

punches, kicks, and knees to the face and body while Plaintiff was defenseless and handcuffed, was so extreme that it caused Plaintiff to suffer broken teeth as well as other bruising and trauma.

2. Defendants' conduct in assaulting Plaintiff on October 7, 2014 violated Plaintiff's well-settled federal civil rights to be free from unreasonable force and false arrest, all while acting under color of state law.
3. Defendants were acting within the course and scope of their employment with the City of Minneapolis when they violated Plaintiff's constitutional rights on October 7, 2014.

JURISDICTION AND VENUE

4. Plaintiff brings this action under 42 U.S.C. §§ 1983 and 1988 and the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution.
5. At the time of the use of unreasonable force which is the subject matter of this Complaint, Plaintiff resided and presently resides in Minneapolis, Hennepin County, in the state of Minnesota.
6. On information and belief, Defendant Robert Thunder was, at all

times material herein, a citizen of the United States and a resident of the state of Minnesota, duly appointed and acting as an officer of the Minneapolis Police Department.

7. Mr. Thunder is sued in his individual capacity.
8. On information and belief, Defendant Tou Thao was, at all times material herein, a citizen of the United States and a resident of the state of Minnesota, duly appointed and acting as an officer of the Minneapolis Police Department.
9. Mr. Thao is sued in his individual capacity.
10. The City of Minneapolis is a municipality incorporated under the laws of the State of Minnesota.
11. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1343(a)(3), which confer this Court with original jurisdiction in this matter.
12. Plaintiff also requests declaratory and injunctive relief. He also seeks compensatory and punitive damages permitted by law, as well as statutory attorneys' fees and expenses.
13. Plaintiff demands a jury trial as to all issues of fact herein.

FACTUAL BACKGROUND

14. In the early morning of October 7, 2014, Plaintiff Ferguson was walking home with his girlfriend, Brittany Peterson, after the two had been at the hospital for issues related to Ms. Peterson's pregnancy. She was about 8 months pregnant at the time.
15. Plaintiff and Ms. Peterson had taken a taxi from the hospital to Plaintiff's grandmother's house, who had asked Plaintiff for help taking out her garbage. The two were walking to Ms. Peterson's home, a block-and-a-half away, after having attended to Plaintiff's task for his grandmother.
16. A car approached Plaintiff and Ms. Peterson in the alley, causing Ms. Peterson some concern. She kept walking and Plaintiff was left by himself as the car pulled up.
17. It was a Minneapolis police car and in it were the Defendant Officers Thunder and Thao.
18. The Officers exited the car.
19. The Officers had no reasonable suspicion to stop Plaintiff.

20. The Officers had no probable cause to believe that Plaintiff committed a crime.
21. Officer Thao asked Plaintiff to put his hands on the hood of the car.
22. Officer Thao then put Plaintiff in handcuffs, behind Plaintiff's back, and took Plaintiff's wallet with identification out of Plaintiff's pocket.
23. Officer Thao gave Plaintiff's I.D. to Officer Thunder.
24. Officer Thunder re-entered the squad car and purported to run Plaintiff's ID through the National Crime Information Center ("NCIC") in the squad car.
25. On information and belief, no warrant showed up for Plaintiff when Officer Thunder ran the ID through NCIC.
26. Nevertheless, Officer Thunder exited the squad car and, on information and belief, falsely stated that there was a warrant out for Plaintiff's arrest.
27. Officer Thunder, noting Plaintiff's last name, began questioning Plaintiff about a previous incident involving people that Officer Thunder believed were Plaintiff's family members.

28. Plaintiff said he had no information to tell the officers.
29. Officer Thunder grabbed and pulled Plaintiff's right arm towards him.
30. Officer Thao was holding onto Plaintiff's left arm at the time.
31. Officer Thao then threw Plaintiff, handcuffed, to the ground, and began hitting him.
32. Plaintiff was not resisting arrest; he was merely being pulled in two different directions at the same time by both Officers.
33. Plaintiff was unarmed.
34. Plaintiff made no sudden moves.
35. Plaintiff was lying face down on the ground.
36. The Officers' use of force was excessive.
37. Plaintiff shouted out for help, as evidenced by a 911 call placed by a nearby resident who heard Plaintiff.
38. Ms. Peterson also heard Plaintiff's cries for help.
39. With Plaintiff, face down on the ground and hand-cuffed, Officer Thao pulled Plaintiff's head up by grabbing the back of his hooded

sweatshirt.

40. Officer Thunder then kicked Plaintiff in the mouth, causing Plaintiff immediate and excruciating pain, suffering, dental damage, and permanent pain.
41. Officers Thao and Thunder subsequently took Plaintiff to the hospital for medical care.
42. They expressed impatience with medical staff caring for Plaintiff.
43. Hospital staff gave Plaintiff discharge papers, including prescription pain-killers.
44. Plaintiff's hands having been cuffed behind him, Officer Thunder took Plaintiff's discharge papers from Plaintiff's hand-cuffed hands and threw them in the garbage as the officers left the hospital.
45. Hospital staff expressed concern that Plaintiff should not leave the hospital in t-shirt and underpants, and told Officers Thao and Thunder that Plaintiff should be allowed to put on clothes.
46. Officers Thao and Thunder rejected the hospital staff's suggestion and took Plaintiff to jail in t-shirt and underpants.

47. Officers Thao and Thunder did not tell jail staff that Plaintiff had prescription pain-killers and Plaintiff thus suffered additional pain, suffering, and indignities.

COUNT I: VIOLATIONS OF 42 U.S.C. § 1983

(AGAINST DEFENDANT OFFICERS THUNDER & THAO)

48. All the foregoing paragraphs of this Complaint are incorporated herein by reference.
49. By the actions described above, the Defendant Officers, under color of state law, violated and deprived Plaintiff of his clearly established and well-settled civil rights to be free from excessive force and unreasonable seizure under the Fourth Amendment of the United States Constitution.
50. The right to be free from excessive force during arrest is clearly established and that right was violated.
51. The Defendant Officers deprived Plaintiff of these rights either maliciously or by acting with reckless disregard for whether Plaintiff's rights would be violated by their actions.

52. The Defendant Officers' actions were also objectively unreasonable pursuant to *Graham v. Connor*, 490 U.S. 386 (1989).
53. At the time the Defendant Officers struck Plaintiff repeatedly in the face and body, Plaintiff posed no threat to the safety of the Defendant Officers, no threat to his own safety, and no threat to any others. Plaintiff was already handcuffed in police custody, in a position which left him defenseless against Thunder's kick to his face.
54. Plaintiff never actively resisted arrest or attempted to evade arrest by flight.
55. As a direct and proximate result of the Defendant Officers' actions, Plaintiff suffered serious injuries, was forced to endure pain and mental suffering, and was thereby damaged in an amount to be determined at trial by jury.
56. Punitive damages are available against the Defendant Officers and are hereby claimed as a matter of federal common law, and therefore are not subject to the pleading standard set forth in Minn. Stat. § 549.20.
57. Plaintiff is entitled to recovery of his costs, including reasonable

attorney's fees, under 42 U.S.C. § 1988.

COUNT II: CONSTITUTIONAL VIOLATION: 8th AMENDMENT

(AGAINST ALL DEFENDANTS)

58. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs of this Complaint as if set forth herein in their entirety.
59. The Eighth Amendment of the U.S. Constitution prohibits the federal government from imposing cruel and unusual punishment.
60. The Fourteenth Amendment and 42 U.S.C. § 1983 provide that the prohibitions of the Eighth Amendment apply to the state government or state actor under color of state law.
61. At all relevant times, Defendants were acting under color of state law.
62. As alleged herein, denying Plaintiff his medical information, including his prescription for pain-killing medication, constituted cruel and unusual punishment as well as deliberate indifference to Plaintiff's medical needs and basic human dignity.
63. Furthermore, as alleged herein, forcibly parading Plaintiff out of the

hospital, into the public, and to jail in his underpants despite

Plaintiff's reasonable request to be fully clothed, subjected Plaintiff to shame and humiliation.

64. Forcibly parading Plaintiff despite Plaintiff's reasonable request to be fully clothed, through the hospital and to jail partially nude violated Plaintiff's basic human dignity.
65. Defendants' conduct conflicts with the Eighth Amendment's prohibition on cruel and unusual punishment.
66. Plaintiff is entitled to recovery of his damages for pain and suffering, for costs, and for reasonable attorney's fees, under 42 U.S.C. §§ 1983 and 1988.

WHEREFORE, based on the foregoing, Plaintiff prays for judgment as follows:

- i. As to Count I, a money judgment against Defendants Thunder and Thao for compensatory damages and punitive damages in an amount to be determined by the jury, together with costs, including reasonable attorney's fees under 42 U.S.C. § 1988, and prejudgment interest;

- ii. As to Count II, a money judgment against Defendants for compensatory damages and punitive damages, together with costs, and reasonable attorney's fees under 42 U.S.C. § 1988, and prejudgment interest;
- iii. For injunctive relief against Defendant City of Minneapolis, including changes in the way it administers discipline to officers who use excessive force; and
- iv. For such other and further relief as the Court deems just and equitable.

Dated: April 10, 2017

LEVENTHAL pllc

By: *Seth Leventhal*

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4818-9163-4245, v. 4

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Lamar Ferguson
(b) County of Residence of First Listed Plaintiff Hennepin
(c) Attorneys (Firm Name, Address, and Telephone Number)
Seth Leventhal, LEVENTHAL pllc, 527 Marquette Ave. South, Suite 2100, Minneapolis, MN 55402; Patrick R. Burns, 1624 Harmon Place, Suite 300 Minneapolis, MN 55403
DEFENDANTS
City of Minneapolis, Robert Thunder, Tou Thao
County of Residence of First Listed Defendant Hennepin
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
U.S. Government Plaintiff
Federal Question (U.S. Government Not a Party)
U.S. Government Defendant
Diversity (Indicate Citizenship of Parties in Item III)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
DEFENDANT
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Click here for: Nature of Suit Code Descriptions.
CONTRACT
REAL PROPERTY
TORTS
PERSONAL INJURY
PERSONAL INJURY
PERSONAL PROPERTY
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
OTHER STATUTES
FEDERAL TAX SUITS

V. ORIGIN (Place an "X" in One Box Only)
Original Proceeding
Removed from State Court
Remanded from Appellate Court
Reinstated or Reopened
Transferred from Another District (specify)
Multidistrict Litigation - Transfer
Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1983, 1988
Brief description of cause: POLICE BRUTALITY - EXCESSIVE FORCE

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions):
JUDGE
DOCKET NUMBER

DATE: 4-10-17
SIGNATURE OF ATTORNEY OF RECORD: SETH LEVENTHAL

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