

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT
CAUSE NO.

REGINA T. CHIAPPAZZI,)
)
Plaintiff,)
)
v.)
)
CITY OF FORT WAYNE and ALLEN)
COUNTY SHERIFF DAVID GLADIEUX.)
)
Defendants.)

COMPLAINT

Comes now Plaintiff, by counsel, and alleges against the Defendants as follows:

1. The Plaintiff is Regina T. Chiappazzi, a resident of Allen County, Fort Wayne Indiana at all materials times to this Complaint.
2. The Defendants include the City of Fort Wayne and the Allen County Sheriff David Gladieux, who are each named in their representative capacity as the employers of various law enforcement personnel who violated the Plaintiff's rights by subjecting her to state tort battery in violation of her rights under the laws and public policies of the state of Indiana. Under the doctrine of *respondeat superior*, the City and Sheriff are liable for the state torts of their employees that were committed against the Plaintiff.
3. Defendants City of Fort Wayne and the Allen County Sheriff, and each of them, are also named in their official capacity pursuant to 42 U.S.C. § 1983. At all materials times to this complaint, the City of Fort Wayne and Allen County Sheriff were responsible for unconstitutional and/or constitutionally deficient policies, practices, procedures, and customs that were in effect during May 29, 2020, that governed their law enforcement personnel's use of force against, and response to citizens participating in peaceful public

protests, which subjected the Plaintiff to excessive and unreasonable force, and unlawful infringements on her right to freedom of speech and freedom of assembly, rights protected under the Fourth Amendment and/or First Amendments of the United States Constitution, and 42 U.S.C. § 1983. In the alternative, the City and Sheriff failed to adequately train and supervise their personnel regarding the appropriate as opposed to inappropriate use of force against individuals engaging in public protests, which led to the violations of the Plaintiff's rights under the First and Fourth Amendments and § 1983.

4. The Plaintiff issued a Tort Claim Notice on July 30, 2020, a copy of which is attached hereto, incorporated herein and made apart hereof as Exhibit "A". All administrative remedies have been exhausted, and all jurisdictional prerequisites have been met for the filing of this lawsuit.
5. Fort Wayne Indiana is home to a diverse group of people, with a population of over 253,000 as of the 2010 census. Plaintiff Regina Chiappazzi and her husband are two of those people that make this City their home.
6. The Plaintiff Ms. Chiapazzii and her husband are two of the many that people who make Fort Wayne, Indiana their home, and they lived in Fort Wayne during the Black Lives Matter protests of 2020. Following the murder of George Floyd in Minneapolis on May 25, 2020, citizens across America including in Fort Wayne, gathered to publicly and peacefully protest against law enforcement abuses, as well as systemic racism and its harmful influence over police actions against (among others) people of color and communities of color.
7. During the evening of May 29, 2020, Ms. Chiappazzi and her husband visited downtown Fort Wayne, where their fellow citizens had gathered to peacefully protest against incidents

of law enforcement's use of excessive force and police brutality. Being individuals with a social conscience, and because Fort Wayne is their home, Ms. Chiappazzi and her husband spent around 2 hours speaking with various law enforcement personnel and protesters, in an effort to do their part to de-escalate tensions between the two groups and facilitate the continued peaceful assembly of concerned citizens.

8. At around 9:20 pm, Ms. Chiappazzi and her husband decided to leave downtown Fort Wayne, so they began the walk back to their car to go home. Their car was parked on Berry Street near the PNC building downtown. They initially attempted to walk south on Clinton Street, and encountered a police officer (either with the Fort Wayne Police Department or Allen County Sheriff's Department) in riot gear.
9. At around this time, tear gas (or some similar chemical agent) had been and was being deployed by the Defendants' personnel in the vicinity. Tear gas was by its nature, causes pain, burning and irritation to the eyes, nose, throat, and impaired breathing, and can also cause nausea, respiratory failure, and blindness.
10. Ms. Chiappazzi asked if there was a way to leave without going through tear gas, and the officer instructed them to leave by way of Barr Street to get to their car, which intersected with Berry Street, but some blocks away. Following the officer's directions, Ms. Chiappazzi and her husband circled over to Berry Street, then waited for the corner cross walk light to change before continuing across. They were met with a cloud of tear gas as they continued peacefully across Clinton Street. Both stopped momentarily, as they struggled to get their breath through the chemical poison which the police had already shot into the air, then Chiappazzi and her husband continued with their now arduous trek back to the car.

11. After a couple of more momentary stops to catch their breath, the couple reached the intersection of Berry and Calhoun Streets.
12. At that point, two new rounds of tear gas were shot off by the City of Fort Wayne and Allen County Sheriff's police. One of the cannisters of tear gas the police shot off struck Ms. Chiappazzi in the leg. Only five other people were within 50 feet of her at the time and there was no violent activity taking place at this intersection. One gentleman, along with other individuals, saw Ms. Chiappazzi get wounded. He along with a couple of the others, helped move her to a nearby wall to get her out of the line of fire from additional rounds of tear gas that the Defendants' personnel were continuing to shoot at them and in their direction.
13. Ms. Chiappazzi, who by this point was unable to walk unaided, saw her car parked on the opposite side of the street. As she was carried to it by one person of the civilians while another person guided her wheezing husband to the car, since he could barely, if at all, see due to the tear gas.
14. Once in their car, Ms. Chiappazzi and her husband were finally able to leave the area. After dropping her husband off at home (a brief distance from where they had been parked) Ms. Chiappazzi drove to the hospital for medical treatment of her leg wound. She was later released with a knee mobilizer, crutches, along with recommendations to follow up with an orthopedic doctor to make sure she had not suffered a fracture in her leg. Later, when Ms. Chiappazzi saw an orthopedic specialist, she was informed that although luckily there was no fracture, but that she did have a very large hematoma.
15. The Plaintiff Regina Chiappazzi contends that police personnel that were employed by the City of Fort Wayne and the Allen County Sheriff, subjected her to state tort battery, when

they shot their tear gas/ chemical agent in her immediate vicinity and at her.

16. The Defendants City of Fort Wayne and the Allen County Sheriff, and each of them, in their representative capacity, are liable to Ms. Chiappazzi for the state tort battery, because their personnel were acting within the scope of their employment when they repeatedly shot the tear gas in Ms. Chiappazzi's immediate vicinity, and when they shot it at her. The City and Sheriff are liable to Ms. Chiappazzi for the battery under the doctrine of *respondeat superior*.
17. Ms. Chiappazzi contends that the complained of acts of battery also constituted excessive and unreasonable force, in violation of her right to be free from unreasonable seizure under the Fourth Amendment and § 1983.
18. She additionally contends that she would not have been subjected to the excessive force, but for the unconstitutional and/or constitutionally deficient policies, practices, procedures, and/or customs of the City of Fort Wayne and Allen County Sheriff pertaining to law enforcement's response to, and use of force against, Ms. Chiappazzi and other individuals that were present and/or participants in public protests.
19. The complained of conduct of the City's and Sheriff's police personnel unlawfully interfered with and unlawfully infringed against her First Amendment rights to free speech and freedom of assembly, and the complained of actions were taken in order to retaliate against Ms. Chiappazzi (and other peaceful protesters) for exercising their First Amendment rights.
20. Ms. Chaipazzi furthermore contends, that the violations of her First Amendment rights were the consequence of the City's and Sheriff's unconstitutional and/or constitutionally deficient policies, practices, procedures, and/or customs that governed their law

enforcement personnel's response to Ms. Chiappazzi's and other citizen's presence and/or participation in public protests.

21. Ms. Chiappazzi additionally and/or in the alternative contends that the excessive force, the violations of her right to free speech and to peacefully assemble, and right to not be violently retaliated against by the police for exercising her First Amendment rights, was caused by the failure City and Sheriff to adequately train and/ adequately supervise their personnel on the appropriate response and use of force against individuals that participate in and/or are otherwise present at public protests.

22. The complained of conduct of the Defendants, and each of them, was the direct and proximate cause of the Plaintiff Ms. Chiappazzi suffering violations of her rights under the First and Fourth Amendments to the United States Constitution, § 1983, and the laws and public policies of the state of Indiana, and additionally subjected her to physical pain, injury, inconvenience, mental anguish, emotional distress, medical bills, and other damages and injuries.

23. The complained of unconstitutional and tortious conduct of the Defendants and each of them, was also intentional, knowing, willful, wanton, and in reckless disregard of the Plaintiff's federally protected rights under the First Amendment, Fourth Amendment, § 1983, and the laws and public policies of the state of Indiana.

WHEREFORE, Plaintiff respectfully requests judgment against the Defendants, and each of them, for compensatory damages, interest, reasonable attorney's fees and costs, and all other just and proper relief in the premises.

JURY DEMAND

Pursuant to Rule 38 of the Indiana Rules of Trial Procedure, Plaintiff demands a trial by jury in this action.

Respectfully submitted,

CHRISTOPHER C. MYERS & ASSOCIATES

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