

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARCON GREEN and  
HAROLD McKINNEY,

Plaintiffs,

v

CITY OF DETROIT, a municipal corpora-  
tion, MICHAEL OSMAN, and MICHAEL  
PARISH, jointly and severally,

Defendants.

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POSNER, POSNER AND POSNER  
By: Gerald F. Posner – P 24269  
Attorneys for Plaintiff  
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**COMPLAINT AND DEMAND FOR JURY TRIAL**

**JURISDICTION**

NOW COME plaintiffs, by and through their attorneys, Posner, Posner and Posner, and state that this action is brought pursuant to 42 U.S.C. §§ 1983, 1988 and the Fourth, Fifth and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1343 and the aforementioned statutory and constitutional provisions.

Plaintiffs hereby invoke the supplemental and pendent jurisdiction of this Court to hear and decide the claim arising under state law, as set forth herein.

**COUNT I. VIOLATION OF CIVIL RIGHTS**

NOW COME plaintiffs, by and through their attorneys, Posner, Posner and Posner, and complain against the defendants herein, jointly and severally, in an action for violation of their civil rights, and says:

1. That each plaintiff is a citizen of the State of Michigan. Plaintiff Green is a resident of Taylor, Michigan, and of this judicial district, and plaintiff McKinney currently resides in St. Louis, Gratiot County, Michigan.

2. That the defendants are citizens of the State of Michigan and are residents of this judicial district.

3. That at all times herein, the defendants were acting in concert and/or combination and/or conspiracy with each other and/or with other persons.

4. That at all times herein, the defendants were acting under color of state law.

5. That at all times herein, the defendants were acting in bad faith.

6. That defendant City of Detroit is a municipal corporation and operates a police department known as the Detroit Police Department.

7. That on or about 5-15-06, defendants MICHAEL OSMAN and MICHAEL PARISH, each of whom is being sued in his individual capacity, were police officers employed by the City of Detroit and the Detroit Police Department.

8. Defendant police officers Osman and Parish have engaged in a pattern and practice of improper, illegal and unconstitutional conduct toward citizens in violation of the constitutional rights of those citizens, and the rights of those citizens under state law. Each instance has involved one or more of the following acts: stopping, detaining,

and searching persons without search warrants, probable cause or even reasonable suspicion, or consent; strip searches; disrobing persons, to a greater or lesser extent; body cavity searches; and searches in which the defendant, either bare handed or with a glove, has touched a person's buttocks, and/or gluteal cleft, and/or spread the buttocks, and/or inserted a finger in the person's anus, and/or has touched, grabbed, and/or fondled a person's genitals and/or genital area.

9. The pattern and practice of the defendant officers' misconduct as set forth above was widespread and well known in the community, yet defendant City of Detroit did nothing to stop the practice.

10. In fact, the pattern and practice of misconduct was so widespread, well known and pervasive, that the defendant officers, as well as the instances of misconduct and the victims thereof, became known by the derogatory euphemism "Booty Boys".

11. Each plaintiff herein is one among many victims of defendant officers.

12. On 5-19-06, plaintiff Green was the driver of a car in which plaintiff McKinney, and McKinney's 15 year old daughter Asia, who is also related to plaintiff Green, were passengers, traveling near Annabelle and Schaefer in the City of Detroit.

13. Defendants Osman and Parish drove up in their police car, and pulled over and stopped the plaintiffs' car on the pretense that the plaintiff passenger McKinney did not have a seat belt on.

14. Defendants ordered the plaintiffs out of the car, and, further, ordered the minor out of the car, made the minor put her hands on the vehicle, and made the minor watch what the defendants did to the plaintiffs.

16. The redheaded officer, who plaintiffs believe is defendant Osman, then, without any reasonable suspicion, probable cause, warrant, consent, or legal justification or cause, and without a glove, conducted both a strip search and a body cavity search of plaintiff Green. He pulled plaintiff's pants and underwear away from his body, put his hands down the back of the pants and underwear, spread the plaintiff's buttock cheeks and examined the area, inserted a finger into plaintiff's anus, and then turned the plaintiff around, put his hand on plaintiff 's front side, rubbed his hand up and down over plaintiff's genitals a number of times, and then grabbed, squeezed, and fondled plaintiff's testicles a number of times.

17. The other officer, who plaintiffs believe is defendant Parrish, then, without any reasonable suspicion, probable cause, warrant, consent, or legal justification or cause, and without gloves, conducted both a strip search and a body cavity search of plaintiff McKinney, pulled plaintiff's pants and underwear away from his body, put his hand down the back and spread the plaintiff's buttock cheeks and examined the area, repeatedly rubbing the area between his buttocks and around his anus, and then turned the plaintiff around, put his hand on plaintiff 's front side, lifting, grabbing and fondling plaintiff's scrotum and penis.

18. Defendant officers found no contraband on either plaintiff, as there was nothing to be found.

19. When defendant Green complained that defendant officer was acting like a homosexual, defendant officer then, without probable cause or any legal justification, falsely arrested plaintiff Green by handcuffing him. Defendant officer then falsely accused plaintiff of Green of having been drinking, and plaintiff replied by demanding a

breathalyzer test, which defendants refused to give him. Defendant officers then released the plaintiffs, without any charges whatsoever; however, they made plaintiff McKinney, who did not have a drivers license, drive.

20. Plaintiff Green immediately went and made a Citizens Complaint Report against the defendants.

21. That the search and seizure of the plaintiffs, and the manner thereof, was unconstitutional, in that it was done without any reasonable suspicion, probable cause, warrant, consent, or legal justification or cause, and was performed in an unreasonable, unjustifiable, outrageous, and unconstitutional manner.

22. Furthermore, strip searches and body cavity searches are prohibited under MCLA 764.25a and MCLA 764.25b, unless performed under certain circumstances and by certain procedures, none of which were applicable or followed in this case, making defendants guilty of a misdemeanor under said statutes.

23. That in touching each plaintiff as set forth above, defendants used unreasonable, unnecessary, excessive, and unconstitutional force against each plaintiff when no use of such force or any force was necessary.

24. That each plaintiff had a right to be protected from intentional, wanton, willful, malicious, sadistic, purposeful, deliberate, grossly negligent, recklessly indifferent, deliberately indifferent, and wrongful conduct by the said police officers and governmental defendant which conduct resulted in injuries to each plaintiff and in violation of each plaintiff's civil rights.

25. Defendants had a duty toward each plaintiff under the United States Constitution and the federal civil rights laws, specifically including 42 USC § 1983, and

the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, to refrain from acting or failing to act so as to violate each plaintiff's civil rights.

26. Each of the defendants breached his duties to each plaintiff and violated each plaintiff's civil rights by his acts and omissions and failures to act, as pled herein.

27. Further, that defendants had both the duty and the power to prevent or aid in the prevention of the commission of said wrongful acts against the plaintiffs, and prevent the violation of each plaintiff's civil and constitutional rights, but neglected or refused to do so.

28. That it was the policy, practice, custom and usage of defendant City to encourage, tolerate, acquiesce in and ratify violations of the civil rights of persons by conduct and inaction which was grossly negligent and/or deliberately indifferent to the civil rights of persons and to constitutional violations by their police officers, and adopting, ratifying, or implementing such policy, practice, custom and usage, which conduct and inaction included, but is not limited to:

- (a) Failure to correct unconstitutional conditions and practices.
- (b) Failure to completely and properly investigate all prior complaints of police misconduct, including strip searches and body cavity searches, against prisoners and citizens and/or to take proper disciplinary action against officers guilty of such misconduct.
- (c) Failure to promulgate and enforce regulations regarding the proper treatment of prisoners and citizens by officers, and for the intervention by officers who witness the mistreatment of persons at the hands of other officers and have the power to prevent same.
- (d) Failure to take proper disciplinary action against officers who had mistreated prisoners and/or citizens.

- (e) Allowing a pervasive and established pattern of constitutional violations as well as statutory violations to become a de facto policy by failing to take action against same or to prevent same.
- (f) Inadequate, grossly inadequate, or non-existent training and supervision of officers, including training and supervision with regard to strip searches and body cavity searches and the use of force.
- (g) Failing to give adequate and proper psychological tests to prospective officers.
- (h) Failing to give periodic adequate and proper psychological tests to officers in order to relieve officers found to be psychologically unfit or give them adequate treatment.
- (i) Failing to adequately and properly investigate the employment history, background and fitness of persons it hired as officers.
- (j) Failing to promulgate, follow, and enforce regulations concerning checking the employment history, background, and fitness, and psychological fitness of persons being hired as officers.
- (k) Retaining persons as officers even after their negative employment history, background, and/or fitness for duty was discovered and/or should have been discovered.

29. That the policy, practice, custom and usage of defendant City, and its conduct and inaction, was a proximate cause of the violation of each plaintiff's civil rights and of the injuries and damages to each plaintiff.

30. That each plaintiff had a right to be protected from the wrongful conduct by defendant City which conduct resulted in injuries and damages to each plaintiff.

31. That each plaintiff had the following rights, privileges and/or immunities, among others, guaranteed him under the United States Constitution and laws of the United States:

- (a) the right to due process of law;

- (b) the freedom from illegal and/or unreasonable search and seizure of his person;
- (c) the freedom from arbitrary and unreasonable interference by the police;
- (d) the freedom from unnecessary force;
- (e) the freedom to be secure in one's person;
- (f) the right to equal protection of the laws; and
- (g) the right to liberty.

32. That by reason of the wrongful conduct by defendants, each plaintiff was deprived of the rights, privileges and/or immunities guaranteed him by the United States Constitution and laws as set forth above.

33. That the wrongful conduct by defendants constituted a violation of the civil rights of each plaintiff and a violation of 42 USC §1983.

34. That the defendants, acting under color of law and right, by said wrongful conduct, deprived each plaintiff of the civil rights guaranteed plaintiff by 42 USC §1983 of the laws of the United States in effect at the time of the injuries inflicted upon the plaintiffs by said defendants, said statute reading as follows:

"Every person who, under color of any statute, ordinance, regulation, custom or usage, or any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

35. That as a direct and proximate result of said wrongful conduct by said defendants as pled herein, each plaintiff sustained serious and permanent injuries to his



body and person, including but not limited to mental and psychological injuries, and aggravation of any and all pre-existing conditions of same.

36. That as a direct and proximate result of said wrongful conduct, each plaintiff has suffered, and will in the future continue to suffer, great mental anguish, fright and shock, embarrassment, humiliation, pain and suffering, denial of social pleasures and enjoyments,.

37. That each plaintiff's injuries are continuing and are permanent in nature.

38. That as a direct and proximate result of said wrongful conduct, each plaintiff may be required to undergo, and expend sums of money and incur bills for psychological treatment.

39. That as a direct and proximate result of the intentional, wanton, willful, malicious, and oppressive manner in which said wrongful conduct was committed, each plaintiff suffered, and will in the future continue to suffer, additional great mental anguish, embarrassment, outrage, fright and shock, mortification, indignity and humiliation.

40. That as a direct and proximate result of said wrongful conduct, each plaintiff incurred substantial liabilities for attorney fees.

WHEREFORE, each plaintiff asks judgment for compensatory damages as well as exemplary damages in the amount of One Million (\$1,000,000.00) Dollars against all of the defendants, jointly and severally, plus punitive damages against the individual defendants in the amount of Two Million (\$2,000,000.00) Dollars, plus actual

reasonable attorney fees pursuant to 42 USC § 1988, plus statutory interest, court costs and attorney fees.

In addition each plaintiff asks for declaratory relief, that the search, and the methods, pattern and practice of defendant officers, as well as the pattern, practice, procedure, custom and usage of defendant City is and was unconstitutional, and for injunctive relief and whatever other relief this Court finds reasonable and proper to prevent future wrongs and violations of civil and constitutional rights.

## **COUNT II. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

1-40. Plaintiffs reassert and reallege each and every allegation set forth in ¶¶1-40 of Count I of this Complaint as if fully set forth herein.

41. That in committing the acts constituting the tort pled herein, each of the individual police officers acted intentionally, with malice, sadistically, in bad faith, and was engaged in ministerial-operational acts; further, defendant was engaged in a non-governmental function in that he intentionally used and misused a badge of governmental authority for a purpose unauthorized by law and/or intended to accomplish illegally what could not be accomplished legally.

42. Defendants had a duty not to perform acts toward plaintiffs constituting intentional infliction of emotional distress.

43. Each of the individual defendants breached that duty to the plaintiffs by committing acts which were extreme and outrageous, and utterly intolerable in a civilized society, which were done intentionally and/or recklessly, which proximately caused each plaintiff's injuries, and which caused severe emotional distress.

44. That as a direct and proximate result of said wrongful conduct by defendants, each plaintiff has suffered the injuries and damages heretofore set forth in Count I of this Complaint.

WHEREFORE, each plaintiff asks judgment for compensatory damages as well as exemplary damages in the amount of One Million (\$1,000,000.00) Dollars against the individual defendants, jointly and severally, plus statutory interest, court costs and attorney fees.

**COUNT III. UNLAWFUL STRIP SEARCH/BODY CAVITY SEARCH  
IN VIOLATION OF MCLA 764.25a and MCLA 764.25b**

1-40. Plaintiffs reassert and reallege each and every allegation set forth in ¶¶1-40 of Count I of this Complaint as if fully set forth herein.

41. That in committing the acts constituting the tort pled herein, each of the individual police officers acted intentionally, with malice, sadistically, in bad faith, and was engaged in ministerial-operational acts; further, defendant was engaged in a non-governmental function in that he intentionally used and misused a badge of governmental authority for a purpose unauthorized by law and/or intended to accomplish illegally what could not be accomplished legally.

42. Defendants had a duty under Michigan statute, MCLA 764.25a and MCLA 764.25b, not to perform strip searches and body cavity searches upon the plaintiffs under the circumstances present in this case and in the manner in which defendants conducted the search of the plaintiffs in this case.

43. The individual defendants breached that duty to the plaintiffs by the

search of each plaintiff and the manner of that search.

44. Defendants' search of each plaintiff in this case violated MCLA 764.25a and/or MCLA 764.25b, and constituted a misdemeanor under said statutes.

45. That as a direct and proximate result of said wrongful conduct by defendants, each plaintiff has suffered the injuries and damages heretofore set forth in Count I of this Complaint.

WHEREFORE, each plaintiff asks judgment for compensatory damages as well as exemplary damages in the amount of One Million (\$1,000,000.00) Dollars against the individual defendants, jointly and severally, plus statutory interest, court costs and attorney fees.

#### **COUNT IV. GROSS NEGLIGENCE**

1-40. Plaintiffs reassert and reallege each and every allegation set forth in ¶¶1-40 of Count I of this Complaint as if fully set forth herein.

41. Defendants had a duty toward plaintiffs under statute and the common law to refrain from acting or failing to act with gross negligence, defined by MCLA 691.1407(2)(c) as conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

42. Each of the individual defendants breached his duties to each plaintiff by his grossly negligent, reckless, willful, wanton and indifferent acts and failures to act, as previously pled, conduct so reckless under the particular circumstances then and there existing as to demonstrate a substantial lack of concern for whether an injury results.

43. Furthermore, each of the individual defendants was not acting, and did not reasonably believe he was acting within the scope of his authority in the act and manner of conducting the strip search/body cavity search in this case.

44. That as a direct and proximate result of said wrongful conduct by defendants, each plaintiff has suffered the injuries and damages heretofore set forth in Count I of this Complaint.

WHEREFORE, each plaintiff asks judgment for compensatory damages as well as exemplary damages in the amount of One Million (\$1,000,000.00) Dollars against the individual defendants, jointly and severally, plus statutory interest, court costs and attorney fees.

**DEMAND IS HEREBY MADE FOR TRIAL BY JURY  
AS TO ALL COUNTS OF THIS COMPLAINT.**

POSNER, POSNER AND POSNER

/s/Gerald F. Posner

By: Gerald F. Posner – P 24269

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