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**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

Richard Banks, Judy Banks, Roger McCarren and Larry Meyer, Plaintiffs	:	Civil Action No.
	:	
v.	:	JURY TRIAL DEMANDED
	:	
Karen Gallagher, Anthony Mariano, William Stadnitski, and Dickson City Defendants	:	

**COMPLAINT**

**JURISDICTION**

1. This is an action for monetary damages and injunctive relief brought pursuant to 42 U.S.C. §1983 and §1988, and the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution and under the common law of the Commonwealth of Pennsylvania. Jurisdiction is based upon 28 U. S.C. §1331 and §1343 and the pendent jurisdiction of this Court to entertain claims arising under state law;

## **THE PARTIES**

2. The Plaintiffs, Richard Banks and Judy Banks, were at all relevant times citizens and residents of Mountaintop, Pennsylvania;

3. The Plaintiff, Roger McCarren, was at all relevant times a citizen and resident of White Mills, Pennsylvania;

4. The Plaintiff, Larry Meyer, was at all relevant times a citizen and resident of Susquehanna, Pennsylvania;

5. The Defendants, Karen Gallagher and Anthony Mariano, were at all relevant times duly appointed officers of the Police Department of Dickson City, Pennsylvania and at all times herein complained of were acting under color of state law, specifically, under color of the statutes, ordinances, regulations, policies, customs and usages of the Commonwealth of Pennsylvania and Dickson City;

6. The Defendant, Williams Stadnitski, was at all relevant times the Chief of Police for the Dickson City Police Department and, as such, had responsibility for the hiring, training and supervision of the individual officers, Defendants Gallagher and Mariano;

7. The Defendant, Dickson City, is a municipal corporation duly organized, existing and operating under and pursuant to the applicable laws of the Commonwealth of Pennsylvania and at all relevant times was the employer of the three individual Defendants and, as such has responsibility for the hiring, training,

supervision, disciplining and retention of police officers employed by the Defendant, Dickson City, including the Defendants Gallagher, Mariano and Stadnitski;

### **FACTUAL ALLEGATIONS**

8. On May 9, 2008, at or about 6:30 p.m., the Plaintiffs were legally and lawfully upon the premises of the Old Country Buffet, a public eating facility within the jurisdictional and geographic limits of the Defendant, Dickson City; all the Plaintiffs were there for purposes of having dinner at the establishment;

9. At the time, the Plaintiffs Richard Banks, Roger McCarren and Larry Meyer were, as permitted by all applicable laws and the Constitution of the United States and the amendments thereto, openly carrying legally possessed and displayed handguns, which were safely and properly secured in a holster;

10. While the Plaintiffs were so engaged, the individual Defendants, Gallagher and Mariano, arrived on the premises in a marked police car in full uniform, displaying badges of their authority and purporting to carry out their duties as the police officers in the employee of the Defendant, Dickson City;

11. Although the Plaintiffs were not doing anything improper, illegal or even suspicious, and despite the fact that the Defendants, Gallagher and Mariano had no reason to think or suspect otherwise, the Defendants nonetheless accosted the Plaintiffs, and thereafter illegally threatened, harassed, detained and/or arrested them, and otherwise interfered with their rights under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution;

**COUNT I –RICHARD BANKS, ROGER McCARREN  
AND LARRY MEYER V. GALLAGHER AND MARIANO**

12. The Plaintiffs incorporate herein by reference the allegations set forth in Paragraphs 1 through 11 of this complaint as though the same were fully set forth herein at length;

13. At the commencement of the incident, the Plaintiffs Richard Banks, Roger McCarren and Larry Meyer were ordered by the Defendants to report to a different section of the Restaurant for "investigation". What exactly was being investigated was not stated;

14. For an extended period of time thereafter, the Plaintiffs, Richard Banks, Roger McCarren and Larry Meyer were prevented from returning to eating area of the restaurant and were eventually forced to leave the premises while the Defendants, Gallagher and Mariano, illegally detained them, refused to allow them to leave and demanded, without cause or justification, that they produce identification;

15. When the Plaintiff, Richard Banks, refused to submit to the illegal demands of the individual Defendants to produce identification, he was illegally and unjustifiably handcuffed, frisked, and arrested, his personal property illegally confiscated and he was thereafter placed in the back seat of the Dickson City marked police car;

16. When the Plaintiffs, Roger McCarren and Lawrence Meyers saw the Plaintiff Banks being physically restrained, handcuffed, arrested and placed in the police car for failing to produce identification, they were coerced into providing

identification, for fear that they, too, would be handcuffed, frisked, arrested and placed in the police car;

17. Even though the Plaintiff, Roger McCarren, submitted to the illegal demand for identification, the Defendants, nonetheless again detained the Plaintiff and subjected him to an illegal search of his person;

18. In addition, after illegally seizing a handgun possessed by the Plaintiff, Roger McCarren, at the time of his detention, the Defendants refused to return it to him, on the basis that, according to some type of illegal registry maintained or available to the Dickson City Police Department, the handgun was not "registered" to the Plaintiff, Roger McCarren. Although the Plaintiff, Roger McCarren, protested that there is no legal registry to which the Defendants could refer, the Defendants nonetheless persisted in their refusal to return a handgun to the Plaintiff, Roger McCarren;

19. Furthermore, when the incident came to a close and Gallagher and Mariano realized that they had no basis for placing the Plaintiff, Richard Banks, under arrest, they did release him, but it was only after an extended period of time;

20. In addition, Gallagher and Mariano refused to return to the Plaintiff, Richard Banks, a handgun which Banks had in his possession at the time of the handcuffing, and which had been illegally confiscated and retained by the Defendants, thereby depriving the Plaintiff of his property without due process of law;

21. All of the above acts and omissions of the Defendants were carried out with a conscious and/or reckless disregard of the Constitutional Rights of the Plaintiffs to be free from unreasonable arrests, detentions, searches and seizures, and to be deprived of their property without due process of law;

22. At the time of the Plaintiffs' seizure and search by the Defendants, the Defendants had no warrant for their arrest, no probable cause for the arrest, and no just cause, justification or excuse for the arrest, detention, the seizure of their property or the demand for the production of identification;

23. The Defendants, Gallagher and Mariano, by acting as set forth above, have violated the Plaintiffs clearly established and well settled constitutional rights;

**COUNT II – JUDY BANKS AND RICHARD BANKS**  
**V. GALLAGHER AND MARIANO**

24. The Plaintiffs incorporate herein by reference the allegations set forth in Paragraphs 1 through 23 of this complaint as though the same were fully set forth herein at length;

25. When the Plaintiff, Judy Banks, saw her husband and other members of their dinner party being accosted by the Defendants Gallagher and Mariano, she began videotaping and audiotaping the encounter;

26. At that time, in violation of her First Amendment rights, Judy Banks was ordered to cease the audio and videotaping of the event, under threat of being arrested for violation of the Federal Wiretap Law;

27. Due to the illegal and unfounded threat of arrest, the Plaintiff, Judy banks, did stop the taping of the event.

**COUNT III – ALL PLAINTIFFS V. DICKSON CITY**

28. Plaintiffs incorporate herein by reference the allegations set forth in Paragraphs 1 through 27 as though the same were fully set forth herein at length;

29. Prior to the events described herein, the Defendant, Dickson City, developed and maintained policies, practices and/or customs exhibiting deliberate indifference to the constitutional rights of persons within the geographic and jurisdictional limits of Dickson City, which caused violations of the Plaintiffs' constitutional rights. Specifically, the Defendant Dickson City, failed to adequately and properly supervise and train its police officers in various aspects of law enforcement procedure and substance, including, but not limited to, the nature and existence of probable cause, on the constitutional limitations on investigative stops, detentions, searches and seizures, and on the Laws of the Commonwealth relating to the ownership and possession of firearms;

30. The above-described acts and omissions by the Defendant, Dickson City, demonstrated a deliberate indifference to the constitutional rights of citizens of Dickson City, and were the cause of the violations of the Plaintiffs' rights as set forth herein;

#### **COUNT IV- ALL PLAINTIFFS V. WILLIAM STADNITSKI**

31. Plaintiffs incorporate herein by reference the allegations set forth in Paragraphs 1 through 30 as though the same were fully set forth herein at length;

32. Prior to the events described herein, the Defendant, Stadnitski, who is the Chief of Police, acted and/or failed to act in such a way as to exhibit deliberate indifference to the constitutional rights of persons and citizens within Dickson City, which caused violations of the Plaintiffs' constitutional rights;

33. The Defendant, Stadnitski, failed to adequately and properly supervise and train its police officers in various aspects of police procedure, including, but not limited to, the nature and existence of probable cause, and the constitutional limitations on detentions arrests, searches and seizures

34. In addition, in the aftermath of the incident set forth above, the Defendant acquiesced in, adopted and ratified the improper and illegal activities of the individual Defendants, Gallagher and Mariano;

35. The above described acts and omissions by the Defendant, Stadnitski, demonstrated a deliberate indifference to the constitutional rights of citizens of Dickson City in general and of the Plaintiffs specifically, and were the cause of the violations of the Plaintiffs' rights as set forth herein;

#### **COUNT IV- ALL PLAINTIFFS V. ALL DEFENDANTS**

36. Plaintiffs incorporate herein by reference the allegations set forth in Paragraphs 1 through 35 as though the same were fully set forth herein at length;

37. The Defendants, acting in concert and under color of state law, have deprived the Plaintiffs of their rights under the First, Fourth, Fifth and Fourteen Amendments to the United States Constitution, including, but not limited to their right to free speech, their right to keep and bear arms, their right to be free from unreasonable searches and seizures and their right to not be deprived of their property without due process of law, all which is in violation of the Civil Rights Act of 1866, as amended, 42 USC § 1983;

**COUNT V- ALL PLAINTIFFS V. GALLAGHER AND MARIANO CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS**

38. Plaintiffs incorporate herein by reference the allegations set forth in Paragraphs 1 through 37 as though the same were fully set forth herein at length;

39. The Civil Rights Act of 1866, as amended, 42 USC § 1985 and §1986, prohibit conspiracies to interfere with civil rights;

40. Defendant officers violated 42 USC § 1985 in that they have conspired for the purpose of impeding, hindering, obstructing and/or defeating the due course of justice with the intent to deny the Plaintiffs the protection of the laws and to injure them and their property;

41. Defendant officers have each done and/or have caused to be done acts in furtherance of this conspiracy whereby the Plaintiffs have been injured and have been deprived of their rights and privileges as citizens of the United States;

42. The Defendant officers each had actual knowledge of the conspiracies to deprive the Plaintiffs of their rights protected by §1985, and each had the power and

the opportunity to prevent the violations from occurring and/or continuing and failed to do so;

43. As a direct and proximate result of the foregoing, the Defendants have caused the Plaintiffs to suffer significant indignities and financial and other damages and have deprived the Plaintiffs of their rights and privileges as citizens of the United States;

**COUNT VI- CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA-  
ARTICLE I § 8**

44. Plaintiffs incorporate herein by reference the allegations set forth in Paragraphs 1 through 43 as though the same were fully set forth herein at length;

45. The Defendants have denied the Plaintiffs their rights under Article I §8 of the Constitution of the Commonwealth of Pennsylvania, including their right to be secure in their person from unreasonable searches and seizures, and to be secure against arrest without probable cause;

46. As a direct and proximate result of the foregoing, the Defendants have caused the Plaintiffs to suffer significant indignities, and other damages and have deprived the Plaintiffs of their rights and privileges as citizens of the Commonwealth of Pennsylvania;

WHEREFORE, the Plaintiffs request this Court to find and determine, after trial by jury, that the Plaintiffs have suffered substantial and continuing injury as a result of the deprivation of their civil and constitutional rights and other wrongful conduct on the part of the Defendants, and to award the following relief, as appropriate:

(a). An injunction prohibiting the Defendants from any future violations of the civil and constitutional rights of the citizens;

(b). An injunction prohibiting the Defendant, Dickson City, from promulgating, or attempting to promulgate, enforcing, or attempting to enforce, any policy, rule or regulation which purports to limit, interfere with or restrict the constitutional rights of the citizens of this Commonwealth;

(c). An injunction requiring the individual Defendants to receive such additional training as may be necessary to prevent a recurrence by them of the illegal activities described above

(d). Compensatory damages in excess of \$100,000.00;

(e). Punitive damages against the Defendants, Gallagher and Mariano, in a similar amount;

(f). Pre-judgment interest, attorney's fees and costs;

(g). Such other legal and equitable relief as the Court seems just and proper.

Respectfully Submitted,

WORTH, MAGEE & FISHER, P.C.

/s/ Robert J. Magee, Esquire  
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