

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

MARK EDWARD NIETERS,

Plaintiff,

vs.

**BRANDON HOLTON; DANA
WINGERT; CITY OF DES MOINES,
IOWA,**

Defendants.

Case No. _____

PETITION AT LAW and JURY DEMAND

COMES NOW the Plaintiff, Mark Edward Nieters, by and through the undersigned counsel, and for his causes of action, respectfully states the following:

PARTIES

1. Plaintiff Mark Edward Nieters is a United States citizen and was a resident Polk County, Iowa at all times relevant to the events complained of herein.

2. Defendant Brandon Holton is believed to be a citizen and resident of Iowa and was employed as a law enforcement officer with the Des Moines, Iowa Police Department at all times relevant to the events complained of herein. At all times material hereto, the actions and omissions of Defendant Holton were made under the color of authority and law as a law enforcement officer for the Des Moines, Iowa Police Department. He is sued in his official and individual capacities.

3. Defendant Dana Wingert is believed to be a citizen and resident of Iowa and was employed as the Chief of Police of the City of Des Moines Police at all times relevant to the events complained of herein. At all times material hereto, Defendant Wingert's actions and/or omissions were made under the color of authority as the Chief of Police. He is sued in his official and individual capacities.

4. Defendant City of Des Moines, Iowa is a municipal corporation organized and authorized to operate under the laws of Iowa and is located at 400 East First Street, Des Moines, Polk County, Iowa. Defendant City is responsible for maintaining and operating the Des Moines Police Department.

JURISDICTION AND VENUE

5. Venue is proper in the District Court for Polk County pursuant to Iowa Code §669.4(1) as the district in which Plaintiff resides and/or in which the acts and omissions complained of occurred.

6. Subject matter jurisdiction of the District Court for Polk County is proper pursuant to Iowa Code § 602.6101.

7. The amount in controversy exceeds the jurisdictional amount.

GENERAL FACTUAL ALLEGATIONS

8. All events complained of herein occurred in Polk County, Iowa.

9. Mr. Nieters is a freelance photographer/filmmaker from Des Moines, Iowa. He graduated from Roosevelt High School.

10. Mr. Nieters works for various international television/print publications throughout the world covering current affairs and politics. Mr. Nieters' photography work is distributed by Polaris Images.

11. Mr. Nieters spent years documenting conflicts in the Middle East and Africa, including a civil war in Syria, Gaza under Israeli occupation, and the Arab Spring in Egypt and Libya.

12. On May 31, 2020, Polk County, Iowa issued a "stay at home" curfew between the hours of 9:00 p.m. and 5:00 a.m., effective immediately.

13. The curfew did not apply to individuals from the media who were covering the demonstrations.

14. On June 1, 2020, Mr. Nieters was working as a photographer, covering the Black Lives Matter protests in Des Moines.

15. That day, protesters gathered at the Iowa Capitol for an event organized by local civil rights advocates, called "Together We Can Make a Change: A Call to Action."

16. The formal event ended around 8:15 p.m., after which time several hundred individuals continued to protest on the Capitol grounds.

17. Around 9:00 p.m., several hundred people marched peacefully from the Capitol to the Des Moines Police Department.

18. Some protesters continued to march, eventually returning to the Capitol around 10:45 p.m.

19. Around 11:45, p.m., Des Moines Police threw tear gas canisters and flash bangs into the group of protesters.

20. Mr. Nieters left the Capitol complex prior to the Des Moines Police's deployment of tear gas and flash bangs.

21. By himself, Mr. Nieters walked West on Locust from the State Historical Building down towards Embassy Suites.

22. A group of around five police officers walked several yards behind Mr. Nieters.

23. At no point during his walk from the State Historical Building to Embassy Suites did Mr. Nieters have any interaction with any law enforcement officers.

24. No law enforcement officer gave any order to Mr. Nieters.

25. Mr. Nieters reached the Southwest area of Embassy Suite's drop-off driveway.

26. Mr. Nieters stopped walking and took a few photographs.

27. Mr. Nieters observed Des Moines Police officers running South on Robert D. Ray Drive, in front of the Des Moines City Hall.

28. One officer, Defendant Holton, ran directly towards Mr. Nieters.

29. As Defendant Holton approached, Mr. Nieters placed his hands in the air and stated that he was a journalist.

30. Mr. Nieters perceived that Defendant Holton was going to run directly into him and so Mr. Nieters turned his back and tried to brace himself.

31. Mr. Nieters had a camera in his hand and another camera around his neck.

32. Defendant Holton proceeded to tackle Mr. Nieters.

33. As he tackled Mr. Nieters, Defendant Holton pepper-sprayed Mr. Nieters directly in the eyes.

34. Defendant Holton then slammed Mr. Nieters to the ground.

35. As this happened, Mr. Nieters stated to Defendant Holton that he was not resisting, that he was a journalist, and that he was working.

36. Mr. Nieters told Defendant Holton that his press card was in his back pocket.

37. After tackling him to the ground, Defendant Holton took Mr. Nieters' press card from Mr. Nieters' pocket and inspected it.

38. Despite observing confirmation that Mr. Nieters was working as a photographer, Defendant Holton proceeded to tightly zip-tie Mr. Nieters' hands together behind his back and arrest him.

39. Mr. Nieters was violating no laws.

40. Mr. Nieters was not being violent or threatening.

41. There was no probable cause to arrest Mr. Nieters for any crime.

42. Another media photographer witnessed Mr. Nieter's arrest and recorded the events.

43. Referring to that witness, Defendant Holton's supervisor, Ryan Armstrong, yelled, "You can arrest that reporter, too!"

44. Ryan Armstrong then chased the photographer witness away so he could not observe the rest of Mr. Nieter's arrest.

45. Mr. Nieters suffered burning and severe pain as a result of being slammed to the ground, pepper-sprayed, and zip-tied by Defendant Holton.

46. Des Moines Police subsequently transported Mr. Nieters to jail.

47. On June 2, 2020, Des Moines Police Officer Lance Ripperger filed a criminal complaint against Mr. Nieters charging him with Failure to Disperse, in violation of Iowa Code § 723.3.

48. Des Moines Police Officer Lance Ripperger swore in an affidavit supporting that complaint:

Defendant was a member of a group (of WELL over three people) that assembled to protest allegations of racism and police brutality. The protests evolved to property damage and obstruction of public roadways, with many of the remaining participants engaging in violent, intimidating and destructive behavior.

Police officers clearly, loudly and repeatedly instructed all participants to disperse intermittently a total of 5 times over a period of approximately 20 minutes, reading a command to disperse as written in the state code of Iowa.

Despite those instructions, Defendant willfully stayed among the group that remained. This group was engaging in assaultive conduct, the intimidation

of people and destruction of property. Private businesses and public buildings were damaged by breaking windows. Water bottles and other objects were thrown at individuals.

This destruction was open, extensive and obvious, yet the defendant willfully remained among the group of persons responsible for this conduct all of which occurred in the City of Des Moines, Polk County, Iowa. Defendant was within hearing distance of the commands to disperse and failed to leave.

49. These statements were false.

50. Mr. Nieters was not near anyone else at the time he was tackled by Defendant Holton.

51. There was no destruction happening anywhere near Mr. Nieters at the time he was tackled by Defendant Holton.

52. On June 15, 2020, Defendant Holton authored a report about Mr. Nieters in which he stated: "I gave him a verbal command to get on the ground and he did not comply. Neiters began to run into the driveway of the Embassy Suites."

53. These statements were false.

54. On August 13, 2020, an Assistant Polk County Attorney filed a Notice of Intent Not to Prosecute stating the government had "been unable to sufficiently document this defendant's actions for charges to go forward at this time."

55. Accordingly, the government asked the court to dismiss the criminal charge against Mr. Nieters.

56. On August 13, 2020, the Polk County District Court granted the government's request and dismissed the criminal charge against Mr. Nieters.

57. It is well established that it is unconstitutional for law enforcement to use chemical spray when an individual has broken no law and is not threatening anyone. See *Davis v. City of Albia*, 434 F. Supp. 2d 692, 707 (S.D. Iowa 2006).

58. It is clearly established that it is unconstitutional for law enforcement to tackle or beat an individual who is not in flight or resisting arrest. See *Small v. McCrystal*, 708 F.3d 997, 1005 (8th Cir. 2013).

59. It is clearly established that it is unconstitutional to arrest and charge an individual without probable cause. *Baribeau v. City of Minneapolis*, 596 F.3d 465, 478 (8th Cir. 2010).

60. It is clearly established that it is unconstitutional for law enforcement to retaliate against a citizen for that citizen's exercise of his First Amendment rights. *Osborne v. Grussing*, 477 F.3d 1002, 1005 (8th Cir. 2007).

61. It is clearly established that an officer is not excused for violating someone's constitutional rights simply because the officer is following orders. *J.H.H. v. O'Hara*, 878 F.2d 240, 245 n.4 (8th Cir. 1989).

62. Des Moines Police have a pattern of using excessive force against individuals they believe are affiliated with protests, charging those individuals without probable cause, and targeting members of the media who are attempting to cover the police response to protests.

63. By these actions, the police intend to punish citizens for their protest activity—an exercise of their First Amendment rights—and to deter future demonstrations.

64. Des Moines Police officers pepper-sprayed a young woman, Essence Welch, the evening of May 30, 2020. Ms. Welch likewise was not violating any laws or acting in a violent or threatening manner. Ms. Welch was recording law enforcement's activities at a protest.

65. Des Moines Police officers repeatedly pepper-sprayed and beat another young woman, Denver Foote, in the early morning hours of May 31, 2020. Ms. Foote likewise was not violating any laws or acting in a violent or threatening manner.

66. Des Moines Police officers pepper-sprayed and tackled a young man, Trent Schwab, in the early morning hours of May 31, 2020. Mr. Schwab likewise was not violating any laws or acting in a violent or threatening manner.

67. Des Moines Police officers pepper-sprayed and assaulted many other people in the early morning hours of May 31, 2020, people who were not violating any laws or acting in a violent or threatening manner. Several of the people who were pepper-sprayed were cowering from law enforcement at the time they were assaulted.

68. Des Moines Police officers falsely arrested many individuals on May 31, 2020 and charged them with protest-related crimes that those people did not commit.

69. Defendant Holton illegally arrested several other individuals on May 31, 2020 and falsely charged them with protest-related crimes, including Cierra Dunn and Trentae Fugate and, upon information and belief, Tony Young, Sophia Jacobsen, Emma Timberlake, and Jaquan Patton.

70. Des Moines Police officers pepper-sprayed and arrested a Des Moines Register reporter, Andrea Sahouri, who was covering the protests near Merle Hay Mall on May 31, 2020. Ms. Sahouri advised the officers that she was working as a reporter. The officers arrested her, regardless.

71. Des Moines Police officers pepper-sprayed a Des Moines Register reporter, Katie Akin, who was attempting to comply with commands to disperse on June 1, 2020. Ms. Akin was not in the group with the protesters, but was observing the protests from

yards away. Ms. Akin was holding up her press badge and shouting that she was with the press at the time she was pepper-sprayed.

72. Mr. Nieters has traveled the world and spent years of his life living and working in countries ruled by authoritarian regimes, but he has never before been arrested and jailed simply for doing his job.

CAUSES OF ACTION

COUNT 1

ILLEGAL SEIZURE

CIVIL RIGHTS VIOLATION UNDER 42 U.S.C § 1983

VIOLATION OF 4th AMENDMENT TO THE UNITED STATES CONSTITUTION

(Against Defendant Holton, Individually)

73. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

74. Defendant Holton violated Plaintiff's clearly established federal constitutional rights by seizing Plaintiff without reasonable suspicion or probable cause to do so and by charging Plaintiff with a crime without probable cause.

75. Defendant Holton demonstrated a deliberate indifference to and reckless disregard of Plaintiff's civil and constitutional rights.

76. Defendant's actions were willful, wanton, unlawful, and in gross disregard of Mr. Nieters' civil rights, justifying an award of punitive damages.

77. As a result of Defendant's acts and omissions, Mr. Nieters has in the past and will in the future suffer injuries and damages.

**COUNT 2
ILLEGAL SEIZURE
CIVIL RIGHTS VIOLATION OF ARTICLE I, § 8 OF THE IOWA CONSTITUTION
(Against Defendant Holton, Individually)**

78. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

79. Defendant Holton violated Plaintiff's clearly established constitutional rights by seizing Plaintiff without reasonable suspicion or probable cause to do so and by charging Plaintiff with a crime without probable cause.

80. Defendant demonstrated a deliberate indifference to and reckless disregard of Plaintiff's civil and constitutional rights.

81. Defendant's actions were willful, wanton, unlawful, and in gross disregard of Plaintiff's civil rights, justifying an award of punitive damages.

82. Plaintiff hereby requests reasonable attorney fees and costs associated with prosecuting this action as Defendant's violation of his constitutional right was oppressive, conniving, harsh, cruel, and/or tyrannical.

83. As a result of Defendant's acts and omissions, Mr. Nieters has in the past and will in the future suffer injuries and damages.

**COUNT 3
EXCESSIVE FORCE
CIVIL RIGHTS VIOLATION UNDER 42 U.S.C § 1983
VIOLATION OF 4th AMENDMENT TO THE UNITED STATES CONSTITUTION
(Against Defendant Holton, Individually)**

84. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

85. The force used by Defendant Holton was excessive and applied maliciously and sadistically for the purpose of causing harm and not in a good faith effort to achieve a legitimate purpose.

86. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of others.

87. Defendant demonstrated a deliberate indifference to and reckless disregard of Plaintiff's civil and constitutional rights.

88. Defendant's actions were willful, wanton, unlawful, and in gross disregard of Mr. Nieters' civil rights, justifying an award of punitive damages.

89. As a result of Defendant's acts and omissions, Mr. Nieters has in the past and will in the future suffer injuries and damages.

**COUNT 4
EXCESSIVE FORCE
CIVIL RIGHTS VIOLATION OF ARTICLE I, § 8 OF THE IOWA CONSTITUTION
(Against Defendant Holton, Individually)**

90. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

91. The force used by Defendant Holton was excessive and applied maliciously and sadistically for the purpose of causing harm and not in a good faith effort to achieve a legitimate purpose.

92. Defendant demonstrated a deliberate indifference to and reckless disregard of Plaintiff's civil and constitutional rights.

93. Defendant's actions were willful, wanton, unlawful, and in gross disregard of Plaintiff's civil rights, justifying an award of punitive damages.

94. Plaintiff hereby requests reasonable attorney fees and costs associated with prosecuting this action as Defendant's violation of his constitutional right was oppressive, conniving, harsh, cruel, and/or tyrannical.

95. As a result of Defendant's acts and omissions, Mr. Nieters has in the past and will in the future suffer injuries and damages.

**COUNT 5
RETALIATION
CIVIL RIGHTS VIOLATION UNDER 42 U.S.C § 1983
VIOLATION OF 1st AMENDMENT TO THE UNITED STATES CONSTITUTION
(Against Defendant Holton, Individually)**

96. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

97. Mr. Nieters was exercising his First Amendment rights.

98. Media personnel engaged in newsgathering do not present public safety issues. Preventing them from newsgathering during a protest thus does not serve any legitimate government interest.

99. Defendant violated Mr. Nieters' clearly established federal constitutional rights by tackling him, pepper-spraying him, and arresting him in retaliation for his exercise of his First Amendment rights.

100. Retaliation was a substantial or motivating factor for Defendant's decision to tackle, pepper-spray, and arrest Mr. Nieters.

101. Defendant would not have tackled, pepper-sprayed, and arrested Mr. Nieters but for his retaliatory motive.

102. Similarly situated individuals who were not engaged in the same sort of protected activity as Mr. Nieters were not tackled, pepper-sprayed, and arrested.

103. Defendant demonstrated a deliberate indifference to and reckless disregard of Mr. Nieters' civil and constitutional rights.

104. Defendant's actions were willful, wanton, unlawful, and in gross disregard of Mr. Nieters' civil rights, justifying an award of punitive damages.

105. As a result of Defendant's acts and omissions, Mr. Nieters has in the past and will in the future suffer injuries and damages.

**COUNT 6
RETALIATION
CIVIL RIGHTS VIOLATION OF ARTICLE I, § 7 OF THE IOWA CONSTITUTION
(Against Defendant Holton, Individually)**

106. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

107. Mr. Nieters was exercising his article I, § 7 rights by assembling with his fellow citizens and engaging in political speech.

108. Defendant violated Mr. Nieters' clearly established state constitutional rights by shooting him with pepper spray, tackling him, and arresting him in retaliation for his exercise of his article I, § 7 rights.

109. Retaliation was a substantial or motivating factor for Defendant's decision to shoot Mr. Nieters with pepper spray.

110. Defendant would not have shot Mr. Nieters with pepper spray, tackled him, or arrested him but for his retaliatory motive.

111. Similarly situated individuals who were not engaged in the same sort of protected activity as Mr. Nieters were not shot with pepper spray.

112. Defendant demonstrated a deliberate indifference to and reckless disregard of Mr. Nieters' civil and constitutional rights.

113. Defendant's actions were willful, wanton, unlawful, and in gross disregard of Mr. Nieters' civil rights, justifying an award of punitive damages.

114. Mr. Nieters hereby requests reasonable attorney fees and costs associated with prosecuting this action as Defendant's violation of his constitutional rights was oppressive, conniving, harsh, cruel, and/or tyrannical.

115. As a result of Defendant's acts and omissions, Mr. Nieters has in the past and will in the future suffer injuries and damages.

COUNT 7
DELIBERATELY INDIFFERENT POLICIES, PRACTICES,
CUSTOMS, TRAINING AND SUPERVISION
CIVIL RIGHTS VIOLATION PURSUANT TO 42 U.S.C § 1983
VIOLATION OF 1st, 4th, 5th & 14th AMENDMENTS TO
THE UNITED STATES CONSTITUTION
(Against Defendants Wingert, Individually, and City of Des Moines, Iowa)

116. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

117. Defendants Wingert and City of Des Moines, Iowa are responsible for establishing, maintaining, and enforcing the official policies, procedures, patterns, practices, and/or customs of the Des Moines Police Department for use of pepper spray and use of force, generally.

118. Defendant City of Des Moines, Iowa is charged with the duty to ensure that its law enforcement officers are properly trained and supervised.

119. As Chief of Police, Defendant Wingert is ultimately responsible for the training and supervision of his officers.

120. Defendants violated Plaintiff's federal constitutional rights by:

- a. permitting City of Des Moines Police officers to violate the constitutional rights of citizens;

- b. ratifying and approving the unlawful use of force against citizens;
- c. failing to enforce and implement policies preventing the unlawful use of force against citizens;
- d. tolerating, encouraging, and permitting collusive statements by involved officers in such situations;
- e. failing to adopt and enforce policies to document citizen interactions that do not result in arrest or citation;
- f. failing to adopt a system to identify, track, and monitor problematic police behavior and patterns of unconstitutional conduct;
- g. failing to take adequate disciplinary measures against City of Des Moines Police officers who violate the civil rights of citizens;
- h. failing to train and/or supervise properly Defendant Holton in the constitutional requirements for use of force and the necessity of probable cause for arrest;
- i. failing to implement adequate maintenance training and properly focused maintenance training.

63. Defendants' policies, procedures, customs, and/or practices caused the violations of Plaintiff's constitutional and federal rights as set forth herein and in the other claims and resulted from a conscious or deliberate choice to follow a course of action from among various available alternatives.

121. The need for the aforementioned training and supervision was obvious and it was foreseeable that the inadequacy of Defendants' training and supervision was likely to result in the violation of constitutional rights.

122. Defendants demonstrated a deliberate indifference to and/or reckless disregard of Plaintiff's constitutional rights and those similarly situated to them.

123. Defendants' failure to train and supervise Defendant Holton caused the violations of Plaintiffs' constitutional and federal rights as set forth herein and in the other

claims and resulted from a conscious or deliberate choice to follow a course of action from among various available alternatives

124. As a result of Defendants' acts and omissions, Mr. Nieters has in the past and will in the future suffer injuries and damages.

**COUNT 8
DELIBERATELY INDIFFERENT POLICIES, PRACTICES,
CUSTOMS, TRAINING AND SUPERVISION
CIVIL RIGHTS VIOLATION PURSUANT TO
ARTICLE I, §§ 6, 7 & 8 OF THE IOWA CONSTITUTION
(Against Defendants Wingert, Individually, and City of Des Moines, Iowa)**

125. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

126. Defendants Wingert and City of Des Moines, Iowa are responsible for establishing, maintaining, and enforcing the official policies, procedures, patterns, practices, and/or customs of the Des Moines Police Department for use of pepper spray and use of force, generally.

127. Defendant City of Des Moines, Iowa is charged with the duty to ensure that its law enforcement officers are properly trained and supervised.

128. As Chief of Police, Defendant Wingert is ultimately responsible for the training and supervision of his officers.

129. Defendants violated Plaintiff's state constitutional rights by:

- a. permitting City of Des Moines Police officers to violate the constitutional rights of citizens;
- b. ratifying and approving the unlawful use of force against citizens;
- c. failing to enforce and implement policies preventing the unlawful use of force against citizens;
- d. tolerating, encouraging, and permitting collusive statements by involved officers in such situations;

- e. failing to adopt and enforce policies to document citizen interactions that do not result in arrest or citation;
- f. failing to adopt a system to identify, track, and monitor problematic police behavior and patterns of unconstitutional conduct;
- g. failing to take adequate disciplinary measures against City of Des Moines Police officers who violate the civil rights of citizens;
- h. failing to train and/or supervise properly Defendant Holton in the constitutional requirements for use of force and the necessity of probable cause for arrest;
- i. failing to implement adequate maintenance training and properly focused maintenance training.

130. Defendants' policies, procedures, customs, and/or practices caused the violations of Plaintiff's constitutional rights as set forth herein and in the other claims and resulted from a conscious or deliberate choice to follow a course of action from among various available alternatives.

131. The need for the aforementioned training and supervision was obvious and it was foreseeable that the inadequacy of Defendants' training and supervision was likely to result in the violation of constitutional rights.

132. Defendants demonstrated a deliberate indifference to and/or reckless disregard of Plaintiff's constitutional rights and those similarly situated to them.

133. Defendants' failure to train and supervise Defendant Holton caused the violations of Plaintiff's constitutional rights as set forth herein and in the other claims and resulted from a conscious or deliberate choice to follow a course of action from among various available alternatives.

134. Plaintiff hereby requests reasonable attorney fees and costs associated with prosecuting this action as Defendants' violation of his constitutional rights was oppressive, conniving, harsh, cruel, and/or tyrannical.

135. As a result of Defendants' acts and omissions, Mr. Nieters has in the past and will in the future suffer injuries and damages.

**COUNT 9
MALICIOUS PROSECUTION
(Against Defendant Holton, Individually)**

136. Plaintiff repleads paragraphs 1 through 120 as if fully set forth herein.

137. Defendant Holton instigated a criminal prosecution against Plaintiff.

138. The criminal prosecution against Plaintiff was dismissed.

139. There was no probable cause for the charge against Plaintiff.

140. Defendant Holton acted with malice in initiating the prosecution against Plaintiff.

141. As a result of Defendant's acts and omissions, Mr. Nieters has in the past and will in the future suffer injuries and damages.

**COUNT 10
FALSE ARREST / IMPRISONMENT
(Against Defendant Holton, Individually)**

142. Plaintiff repleads paragraphs 1 through 120 as if fully set forth herein.

143. Defendant Holton detained Plaintiff against his will.

144. The detention of Plaintiff was unlawful.

145. As a result of Defendant's acts and omissions, Mr. Nieters has in the past and will in the future suffer injuries and damages.

**COUNT 11
ASSAULT AND BATTERY
(Against Defendant Holton)**

146. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

147. Defendant Holton subjected Mr. Nieters to contact of an insulting and provoking nature.

148. The actions of Defendant Holton were undertaken without the consent of Mr. Nieters.

149. The intentional acts of Defendant Holton resulted in bodily contact with Mr. Nieters that a reasonable person would deem insulting or offensive.

150. The actions of Defendant Holton were willful, wanton, unlawful, and in gross disregard of Mr. Nieters' civil rights, justifying an award of punitive damages.

151. Plaintiff hereby requests reasonable attorney fees and costs associated with prosecuting this action as Defendant's behavior was oppressive, conniving, harsh, cruel, and/or tyrannical.

152. As a result of Defendant's acts and omissions, Mr. Nieters has in the past and will in the future suffer injuries and damages.

**COUNT 12
LIBEL
(Against Defendant Holton)**

153. Defendant Holton published a statement falsely stating that Mr. Nieters committed a crime, which resulted in Officer Ripperger filing a criminal charge against Mr. Nieters.

154. Mr. Nieters committed no crime and there was no probable cause for the charges against Mr. Nieters.

155. Defendant's statement was libelous per se.

156. Defendant's false statement injured Mr. Nieters.

157. As a result of Defendant's acts and omissions, Mr. Nieters has in the past and will in the future suffer injuries and damages.

PRAYER FOR RELIEF

Plaintiff prays for Judgment against the aforementioned Defendants as follows:

- a. Actual, Compensatory, Consequential, and all other allowable damages against Defendant in an amount yet to be determined;
- b. Compensation for violation of his constitutional rights, mental anguish, and humiliation;
- c. Plaintiff's cost in this action, including reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988;
- d. Declaratory relief;
- e. Injunctive relief;
- f. An award of pre-judgment interest;
- g. Punitive damages; and
- h. Any other relief the Court deems just and equitable.

JURY DEMAND

Plaintiff hereby demands a trial by jury in this matter on all counts to which Plaintiff is entitled to a jury.

**PARRISH KRUIDENIER DUNN GENTRY
BROWN BERGMANN & MESSAMER, L.L.P.**

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