

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

GILBERT WEBER and TYRONE
HIGHTOWER,

Plaintiffs,

vs.

CITY OF GRAND RAPIDS; KEVIN
BELK, Chief of Police of the Grand Rapids
Police Department, in his official capacity;
Officer JOHN GUERRERO, in his
individual capacity; Officer THOMAS
MCCARTHY, in his individual capacity;
Officer GREGORY REKUCKI, in his
individual capacity; and Officer ANTHONY
LEONARD, in his individual capacity,

Defendants.

Hon. Paul L. Maloney

Case No. 1:13-cv-00469

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

INTRODUCTORY STATEMENT

1. This civil rights case challenges the Grand Rapids Police Department's ongoing practice of charging individuals with criminal trespassing at gas stations, bars and other commercial businesses open to the public, even though the individuals have done nothing wrong, and even though no one has asked them to leave.

2. For example, last summer Grand Rapids police officers arrested Plaintiff Gilbert Weber, charged him with trespass, and jailed him when he stopped his car to stretch at a gas station. No employee of the gas station ever told him he was unwelcome on the premises.

3. Similarly, in 2011, Plaintiff Tyrone Hightower was sitting in his car in a parking lot to a sports bar in order to get out of the rain while his friend held his spot in the line to enter the bar. Although Mr. Hightower was simply sitting in his vehicle and no one had told him that he was unwelcome on the premises, Grand Rapids police officers arrested him for "trespassing" and took him to jail.

4. The Grand Rapids Police Department ("GRPD") has a policy, practice or custom of arresting individuals for trespass, without warning, at businesses open to the public based on general Letters of Intent to Prosecute Trespassers ("Letters of Intent"). These form letters simply say that "the occupant(s) and/or owners of this address will prosecute all trespassers." See Blank Letter of Intent (Exh. A). Over 800 Grand Rapids businesses have signed these letters at the urging of the GRPD.

5. The Letters of Intent do not purport to bar any specific people from the premises. Nonetheless, the GRPD and its officers, relying on these letters and acting independently of the business owners, determine who belongs on the premises and who is guilty of criminal trespass.

The GRPD and its officers have used the Letters of Intent as a substitute for probable cause to arrest numerous individuals, including Mr. Weber and Mr. Hightower, for criminal trespass.

6. While the charges against both Mr. Weber and Mr. Hightower were dismissed, they nonetheless suffered the indignity of being wrongfully arrested and jailed. Additionally, although both men wish to patronize businesses in downtown Grand Rapids, they fear being arrested and jailed again for innocent conduct, and they therefore avoid going downtown.

7. Plaintiffs bring this action under 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution to vindicate their right to be free from arrest without probable cause. They seek a declaration that their rights were violated, an injunction against future arrests for criminal trespass based solely on the Letters of Intent, and damages to compensate them for their unlawful arrests.

JURISDICTION AND VENUE

8. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1343 because this is a civil action seeking redress for the deprivation of rights secured by the United States Constitution.

9. Plaintiffs' claim for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202; Rules 57 and 65 of the Federal Rules of Civil Procedure; and the general legal and equitable powers of this Court.

10. Venue is proper in the Western District of Michigan pursuant to 28 U.S.C. § 1391(b), because that is the judicial district where the Defendants are located or reside, and where the majority of the events and omissions giving rise to this action occurred and will occur.

PARTIES

11. Plaintiff Gilbert Weber is a resident of Grand Rapids, Michigan, who was arrested and jailed by GRPD officers for criminal trespassing without individualized suspicion of wrongdoing based on a generalized “Letter of Intent to Prosecute Trespassers.”

12. Plaintiff Tyrone Hightower is a resident of Kalamazoo, Michigan, who was arrested and jailed by GRPD officers for criminal trespassing without individualized suspicion of wrongdoing based on a generalized “Letter of Intent to Prosecute Trespassers.”

13. Defendant City of Grand Rapids is a municipal corporation located in Kent County, Michigan.

14. Defendant Kevin Belk is the duly appointed Chief of the Grand Rapids Police Department (“GRPD”) and is sued in his official capacity.

15. The GRPD operates under the direction of Defendant Belk, who is the chief law enforcement officer for the City of Grand Rapids and the final policymaker of the GRPD.

16. The GRPD is an entity created by and responsible to Defendant City of Grand Rapids. As such, Defendant Belk exercises his authority on behalf of and for the benefit of the City of Grand Rapids.

17. Defendant Belk is responsible for the enforcement of all applicable laws and for the arrest of all persons alleged to have violated the law within the jurisdiction of the City of Grand Rapids. Further, Defendant Belk is responsible for ensuring that GRPD law enforcement officers enforce the law consistent with constitutional requirements.

18. Defendant John Guerrero is an officer of the Grand Rapids Police Department, who participated in arresting Plaintiff Gilbert Weber for criminal trespass on June 1, 2012. He is sued in his individual capacity.

19. Defendant Thomas McCarthy is an officer of the Grand Rapids Police Department, who participated in arresting Plaintiff Gilbert Weber for criminal trespass on June 1, 2012. He is sued in his individual capacity.

20. Defendant Gregory Rekucki is an officer of the Grand Rapids Police Department, who participated in arresting Plaintiff Tyrone Hightower for criminal trespass on September 4, 2011. He is sued in his individual capacity.

21. Defendant Anthony Leonard is an officer of the Grand Rapids Police Department, who participated in arresting Plaintiff Tyrone Hightower for criminal trespass on September 4, 2011. He is sued in his individual capacity.

22. At all times relevant to this Complaint, all Defendants were acting under the color of state law.

FACTUAL BACKGROUND

The City's Use of Letters of Intent to Prosecute Trespassers

23. The Grand Rapids Police Department solicits businesses throughout the City to sign general "Letters of Intent to Prosecute Trespassers," a practice which, upon information and belief, has been in place since at least 1986.

24. The Letters of Intent are standardized forms that are completed by the owners or occupants of properties in Grand Rapids.

25. The Letter of Intent form is captioned "No Trespassing," contains a space for the date, and is addressed to the attention of the Detective Unit, Grand Rapids Police Department.

26. The form then states: "Dear Sir/Madam: This letter serves notice to your office that the occupant(s) and/or owners of this address will prosecute all trespassers."

27. The form requires the occupant/owner to fill in identifying information about the business or tenant and the property owner, including names, addresses, and phone numbers.

28. Upon information and belief, the second and third pages of the letter are intended for owners or landlords of private residences.

29. The second page provides blank spaces for the names and signatures of all tenants. Minors need not sign, but they must be listed.

30. The third page states that the purpose of the letter is to “assist in keeping trespassers off your property.” It further states that the letter is not to be used as an eviction notice and is not meant to bar tenants from having guests in their home.

31. The third page also states that the letters “must be renewed on a yearly basis or if and when, any change in tenants or owner occupancy.”

32. The final page of the letter includes a recitation of Grand Rapids City Ordinance §§ 9.132 and 9.133.

33. Once signed, Letters of Intent are placed on file by the GRPD for future reference.

34. In April 2012, the American Civil Liberties Union of Michigan submitted a Freedom of Information Act (“FOIA”) request to the City of Grand Rapids seeking information related to the use of Letters of Intent by the Grand Rapids Police Department.

35. The City’s response indicated that there were 2,024 Letters of Intent executed between January 1, 2009 and May 15, 2012. Of these, at least 815 were for a business entity. This does not include any previously issued letters that remain on file with the GRPD or any letters that have been signed since May 15, 2012.

36. The business entities that have executed Letters of Intent are open to the public and include retail stores, supermarkets, gas stations, restaurants, and even homeless service-providers.

37. Because such businesses are open to the public, a person who enters the publicly-accessible premises of these businesses has legal authority to do so as an invitee, provided that the person has not been advised by the business that s/he is personally unwelcome.

38. The Letters of Intent do not purport to diminish in any way the legal significance of the fact that the businesses in question are open to the public.

39. The Letters of Intent do not purport to allow the Grand Rapids Police Department to decide, without any further consultation with the property owner/occupant, that a particular individual is not authorized to be on the property.

40. The Letters of Intent do not purport to authorize officers of the Grand Rapids Police Department to arrest individuals simply for being present on the property.

41. The Letters of Intent do not purport to create probable cause that any particular individual is trespassing.

42. The Letters of Intent do not – and cannot, as a legal matter – purport to eliminate the constitutional requirement that an arrest for criminal trespassing must be supported by probable cause to believe that the arrested individual was trespassing.

43. Defendants have been on notice regarding the unconstitutional nature of this practice since at least 1997, when the Michigan Court of Appeals decided in *People v. Clay*¹, that it is unconstitutional to use Letters of Intent as a substitute for probable cause.

44. In *Clay*, Grand Rapids police officers arrested the defendant for trespassing in the parking lot of a local gas station, pursuant to Grand Rapids City Ordinance § 9.133(1), and found

¹ 1997 WL 33342783 (April 11, 1997).

a concealed weapon. The defendant, Jerry Clay, moved to suppress the weapon. The City argued that the police officers made a valid arrest for trespassing because they were aware that the owner of the gas station had a Letter of Intent on file with the GRPD. In granting the defendant's motion to suppress, the court pointed out that the crime of trespass requires that an individual either be forbidden to enter the premises or refuse to depart after being told to do so.²

45. On April 2, 2010, Grand Rapids police officers again arrested Jerry Clay for trespassing—at the very same gas station where he had been wrongfully arrested thirteen years earlier.

46. The arresting officers specifically cited the Letter of Intent as the basis for the arrest of Mr. Clay.

47. The arresting officers included Grand Rapids police officers Greg Alcala and Thomas McCarthy. McCarthy, who is named as a defendant in this case, was also involved in the arrest of Plaintiff Gilbert Weber.

48. Ultimately, the charges against Mr. Clay were dismissed when the owner of the gas station submitted an affidavit on Mr. Clay's behalf indicating that Mr. Clay was a lawful visitor to and frequent customer at his business, and that none of his employees had contacted the police regarding Mr. Clay's presence on the property, or asked Mr. Clay to leave the premises. See Affidavit of Karamjit Singh (Exh. B).

49. On May 4, 2012, Jerry Clay filed suit in this court against the City of Grand Rapids, alleging various civil rights violations stemming from his unlawful arrest two years before, including a violation of the Fourth Amendment prohibition against unreasonable seizures.³

² *Id.* at *3.

³ The case was assigned to the Hon. Janet T. Neff, Case No. 1:12-cv-441.

50. The parties reached a settlement agreement in November 2012, and the case was then dismissed by stipulation.

Plaintiff Gilbert Weber

51. In June 2012, 46-year-old Gilbert Weber, then a resident of Kentwood, was arrested for trespassing after pulling his vehicle into the lot of a BP gas station located at 801 Franklin Avenue, Grand Rapids—the same gas station where the aforementioned Jerry Clay was unlawfully arrested by Grand Rapids police officers on two separate occasions.

52. The gas station was open for business at the time, and Mr. Weber was parked in clear view of any person working in the station. At no point did any representative of BP ask Mr. Weber to leave the parking lot.

53. Mr. Weber had pulled into the BP parking lot so that he could get out of the car to stretch, thereby relieving the chronic hip pain from which he suffers.

54. Grand Rapids police officers, Defendants Guerrero and McCarthy, approached Mr. Weber as he stood outside of his vehicle and questioned him regarding his presence on the premises.

55. After hearing Mr. Weber's explanation, the officers conducted a search of his vehicle, and administered a breathalyzer test, neither of which produced any evidence of illegal activity.

56. Having failed to uncover any other basis for arrest, the officers then arrested Mr. Weber for trespassing, notwithstanding the fact that no BP representative had complained to the police or asked Mr. Weber to leave the premises. Although there were BP staff present at the gas station that night, at no point did the officers communicate with any BP representative regarding whether to arrest Mr. Weber.

57. According to the police report, the officers' sole justification for the arrest was the existence of the Letter of Intent. The officers did not report any facts that would establish probable cause that Mr. Weber was trespassing.

58. During a subsequent hearing in Mr. Weber's criminal case, Defendant Guerrero testified under oath that no BP representative had complained to the police about Mr. Weber. Defendant Guerrero further testified regarding the Letter of Intent as the justification for Mr. Weber's arrest.⁴

59. Mr. Weber was jailed for three days before a friend was able to post bond. While in jail, Mr. Weber experienced unnecessary pain and/or aggravated a pre-existing injury or medical condition.

60. In addition, Mr. Weber's vehicle was impounded following his arrest. Mr. Weber was later required to pay approximately \$280 to retrieve his vehicle from impound.

61. Mr. Weber was prosecuted by the Grand Rapids City Attorney's office for violating Grand Rapids City Ordinance § 9.133(1).

62. Mr. Weber subsequently moved to dismiss the criminal charges against him.

63. On October 24, 2012, District Court Judge David J. Buter—noting that Mr. Weber's case involved the same gas station where the unlawful arrest in *People v. Clay* had occurred—granted Mr. Weber's motion to dismiss the case.

64. Judge Buter found that the City had presented “no evidence that Defendant was aware of this [Letter of Intent],” nor “that Defendant was aware through posted notice or personal contact that he was trespassing.”⁵ The court added that the Letter of Intent “does not

⁴ See *City of Grand Rapids v. Weber*, Case No. 12-OM-1530, Transcript, Hearing on Motion to Dismiss (Oct. 3, 2012) (Exh. C).

⁵ *City of Grand Rapids v. Weber*, Case No. 12-OM-1530, Opinion (Oct. 24, 2012) (Exh. D).

accomplish as much as the City contends where, as here, the property owner is present and the business is open to the public.”⁶

65. Because of his experience being arrested, jailed and prosecuted without probable cause, and because he fears again being arrested, jailed and prosecuted if he patronizes businesses or simply travels in downtown Grand Rapids, Mr. Weber avoids going to downtown Grand Rapids whenever possible.

66. Mr. Weber remains haunted by the idea that he can be seized and jailed for no reason at any time, and worries about how any future arrest could affect his health given his medical condition.

67. Although Mr. Weber would like to go to visit family members and patronize businesses in downtown Grand Rapids in the future, Mr. Weber fears that doing so will again result in his unlawful detention and/or arrest. Mr. Weber intends to avoid doing so for as long as the Defendants continue to use Letters of Intent as a basis for trespassing arrests.

Plaintiff Tyrone Hightower

68. On September 4, 2011, 33-year-old Tyrone Hightower, along with two friends, drove from Kalamazoo to Grand Rapids in order to patronize Cheero’s Sports Bar, located at 2510 Burton Street, SE, Grand Rapids.

69. Cheero’s was open for business at the time, but there was a line to get in.

70. Mr. Hightower let his friends out of the car to wait in line, while he parked the vehicle. Thereafter, because it had begun to rain, one of his friends returned to wait in the vehicle while the third friend stayed in line.

71. Two police officers, Defendants Gregory Rekucki and Anthony Leonard, approached Mr. Hightower’s vehicle.

⁶ *Id.*

72. The officers pulled Mr. Hightower and his friend out of the car, handcuffed them, and arrested them for criminal trespass. The handcuffs caused Mr. Hightower considerable pain.

73. At no point did any representative of Cheero's ask Mr. Hightower to leave the parking lot. Although there were staff of Cheero's at the bar that night, at no point prior to Mr. Hightower's arrest did the officers communicate with any representative of Cheero's regarding whether to arrest Mr. Hightower.

74. The police video of the incident indicates that when Mr. Hightower and his friend questioned the basis of their arrest, the officers informed them that they were arrested because the owner of Cheero's had signed a general Letter of Intent.

75. The police report confirms that the officers' sole proffered justification for arresting Mr. Hightower was that the owners of Cheero's had signed a general Letter of Intent. The officers did not report any facts that would establish probable cause that Mr. Hightower was trespassing.

76. Mr. Hightower was transported in handcuffs to a local jail, where he spent approximately four hours before a friend posted his bond.

77. The vehicle Mr. Hightower was driving was impounded. The owner of the vehicle was forced to drive to Grand Rapids to retrieve the vehicle from impound, and had to pay impound and towing charges. To date, Mr. Hightower has paid \$250 to the vehicle's owner to cover her expenses.

78. Both Mr. Hightower and his friend were prosecuted by the Grand Rapids City Attorney's office for violating Grand Rapids City Ordinance § 9.133(1).

79. Both pled not guilty, and the trespassing charges against them were eventually nolle prossed.

80. Mr. Hightower suffered the indignity of being arrested in front of a parking lot full of Cheero's patrons, of being deprived of his liberty without justification, and of being forced to make multiple court appearances as a criminal defendant.

81. Because of his experience being arrested, jailed and prosecuted without probable cause, and because he fears again being arrested, jailed and prosecuted if he patronizes businesses in Grand Rapids, Mr. Hightower has not visited Grand Rapids since his arrest, except to attend court hearings or meet with legal counsel.

82. Mr. Hightower remains haunted by the idea that he can be seized and jailed for no reason at any time.

83. Although he would like to patronize businesses in Grand Rapids in the future, as well as visit Grand Rapids for other reasons, Mr. Hightower fears that doing so will again result in his unlawful detention and/or arrest. He intends to avoid patronizing local businesses in Grand Rapids so as long as the Defendants continue to use Letters of Intent as a basis for trespassing arrests.

**Plaintiffs' Efforts to Urge Defendants to
Abandon Letters of Intent as a Substitute for Probable Cause**

84. In a letter dated February 5, 2013, Plaintiffs' counsel, the American Civil Liberties Union of Michigan and the American Civil Liberties Union (collectively "ACLU") informed the Defendant City of Grand Rapids of its concerns regarding the GRPD's unlawful use of Letters of Intent as a means of establishing probable cause to arrest individuals for trespassing. *See* Feb. 5, 2013 ACLU Letter (Exh. E).

85. In the February 5 letter, the ACLU advised City officials that the Letters of Intent could not be used as a substitute for probable cause and served no legitimate law enforcement

purpose. As such, the ACLU letter requested that the GRPD be directed to discontinue this unconstitutional practice immediately.

86. The ACLU has engaged in further written and verbal correspondence with the City since submission of the February 5 letter, but to this point the City has not stopped using generalized Letters of Intent as a substitute for probable cause.

Defendants City of Grand Rapids' and Kevin Belk's Custom, Policy or Practice of Using Generalized Letters of Intent as a Substitute for Probable Cause

87. The Grand Rapids Police Department maintains a custom, policy, or practice of arresting individuals for trespassing on the publicly-accessible property of private businesses across the city, based on the fact that the owner of the business in question signed a generalized Letter of Intent, even though the businesses in question are open to the public, the alleged trespassers have never been asked to leave by the lawful owner or occupant of the property, and there is no probable cause for a trespassing arrest.

88. This custom, policy or practice is evidenced by (1) official GRPD policies and practices surrounding the Letters of Intent; (2) the actions of GRPD officials and City of Grand Rapids officials with final decision-making authority; (3) the GRPD's policy of affirmatively training police officers to rely on a generalized Letter of Intent as creating probable cause for arrest, or alternately of failing to adequately train and supervise police officers with respect to the legal requirements for arrest, thereby causing those officers to rely on generalized Letters of Intent as a substitute for probable cause; and (4) a custom of tolerating or acquiescing to repeated violations of the Fourth Amendment rights of individuals who were arrested for trespassing based solely on a generalized Letter of Intent without any individualized suspicion of wrongdoing.

89. First, upon information and belief, it is the official policy of the GRPD to obtain and rely on generalized Letters of Intent as a basis for making trespassing arrests.

90. The GRPD developed a standardized form “Letter of Intent.”

91. The GRPD routinely uses this standardized form “Letter of Intent.” At least 2,024 such Letters were executed between January 1, 2009 and May 15, 2012.

92. The GRPD actively solicits business owners to sign “Letters of Intent” and keeps those letters on file. At least 815 such Letters were signed by business entities between January 1, 2009 and May 15, 2012.

93. The GRPD instructs businesses to renew their Letters of Intent on an annual basis, or if/when there is a change of tenancy or ownership.

94. The GRPD maintains information about which properties in the City of Grand Rapids are covered by Letters of Intent.

95. Upon information and belief, the GRPD makes this information easily accessible to GRPD officers.

96. The use of generalized Letters of Intent as a proxy for probable cause is standard operating procedure within the GRPD, and it is common knowledge within the GRPD and City Attorney’s office that Letters of Intent are used as the basis for making trespass arrests.

97. Second, in light of the Michigan Court of Appeals’ 1997 decision in *People v. Clay*; the subsequent unlawful arrest of Jerry Clay in 2010, and the resulting civil lawsuit; and the Kent County district court’s 2012 decision to grant Plaintiff Weber’s motion to dismiss, Defendant Belk and Defendant City of Grand Rapids have long had actual or constructive notice that GRPD officers’ clear and persistent practice of arresting individuals for trespassing based solely on a Letter of Intent is unconstitutional.

98. Nevertheless, Defendant Belk and City of Grand Rapids have endorsed and maintained the policy of relying on Letters of Intent as a basis for trespassing arrests.

99. In addition, the failure of Defendants Belk and the City of Grand Rapids to instruct their officers immediately to cease using or relying on generalized Letters of Intent as a substitute for probable cause, after Plaintiffs' counsel outlined the unconstitutionality of the practice, reflects a conscious choice by Defendants to continue this unconstitutional practice.

100. Third, Defendants Belk and the City of Grand Rapids have either affirmatively trained and supervised their police officers so as to encourage the unconstitutional practice of using Letters of Intent as a substitute for probable cause, or, alternatively, have failed to meet their duty to adequately train and supervise their police officers in order to ensure that those officers act in accordance with well-established constitutional principles.

101. Upon information and belief, the GRPD trains officers how to solicit businesses to sign a Letter of Intent.

102. Upon information and belief, the GRPD trains officers how to determine whether a particular property is covered by a Letter of Intent.

103. Upon information and belief, the GRPD trains officers to note in their incident reports when making a trespass arrest based on a Letter of Intent that a Letter of Intent is on file for the property where the arrest was made.

104. Upon information and belief, the GRPD instructs its officers that the existence of a Letter of Intent constitutes probable cause for an arrest for trespass, and that officers may rely solely on a Letter of Intent when making a trespassing arrest on the site of a business that is open to the public.

105. Alternately, Defendants Belk and the City of Grand Rapids failed to adequately train GRPD officers and failed to provide GRPD officers with sufficient guidance and oversight regarding the legal requirements for a valid arrest, including the need for and permissible contours of probable cause.

106. Upon information and belief, the City of Grand Rapids' counsel previously indicated to Jerry Clay, the plaintiff in the prior lawsuit regarding the constitutionality of arrests under Letters of Intent, that the City would undertake training of its officers to address the issues raised in that litigation.

107. Upon information and belief, no such training has taken place.

108. Defendants Belk and the City of Grand Rapids have also failed to meet their duty to appropriately discipline their police officers for making arrests absent probable cause, in clear violation of the Fourth Amendment to the United States Constitution.

109. This failure to train, supervise and discipline had the highly predictable consequence of causing GRPD officers to rely on Letters of Intent as a substitute for probable cause when making trespass arrests, including the arrests of Plaintiffs.

110. Defendants Belk and the City of Grand Rapids failed to adequately train, supervise, and discipline GRPD officers for the challenged conduct, despite the fact that (a) the Defendants had actual or constructive notice of the challenged conduct through officers' own routine admissions in incident reports that officers were making arrests based solely on the existence of a generalized Letter of Intent; (b) the Defendants had actual or constructive notice that the City was routinely prosecuting cases based on these incident reports despite the obvious lack of probable cause; and (c) the Defendants had actual or constructive notice of the relevant court decisions that generalized Letters of Intent do not create probable cause for a trespassing arrest.

The failure to train, supervise and discipline under these circumstances constitutes deliberate indifference to the rights of Plaintiffs, and others who have, without warning, been arrested for trespass based on Letters of Intent.

111. Fourth, despite a clear and persistent pattern of GRPD officers relying on generalized Letters of Intent to make trespassing arrests in the absence of probable cause, and despite the fact that Defendants Belk and City of Grand Rapids had actual or constructive notice of this clear and persistent pattern, Defendants Belk and City of Grand Rapids either explicitly or tacitly approved of this unconstitutional conduct, such that their failure to act constitutes deliberate indifference to the rights of Plaintiffs, and others who have, without warning, been arrested for trespass based on Letters of Intent.

112. The custom, policy and practice of Defendants Belk and the City of Grand Rapids—including official policies, the actions of City and GRPD officials with final decision making authority, the failure to adequately train, supervise, and discipline GRPD officers for the challenged conduct, and the tolerance of repeated violations of individuals' Fourth Amendment rights—are the moving force behind the challenged conduct and proximately caused the development and proliferation of the practice of using generalized Letters of Intent as a basis for trespassing arrests.

113. The custom, policy and practice of Defendants Belk and the City of Grand Rapids—including official policies, the actions of City and GRPD officials with final decision making authority, the failure to adequately train, supervise, and discipline GRPD officers for the challenged conduct, and the tolerance of repeated violations of individuals' Fourth Amendment rights—were the moving force behind the unconstitutional conduct of Defendants Guerrero,

McCarthy, Rekucki, and Leonard, and proximately caused Defendants Guerrero, McCarthy, Rekucki, and Leonard to effectuate the unlawful arrests of Plaintiffs Hightower and Weber.

Injunctive Relief

114. Although hundreds of businesses in Grand Rapids have signed Letters of Intent, there is no publicly available list identifying those businesses.

115. As a practical matter, it is difficult, if not impossible, for plaintiffs, or other members of the public, to determine whether a particular business has signed a Letter of Intent. Plaintiffs, or other members of the public, cannot know which of the many businesses in Grand Rapids are covered by a Letter of Intent.

116. Plaintiffs wish to enter and patronize businesses in Grand Rapids in the future without fear of being unlawfully stopped, arrested, prosecuted or incarcerated. As a result of Defendants' policy, practice and/or custom of using generalized Letters of Intent as a basis for arresting individuals for criminal trespassing, Plaintiffs are unable to enter and patronize businesses in Grand Rapids without fear of being unlawfully stopped, arrested, prosecuted or incarcerated.

117. The custom, policy and practice of Defendants Belk and the City of Grand Rapids—including official policies, the actions of City and GRPD officials with final decision making authority, the failure to adequately train, supervise, and discipline GRPD officers for the challenged conduct, and the tolerance of repeated violations of individuals' Fourth Amendment rights—has proximately caused Plaintiffs to avoid entering or patronizing Grand Rapids business establishments for fear of being unlawfully stopped, arrested, and jailed in violation of their Fourth Amendment rights.

118. Plaintiffs' harm in being unable to patronize Grand Rapids business establishments without fear of being unlawfully stopped, arrested and jailed is ongoing, and cannot be alleviated except by injunctive relief. If the injunction requested in this case is granted, Plaintiffs will again patronize Grand Rapids businesses. There is no adequate remedy at law.

CAUSE OF ACTION

**VIOLATION OF THE FOURTH AMENDMENT PROTECTION AGAINST
UNREASONABLE SEARCHES AND SEIZURES BY THE GOVERNMENT**

(All Plaintiffs against All Defendants)

119. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations in all preceding paragraphs.

120. The Fourth Amendment to the United States Constitution protects the people from unreasonable searches and seizures by the government. As such, it prohibits police from subjecting people to arrest in the absence of probable cause to believe the individual in question is engaged in wrongdoing.

121. Grand Rapids police officers' practice of arresting individuals for trespassing in the absence of probable cause, and based solely on the fact that the owner of the property in question had signed a generalized Letter of Intent, violates the clearly established Fourth Amendment prohibition against unreasonable searches and seizures.

122. Defendants, by arresting, jailing and prosecuting the Plaintiffs for trespassing in the absence of probable cause and based solely on the fact that the owner of the property in question had signed a generalized Letter of Intent, violated Plaintiffs' clearly established Fourth Amendment right against unreasonable searches and seizures.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Enter a judgment declaring that Defendants' reliance on generalized Letters of Intent as the sole justification for making trespass arrests violates the Fourth Amendment to the United States Constitution;
- b. Enter a judgment declaring that Defendants Guerrero and McCarthy violated Plaintiff Weber's clearly established constitutional rights by arresting him for criminal trespassing in the absence of probable cause;
- c. Enter a judgment declaring that Defendants Rekucki and Leonard violated Plaintiff Hightower's clearly established constitutional rights by arresting him for criminal trespassing in the absence of probable cause;
- d. Issue a permanent injunction restraining Defendants, their employees, agents, and successors from continuing to use generalized Letters of Intent as a basis for making individual trespass arrests;
- e. Award damages to the Plaintiffs to compensate them for the indignity of being subjected to an unlawful arrest; time spent in jail as a result of the unlawful arrest; costs incurred as a result of the unlawful arrest; pain, suffering and injury sustained as a result of the unlawful arrest and subsequent incarceration; and Plaintiffs' ongoing fear of being unlawfully arrested and jailed in the future when frequenting Grand Rapids business establishments;
- f. Award costs and attorney's fees pursuant to 42 U.S.C. § 1988; and
- g. Grant or award such other relief that this Court deems just and proper.

Respectfully submitted,

/s/ Miriam J. Aukerman

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Dated: May 14, 2013

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- B. Affidavit of Karamjit Singh
- C. *City of Grand Rapids v. Weber*, Case No. 12-OM-1530, Transcript, Hearing on Motion to Dismiss (Oct. 3, 2012)
- D. *City of Grand Rapids v. Weber*, Case No. 12-OM-1530, Opinion (Oct. 24, 2012)
- E. Feb. 5, 2013 ACLU Letter

JURY DEMAND

Plaintiffs demand a jury on all issues so triable.

Respectfully submitted,

/s/ Miriam J. Aukerman

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