

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE  
CIVIL DIVISION

ROSEMARY WHITE,  
Plaintiff,

Case No. 20-                    -NZ  
Hon.

v.

JANE DOE  
And THE CITY OF DETROIT,  
Defendants.

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DAVID R. ADGATE (P84200)  
JONATHAN R. MARKO (P72450)  
MARKO LAW, PLLC  
**Attorneys for Plaintiff**  
1300 Broadway Street, Fifth Floor  
Detroit, MI 48226  
Phone: (313) 777-7529  
Fax: (313) 771-5785  
[david@markolaw.com](mailto:david@markolaw.com)

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There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this Complaint that is either pending or was previously filed and dismissed, transferred or otherwise disposed of after having been assigned to a Judge in this Court.

**PLAINTIFF'S COMPLAINT**

Plaintiff Rosemary White (hereafter "White"), by and through her attorneys, Marko Law, PLLC, states the following for her Complaint against Defendants City of Detroit (hereafter "COD") and Detroit Police Officer, Jane Doe (hereafter "Doe").

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

2. Plaintiff sues the City of Detroit, and Detroit Police Officer Doe in her individual capacity.

### **JURISDICTION AND VENUE**

3. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331.
4. Venue is proper in the Eastern District of Michigan, Southern Division pursuant to 28 U.S.C. § 1391(b) because the events giving rise to this action occurred in the City of Detroit, County of Wayne, State of Michigan.
5. At all times relevant herein, Plaintiff resided in and was a citizen of the City of Detroit, County of Wayne, and state of Michigan.
6. The incident giving rise to this case occurred in Wayne, Michigan.
7. Defendant Doe is a City of Detroit Police Officer who, at all times relevant, acted under color of state law and is a “person” for purposes of a 42 U.S.C. § 1983 action.
8. At all times relevant herein, Defendants acted under color of state law including statutes, ordinances, regulations, policies, customs and usages of the State of Michigan.

### **PARTIES**

9. Plaintiff, Rosemary White, is a resident of the County of Wayne, State of Michigan.
10. Defendant, City of Detroit, is a local public entity organized under the laws of the State of Michigan which operates, manages, and controls the City of Detroit Police Department.
11. Defendant, Officer Jane Doe, sued in her individual capacity, is a police officer employed by the Detroit Police Department and, by all information and belief resides in Wayne County, State of Michigan.

### **FACTUAL BACKGROUND**

12. On or about August 3, 2020, a male individual had stolen items from a Dollar Store and ran through several yards of houses located on the east side of Detroit.

13. On August 3, 2020, Detroit Police Officers were, on information and belief, looking for an individual who was not Plaintiff, was not related to Plaintiff, did not know Plaintiff, and did not reside with Plaintiff.
14. The individual was apprehended by Detroit Police Officers; however, before the apprehension, the individual ran through Plaintiff's yard while attempting to evade Detroit Police Officers.
15. After the individual was apprehended and secured, Detroit Police Officers came to Plaintiff's residence, 15074 Alma Street, Detroit, MI 48205, ostensibly to look for evidence relating to the male individual's theft from the Dollar Store.
16. On or about August 3, 2020, Plaintiff owned a dog named Chino.
17. On or about August 3, 2020, after the individual was apprehended, Detroit Police Officers requested that Plaintiff take Chino out of his secure outdoor kennel, which was in Plaintiff's yard backyard, and into Plaintiff's house, so that the officers could search the yard for items the individual may have dropped during the chase.
18. As requested by the officers, Plaintiff's 18 year-old daughter began walking Chino towards the house to secure him indoors, when, suddenly and without notice, alert or warning, Defendant Doe approached Plaintiff's fence with a K-9 dog.
19. The K-9 was required to be under Defendant Doe's direction and control at all times relevant.
20. Defendant Doe utterly failed to secure the K-9, it approached Plaintiff's fence, and inserted its nose through Plaintiff's fence and began barking at Chino.
21. At this point, Plaintiff's daughter had not even had time to secure Chino indoor as requested by Detroit Police Officers.

22. Upon Defendant's K-9 inserting its nose through Plaintiff's fence, Chino, clearly startled by the foreign K-9 invading its territory, ran up to the K-9 and bit the dog on its nose.
23. Instead of attempting to gain control of the K-9, by taking any number of actions that Defendant Doe either was, or should have been trained, to take, she removed her side arm from its holster and shot Chino in the head, fatally wounding him.
24. Chino died a short time later.
25. At no time during the aforementioned incident was the K-9 in mortal danger; Defendant Doe could have easily pulled the K-9 back from the fence.
26. Equally, at no time was Defendant Doe, or any other Detroit Police Officer in danger. Between Chino and Defendant's and Defendant's K-9 was a) an eight-foot-tall fence; b) made from iron; c) with long, sharp metal spikes affixed atop the fence.
27. The fence was too tall and too secure for Chino to have injured any dog or human on the other side of the fence.

### **CLAIMS FOR RELIEF**

#### **COUNT I – UNLAWFUL SEIZURE VIOLATION OF CIVIL RIGHTS 42 U.S.C. § 1983 AND THE FOURTH AMENDMENT FOR COMPENSATORY DAMAGES, PUNITIVE DAMAGES AND ATTORNEY'S FEES**

28. Plaintiff reincorporates and realleges paragraphs 1 through 27.
29. The Fourth Amendment of the United States Constitution, U.S. Const. amend. IV, prohibits the government from unreasonably seizing a citizen's property.
30. "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).
31. Citizens have a Fourth Amendment property right in their pets under the United States Constitution. *San Jose Charter of the Hell's Angels Motorcycle Club v. City of San Jose*,

402 F.3d 962, 977-78 (9th Cir. 2005); *Brown v. Battle Creek Police Department*, 844 F.3d 556, 568 (6th Cir. 2016).

32. Additionally, the Sixth Circuit has determined that an individual has a property right in their pets. *Brown*, 844 F.3d at 567.

33. In addition to individuals simply having a property right in their pets, pets are more than just a personal effect. *San Jose*, 402 F.3d at 975.

34. The emotional attachment to a pet is not comparable to a possessory interest in furniture or other inanimate property. *Id.*

35. Plaintiff White's Fourth Amendment interests involved are important and significant because her relationship with the dog was continuous and emotionally fulfilling which was akin to "an emotional relationship, rather than a property relationship." *Bateman v. Driggett*, No. 11-13142, 2012 U.S. Dist. LEXIS 91221, at \*20-21 (E.D. Mich. July 2, 2012).

36. Defendants' actions described herein were intentional, grossly negligent, amounted to reckless or callous indifference to Plaintiff's constitutional rights.

37. Defendants' seizure of Plaintiff White's dog, Chino, was objectively unreasonable.

38. There were no exigent circumstances that excused or warranted Defendant Doe to allow the K-9 to suddenly approach Plaintiff's fence when she knew that Chino was not yet secured as requested.

39. There were also no exigent circumstances whatsoever because, on information and belief, the individual who had allegedly stolen items from the Dollar Store had already been secured by Detroit Police Officers.

40. There was no governmental interest that justified the search and/or seizure involved in this case when Chino was tragically shot and killed by Defendant Doe.

41. Under 42 U.S.C. § 1983 Plaintiff is entitled to an award of compensatory damages against Defendant Doe in her individual capacity, which includes “damages for the emotional distress suffered by Plaintiffs . . . and any other injury that is the result of . . . the unlawful seizure of Plaintiffs” dogs. *Moreno v. Hughes*, 157 F.Supp.3d 687, 692 (E.D. Mich. 2016).

42. 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.

43. Plaintiff White is entitled to an award of punitive damages against Defendant in her individual capacity, in order to punish him and to deter others.

44. Under 42 U.S.C. § 1988, if Plaintiff’s action succeeds, she will be entitled to receive an award of reasonable attorney’s fees, non-taxable expenses and costs.

WHEREFORE, Plaintiff prays for judgment under 42 U.S.C. § 1983 and 1988 against Defendants in their 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 Plaintiff prays for such other relief as may be just under the circumstances and consistent with the purpose of 42 U.S.C. § 1983.

**COUNT II – VIOLATIONS OF CIVIL RIGHTS 42 U.S.C. § 1983 AND THE FOURTH AMENDMENT AGAINST DEFENDANT CITY OF DETROIT FOR COMPENSATORY DAMAGES, PUNITIVE DAMAGES AND ATTORNEY’S FEES**

45. Plaintiff realleges and reincorporates paragraphs 1 through 27.

46. Defendant COD utterly failed to properly hire, train and supervise Defendant Doe with regard to the K-9 she should have had control over at all times relevant.

47. Defendant COD exhibited deliberate indifference to the rights of others when it failed to properly hire, train and supervise Defendant Doe with regard to the K-9 she should have had control over at all times relevant.

48. Defendant COD's failures showed a deliberate choice by Defendant COD when it had other alternatives to choose from that would have protected the rights of others. *City of Canton v. Harris*, 489 U.S. 378, 389 (1989).

49. Defendant COD directly and proximately caused the death of Plaintiff's dog, Chino, because it failed to adequately and properly hire train and supervise Defendant Doe with respect to her control, or lack thereof, of its K-9.

50. The importance of proper training, hiring and supervision is so necessary and important for the safety of the K-9, other Officers, the public, and other dogs that willful disregard for such property training hiring and supervision can reasonably be determined to have been deliberately indifferent to such a vital need.

51. But for Defendant COD's failure to properly hire, train and supervise Defendant Doe, the damages to Plaintiff White and the constitutional violations of Doe would not have occurred.

52. Under 42 U.S.C. § 1983, Plaintiff is entitled to an awarded of compensatory damages against Defendant COD.

53. Under 42 U.S.C. § 1988, if Plaintiff's action succeeds, then she will be entitled to an award of reasonable attorney's fees.

WHEREFORE, Plaintiff prays for judgement under 42 U.S.C. § 1983 and 1988 against Defendant COD for compensatory damages in a fair and reasonable amount, for reasonable attorney's fees and other expenses and relief as may be just consistent with 42 U.S.C. § 1983.

### **COUNT III – CONVERSION**

54. Plaintiff realleges and reincorporates paragraphs 1 through 24.

55. Conversion is “any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein.” *Foremost Ins. Co. v. Allstate Ins. Co.*, 439 Mich. 378, 486 (1992)

56. Defendant Doe shot and killed Plaintiff White’s Dog, Chino.

57. That by needlessly and wrongfully shooting and killing Plaintiff’s dog, Defendant Doe’s action was a distinct act of dominion wrongfully exerted over Plaintiff White’s personal property, her dog Chino, which was a denial of her rights.

WHEREFORE, pursuant to MCL § 600.2919(a), Plaintiff requests relief, judgment and award of all reasonable costs, interest and attorney’s fees consistent with the statutory provisions.

### **COUNT IV – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

58. Plaintiff realleges and reincorporates paragraphs 1 through 24.

59. That by shooting and killing Plaintiff White’s dog, Chino, Defendant Doe exhibited extreme and outrageous conduct.

60. Defendant Doe intentionally and/or recklessly shot Plaintiff White’s dog, Chino.

61. That by shooting and killing Plaintiff’s dog, Chino, Defendant Doe caused severe emotional distress of Plaintiff White.

62. Defendant Doe’s conduct was so outrageous in character, and so extreme in degree, that it went beyond all possible bounds of decency.

63. That by shooting and killing Plaintiff White’s dog, Chino, Defendant Doe’s actions are regarded as atrocious and utterly intolerable in a civilized community.

**DEMAND FOR RELIEF**

Plaintiff requests that this Court a) assert jurisdiction over this matter; b) enter judgment in favor of Plaintiff and against Defendants; c) award Plaintiff compensatory and punitive damages; d) award costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and e) Grant other appropriate relief.

Respectfully submitted,

/s/ David R. Adgate

David R. Adgate (P84200)

Jonathan R. Marko (P72450)

**MARKO LAW, PLLC**

1300 Broadway Street, Fifth Floor

Detroit, MI 48226

Phone: 313-777-7529

Fax: 313-777-5785

Email: [david@markolaw.com](mailto:david@markolaw.com)

Dated: August 28, 2020

**CERTIFICATE OF SERVICE**

I hereby certify that on August 28, 2020, I presented the foregoing paper to this Court's ECF System which will send notification of such filing to the above listed attorneys of record.

/s/ Heather J. Ducharme  
Heather J. Ducharme



JMARKOLAW.COM  
(313) 777-7LAW

1300 BROADWAY ST., 5TH FLOOR  
DETROIT, MI 48226

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