



**JURISDICTION**

3. This action is brought pursuant to 42 U.S.C. § 1983 and § 1988 and the Fourth and Fourteenth Amendments to the United States Constitution. Title 28 U.S.C. § 1331 and § 1343 provide federal question jurisdiction over all federal claims, and 28 U.S.C. § 1367 provides supplemental jurisdiction over state law claims.

**PARTIES**

4. Plaintiff Bill Ceneus is a resident of Plymouth County, Massachusetts.

5. Defendant Andrew Kalp was at all times relevant to this complaint a duly appointed police officer of the Brockton Police Department. His actions alleged in this complaint were taken under color of the laws of the Commonwealth of Massachusetts and of the City of Brockton. He is sued in his individual capacity.

6. Defendant Hermer Cole was at all times relevant to this complaint a duly appointed police officer of the Brockton Police Department. His actions alleged in this complaint were taken under color of the laws of the Commonwealth of Massachusetts and of the City of Brockton. He is sued in his individual capacity.

7. Defendant David Montrond was at all times relevant to this complaint a duly appointed school police officer and a special police officer of the City of Brockton. His actions alleged in this complaint were taken under color of the laws of the Commonwealth of Massachusetts and of the City of Brockton. He is sued in his individual capacity.

**FACTS**

8. On the morning of September 1, 2011, at approximately 7:15 a.m., Mr. Ceneus arrived at work at Save-A-Lot in Brockton, Massachusetts. Like most Save-A-Lot employees, he was wearing a red Save-A-Lot shirt. Mr. Ceneus was also wearing a red hat and black jeans. He is an African-American man.

9. At 7:33 a.m., Mr. Ceneus' colleague Ryan Smith, who is African-American, entered Save-A-Lot dressed in a red Save-A-Lot shirt and tan pants. He had a pricing gun in his back pocket.

10. Four minutes later, Defendant Kalp entered Save-A-Lot. He was responding to a report of an African-American man dressed in a red shirt and tan pants with a black gun in his back pocket who had been seen at the nearby Shell gas station and entering the Save-A-Lot.

11. When Defendant Kalp entered the store, Mr. Ceneus and Godfried Darko, another African-American man wearing a red Save-A-Lot shirt, were in the front of the store. Mr. Darko was wearing blue jeans.

12. As Defendant Kalp walked toward the cash registers, Mr. Ceneus walked past him.

13. Although Mr. Ceneus did not fit the description of the man he was looking for, Defendant Kalp turned around, looked at Mr. Ceneus, walked toward him, and said, "Hold on, wait."

14. If Mr. Ceneus had had a gun in his back pocket, Defendant Kalp would have been able to see it when Mr. Ceneus turned around.

15. Mr. Ceneus turned, took a few steps toward Defendant Kalp, and asked him what was going on.

16. Defendant Kalp claimed in his police report that Mr. Ceneus "turned away and began walking towards the back of the store." Store surveillance video shows that this did not occur.

17. Defendant Kalp grabbed Mr. Ceneus' right wrist, causing Mr. Ceneus to instinctively pull away. Mr. Ceneus had done nothing wrong; he had no reason to know why Defendant Kalp approached and grabbed him.

18. Defendant Kalp's police report claimed that Mr. Ceneus was "attempting to flee." Again, the surveillance video belies this claim.

19. Defendant Kalp said, "Don't resist," and quickly reached around Mr. Ceneus' body, grabbed him, lifted him into the air, and slammed him to the floor.

20. Surveillance video shows that five seconds passed from the moment Mr. Ceneus turned toward Defendant Kalp to speak with him and when Defendant Kalp grabbed Mr. Ceneus and lifted him into the air.

21. While Defendant Kalp was lifting Mr. Ceneus up to slam him on the floor, Defendant Cole ran in the front door and Defendant Montrond ran over from another part of the store.

22. Mr. Ceneus asked what this was about. Defendant Kalp replied, "You know what this is about."

23. Defendants Kalp, Montrond, and Cole held Mr. Ceneus down, while an officer or officers pressed their knees into his back. They spread his arms out on the floor, patted him down, and handcuffed him.

24. Defendants did not find a gun, a weapon or contraband during this search.

25. One of the Defendants asked Mr. Ceneus why he had resisted. Mr. Ceneus replied to the effect of, "I didn't resist, I was just asking."

26. Defendants Kalp and Montrond walked away. They left Mr. Ceneus handcuffed on the floor while they went to look for the person they were seeking.

27. Defendant Cole pulled Mr. Ceneus up to a sitting position.

28. Mr. Ceneus asked Defendant Cole what was going on. Defendant Cole explained that there had been a report of someone with a gun at the nearby Shell gas station and that Mr. Ceneus fit the description of that man.

29. Defendants Kalp and Montrond approached Ryan Smith, the Save-A-Lot employee who fit the description of the person they were looking for.

30. Defendant Kalp quickly ascertained that Mr. Smith had a pricing gun in his back pocket, not a firearm.

31. Defendant Kalp returned the pricing gun to Mr. Smith. Defendants Kalp and Montrond then walked away.

32. Defendants Kalp and Montrond returned to where Mr. Ceneus was sitting in handcuffs. Defendant Kalp removed the handcuffs.

33. Then Defendant Kalp asked Mr. Ceneus for identification.

34. Mr. Ceneus gave his identification to Defendant Kalp.

35. Mr. Ceneus asked again why they had done this to him. He also asked for Defendant Kalp's badge number, which Kalp provided to him.

36. Defendants did not take Mr. Ceneus into custody and did not charge him with a crime as a result of this incident.

37. Defendant Kalp had neither probable cause nor reasonable suspicion to support his stop of Mr. Ceneus.

38. Defendant Kalp was looking for a man wearing tan pants; Mr. Ceneus was not wearing tan pants. Defendant Kalp stopped Mr. Ceneus because he was an African-American man wearing a red shirt. Red shirts are part of the uniform for many Save-A-Lot employees. A number of the male employees are African-American. These two factors are insufficient to support Defendant Kalp's actions.

39. Defendants had no reason to use force on Mr. Ceneus.

40. The radio call heard by Defendant Kalp did not provide facts to suggest that the person viewed posed an immediate threat to public safety or illegally possessed a gun. There was no report that a crime had been committed or that the person sought had attempted to resist or evade arrest. Some people are licensed to carry guns, such as private security officers, police detectives, and the like.

41. Even if Mr. Ceneus were the suspect, it would have been unreasonable for Defendants to handle Mr. Ceneus in this way.

42. Defendant Kalp filed a police report containing several false statements in an effort to justify the actions of the police officers. These statements include claims that Mr. Ceneus shouted, attempted to flee, and otherwise resisted Defendant Kalp's efforts to talk to him.

43. Immediately after the incident, Mr. Ceneus left work and went to Brockton Hospital.

44. Mr. Ceneus experienced nausea and severe, constant abdominal pain after the incident. When asked at the hospital, he rated his pain as a 9 on a scale of 1 to 10 with 10 being the most severe pain possible.

45. Mr. Ceneus suffered from kidney disease before this incident. He remained in the hospital for dialysis for two weeks immediately after the incident. He missed two weeks of work.

46. As a result of Defendants' actions, Mr. Ceneus suffered physical and emotional injuries. Defendants' conduct shocked Mr. Ceneus. An ordinary morning became a nightmare. He has a chronic illness that was temporarily exacerbated by Defendants' actions. He lost weight, began having trouble sleeping, and lost his appetite. He did not have

these symptoms before the incident. Mr. Ceneus also has high blood pressure. An emotional shock could have serious consequences for him.

**COUNT I**    **Claim under 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments Against All Defendants for Unreasonable Seizure and Use of Force**

47.    The above paragraphs are incorporated by reference.

48.    Defendant Kalp initiated an unreasonable seizure of Plaintiff.

49.    Defendants Cole and Montrond, acting jointly and in concert with Defendant Kalp, continued the unreasonable seizure of Plaintiff.

50.    Defendants Kalp, Cole, and Montrond, acting jointly and in concert, used unreasonable force against Plaintiff.

51.    Defendants' actions were taken in reckless disregard of Plaintiff's well-established constitutional rights.

52.    As a direct and proximate result of Defendants' actions, Plaintiff suffered the damages described above.

**COUNT II**    **Massachusetts Civil Rights Act M.G.L. c. 12, § 11I Against All Defendants**

53.    The above paragraphs are incorporated by reference.

54.    Defendants Kalp, Cole, and Montrond assaulted and handcuffed Mr. Ceneus to stop his perceived resistance to Defendant Kalp's questioning.

55.    Acting jointly and in concert, Defendants Kalp, Cole, and Montrond violated Mr. Ceneus' civil rights under the Massachusetts Civil Rights Act, M.G.L. c. 12, § 11I, by threats, intimidation, and coercion.

56.    As a direct and proximate result of Defendants' actions, Mr. Ceneus suffered the damages described above.

**WHEREFORE**, Plaintiff requests that this Court:

1. Award compensatory damages;
2. Award the cost of this action, including reasonable attorney's fees; and
3. Award such other further relief as this Court may deem necessary and appropriate.

**JURY DEMAND**

A jury trial is hereby demanded.

RESPECTFULLY SUBMITTED,  
For the Plaintiff,  
By his attorneys,

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