as well. On appeal, one of the issues was whether the evidence supported the jury’s finding that the detention was without legal justification. The court found that under the circumstances there was no legal justification. Similarly, in Mr. Weinberg’s case, there is no legal justification for either detention because the evidence presented the court was false.
7. The actions of the Defendants directly led to the false imprisonment of the Plaintiff.

# ATTORNEY’S FEES

1. Plaintiff hereby requests an award of attorney’s fees. *See* *Gibson Disc. Ctr., Inc. v. Cruz*, 562 S.W.2d 511, 513 (Tex. Civ. App.—El Paso 1978, writ ref’d n.r.e.).

# CONDITIONS PRECEDENT

1. All conditions precedent to plaintiff’s claim for relief have been performed or have occurred.

# PRAYER

1. For these reasons, Plaintiff asks that this Honorable Court issue citation for Defendant to appear and answer, and that Plaintiff be awarded a judgment against Defendant for the following:
	1. Actual damages.
	2. Exemplary damages.
	3. Return of all Fees paid to all Bonding companies.
	4. Attorney’s fees.
	5. Prejudgment and postjudgment interest.
	6. Court costs.
	7. All other relief to which Plaintiff is entitled.

Respectfully submitted,

/s/ Robert Pelton
Robert Pelton
SBN 15733500
4001 N. Shepherd
Houston, Texas 77018
Tel.: (713) 697-5900
Fax: (888) 834-3696
rpeltonlawyer1@aol.com
Attorney for Plaintiff Maurice Williams