

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**TERRI COOPER**

Individually and as guardian and mother of  
her son T.W.

c/o Alphonse Gerhardstein  
Gerhardstein & Branch, Co. LPA  
432 Walnut Street, Suite 400  
Cincinnati, OH 45202,

and

**T.W.**

By and through his mother Terri Cooper  
c/o Alphonse Gerhardstein  
Gerhardstein & Branch, Co. LPA  
432 Walnut Street, Suite 400  
Cincinnati, OH 45202,

and

**CARIN ALLEN**

c/o Alphonse Gerhardstein  
Gerhardstein & Branch, Co. LPA  
432 Walnut Street, Suite 400  
Cincinnati, Ohio 45202,

Plaintiffs

v.

**JENNIFER ERNST**

in her Individual Capacity  
c/o City of Cincinnati  
301 Ezzard Charles Drive  
Cincinnati, Ohio 45202,

Defendant.

: Case No. 1:10-cv-00271

:  
:  
: Judge

:  
:  
: **CIVIL COMPLAINT AND JURY**  
: **DEMAND**

### **I. Preliminary Statement**

1. This is a civil rights action challenging as excessive force the “off-lead” deployment of a police canine engaged in an article search that chased and then knocked over one of the Plaintiffs and injured the other two. Plaintiffs seek fair compensation and seek to ensure that this type of abuse does not happen in the future.

### **II. Jurisdiction**

2. Jurisdiction over the Civil Rights Act is conferred on this Court by 28 U.S.C. §§1331, 1343(3) and (4). Supplemental jurisdiction authorizes this Court to hear the state law claim(s).

### **III. Parties**

3. Plaintiff Terri Cooper is, and was at all relevant times, a citizen of the State of Ohio and is a resident of Cincinnati, Ohio. Plaintiff Cooper is the mother of plaintiff T.W.

4. Plaintiff T.W. is, and was at all relevant times, a minor child, a citizen of Ohio and a resident of Cincinnati, Ohio. He is identified only by his initials in order to protect his privacy.

5. Plaintiff Carin Allen is, and was at all relevant times, a citizen of Ohio and a resident of Cincinnati, Ohio.

6. Defendant Jennifer Ernst was at all relevant times a police officer employed by the City of Cincinnati, Ohio. Defendant is sued in her individual capacity.

### **IV. Facts**

7. On July 9, 2009, Plaintiffs Cooper and Allen were socializing outside of Plaintiff Cooper’s residence at 3067 Walters Ave., Cincinnati, OH (“the premises”). Accompanying Plaintiffs were several friends and several minor children, ranging in age from 1.5 years to 5 years.

8. Defendant Ernst was present near the premises with her K-9 partner, Bak, engaged in an article search for a missing firearm.

9. An article search is described in the City of Cincinnati Police Procedure Manual as a search for evidence or property. The police dog is trained to locate articles by tracking the residual human scent left on them. "Off-lead" deployment is not authorized by the Procedure Manual for article searches.

10. Defendant Ernst ordered everyone including Plaintiffs to "get back in the house."

11. As the Plaintiffs started to comply with Defendant Ernst' order, she deployed the dog off-lead.

12. The dog proceeded to chase the Plaintiffs into the premises that Officer Ernst had directed them to enter.

13. Plaintiff T.W., who was only one and a half years old, was still on the doorstep of the residence when the dog charged into the house.

14. The dog ran over Plaintiff T.W., forcing him to fall and injure his head on the threshold of the front door.

15. Inside the home, the dog chased Plaintiff Allen up the stairs.

16. Plaintiff Allen, who had a pre-existing fear of dogs, fell while running up the stairs and was injured.

17. The dog remained inside the residence for several minutes before Defendant Ernst retrieved him.

18. Defendant Ernst seized Plaintiffs and acted unreasonably, negligently, intentionally, recklessly, knowingly, with deliberate indifference, in a manner that shocks the conscience and in a wanton and willful manner.

19. As a direct and proximate result of the actions of Defendant Ernst, Plaintiff T.W. suffered injuries to his forehead and back. Plaintiff T.W. also suffered emotional distress. Plaintiff Cooper suffered emotional distress, and Plaintiff Allen, who had a pre-existing fear of dogs, was terrified by her encounter with the dog. In addition, she suffered injuries to her hip and to her abdomen.

**V. First Claim – Excessive Force (42 U.S.C. §1983)**

20. Defendant has, under color of law, deprived Plaintiffs of rights, privileges, and immunities secured by the United States Constitution including the Fourteenth and Fourth Amendments to the United States Constitution.

**VI. Second Claim - Assault and Battery**

21. Defendant Ernst intentionally applied and threatened to apply unlawful and unauthorized force against the Plaintiffs.

**VII. Third Claim - Infliction of Emotional Distress**

22. Defendant Ernst intentionally and/or negligently inflicted severe emotional distress on Plaintiffs.

**VIII. Jury Demand**

23. Plaintiffs request a jury trial on all claims triable to a jury.

**IX. Prayer for Relief**

WHEREFORE, plaintiffs request the Court to award them:

- A. Compensatory damages in an amount to be shown at trial;
- B. Punitive damages in an amount to be shown at trial;
- C. Costs incurred in this action;
- D. Reasonable attorney fees under 42 U.S.C. §1988;

- E. Prejudgment interest;
- F. Such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/Alphonse A. Gerhardstein  
Alphonse A. Gerhardstein #0032053  
Attorney for Plaintiffs  
Jennifer L. Branch #0038893  
Attorney for Plaintiffs  
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JS 44 (Rev. 12/07)

**CIVIL COVER SHEET** case no. 1:10-cv-00271

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Terri Cooper, Individually and as guardian and mother of her son  
T.W., T.W., and Carin Allen

(b) County of Residence of First Listed Plaintiff Hamilton  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Alphonse A. Gerhardstein 432 Walnut Street, Suite 400  
Gerhardstein & Branch Cincinnati, OH 45202 (513) 621-9100

**DEFENDANTS**

Jennifer Ernst

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN**

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 USC § 1983

Brief description of cause:

Defendant used excessive force in violation of the 4th & 14th Amendments, injuring Plaintiffs

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** to be determined CHECK YES only if demanded in complaint: **JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

4/29/10

SIGNATURE OF ATTORNEY OF RECORD

a a Gerhardstein

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_