

**IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 20-cv-904

A.N., a minor child, by his mother and legal guardian, Priscilla Nunez-Espinoza,

Plaintiffs,

v.

LARRY NEUGEBAUER, Weld County Sheriff's Deputy, in his individual capacity,
BRYAN WHYARD, Fort Lupton Police Officer, in his individual capacity,
NATE MORTON, Firestone Police Officer, in his individual capacity,
JUSTIN ELLIS, Firestone Police Officer, in his individual capacity,

Defendants.

COMPLAINT AND JURY DEMAND

Plaintiff A.N., by his legal guardian and representative, Priscilla Nunez-Espinoza, by and through his attorneys Adam Frank and Melissa Roth of FRANK & SALAHUDDIN LLC, respectfully alleges for this Complaint and Jury Demand as follows:

INTRODUCTION

1. On April 27, 2019, as fourteen-year-old A.N. walked outside of his family's apartment complex, he was attacked with zero justification by multiple members of law enforcement from numerous jurisdictions. Law enforcement officers from the Weld County Sheriff's Department, the Fort Lupton Police Department, and the Firestone Police Department assaulted the innocent child on the eve of his fifteenth birthday, tackling him to the ground without warning and attacking him with a vicious police dog.

2. Defendants Larry Neugebauer of the Weld County Sheriff's Department, Bryan Whyard of the Fort Lupton Police Department, and Nate Morton and Justin Ellis of the Firestone Police

Department, along with other officers from those and from additional law enforcement agencies were searching for a theft suspect who was alleged to have stolen beer and laundry detergent from a Safeway store in Firestone, CO. The suspect's car had been abandoned and the Individual Defendants, including Defendant Neugebauer and his K-9 Viper, were tracking the white adult male suspect on foot.

3. Despite the fact that A.N., a Hispanic child, did not match the description of the theft suspect in any way, when Defendant Morton saw A.N., he pointed at the child and yelled, "That's our guy!"

4. Without stopping to question this identification or to assess whether any force was necessary or appropriate given the situation, Defendant Whyard proceeded to tackle the innocent child to the ground, wrapping his arms and legs around A.N. to immobilize him. Defendant Whyard then proceeded to choke the child.

5. While this was going on, Defendant Neugebauer sicced a police dog on A.N. even though the child was already pinned down on the ground by an adult male police officer. The K-9 repeatedly bit the child's leg, causing lacerations and puncture wounds that would later require sutures, in addition to other treatment.

6. The Individual Defendants and other officers then inexcusably detained A.N. while they attempted to cover up their unjustified and indefensible conduct, keeping the traumatized child in handcuffs for 25 minutes before releasing him.

JURISDICTION AND VENUE

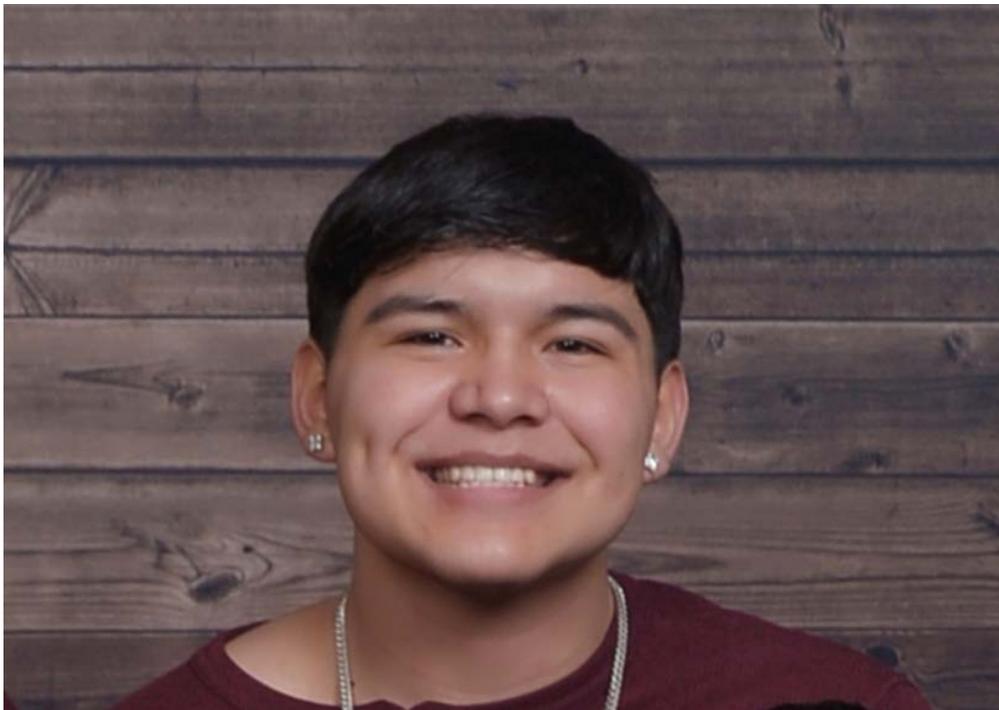
7. This is a civil rights action for monetary damages, declaratory relief, and injunctive relief, brought pursuant to 42 U.S.C. § 1983.

8. This Court possesses subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, and 2201-02. Plaintiff seeks attorney fees and costs under 42 U.S.C. § 1988.

9. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All the events alleged herein occurred in the State of Colorado, and all the parties were residents of and/or domiciled in the State at the time of the events giving rise to this Complaint.

PARTIES

10. A.N. was 14 years old on April 27, 2019. April 28, 2019 was the child's 15th birthday. He is a resident of Colorado and was a resident of Colorado at all times relevant to this Complaint.



11. Priscilla Espinoza-Nunez is the mother and legal guardian of minor child A.N. She is a resident of Colorado and was a resident of Colorado at all times relevant to this Complaint.

12. At all times relevant to this Complaint and Jury Demand, Defendant Larry Neugebauer was a resident of the State of Colorado. At all relevant times, Defendant Neugebauer was acting within the scope of his official duties and employment and under color of state law in his capacity as a law enforcement officer for the Weld County Sheriff's Department.

13. At all times relevant to this Complaint and Jury Demand, Defendant Bryan Whyard was a resident of the State of Colorado. At all relevant times, Defendant Whyard was acting within the scope of his official duties and employment and under color of state law in his capacity as a police officer for the Fort Lupton Police Department.

14. At all times relevant to this Complaint and Jury Demand, Defendant Nate Morton was a resident of the State of Colorado. At all relevant times, Defendant Morton was acting within the scope of his official duties and employment and under color of state law in his capacity as a police officer for the Firestone Police Department.

15. At all times relevant to this Complaint and Jury Demand, Defendant Justin Ellis was a resident of the State of Colorado. At all relevant times, Defendant Ellis was acting within the scope of his official duties and employment and under color of state law in his capacity as a police officer for the Firestone Police Department.

16. Throughout this Complaint and Jury Demand, when referring to Defendants Neugebauer, Whyard, and Morton in their individual capacities as law enforcement officers for their respective law enforcement agencies, the moniker “Individual Defendants” is used.

FACTUAL ALLEGATIONS

Despite Having Zero Justification to Use Any Force Against A.N., Defendants Neugebauer, Whyard, and Morton Unlawfully Attacked A.N. and Brutalized him with a Police K-9

17. On April 27, 2019, fourteen-year-old A.N. was spending time with his friends and family on the eve of his fifteenth birthday. He and his family had just returned home from Wattenburg, Colorado, celebrating A.N.’s upcoming birthday. Shortly after arriving back home, sometime around 9:00 PM, A.N. was walking outside his family’s apartment at 1001 Montview Avenue, Fort Lupton, Colorado with his sixteen-year-old sister, E.E.

18. While A.N. was walking with his sister, he was chased down, assaulted, and brutalized by multiple members of the Fort Lupton Police Department, the Firestone Police Department, and the Weld County Sheriff's Office.

19. A.N. had done absolutely nothing wrong prior to being targeted, tackled to the ground, and bitten multiple times by a police K-9.

20. The Individual Defendants and other officers on scene had no cause to detain A.N. or use any force against him whatsoever.

21. Despite this, the involved officers tackled A.N. and sicced a police dog on him, causing him extensive injury that would require multiple trips to the doctor and a hospitalization, as well as horrific trauma that is ongoing to this day.

22. On the day of the incident, A.N. and some of his friends and family members had gotten together to celebrate A.N.'s upcoming birthday.

23. At a certain point in the evening, they all noticed that police officers were doing something nearby.

24. A.N., E.E, and a few other children from the neighborhood wanted to see what was going on, so they started walking towards the flashing lights.

25. When the children saw the police officers were searching the neighborhood with their flashlights, they decided to go back home. The other children went ahead, and A.N. and E.E started walking home.

26. At that point, without any reason or warning, A.N. was rushed and attacked by three police officers: Defendants Sergeant Bryan Whyard of the Fort Lupton Police Department, Weld County Sheriff's Deputy Larry Neugebauer and his K-9 Viper, and Firestone Police Department Sergeant Nate Morton.

27. First, absent any justification and despite the fact that the child did not meet the description of the theft suspect, Defendant Morton shouted out “that’s our guy!” while indicating A.N. to his fellow officers and started charging toward the child.

28. Defendant Whyard then sprinted toward fourteen-year-old A.N. and tackled him to the ground, grabbing onto his waist and legs, wrapping his legs around the child’s hips, and attempting to roll the child to the side.

29. At this point, Defendant Whyard had not identified himself as a police officer and had not given any explanation for his behavior.

30. While Defendant Whyard had A.N. pinned to the ground, Defendant Weld County Sheriff’s Deputy Neugebauer and his K-9 Viper joined the attack of the defenseless child.

31. According to Defendant Neugebauer’s report, when he saw Defendant Whyard tackling A.N., Defendant Neugebauer ordered K-9 Viper to bite A.N.

32. K-9 Viper complied with Defendant Neugebauer’s command and forcibly bit the child.

33. As K-9 Viper sunk his teeth into A.N.’s leg, the dog also bit Defendant Whyard’s leg.

34. Because Defendant Whyard was being bitten, he told Defendant Neugebauer to disengage the dog. Despite Defendant Whyard’s request, K-9 Viper continued to bite both A.N. and Whyard.

35. There was no justification to use a police attack dog on a fourteen-year-old who had committed no crime and had already been tackled to the ground by a police officer.

36. On police body camera video of the incident, A.N. can be heard screaming in pain as K-9 Viper attacks him.

37. Later, Defendant Whyard described being bitten by the dog as “the worst thing I’ve ever experienced in my life.”

38. A.N. had to experience that excruciating pain—the worst pain an adult member of law enforcement had ever felt—as an innocent fourteen-year-old boy walking outside of his own home.

39. After A.N. had already been tackled and bitten by a vicious police dog, Defendant Whyard inexplicably decided to choke A.N.

40. Defendant Whyard wrote in his police report that as the dog attacked both A.N. and himself, Whyard choked A.N., causing the child to scream out.

41. In body camera footage of the incident, Defendant Whyard makes clear that his decision to choke Angel came before Whyard was bitten by the dog and was therefore unrelated to his being bitten.

42. As A.N. bled from the leg from the dog bites, Defendant Whyard put handcuffs on the injured child.

43. While Defendants Whyard and Neugebauer and K-9 Viper attacked A.N., Defendant Morton of the Firestone Police Department held A.N.'s sixteen-year-old sister E.E. at gunpoint.

44. A.N.'s parents and family members came outside to see what was happening and to try to protect their children from the police brutality that was occurring in front of their eyes.

45. Rather than try to de-escalate the situation, Defendant Morton addressed the family with his gun drawn.

46. Defendant Morton then holstered his gun and drew his taser on the family instead.

47. Despite the fact that A.N. had been with his family all evening, Defendant Morton and his fellow officers proceeded to lie to the family, claiming they saw A.N. run from a stolen vehicle that had been abandoned nearby.

48. Defendant Ellis and other officers continued to pin A.N. to the ground on top of rough rocks for six minutes.

49. Defendant Ellis then moved A.N., who was still handcuffed and not free to get up, leave, or join his family, into a seated position on the ground.

50. Despite the fact that A.N. was injured and that he did not match the description of the suspect for whom officers had been searching, Defendant Ellis and other officers detained A.N. in this position for 25 minutes before they removed his handcuffs and let him go to the hospital.

A.N. Did Not Match the Description of the Suspect the Individual Defendant Law Enforcement Officers Were Attempting to Apprehend, Rendering Their Brutal and Unjustified Attack on the Child That Much More Horrible

51. Earlier on April 27, 2019, the Firestone Police Department had received a report that a white adult male suspect stole Tide Pods and beer from an area Safeway, entered a grey BMW with license plate number QAF-106, and left the scene.

52. Police officers from numerous jurisdictions pursued the vehicle and ultimately observed that the suspect abandoned the car.

53. Law enforcement then began searching the area for this white adult male suspect.

54. As captured on the dash cameras for Defendant Morton and for Sergeants Tera Neugebauer and Christopher Ross of the Firestone Police Department, all responding units were provided a description of the suspect prior to their unconstitutional seizure of A.N.

55. The description provided to all involved law enforcement officers that they all heard over their radios was as follows: “All units, our suspect is going to be a *white* male, 5’ 9”, 5’ 10”, blue shirt, black jacket, black pants, dark hair, white shoes.”

56. Despite having this description, the officers all ignored it.

57. Only *after* the officers brutally seized A.N. by tackling him, choking him, and attacking him with a K-9, and held E.E. at gunpoint, did Defendant Morton and his fellow officers decide to review the information about the theft suspect they were pursuing.

58. Shockingly, *after* A.N. was brutally attacked by Defendant Whyard and Defendant Neugebauer’s K-9 Viper, Defendant Morton inquired of his fellow officers, “I mean, does this guy meet the description?”

59. The other officers hesitated, unable to answer Defendant Morton's question because the child on the ground in front of them did not match the theft suspect description.

60. All of the law enforcement officers who were present could plainly discern that the child on the ground in front of them did not match the theft suspect description.

61. After a short silence, another officer finally stated the obvious. Referring to the suspect description, the officer admitted, "[t]hey said he was white."

62. A.N. was obviously not the suspect the officers were looking for.

63. A.N. was a 5' 4" fourteen-year-old Hispanic male wearing a grey sweatshirt with black pants and black shoes.

64. As is clear from the photograph below, A.N. looked nothing like the description.

65. A.N., a child, was tackled to the ground and choked by a grown man and attacked by a police dog for literally no reason.



66. Eventually, Defendant Morton and his fellow officers realized they had made a terrible mistake.

67. This mistake presented the law enforcement officers with a choice. They could immediately take every corrective action to try to make the situation better or they could try to place the blame on the innocent fourteen-year old and start a cover up.

68. Inexcusably, the Individual Defendants and other officers involved decided to blame the child and start a cover up.

69. To effectuate this cover up, the Individual Defendants and other officers kept A.N. in handcuffs for 25 minutes after they confirmed that A.N. was not the person they were looking for while they assembled the attempted cover up.

70. Realizing that A.N. in no way matched the description of the theft suspect, the Individual Defendants and other officers set about trying to retroactively change that description to make their actions appear justified.

71. As quoted above, the suspect description that all the officers had was, “our suspect is going to be a *white* male, 5’ 9”, 5’ 10”, blue shirt, black jacket, black pants, dark hair, white shoes.”

72. An officer on scene confirmed this description to Defendant Morton, telling him the description was “blue striped shirt, dark pants, dark jacket” and that the suspect was white.

73. Defendant Morton knew this description was a problem for him and his fellow officers, so he started disseminating falsehoods about it while A.N. was still being detained.

74. Defendant Morton called his supervisor, Lieutenant Brian Scott in the Firestone Police Department, and told him, “Hey, we’re in a pickle, buddy. The issue is we don’t have the right suspect. And he got bit by a dog.”

75. Defendant Morton then falsely claimed, “this guy fits the description to a tee other than he’s wearing black shoes.”

76. In a further lie, Defendant Morton stated that the suspect description was a “close match, Hispanic male, dark, like grayish hoodie, and this is what this guy had on.”

77. None of these statements that Defendant Morton made to Lieutenant Scott were true.

78. Having decided to perpetuate a self-justifying lie instead of acting to remedy their unconscionable mistake, the Individual Defendants and other officers set about getting their stories straight.

79. Multiple officers’ body cameras demonstrate that after Defendant Morton’s conversation with Lieutenant Scott, Defendant Morton went to confer with his fellow officers, repeatedly muting the microphone on his body cam so that his words would not be recorded.

80. While A.N. cannot know the exact content of what was said because of Defendant Morton’s decision to mute his body camera, the natural inference is that Defendant Morton said things he didn’t want recorded.

81. After conferring with his fellow officers while muting the microphone on his body camera, Sergeant Morton decided his lie about the description of the suspect would be his story, going as far as to put the falsified suspect description in his police report.

82. To varying degrees, the other Individual Defendants and officers followed suit.

83. While Defendant Morton’s fellow officers did not all go so far as to describe the suspect as Hispanic as opposed to white like Defendant Morton did, they each omitted the fact that the suspect description they all had was of a white male, and they each falsely claimed that A.N. matched the description they had.

84. Defendant Neugebauer of the Weld County Sheriff’s Office and Sergeant Bringle of the Firestone Police Department both falsely claimed the description they received from Safeway was of a “gray hoodie and black pants”—a description that conveniently matched A.N.’s clothing.

85. Defendant Whyard of the Fort Lupton Police Department claimed that the male he pursued “matched the description” of the suspect, though he did not include any suspect description whatsoever in his report.

86. The fact that every single officer who wrote a report left out the most important part of the suspect description, combined with the fact that race is *always* included in a suspect description, is strong evidence of a cover-up conspiracy.

87. The involved officers added additional lies to their reports in a futile attempt to justify their and their departments’ unjustifiable conduct.

88. For example, Defendant Whyard and Defendant Morton each claimed that they told A.N. repeatedly to stop before physically attacking the child, but Sergeant Morton’s body camera reveals that neither of them did so.

89. Next, the officers set about trying to blame A.N. for their own unforgivable conduct.

90. When, after 25 minutes of detention, Defendant Ellis finally removed the handcuffs from A.N.’s wrists at Defendant Morton’s direction, Defendant Morton told A.N. it was A.N.’s fault that he was injured because he did not listen to the officers’ commands.

91. No criminal charges were filed against A.N. as a result of this incident.

92. Defendant Morton blamed the innocent child victim for the situation, telling A.N., “I wish this had a different outcome, I really do, that’s not what we want to do, is take you down to the ground and have you bit by a dog. I wish you would have just listened and went down to the ground, and this would have been over. And then we would have figured this out.”

93. Apart from constituting offensive victim-blaming, this statement was just plain wrong.

94. It is the obligation and duty of law enforcement to have reasonable suspicion that a fourteen-year-old boy fits the description of a suspect *before* tackling him to the ground and attacking him with a dog.

A.N. Suffered Severe, Substantial, and Ongoing Injuries, Losses, and Damages as a Direct Result of this Brutal and Unjustified Attack by Law Enforcement

95. The Individual Defendants and other officers then attempted to downplay the extent of A.N.'s injuries.

96. Defendant Morton told Lieutenant Scott that A.N. suffered only "superficial bite marks on his right leg, but other than that he's fine."

97. In fact, A.N. suffered two deep puncture wounds and a laceration on the front of his leg and severe bruising to the back of his leg. A.N. was transported to Platte Valley Medical Center to receive treatment and sutures for these injuries.





98. A.N.'s injuries also required aftercare at Brighton Pediatrics.

99. Later the dog bite wounds became infected and A.N. had to be admitted to Children's Hospital for twenty-four hours for treatment.

100. A.N. also suffered bruising along his back from Defendant Whyard tackling him to the ground and several scrapes and abrasions from being pinned to the ground.

101. In addition to the pain A.N. suffered that day, the physical scars from the dog bites and the emotional scars for the excessive force and miscarriage of justice at the hands of the Firestone Police Department, Fort Lupton Police Department, and Weld County Sheriff's Office will last a lifetime and will require ongoing care.

102. A.N. has had to receive mental health treatment to process and cope with the trauma he endured as a result of the brutal attack, which is having a significant negative impact on his life on a daily basis. A.N. experiences flashbacks to the attack, difficulty sleeping, nightmares, and a new deep fear of large dogs, among other symptoms.

103. Adding insult to literal injury, the officers on scene proceeded to disparage A.N.'s family and community.

104. In just one example of many, Defendant Whyard told Defendant Morton that a civilian had called in a report of a person running on a golf course in a different location. Defendant Whyard falsely speculated that a family member of A.N. must have made that call to distract or "detour" law enforcement away from A.N. because "that is common in this apartment complex."

105. Because officers acted on their biases instead of objective facts, they missed this opportunity to actually catch the person who had evaded them.

STATEMENT OF CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Excessive Force

42 U.S.C. § 1983 – Fourth Amendment Violation

Defendants Neugebauer, Whyard, and Morton

106. A.N. incorporates all other paragraphs of this Complaint as if fully set forth herein.

107. At all relevant times hereto, the Individual Defendants were acting under the color of state law in their capacities as law enforcement officers for their respective law enforcement agencies.

108. A.N. has a protected Fourth Amendment right to not be subjected to excessive force by law enforcement.

109. Defendants Neugebauer, Whyard, and Morton subjected A.N. to force which, judged from a perspective of a reasonable officer on the scene, was unreasonable.

110. The Individual Defendants' unjustified decision to dispatch K-9 Viper and their failure to release K-9 Viper from A.N. immediately constituted an unconstitutional use of excessive force against the child.

111. The Individual Defendants' unjustified decision to target A.N., forcefully tackle him to the ground, pin him on the ground under the weight of an adult male law enforcement officer, and choke him constituted an unconstitutional use of excessive force against the child.

112. At all times relevant hereto, the only crime the adult male suspect police were searching for was suspected of committing was misdemeanor theft.

113. At all times relevant hereto, A.N. did not commit any crimes.

114. At all times relevant hereto, A.N. was not suspected of committing any crime.

115. A.N. did not match the description of the theft suspect for which law enforcement was searching.

116. To the contrary, everything the police observed prior to tackling an innocent child, pinning him to the ground, choking him, and attacking him with a police K-9 was inconsistent with the description of the suspect they were seeking.

117. A.N. posed no threat to any law enforcement officers.

118. A.N. did not attempt to evade arrest by flight or resist arrest.

119. A.N. did not have a history of violence, nor had he exhibited or threatened any violence at any time on April 27, 2019.

120. A.N. did not have any criminal history whatsoever on April 27, 2019.

121. A.N. was a minor child with no history of police interaction on April 27, 2019.

122. There was no allegation or other evidence to suggest that A.N. was armed when the officers attacked him and dispatched the K-9 unit.

123. A.N. was not armed when the officers attacked him and dispatched the K-9 unit.

124. A.N. did not pose an immediate threat to the Individual Defendants or anyone else on that date.

125. A.N. did not pose any threat to the Individual Defendants or anyone else on that date.

126. Under these circumstances, the Individual Defendants had no justification for subjecting A.N. to *any* physical force.

127. The Individual Defendants certainly had no justification for tackling an innocent child to the ground without warning, pinning him on the ground under the weight of an adult male, and choking him, or for sending an unsupervised K-9 to apprehend A.N. by biting him repeatedly, causing him to suffer numerous injuries and trauma.

128. These actions caused A.N. substantial harm and were the direct and proximate causes of his injuries, damages, and losses.

SECOND CLAIM FOR RELIEF
Unlawful Seizure
42 U.S.C. § 1983 – Fourth Amendment Violation
Defendants Neugebauer, Whyard, Morton, and Ellis

129. A.N. incorporates all other paragraphs of this Complaint as if fully set forth herein.

130. At all relevant times hereto, the Individual Defendants were acting under the color of state law in their capacities as law enforcement officers for their respective law enforcement agencies.

131. A.N. has a protected Fourth Amendment interest against being unlawfully seized by law enforcement without a warrant or any other lawful justification for the seizure of his person.

132. Defendants Neugebauer, Whyard, and Morton illegally seized A.N.'s person and detained him, all without probable cause, a warrant, or any other lawful justification.

133. This seizure was despite the fact that A.N. did not match the description of the theft suspect for which the Individual Defendants were searching and that it was immediately obvious to the Individual Defendants that A.N. did not match that description.

134. When the Individual Defendants seized A.N., they did so in violation of A.N.'s constitutional rights.

135. Despite the fact that it was immediately obvious to the Individual Defendants that A.N. did not match the suspect description, the Individual Defendants then compounded the violation of A.N.'s constitutional rights by handcuffing the innocent child.

136. Despite the fact that it was immediately obvious to the Individual Defendants that A.N. did not match the suspect description, the Individual Defendants then compounded the violation of A.N.'s constitutional rights by keeping A.N. in handcuffs for 25 minutes *after* they confirmed that A.N. was not the theft suspect for whom they had been searching.

137. The actions of Defendants Neugebauer, Whyard, and Morton were the proximate cause of A.N.'s physical injuries, emotional distress, and ongoing trauma.

PRAYER FOR RELIEF

WHEREFORE, A.N. respectfully requests that this Court enter judgment in his favor against Defendants, and award him all relief as allowed by law, including but not limited to the following:

- a) Appropriate relief at law and equity;
- b) Declaratory relief, injunctive relief, and other appropriate equitable relief;
- c) Compensatory and punitive damages on all claims allowed by law in an amount to be determined at trial;
- d) Attorneys' fees and the costs associated with this action on all claims pursuant to 42 U.S.C. §1988 and all applicable law;
- e) Pre- and post-judgment interest at the appropriate lawful rate;
- f) Any further relief this Court deems just and proper, and any other relief as allowed by law.

PLAINTIFF HEREBY DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE

Dated: April 2, 2020

/s Adam Frank
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Certificate of Service

I hereby certify that on April 2, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system.

s/Adam Frank
FRANK & SALAHUDDIN LLC