

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KENNETH SAVAGE,	)	
ASHLEY DANYELLE FRANKLIN	)	
Plaintiffs,	)	
v.	)	Case No.
	)	
CITY OF DETROIT, AND	)	
POLICE OFFICER JOHN DOE #1,	)	
POLICE OFFICER JOHN DOE #2,	)	
SGT. JOHN DOE #3	)	
Defendants.	)	

**COMPLAINT**

Plaintiff KENNETH SAVAGE and ASHLEY DANYELLE FRANKLIN (“Plaintiffs”), by and through their attorney, Olson PLLC, state the following for their Complaint against Defendant City of Detroit (“City”) and Police Officer John Doe (“Doe #1”), Police Officer John Doe #2 (“Doe #2) and Sgt. John Doe #3 (“Sgt. Doe #3):

1. This is a civil action arising under 42 U.S.C. § 1983 and common law avenues of recovery for deprivations of Plaintiffs’ rights.

2. Plaintiffs sue the individual Defendants Doe #1, Doe #2 and Sgt. Doe #3 in their individual capacity.

**JURISDICTION**

3. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, 1367(a) and § 1341.

## **VENUE**

4. Venue is proper under 28 U.S.C. § 1391(b).

5. At all times relevant herein, Plaintiffs resided in and were citizens of Detroit, Michigan.

6. Defendant City is a political subdivision of the State of Michigan acting under color of State law, and is a person for purposes of a 42 U.S.C. § 1983 action.

7. Defendants Doe #1, Doe #2 and Sgt. Doe #3 were at all relevant times police officers employed by Defendant City.

## **COLOR OF STATE LAW**

8. At all times relevant herein, Defendants Doe #1, Doe #2 and Sgt. Doe #3 acted under color of state law.

9. Particularly, Defendants Doe #1, Doe #2 and Sgt. Doe #3 acted under color of the laws, statutes, ordinances, regulations, policies, customs and usages of the State of Michigan, and its political subdivisions.

## **FACTUAL BACKGROUND**

10. On July 22, 2016, Plaintiffs owned three dogs named Isis, Heru and Beautiful.

11. On July 22, 2016, Plaintiffs, Ms. Franklin's son, Dejon and three dogs resided at 16892 Cruse, Detroit, Michigan 48235.

12. On July 22, 2016 at approximately 11:00 a.m., eight of Defendant City's police officers arrived Plaintiffs' residence to execute a search warrant.

13. The Search Warrant Affidavit indicated that:

- a. On July 20, 2016, City of Detroit police officers were conducting an investigation unrelated to Plaintiffs when the Affiant observed marijuana growing in Plaintiffs' back yard;
- b. The Affiant was "aware of a medical marijuana card holder and able to grow plants [sic]";
- c. "Due to plants being in an unsecure structure and visible to the public [sic] is a violation";
- d. "Affiant also took a picture of the marijuana at the location while on the non related investigation";
- e. "Due to the above observations, Affiant believes that the target location is functioning as a covert marijuana grow operation";
- f. "Affiant has been involved in the execution of numerous narcotics search warrants at locations in the City of

Detroit and has found that firearms and dogs are often found inside to protect the narcotics trade”; and

g. “Affiant seeks to remove any firearms and dogs found on the premises.”

14. Thus, Defendants knew in advance that Plaintiffs had dogs at their home.

15. Plaintiff Savage is an electrician.

16. At the time of the raid, Plaintiff Franklin announced to City of Detroit police officers that Plaintiffs’ marijuana was legal and that Plaintiffs had marijuana paperwork posted by the front door.

17. Plaintiff Franklin was detained.

18. According to the police report, City of Detroit police officers, including the Defendants Doe #1, Doe #2 and Sgt. Doe #3, entered through the front door and cleared the residence finding no one else inside.

19. According to the police report, City of Detroit police officers, including Defendants Doe #1, Doe #2 and Sgt. Doe #3, observed marijuana growing in the back yard of the Plaintiffs’ home but were unable to access the subject marijuana because Plaintiffs’ three dogs were in the back yard that was surrounded with an eight-foot high privacy fence.

20. Plaintiffs' back yard gate was chained and locked with a master lock and key at the time.

21. Plaintiffs had moved the plants, still in their pots, out into the yard to get some natural sunlight.

22. At the time of the raid, all of Plaintiffs' dogs were securely contained in the back yard surrounded by an eight-foot high chain link fence that was padlocked shut.

23. Plaintiff Franklin asked Defendant City of Detroit police officers for a warrant, to which a police officer Defendant stated that "if you keep asking for a warrant, we are gonna kill those dogs and call child protective services to pick up your kid."

24. Defendant City of Detroit's police report states that Defendant City of Detroit police officers contacted City of Detroit Animal Control to control the dogs and safely access the marijuana in the back yard.

25. The police report falsely states that Defendant City of Detroit police officers, including Defendants Doe #1, Doe #2 and Sgt. Doe #3, next unsuccessfully tried to capture Plaintiffs' dogs in the back yard before City of Detroit Animal Control arrived. They did not.

26. The police report states that Sgt. Doe #3 “determined that it would be unsafe for crewmembers to attempt to capture the dogs and gave the order to destroy them.”

27. Plaintiffs observed Defendants Doe #1, Doe #2 and Sgt. Doe #3 shoot Plaintiffs’ dogs from behind the fence while the dogs presented no imminent threat to police.

28. Isis screamed in pain and died in the back yard behind the house.

29. Next, Defendants Doe #1, Doe #2 and Sgt. Doe #3 shot the lock off the gate, entered Plaintiffs’ back yard and followed Heru and Beautiful who ran into the back of garage.

30. While Heru and Beautiful cowered in the back of the garage, Defendants Doe #1, Doe #2 and Sgt. Doe #3 shot Heru and Beautiful multiple times.

31. Beautiful died in the garage.

32. Shortly after the shooting was over, City of Detroit Animal Control Unit #D-30 responded to the scene and recovered the deceased dogs.

33. Heru walked into the Animal Control van but later died from his wounds.

34. Animal Control refused to give Plaintiffs the dogs’ bodies.

35. At no time did City of Detroit police officers give Plaintiffs an opportunity to sequester the dogs to permit them to access the back yard where the subject marijuana was located.

36. Plaintiff Franklin offered to take the marijuana from the back yard and give it to the police but Defendant police officers refused.

37. All three dogs died from the gunshot wounds.

38. It was not necessary, reasonable or legal for Defendants Doe #1, Doe #2 and Sgt. Doe #3, to shoot Plaintiffs' 3 dogs because they were secured inside of Plaintiffs' backyard behind a locked fence.

39. In other words, Defendants Doe #1, Doe #2 and Sgt. Doe #3 shot Plaintiffs' dogs while they presented no imminent threat to Defendants or anyone else for that matter.

40. Moreover, there was no exigency because Defendants could plainly see the marijuana they had come to seize and it was not going anywhere because police had secured the location and detained Plaintiff Franklin and police could watch the marijuana with no risk of the marijuana being destroyed.

41. Defendants Doe #1, Doe #2 and Sgt. Doe #3 calmly, carefully and cowardly shot and killed Plaintiffs' three dogs from a position where the dogs presented no imminent danger to them.

42. Furthermore, Defendants Doe #1, Doe #2 and Sgt. Doe #3 could have gained access to Plaintiffs' back yard by simply waiting for City of Detroit Animal Control to control the dogs before killing Plaintiffs' three dogs under circumstances where waiting for Animal Control would have posed no threat to Defendants Doe #1, Doe #2 and Sgt. Doe #3 or the police objective of seizing Plaintiffs' marijuana.

43. Sadly, City of Detroit Animal Control arrived less than ten minutes after Defendants Doe #1, Doe #2 and Sgt. Doe #3 finished shooting Plaintiffs' dogs.

44. Defendants Doe #1, Doe #2 and Sgt. Doe #3 killed Plaintiffs' three dogs for no reason.

45. Plaintiffs' dogs were all properly licensed at the time of the shooting.

**COUNT I  
VIOLATION OF CIVIL RIGHTS  
42 U.S.C. § 1983 AND FOURTH AMENDMENT  
AGAINST THE INDIVIDUAL DEFENDANT  
FOR COMPENSATORY DAMAGES, PUNITIVE DAMAGES  
AND ATTORNEY'S FEES**

46. Plaintiffs re-allege all of the preceding paragraphs.

47. The Fourth Amendment of the United States Constitution, U.S. Const. amend. IV, prohibits the government from unreasonably destroying or seizing a citizen's property.



48. "The destruction of property by state officials poses as much of a threat, if not more, to people's right to be 'secure . . . in their effects' as does the physical taking of them." *Fuller v. Vines*, 36 F.3d 65, 68 (9th Cir. 1994), overruled on other grounds, *Robinson v. Solano County*, 278 F.3d 1007, 1013 (9th Cir. 2002) (citation omitted).

49. "The killing of [a] dog is a destruction recognized as a seizure under the Fourth Amendment" and can constitute a cognizable claim under § 1983. *Id.*

50. Dogs are more than just a personal effect. *San Jose Charter of the Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962, 975 (9<sup>th</sup> Cir. 2005) (holding that defendant police's shooting of plaintiff's dogs was an unreasonable seizure in particular where defendant police officers had notice of the dog's presence and were not surprised by them and had no plan to deal with the dog other than by shooting it).

51. The emotional attachment to a family's dog is not comparable to a possessory interest in furniture. *Id.*

52. Indeed, Plaintiffs' Fourth Amendment interests involved are substantial because "the bond between a dog owner and his pet can be strong and enduring," and Plaintiffs thinks of their three dogs "in terms of an

emotional relationship, rather than a property relationship." *Altman v. City of High Point, N.C.*, 330 F.3d 194, 205 (4th Cir. 2003).

53. In circumstances where, as here, the dogs do not pose an imminent threat, or the officer is not surprised by the dog and has had time to make alternate plans to control the dog, other than shooting, the shooting of the dog has been found to be an unreasonable seizure. *Dziekan v. Gaynor*, 376 F. Supp. 2d 267, 270-71 (D. Conn. 2005). (citing cases and discussing *San Jose Charter of the Hells Angels Motorcycle Club*, 402 F.3d at 975).

54. Defendants' acts described herein were objectively unreasonable allowing for the fact that police officers are often forced to make split-second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation." *Graham v. Connor*, 490 U.S. 386, 396-97, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989).

55. Indeed, Defendants' acts described herein were intentional, grossly negligent, amounted to reckless or callous indifference to Plaintiffs' constitutional rights.

56. Defendants' shooting and killing of Plaintiffs' three dogs was unreasonable under the totality of the circumstances and therefore constituted an unreasonable seizure under the Fourth Amendment because

there was no exigency and police officers could have conducted their business without killing Plaintiffs' three dogs.

57. Defendants shooting and killing of Plaintiffs' three dogs was more intrusive than necessary. *Florida v. Royer*, 460 U.S. 491, 504 (1983) ("A seizure becomes unlawful when it is 'more intrusive than necessary'").

58. No governmental interest justifies the intrusion involved in this case.

59. Defendants Doe #1, Doe #2 and Sgt. Doe #3 shooting and killing Plaintiffs' three dogs was objectively unreasonable because Plaintiffs' three dogs were secured inside of Plaintiffs' back yard and Defendants Doe #1, Doe #2 and Sgt. Doe #3 could have accessed Plaintiffs' back yard and the marijuana contained therein without exposing themselves to any imminent danger if they had simply waited ten more minutes until Animal Control arrived (or by simply having Plaintiff Franklin give it to them).

60. In other words, Defendants Doe #1, Doe #2 and Sgt. Doe #3 could have conducted their police business by merely waiting for Animal Control, which tragically arrived shortly after Defendants Doe #1, Doe #2 and Sgt. Doe #3 lost patience and killed all of Plaintiffs' dogs.

61. Defendants Doe #1, Doe #2 and Sgt. Doe #3 (and indeed none of the police officers) were not in any immediate danger that would have justified the use of deadly force. *Fuller v. Vines*, 36 F.3d 65 (9th Cir. 1994).

#### **COMPENSATORY DAMAGES**

62. Under 42 U.S.C. § 1983 Plaintiffs are entitled to an award of compensatory damages against each individual Defendant in his individual capacity.

#### **PUNITIVE DAMAGES**

63. The individual Defendant's actions were:

- a. Reckless;
- b. Showed callous indifference toward the rights of Plaintiff; and
- c. Were taken in the face of a perceived risk that the actions would violate federal law.

64. Plaintiffs are entitled to an award of punitive damages against the each individual Defendant in his individual capacity, in order to punish him and to deter others.

#### **ATTORNEY'S FEES**

65. Under 42 U.S.C. § 1988 if Plaintiffs are the prevailing party in this litigation, then they will be entitled to receive an award of reasonable attorney's fees, non-taxable expenses and costs.

WHEREFORE, Plaintiffs pray for judgment under 42 U.S.C. § 1983 and 1988 against each individual Defendant in his individual capacity, for compensatory damages in a fair and reasonable amount, for punitive damages, for reasonable attorney's fees, for and non-taxable expenses, for costs, and Plaintiffs pray for such other relief as may be just under the circumstances and consistent with the purpose of 42 U.S.C. § 1983.

**COUNT II  
VIOLATION OF CIVIL RIGHTS  
42 U.S.C. § 1983 AND FOURTH AMENDMENT  
AGAINST DEFENDANT CITY  
FOR COMPENSATORY DAMAGES AND ATTORNEY'S FEES**

66. Plaintiffs re-allege their prior allegations.

**COMPENSATORY DAMAGES  
1ST ALTERNATIVE BASIS OF MUNICIPAL LIABILITY  
DELEGATION TO INDIVIDUAL DEFENDANT**

67. As the first alternate basis for liability against Defendant City, the policy maker for Defendant City, the mayor, or someone else, and that person delegated full authority and/or empowered the individual Defendant's policy.

68. That delegation of authority by the actual policy maker of Defendant City placed the individual Defendant in a policy making position, and the acts of the individual Defendant may fairly be said to be those of the municipality. *Id.* at 483, and *Kujawski v. Board of Com'rs of Bartholomew County, Ind.*, 183 F.3d 734, 737 (7th Cir. 1999).

69. Those acts therefore subject Defendant City to liability for the constitutional violations of the individual Defendant. *Id.* at 483; *Kujawski v. Board of Com'rs of Bartholomew County, Ind.*, 183 F.3d 734, 737 (7th Cir. 1999).

**2ND ALTERNATIVE BASIS OF MUNICIPAL LIABILITY – FAILURE TO TRAIN,  
SUPERVISE, CONTROL**

70. As the second alternative basis for liability against Defendant City, Defendant City failed to properly hire, train, supervise, control and/or discipline the individual Defendants with respect to dogs such as Plaintiffs' dogs, who live throughout the City.

71. Defendant City was thus deliberately indifferent to the rights of others in adopting its hiring and training practices, and in failing to supervise, control and/or discipline each individual Defendant such that those failures reflected a deliberate or conscious choice by Defendant City made from among various alternatives. *City of Canton v. Harris*, 489 U.S. 378, 389 (1989).

72. Those deficiencies were the moving force that caused Plaintiffs' damages. *Larson By Larson v. Miller*, 76 F.3d 1446, 1454 (8th Cir. 1996).

73. In light of the fact that it was each individual Defendant who engaged in the constitutional violations (and numerous other City of Detroit police officers who needlessly and unconstitutionally killed citizens' dogs), the need to correct the deficiencies is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of Defendant City can reasonably be said to have been deliberately indifferent to the need. *Andrews v. Fowler*, 98 F.3d 1069, 1076 (8th Cir. 1996).

74. If Defendant City had properly hired, trained, supervised, controlled and/or disciplined the individual Defendants, the constitutional violations committed that the individual Defendants committed would not have occurred.

75. These failures by Defendant City to hire, train, supervise, control and/or discipline the individual Defendants subject Defendant City to liability for the constitutional violations committed by the individual Defendant.

76. On information and belief, Defendant City had no policy or training in place in how to handle encounters with dogs secured inside of a locked chain link fence, which was evident in Defendants' actions alleged herein.

77. Such training was at all relevant times available online at no cost to Defendant City.

78. Defendant City has repeatedly been sued for unconstitutional shootings of dogs, yet has done nothing to address the problem that is well known to the City and has been widely covered in local, national and international media.

79. On information and belief, the City has never independently determined that a police officer improperly shot any dog.

#### **COMPENSATORY DAMAGES**

80. Under 42 U.S.C. § 1983, Plaintiffs are entitled to an award of compensatory damages against Defendant City.

#### **ATTORNEY'S FEES**

81. Under 42 U.S.C. § 1988 if Plaintiffs are the prevailing party in this litigation, then they will be entitled to receive an award of reasonable attorney's fees, non-taxable expenses and costs.



WHEREFORE, Plaintiffs pray for judgment under 42 U.S.C. § 1983 and 1988 against Defendant City for compensatory damages in a fair and reasonable amount, for reasonable attorney's fees, and non-taxable expenses, for costs and such other relief as may be just under the circumstances and consistent with the purpose of 42 U.S.C. § 1983.

Respectfully submitted,

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June 28, 2017  
Detroit, Michigan

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand trial by jury in this action of all issues so triable.

Respectfully submitted,

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