

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

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Kevin J. Phillips

Case Type: Battery & Others

Plaintiff,

Civil Action No. \_\_\_\_\_

v.

**COMPLAINT**

Metropolitan Council (a/b/a/Metropolitan Transit Police) , and its John Doe Officers, (whose Identities are unknown at this time), individual, personally and as employees/agents of Metro Council; and Mall of America,

Defendants.

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TO: THE COURT AND DEFENDANTS.

For his Complaint, Plaintiff Kevin J. Phillips, (herein after referred to as "Plaintiff" or "Mr. Phillips" ), states and alleges as follows:

1. That Plaintiff is an African-American male at all times relevant hereto resided in the State of Minnesota, County of Hennepin; and that Defendants, at all times relevant hereto have been doing business in the State of Minnesota and County of Hennepin where the incident leading up to this civil action occurred.

2. On October 26, 2009, Mr. Phillips arrived at the Mall of America around 6:38 p.m. via light rail train and began walking away from the train with other passengers. Suddenly Mr. Phillips sees a bus he could use and proceeds to his left to cut through

the gated area separating the tracks from people. Mr. Phillips then gets in line with other passengers waiting to board the number "539" Bus at Gate C.

3. Then, out of nowhere without warning, a man wearing a black uniform (who he now reasonably believes was a Metro Transit Police Officer), approaches Mr. Phillips from his left side. Another black uniformed male approaches Mr. Phillips from his right side. Mr. Phillips had no idea who these men were, then, he sees a third male in black uniform approaching him. These three uniformed men, who never identified themselves, then grab Mr. Phillips. They aggressively jostled Mr. Phillips to the hallway of the MOA where they slammed him up against the glass, and were continuously jabbing him with the tazer to his lower back while threatening Mr. Phillips that they were going to use the tazer on him.

4. The above jamming of the tazer in Mr. Phillips' back and telling him they were going to tazer him, caused Mr. Phillips added stress because he had just been diagnosed with a weak heart and was thinking that if "tazed" it could kill him. Mr. Phillips' legs are then kicked open aggravating his arthritic ankle and a recently scoped groin. Then finally Mr. Phillips was violently handcuffed, hurting his wrists. After Mr. Phillips was handcuffed the three officers lead him through the Mall with many other patrons watching this embarrassing sight, into a holding cell where Mr. Phillips was locked up, while still handcuffed.

5. The Metro Transit Police ("MTP") Officers who grabbed Mr. Phillips said that they were checking transfer tickets, and that this was why they stopped Mr. Phillips, thinking he did not have a valid ticket. These John Doe Officers never asked Mr.

Phillips to show a ticket, they simply pounced on him. All these Officers had to do was ask Mr. Phillips for his ticket and he would have shown them his valid ticket. But they did not. **(See, Exhibit A, Metro Transit Ticket of Phillips, issued 10/26/09 at 6:14 p.m., attached).**

6. Understand, Mr. Phillips was in line to wait for the bus, and it was obvious he was not leaving, but just standing there—where the Officers had the opportunity to simply ask to see Mr. Phillips' valid ticket. Instead, without warning these Officers assaulted, battered and falsely imprisoned, not to mention humiliated and embarrassed, Mr. Phillips in front of the many other patrons at the Mall. Had Mr. Phillips boarded the bus, these Officers could have then asked to see Mr. Phillips' ticket, and they would have seen that he had a valid ticket. Mr. Phillips never resisted these Officers and the video surveillance tape will show this to be true.

7. The Mall of America and Metro Transit Police seem to have a partnership and/or agreement in place whereby the MOA has made its facility available for the MTP Officers to conduct business, including providing the holding cells to imprison individuals, such as Mr. Phillips. Because after the Officers took Mr. Phillips from the bus or transit area outside the Mall's facility, the Transit Officers, (badges #'s 6787 and 8066), **(See, Exhibit B, Complaint (citation) from MTP dated 10/26/09 at 18:40 pm, attached)**, marched him handcuffed through the Mall and into a holding office, where Mr. Phillips was then placed in a separate holding cell in the Mall.

**COUNT I**

**("Assault")**

Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 7 set forth above, and further states and alleges as follows:

8. Defendant-Officers, intentionally and maliciously accosted Plaintiff through their hostility and demeanor making Plaintiff believe he was in the midst of imminent bodily harm.

9. Plaintiff asserts that Defendant-Metro Council through its transit officers is liable for the injuries he has suffered from the conduct of its employee/agent Defendant-Officers based upon the doctrine of respondent superior.

10. The conduct of the John Doe Officers described above, resulted in Plaintiff incurring emotional distress, mental anguish, fear for his safety, humiliation and embarrassment and physical injury.

**COUNT II**

**("Battery")**

Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 10 set forth above, and further state and allege as follows:

11. Plaintiff claims that based upon the above-referenced facts and allegations, that Defendant-Officers committed a battery upon him by his use of physical force, including handcuffing Plaintiff in such a manner causing his wrist to hurt, jabbing him in the back with the tazer and kicking his legs apart so violently, that it hurt his injured groin and arthritic ankle.

12. As a direct and proximate result of the above Plaintiff has suffered emotional distress, pain and suffering, humiliation and embarrassment. Plaintiff claims that along with Defendant-John Doe Officers, Defendant-Metro Council through the conduct of its Transit Police is liable based upon the doctrine of respondent superior, agency law.

**COUNT III**  
**(“False Imprisonment”)**

Plaintiff realleges those facts asserted in Paragraphs 1 through 12 as though set forth herein, and further states and alleges as follows:

13. Defendant-Officers did not have probable cause to detain Plaintiff; and that their conduct resulted in Plaintiff not being able to move freely of his own free will.

14. Plaintiff asserts that as a result of the above conduct by the Defendant Officers, this constituted a false imprisonment of the Plaintiff, which caused him mental anguish, emotional distress, humiliation and embarrassment, and pain and suffering and defamed his reputation. Plaintiff further claims that Defendant-Metro Council is liable based upon the doctrine of respondent superior; and that Defendant-MOA is liable based agency law, vicarious liability, joint enterprise and assumption of duty, by the Mall of America, (MOA) providing the facility for Defendant-Met Council’s transit Police to detain citizens such as Plaintiff and thereby facilitating foreseeable harm to Plaintiff.

**COUNT IV**  
**(“Negligence”)**

Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 14 set forth above, and further states and alleges as follows:

15. Plaintiff claims, based upon the above-referenced facts and allegations, that Defendants Metro Council and MOA, through its Transit Officers, who were either employees or agents of the Defendants in a joint enterprise, owed a duty of having its transit police carry out their duties in a non-negligent manner, including using ordinary and reasonable care when dealing with the public, which includes Plaintiff, and not to inflict unlawful or excessive force upon Plaintiff; but breached their duties resulting in injury to Plaintiff. Defendant-Metro Council is liable based upon respondent superior and Defendant-MOA is liable based upon joint enterprise, agency law, vicarious liability and assumption of duty.

16. As a proximate and direct result of the Defendants' conduct referenced above, Plaintiff has suffered damages and injury in the form of emotional distress, mental anguish, humiliation and embarrassment, defaming of character and pain and suffering.

**COUNT V  
("Negligent Supervision")**

Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 16 set forth above, and further states and alleges as follows:

17. Plaintiff claims, based upon the above-referenced facts and allegations, that Defendants Metro Council and MOA, negligently supervised its Transit Officer, who were either employees or agents of the Defendants in a joint enterprise, owed a duty of having its transit police carry out their duties in a non-negligent manner, including using

ordinary and reasonable care when dealing with the public, which includes Plaintiff, and not to inflict unlawful or excessive force upon Plaintiff; but breached their duties resulting in injury to Plaintiff. Plaintiff is claiming that if Defendants' had better supervision of the transit police officers in question that he would have never suffered the injuries and damages that incurred on the date in question. Defendant-Metro Council is liable based upon respondent superior; and Defendant-MOA is liable based upon joint enterprise, agency law, vicarious liability and assumption of duty.

18. As a proximate and direct result of the Defendants' conduct referenced above, Plaintiff has suffered damages and injury in the form of emotional distress, mental anguish, humiliation and embarrassment, defaming of character and pain and suffering.

**WHEREFORE,** Plaintiff prays for relief in excess of \$50,000.00 in the form of special, general and/or compensatory damages for pain and suffering, emotional distress, mental anguish, humiliation, embarrassment, including attorney's fees where applicable, costs and disbursements, interest; and for any further relief as the Court may deem equitable and appropriate in this case. Plaintiff further gives notice of his intent to motion the Court to make a claim for punitive damages.

**JESSE GANT, III, ATTORNEY AT LAW, P.A.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
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ATTORNEY FOR PLAINTIFF

