

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

**SARAY PRATT,
KATEY DAVID,
ROBERT KOWALSKI,
JASON STEWARD,
TERRANCE JOHNS, JR.,
BENJAMIN HINSEY,
ROBERT BARNER,
CHRISTOPHER BANKS,
ROBERT HILLIER,
SHELBY HILLIER,
MICHAEL CARPENTER,
TAYLOR HARRISON,
CHASE KELLER,
DEVIN RUIZ,
KERYN WERDEHOFF,
CAMERON SINGLETON,
SIENNA SALAS, BY AND THROUGH HER MOTHER
KIMBERLY WELCH,
ZACHARY DEMPSTER,
ALYX KENDZIERSKI,
ELIJAH YOUNG,
ISABELLA BRAZZIL,
DEAN MCNEAL,
c/o Friedman, Gilbert + Gerhardstein
50 Public Square, Suite 1900
Cleveland, Ohio 44113,**

Johnson and Associates,
2927 N. McCord Road, Suite 100
Toledo, Ohio 43615

Plaintiffs,

v.

**CITY OF TOLEDO,
DEPUTY CHIEF MICHAEL TROENDLE,
OFFICER ROBERT ORWIG,
JOHN DOE TOLEDO POLICE OFFICERS 1-35,
c/o Toledo Law Department**

Case No.

Judge

COMPLAINT

(JURY DEMAND ENDORSED HEREON)

1 Government Ctr., #2250
Toledo, Ohio 43604,

Defendants.

Plaintiffs Saray Pratt, Katey David, Robert Kowalski, Jason Steward, Terrance Johns Jr., Benjamin Hinsey, Robert Barner, Christopher Banks, Robert Hillier, Shelby Hillier, Michael Carpenter, Taylor Harrison, Chase Keller, Devin Ruiz, Keryn Werdehoff, Cameron Singleton, Sienna Salas by and through her mother Kimberly Welch, Zachary Dempster, Alyx Kendzierski, Elijah Young, Isabella Brazzil and Dean McNeal for their Complaints against Defendants City of Toledo, Deputy Chief Troendle, Officer Robert Orwig, and John Doe Officers 1-35, allege as follows:

INTRODUCTION

1. This is a civil rights action. On Saturday, May 30, 2020, people gathered in cities across the world to protest racial injustice and police brutality, prompted by the police murder of George Floyd in Minneapolis. In Toledo, several hundred individuals gathered as part of this world-wide mobilization. The City of Toledo, through its police department, were present in the area of the protest allegedly to keep the peace. However, rather than protecting and facilitating protected free speech and assembly, as mandated by the First Amendment, the police brutalized peaceful protesters, shooting wooden and rubber bullets indiscriminately and directly at people, causing serious injury, pain, and fear.

2. Plaintiffs were all protesters in Toledo who posed no threat to law enforcement or to the community when Toledo Police opened fire against them with wooden and rubber bullets. There was no justification for this excessive and unnecessary force against peaceful protestors.

JURISDICTION AND VENUE

3. The Jurisdiction of the court is invoked pursuant to the Civil Rights Act, 42 U.S.C. §1983 et seq; the Judicial Code, §§1331 and 1343(a); and the Constitution of the United States.

4. Supplemental jurisdiction over the related state law claims is invoked pursuant to 28 U.S.C. §1367.

5. Venue is proper in this District under 28 U.S.C. § 1391(b). The parties reside, or, at the time the events took place, resided in this judicial district, and the events giving rise to Plaintiffs' claim also occurred in this judicial district.

PARTIES

6. Plaintiff Saray Pratt, at all times relevant to the allegations made in this complaint, resided in Lucas County, Ohio.

7. Plaintiff Katey David, at all times relevant to the allegations made in this complaint, resided in Wood County, Ohio.

8. Plaintiff Robert Kowalski, at all times relevant to the allegations made in this complaint, resided in Lucas County, Ohio.

9. Plaintiff Jason Steward, at all times relevant to the allegations made in this complaint, resided in Lucas County, Ohio.

10. Plaintiff Terrance Johns Jr., at all times relevant to the allegations made in this complaint, resided in Lucas County, Ohio.

11. Plaintiff Benjamin Hinsey, at all times relevant to the allegations made in this complaint, resided in Lucas County, Ohio.

12. Plaintiff Robert Barner, at all times relevant to the allegations made in this complaint, resided in Lucas County, Ohio.

13. Plaintiff Christopher Banks, at all times relevant to the allegations made in this complaint, resided in Lucas County, Ohio.

14. Plaintiff Robert Hillier, at all times relevant to the allegations made in this complaint, resided in Lucas County, Ohio.

15. Plaintiff Shelby Hillier, at all times relevant to the allegations made in this complaint, resided in Lucas County, Ohio.

16. Plaintiff Michael Carpenter, at all times relevant to the allegations made in this complaint, resided in Lucas County, Ohio.

17. Plaintiff Taylor Harrison, at all times relevant to the allegations made in this complaint, resided in Wood County, Ohio.

18. Plaintiff Chase Keller, at all times relevant to the allegations made in this complaint, resided in Seneca County, Ohio.

19. Plaintiff Devin Ruiz, at all times relevant to the allegations made in this complaint, resided in Lucas County, Ohio.

20. Plaintiff Keryn Werdehoff, at all times relevant to the allegations made in this complaint, resided in Lucas County, Ohio.

21. Plaintiff Cameron Singleton, at all times relevant to the allegations made in this complaint, resided in Wood County, Ohio.

22. Plaintiff Sienna Salas, by and through her mother Kimberly Welch, at all times relevant to the allegations made in this complaint, resided in Lucas County, Ohio.

23. Plaintiff Zachary Dempster, at all times relevant to the allegations made in this complaint, resided in Lucas County, Ohio.

24. Plaintiff Alyx Kendzierski, at all times relevant to the allegations made in this complaint, resided in Lucas County, Ohio.

25. Plaintiff Elijah Young, at all times relevant to the allegations made in this complaint, resided in Lucas County, Ohio.

26. Plaintiff Isabella Brazzil, at all times relevant to the allegations made in this complaint, resided in Lucas County, Ohio.

27. Plaintiff Dean McNeal, at all times relevant to the allegations made in this complaint, resided in Lucas County, Ohio.

28. Defendant City of Toledo is an Ohio Political Subdivision that operates the Toledo Police Department. Defendant City of Toledo is a unit of local government duly organized under the laws of the State of Ohio residing in the Northern District of Ohio acting under the color of law. Defendant County is a “person” under 42 U.S.C. § 1983. Defendant County is the employer and principal of Deputy Chief Michael Troendle, Officer Robert Orwig, and John Doe Toledo Police Officers 1-35, and is responsible for the policies, practices, and customs of the Toledo Police Department.

29. Defendants Deputy Chief Michael Troendle, Officer Robert Orwig, and John Doe Toledo Police Officers 1-35 were at all times relevant to the allegations made in this complaint, duly appointed police officers employed by the Toledo Police Department, acting within the scope of their employment and under the color of state law. They are sued in their individual capacities.

FACTS

Protests in downtown Toledo on May 30, 2020

30. On May 26th, 2020, protests began in Minneapolis in response to police brutality and specifically the police murder of George Floyd by Minneapolis Police Department officer Derek Chauvin. Protests began in Toledo, Ohio on May 30, 2020. Similar protests were taking place around the country, and around the world, ultimately spreading to 2,000 cities and 60 countries. 26 million people in the United States participated in the protests, making it the largest protest demonstration in the nation's history.

31. The City of Toledo and the Toledo Division of Police anticipated that protests would continue as they had across the country and had time to plan for a proper police response.

32. On Saturday, May 30, 2020, at 3 P.M. in Toledo, Ohio a scheduled protest took place. A peaceful crowd of several hundred individuals gathered at the intersection of North Erie and Jackson Streets outside the Toledo Police Safety Building located at 525 North Erie Street.

33. There were a number of activist speakers and people waved flags and held signs as they listened. Toledo police officers watched from a distance and two drones flew over the members of the crowd as they listened to the protest speeches.

34. Around 4:30 P.M., the scheduled event ended and the peaceful crowd marched up North Erie Street and turned left on Cherry Street. The crowd marched up to Cherry Street and Spielbusch Streets where the crowd was sprayed with chemical agents and several individuals were wounded with police projectiles.

35. The police officers and vehicles then left the immediate area and the crowd of several hundred peaceful protestors marched up to the corner of Cherry and Bancroft Streets.

Many members of the crowd were brutally shot with wooden and rubber bullets by the police officer in the gun turret of the Toledo Police SWAT armored tactical vehicle at the intersection of Cherry and Bancroft Streets between 5 and 5:30 P.M.

36. The crowd split into various groups and the SWAT tactical vehicle and accompanying police vehicles followed a group of protestors down Bancroft Street. Numerous individuals were wounded with wooden and rubber bullets approaching to and near the intersection of Bancroft and Franklin Streets near the abandoned shopping plaza and the fire station.

37. The protestors continued marching peacefully to the intersection of 17th and Adams Streets where Saray Pratt was brutally shot around 6:30 P.M. while standing and peacefully holding a sign. Protestors were continually assaulted with wooden and rubber bullets and a woman was pulled off an ATV by her hair near the intersection of 17th and Adams Streets.

38. One individual was peacefully standing on the sidewalk with his hands in the hair and was maced at point blank range by a Toledo police officer. The protestors eventually ended up back near the Lucas County Court of Common Pleas between 7 and 9 P.M. where a line of police officers formed wearing riot helmets and holding shields.

39. Eventually, the line of police officers began pushing protestors out of the lawn of the Lucas County Court of Common Pleas. Canisters of chemical agents were also being dropped from the roof of the courthouse at protesters.

40. Toledo Mayor Wade Kapszukiewicz instituted a curfew to last from 9 P.M. on Saturday May 30th until 6 A.M. on Sunday, May 31st, 2020.

Saray Pratt

41. Saray Pratt is a 29-year-old Latinx woman who was protesting at the intersection of 17th and Adams streets in Toledo, Ohio on May 30, 2020. At all times relevant to this complaint, Saray was participating in First Amendment protected activity.

42. Saray did not pose a threat to any person, law enforcement or otherwise, at any time while she was peacefully protesting.

43. Pratt was standing peacefully, wearing black pants and wearing a white shirt while holding a Black Lives Matter sign, when she was shot around 6:30 P.M. by a Toledo police officer in an armored vehicle, pictured in Figures A & B below:



Figure A



Figure B

44. Defendant Orwig emerged from the turret on top of the SWAT vehicle, purposely aimed at Pratt, and fired a wooden bullet into her leg. Pratt fell to the ground.

45. Defendant Orwig and John Doe Officers 1-4 continued down Bancroft Street shooting less- individuals from the turret instead of offering or rendering medical attention to Pratt.

46. As a result of the officer's brutal excessive force, Pratt sustained four fractures in her tibia.

47. Saray Pratt did not pose any harm to anyone at the time she was shot with a wooden bullet by Defendant Officer Orwig.

Katey David

48. Katey David is a 29-year-old white woman who was volunteering as a medic on May 30, 2020, offering free first aid to people in need during the protest.

49. Katey was kneeling in a grassy area administering medical assistance to injured protestors when Defendant Officer Orwig and/or John Doe Officer 5 came out of the turret of the armored vehicle and directly fired a wooden bullet at the back of Katey's head.

50. At the time she was shot, Katey was not posing a threat to anyone and was not engaged in criminal activity.

51. Upon information and belief, Defendant Orwig or John Doe Officer 5 was the shooter in the armored vehicle.

52. Although David did not pose a threat to anyone, in fact she was helping others, she was met with excessive force causing serious injury to the back of her head, as pictured in Figure C below:



Figure C

53. David pleaded to the police officers for assistance or transportation to the hospital. They refused, and said “you get what you get, bitch.”

Robert “Louie” Kowalski

54. Robert “Louie” Kowalski is a 31-year-old white male who was observing the Black Lives Matter protests in Toledo.

55. Robert was peacefully walking on the sidewalk near the intersection of North Erie and Jackson Street when over a dozen Toledo police officers armored in tactical gear, face visors, and gas masks approached a group of innocent individuals, including Robert. Officers appeared as pictured in Figure D below:



Figure D

56. While videotaping police activity near the Lucas County Common Pleas Courthouse, Robert was struck with a wooden bullet which was shot from an armored Toledo Police SWAT vehicle and then shot again 3-5 seconds later.

57. Upon information and belief, Defendant Orwig or John Doe Officer 6 was the shooter in the armored vehicle.

58. At the time he was shot, Robert was not posing a threat to anyone and was not engaged in criminal activity.

59. Defendant Orwig or John Doe Officer 6 shot Robert in the hand with a wooden bullet, pictured in Figure E below:



Figure E

60. Defendant Orwig or John Doe Toledo Police Officer 6 then shot Robert in the eye near his face 3-5 seconds later.

61. The two wooden bullets fractured Kowalski's eye socket and injured his thumb and hand.

62. Robert required stitches to close the wound near his eye. His eye was swollen and bruised. Kowalski's eye is pictured below in Figure F.



Figure F

Terrance Johns Jr.

63. Terrance Johns Jr. is a 32-year-old Black man who was exercising his First Amendment rights by peacefully protesting at the intersection of Bancroft and Cherry Street in Toledo, Ohio on May 30, 2020.

64. Terrance was among a group of peaceful protestors met with police and SWAT officers unnecessarily firing chemical agents, pepper-balls and wooden bullets.

65. While standing in the median near Cherry and Spielbusch streets, Terrance was sprayed with a chemical agent.

66. Later that same day, while holding a protest sign, Terrance was shot with a wooden bullet in his right ankle, fracturing it.

67. Johns' foot was immensely swollen, pictured in Figure G below:



Figure G

68. Upon information and belief, Defendant Orwig or John Doe Toledo Police Officer 7 was the shooter in the armored vehicle.

69. At the time he was shot, Terrance was not posing a threat to anyone and was not engaged in criminal activity. Rather, he was engaged in First Amendment protected protest activity.

70. Defendant Toledo Police Officer unnecessarily and maliciously continued to shoot at medics as they tried to help Terrance.

Benjamin Hinsey

71. Benjamin Hinsey is a 29-year-old white man who was peacefully protesting police brutality near the intersection of Franklin and Bancroft Street in downtown Toledo.

72. While standing on the sidewalk, John Doe Toledo Police Officer 8 shot wooden bullets at Benjamin from the turret of the armored vehicle.

73. Upon information and belief, Defendant Orwig or John Doe Officer 8 was the shooter in the armored vehicle.

74. At the time he was shot, Benjamin was not posing a threat to anyone and was not engaged in criminal activity.

75. Hinsey was shot in his leg between his thigh and knee leaving a wound and bruise roughly eight inches across, pictured in Figure H below:



Figure H

76. Hinsey's wound was treated at Northwest Ohio Urgent Care, LLC Network located at 5911 Benore Road, Toledo, OH 43612.

77. Hinsey did not pose a threat to any individual while he peacefully protested on May 30, 2020.

Keryn Werdehoff and Devin Ruiz

78. Keryn Werdehoff is 45-year-old white woman who attended the peaceful Black Lives Matter Protest in Toledo, Ohio on May 30, 2020 with her 26-year-old son Devin Ruiz.

79. Ruiz wore a bulletproof vest to the protest to protect himself from any excessive force to come from the Toledo police officers. He was shot several times in his back, but due to the bulletproof vest he did not need treatment.

80. As Werdenhoff and Ruiz walked on the sidewalk on Adams Street, a Toledo police officer forcibly pushed Ruiz off of the sidewalk.

81. Around 8:00 p.m. Werdenhoff was peacefully walking to leave the protest when she was struck in her back by a wooden bullet leaving a sizeable welt, pictured in Figure I below:



Figure I

Christopher Banks

82. Christopher Banks is a 34-year-old Black man who participated in the protests in Toledo on May 30, 2020.

83. Christopher continuously verbally encouraged the peaceful protestors to follow police orders.

84. At the intersection of Cherry and Bancroft Street in Toledo, Ohio, Christopher was shot six to seven times with pepperballs by John Doe Toledo Police Officers 9-13. He was shot in his side, abdomen, thigh, head, shoulders, hip and leg.

85. In addition to the Defendants John Does 9-13 shooting Christopher multiple times wooden bullets, these Defendant John Doe Officers also deployed chemical agents on Banks.

86. At the time he was shot, Christopher was not posing a threat to anyone and was not engaged in criminal activity.

Robert and Shelby Hillier

87. Robert Hillier is a 23-year-old white man who drove with his wife Shelby Hillier, a 28-year-old white woman, from Bowling Green, Ohio to participate in the Black Lives Matter protest in Toledo on May 30, 2020.

88. While engaged in peaceful protest, John Doe Toledo Police Officer 14 shot Robert with wooden bullets multiple times. He was struck in his right ankle, back of his right arm, and his left hip.

89. Shelby was walking on the sidewalk when John Doe Toledo Police Officer 14 shot wooden bullets at her, striking her in the arm and hip.

90. Upon information and belief, Defendant Orwig or John Doe Officer 14 was the shooter in the armored vehicle.

91. At the time they were shot, Robert and Shelby were not posing a threat to anyone and were not engaged in criminal activity.

Robert Barner

92. Robert Barner is a 34-year-old Black man who attended the peaceful protests in downtown Toledo. Barner listened to activists' speeches at the corner of Jackson and North Erie Street outside of the Toledo Police Department Headquarters on May 30, 2020.

93. Following the speeches, Barner began to march with the other protestors. They progressed up North Erie Street and then traveled westbound on Cherry Street.

94. As Barner and other peaceful protesters approached the intersection of Cherry and Spielbusch Streets, they were hit with chemical agents by Toledo Police.

95. Later, Barner was again met with unnecessary force.

96. Near the intersection of Cherry and Bancroft Street, while simply standing and appropriately exercising his First Amendment right, Barner was struck by a wooden bullet in his leg, pictured in Figure J below, causing him injury and pain.



Figure J

97. Upon information and belief, Defendant Orwig or John Doe Officer 15 was the shooter in the armored vehicle.

98. At the time he was shot, Robert was not posing a threat to anyone and was not engaged in criminal activity.

Michael Carpenter

99. Michael Carpenter is a 24-year-old Black man who participated in the peaceful protest in Toledo, Ohio on May 30, 2020.

100. Michael listened to the scheduled speakers at the corner of Jackson and N. Erie Streets outside of the Toledo Police Department Headquarters.

101. Michael and others then marched northbound up North Erie Street and continued westbound on Cherry Street.

102. The group stopped near the Rite Aid parking lot located at Cherry and Bancroft Street.

103. While at the intersection of Cherry and Bancroft Street, Michael observed the Toledo Police SWAT Bearcat rolling down the street, approaching the group. Suddenly, Michael was shot in his back from a distance of approximately ten feet with a wooden bullet fired by Defendant Officer Orwig and/or John Doe Toledo Police Officer 16, who was in the armored vehicle.

104. Later, when Michael and others were trying to leave the protest in compliance with the newly enacted city curfew, he and others were again assaulted by projectiles from the Bearcat.

105. Michael yelled out to the firing officer, “we’re leaving.” However, the officer in the Bearcat yelled “f*** you” and shot another wooden bullet directly at Michael, this time striking the right side of his face.

106. Upon information and belief, Defendant Orwig or John Doe Toledo Police Officer 16 was the shooter in the armored vehicle.

107. At the time he was shot, Michael was not posing a threat to anyone and was not engaged in criminal activity.

Taylor Harrison

108. Taylor Harrison is a 30-year-old white woman who works to promote social justice and attended the protest in Toledo, Ohio on May 30, 2020 with two of her friends.

109. Taylor marched with the crowd up North Erie Street and continued down Cherry Street following speeches from activists.

110. On Bancroft Street, protestors kneeled. Harrison stood behind the kneeling protestors.

111. As she stood in solidarity, Toledo Police shot at her from the turret of the armored vehicle. Taylor was stuck twice by wooden bullets in her stomach, pictured in Figure K below, leaving deep welts that took weeks to heal.



Figure K

112. Taylor was also hit in the leg by a skip-fired wooden bullet, a wooden bullet that is meant to be fired at the ground, which ricocheted up to strike and injure her leg.

113. Upon information and belief, Defendant Orwig or John Doe Toledo Police Officer 17 was the shooter in the armored vehicle.

114. At the time she was shot, Taylor was not posing a threat to anyone and was not engaged in criminal activity.

115. The attack on Harrison for standing did not end with wooden bullets. Near the intersection of 17th and Adams Street, Toledo Police Officer John Doe 17 shot Taylor with several pepperballs that hit her in her groin.

116. Unable to withstand any additional pain or potential future injury, Harrison abandoned the protest.

Sienna Salas

117. Sienna Salas was 16 years old when she protested on May 30, 2020 in Toledo, Ohio following the murder of George Floyd. Sienna Salas is now 17 years old.

118. Due to the fact that Salas is a minor, she joins the Complaint by and through her Mother, Kimberly Welch.

119. As Salas attempted to offer assistance to a person being yanked off a motorcycle by their hair near 17th and Adams Streets, she was fired upon with chemical agents at point-blank range by John Doe Toledo Police Officer 18.

120. Sienna was also harmed by projectiles shot at her by John Doe Toledo Police Officer 19.

Dean McNeal

121. Dean McNeal is a 28-year-old Black man who attended the protest on May 30, 2020 in Toledo, Ohio.

122. As McNeal peacefully protested at the intersection of Cherry and Bancroft Street, Defendant John Orwig or Defendant John Doe 20, firing from the armored police vehicle, struck McNeal near his eye with a wooden bullet.

123. Due to Defendant John Orwig's and/or Defendant John Doe Officer 20's excessive force, dislodging wooden bullets at peaceful protestors, McNeal is unable to drive at night because he has lost vision in his injured eye.

Chase Keller

124. Chase Keller is a 25-year-old retired Marine.

125. On May 30, 2020, Chase joined the peacefully protests in Toledo, Ohio.

126. Chase observed John Doe Toledo Police officer fire at and strike Saray Pratt with a wooden bullet.

127. After Saray's injury, Toledo police continued to shoot at fellow demonstrators who attempted to render her aid. Chase attempted to shield others from the police attack and was hit by wooden bullets in the chest and calf.

Cameron Singleton

128. Cameron Singleton is 24-year-old white man who participated in peaceful protests in Toledo, Ohio on May 30, 2020.

129. Singleton while peacefully protesting was struck multiple times by projectiles.

130. Defendant John Doe Toledo Police Officer 21 and/or Defendant Officer Orwig shot Cameron with a tear gas canister, which impacted his right shin, and with a wooden bullet, which impacted his right leg.

131. Cameron sustained significant wounds from Defendant Orwig's and/or Defendant John Doe Officer 21's excessive use of force at the protest, pictured in Figure L below:



Figure L

Jason Steward

132. Jason Steward is a 28-year-old Black man who marched in the peaceful protest on May 30, 2020 in Toledo, Ohio.

133. Once the Toledo police officers began firing tear gas into the crowd, Steward voluntarily tried to act as a buffer between police and protestors.

134. Deputy Chief Michael Troendle approached Steward, who was identified as a de facto leader, and spoke with him about what police could do to calm the situation. Steward told Troendle that the solution was simple, the Toledo police needed to stop shooting at the protestors.

135. Despite Steward's cooperation with the Toledo police, while standing to act as a buffer to diffuse tension between protestors and police offices, Steward was struck three times by

wooden bullets - twice in his right foot and once in his right shin area, pictured in Figures M & N below, which required stitches.



Figure M



Figure N

136. Upon information and belief, Defendant Orwig or John Doe Officer 22 shot at Steward with wooden bullets, striking him.

137. At the time he was shot, Steward was not posing a threat to anyone and was not engaged in criminal activity.

Zachary Dempster

138. Zachary Dempster is a 40-year-old white man. Dempster attended the peaceful protest in Toledo, Ohio on May 30, 2020.

139. Dempster participated in the march with the other protestors until he witnessed the Toledo officers deploying violence onto the protestors. At this time, he made his way to the top of a grassy hill.

140. As Dempster was upon the hill, the armored Bearcat appeared from the south and headed north along Franklin Avenue. When Dempster recognized an officer was shooting protestors from the Bearcat, he proceeded down the grassy hill, following a crowd through an alley to get away from the shooting.

141. Despite Dempster's efforts to escape the violent situation, he was struck numerous times by wooden bullets about the size of marshmallows coming from the Bearcat, being shot by Defendant Orwig and/or Defendant John Doe Toledo Police Officer 23. He was struck once in his neck, about two inches shy of his windpipe, once in his upper left arm, and slightly below his shoulder.

142. From the wooden bullets, Dempster experienced bleeding and swelling to his neck and left arm. For over a week, Dempster was unable to work because he continuously felt sick with nausea and body aches within his arm, neck, back, and throat. When Dempster moved

his left fingers, he was met with streaks of what felt like ice shooting along the nerves within his forearm.

143. Traumatized by experiencing police brutality while peacefully protesting against police brutality sleep following the incident was difficult for Dempster. He carried an anxious fear many nights causing his heart to race.

144. On May 31, 2020, Dempster was treated for his injuries at Mercy St. Anne's Hospital.

145. Prior to May 30, 2020, Dempster did not experience anxiety or issues sleeping.

146. As of today, Dempster still experiences numbness in the left side of his neck, starting around his jaw line diagonally down and back to his clavicle.

Alyx Kendzierski

147. Alyx Kendzierski is a 32-year-old white woman who attended the protest on May 30, 2020 in Toledo, Ohio as a peaceful demonstrator and a medic providing assistance to any injured protestors.

148. As Kendzierski peacefully held her sign she was shot in the leg with wooden bullets by Defendant Officer Orwig and/or John Doe Toledo Police Officer 24, leaving a gash in her leg, pictured in Figure O below:



Figure O

149. Kendzierski continued to march alongside the other protestors and she was once again struck by wooden bullets.

150. John Doe Toledo Police Officers 25-28 also pepper sprayed Kendzierski as she was standing in solidarity with other demonstrators.

Elijah Young

151. Elijah Young is a 22-year-old Black man who helped peacefully lead the protestors in their fight for racial equality on May 30, 2020 in Toledo, Ohio.

152. Elijah Young, leading peaceful demonstrators, was struck in his bare back and right wrist by wooden bullets. The Defendant John Doe Toledo Police Officers 29-32 did not stop in their attack on Young. They also use chemical agents against him.

153. Despite the Toledo John Doe Toledo Police Officers 29-32's use of excessive force and chaos they promulgated, Young continued to value peace and promote peace between the Toledo officers and the protestors, as pictured in Figure P below:



Figure P

154. At the time she was shot, Elijah Young was not posing a threat to anyone and was not engaged in criminal activity.

Isabella Brazzil

155. Isabella Brazzil is an 18-year-old woman who attended the scheduled protest on May 30, 2020. She was 17 years old at the time of the protest.

156. Isabella peacefully participated in the scheduled protest and in the march on North Erie, Cherry and Bancroft Streets with the other protestors. When peacefully demonstrating on

Bancroft Street, Isabella was shot with a wooden bullet in the arm by Defendant Officer Orwig and/or John Doe Toledo Police Officers 32-35, pictured in Figure Q below:



Figure Q

157. Deputy Chief Troendle was present during the protest and admittedly ordered the use of less-lethal weaponry against protesters. He knew or should have known that the

indiscriminate use of force against peaceful protesters was causing serious injuries yet did nothing to stop it.

158. The actions of each Defendant officer set forth above were without reasonable suspicion or probable cause, were unjustified, objectively unreasonable, and constitute deliberate indifference.

159. Defendants engaged in willful, wanton, reckless, and/or negligent conduct.

160. Each Defendant officer had the duty and opportunity to intervene to prevent the violations of Plaintiffs' rights, yet did nothing to assist or protect them or stop the violations.

161. The actions of the Defendants were taken jointly, in concert, and with shared intent.

162. Defendant Officers' actions, as alleged in the preceding paragraphs, were performed under color of law and deprived Plaintiff of federally protected rights, in violation of Title 42 U.S.C. §1983.

163. Defendants' conduct was the direct, actual, and proximate cause of Plaintiffs' injuries.

164. As a direct and proximate result of Defendants' conduct, Plaintiffs sustained injuries, including, *inter alia*, fear, stress, anxiety, injury, pain, emotional distress, embarrassment, humiliation and costs.

165. The injuries suffered were all preventable had Defendants not engaged in illegal conduct in violation of Plaintiffs' fundamental rights.

**FIRST CLAIM FOR RELIEF:
42 U.S.C. § 1983 – First Amendment: Retaliation Based on Speech and Assembly
against all Defendants**

166. All of the foregoing paragraphs are incorporated as though fully set forth here.

167. Peaceful protesting and assembly are fundamental constitutional activities protected by the First Amendment to the United States Constitution.

168. Defendants' policy and actions of using unjustified force against peaceful protesters were at least partly – if not solely – motivated by Defendants' response to the individual Plaintiffs' exercise of their First Amendment rights to protest and assemble peacefully.

169. Defendants' policy and actions punished the individual Plaintiffs for engaging in their constitutionally protected activities of peaceful protest and assembly.

170. Defendants' policy and actions constitute retaliation against the individual Plaintiffs for Plaintiffs' exercise of fundamental First Amendment rights.

171. Defendants' policy and actions would chill a person of ordinary firmness from engaging in the constitutionally protected activities of peaceful protest and assembly.

172. As a direct result of Defendants' unconstitutional policy and practice, and the constitutional violations committed by Defendants, Plaintiffs have suffered serious personal injuries and are entitled to relief under the US Constitution and 42 U.S.C. § 1983.

173. Defendants' unconstitutional policy of retaliation against protesters has caused and will continue to cause irreparable harm to Plaintiffs, and the community at large, to engage in the constitutionally protected activities of peaceful protest and assembly.

**SECOND CLAIM FOR RELIEF:
42 U.S.C. § 1983 – Unconstitutional Seizure: Excessive Force
against Defendants Orwig and John Does 1-35**

174. All of the foregoing paragraphs are incorporated as though fully set forth here.

175. The actions of Defendants Orwig and John Does 1-35, as alleged in the preceding paragraphs, violated Saray Pratt, Katey David, Robert Kowalski, Jason Steward, Terrance Johns

Jr., Benjamin Hinsey, Robert Barner, Christopher Banks, Robert Hillier, Shelby Hillier, Michael Carpenter, Taylor Harrison, Chase Keller, Devin Ruiz, Keryn Werdehoff, Cameron Singleton, Sienna Salas by and through her mother Kimberly Welch, Zachary Dempster, Alyx Kendzierski, Elijah Young, Isabella Brazzil and Dean McNeal's rights under the Fourth Amendment to the United States Constitution to be secure in their persons against unreasonable seizure, and their right to due process under the Fourteenth Amendment to the United States Constitution, and caused the injuries alleged in this complaint.

176. Plaintiffs Saray Pratt, Katey David, Robert Kowalski, Jason Steward, Terrance Johns Jr., Benjamin Hinsey, Robert Barner, Christopher Banks, Robert Hillier, Shelby Hillier, Michael Carpenter, Taylor Harrison, Chase Keller, Devin Ruiz, Keryn Werdehoff, Cameron Singleton, Sienna Salas by and through her mother Kimberly Welch, Zachary Dempster, Alyx Kendzierski, Elijah Young, Isabella Brazzil and Dean McNeal were subjected to the use of excessive force in violation of their Fourth Amendment rights.

177. The Defendant officers acted unreasonably and with deliberate indifference to the rights and safety of Plaintiffs.

178. Defendant officers failed to prevent this misconduct, in spite of having the duty and opportunity and means to intervene to protect Plaintiffs.

179. Defendants' conduct during and after their uses of force against Plaintiffs constitutes cruel and unusual punishment in violation of their constitutional rights.

180. The actions of the Defendant Officers as alleged in this count of the complaint were the direct and proximate cause of the constitutional violations set forth above and of Plaintiffs' injuries.

181. Defendants are jointly and severally liable for this conduct.

**THIRD CLAIM FOR RELIEF:
42 U.S.C. § 1983 – Supervisory Liability
against Defendant Deputy Chief Michael Troendle**

182. All of the foregoing paragraphs are incorporated as though fully set forth here.

183. The constitutional injuries complained of here were proximately caused by (i) the intentional misconduct of the supervisory defendant, or (ii) by this supervisory defendant being deliberately and recklessly indifferent to their subordinates' misconduct, knowing that ignoring that misconduct would necessarily violate Plaintiffs' constitutional rights.

184. Specifically, Defendant Deputy Chief Michael Troendle was aware of and facilitated, condoned, or oversaw the unconstitutional conduct of other Defendants and Toledo Police Officers Orwig and John Does 1-35.

185. Defendant Deputy Chief Michael Troendle acted under color of law and within the scope of his employment when he took these actions.

186. As a direct and proximate result of the actions of this supervisory defendant, Plaintiffs Saray Pratt, Katey David, Robert Kowalski, Jason Steward, Terrance Johns Jr., Benjamin Hinsey, Robert Barner, Christopher Banks, Robert Hillier, Shelby Hillier, Michael Carpenter, Taylor Harrison, Chase Keller, Devin Ruiz, Keryn Werdehoff, Cameron Singleton, Sienna Salas by and through her mother Kimberly Welch, Zachary Dempster, Alyx Kendzierski, Elijah Young, Isabella Brazzil and Dean McNeal's constitutional rights were violated and they suffered injuries and damages, including but not limited to injury, emotional and physical pain and suffering, and other grievous injuries and damages as set forth above.

187. Defendants are jointly and severally liable for this conduct

188. All of the foregoing paragraphs are incorporated as though fully set forth here.

**SIXTH CLAIM FOR RELIEF:
42 U.S.C. § 1983 *Monell* Claim
against Defendant City of Toledo**

189. The conduct of Defendants and/or their employees/subordinates/agents as set forth in this Complaint resulted from and were taken pursuant to one or more interrelated City of Toledo policies (even if not official written edicts), practices, and/or customs of civil rights violations and unconstitutional practices.

190. Defendant City of Toledo, through the policy maker Chief of Police and Defendant Deputy Chief, who were at all times present, observing, coordinating, and ordering police activities at all times relevant herein, ratified, approved, authorized, and acquiesced in the unlawful and unconstitutional conduct of its respective employees and/or agents and consequently are directly liable for the acts of those agents, pursuant to 42 U.S.C. § 1983.

191. At all times relevant, the Defendant City of Toledo had interrelated de facto policies, practices, and customs which included, *inter alia*:

- a. the failure to properly hire, train, supervise, discipline, transfer, monitor, investigate, counsel and/or otherwise control their police officers who engage in uses of force, false arrest, unreasonable seizures, and malicious prosecutions;
- b. the implementation of unconstitutional policies—whether written or unwritten or official or unofficial, practices, and customs related to police engaging in false arrest, unreasonable seizures, and malicious prosecutions;
- c. the failure to properly hire, train, supervise, discipline, transfer, monitor, investigate, counsel and/or otherwise control their police officers who engage in fabrication of statements, reports, and testimony;
- d. the code of silence.

192. The aforementioned de facto policies, practices, and customs of the City of Toledo lead to harmful consequences to people who are the victims of police encounters within the City limits, including Plaintiffs.

193. Moreover, the conduct of Defendant City of Toledo and/or its employees/subordinates/agents demonstrates the City of Toledo's custom of tolerance or acquiescence of civil rights violations and unconstitutional practices.

194. The Defendant officers committed their misconduct in light of and because of the policy, practice, and custom of the code of silence among City of Toledo police officers. Defendants had good reason to believe that their misconduct would not be revealed or reported by fellow officers or their supervisors, and that they were immune from disciplinary action, thereby protecting them from the consequences of their unconstitutional conduct.

195. The policies, practices, and customs of the Defendant City and the Toledo Police Department were the moving force behind the misconduct described in this Count and behind the violations of Plaintiff's rights. The widespread practices were so well settled as to constitute *de facto* policy in the TPD, were part of TPD's culture, and were allowed to exist because municipal policymakers with authority over the practices exhibited deliberate indifference to the problems, effectively ratifying them.

196. In addition, the Defendants' misconduct was undertaken pursuant to the policy and practices of the Defendant City and the TPD in that the violation of Plaintiffs' rights, and as a result of conduct by the City's relevant final policymaker or the persons to whom final policymaking authority had been delegated.

197. The actions of the Defendant Officers were approved, encouraged, and/or ratified by policymakers for the Defendant City and the TPD with final policymaking authority.

198. The policy, practice, and custom of a code of silence results in police officers refusing to report instances of misconduct of which they are aware, including the type of misconduct describe in this complaint, despite their obligation to do so, and also includes police

officers either remaining silent or giving false and misleading information during official investigations in order to protect themselves or fellow officers from internal discipline, civil liability, or criminal charges, in cases where they or their fellow officers have engaged in misconduct.

199. The de facto policies, practices and customs of failing to hire, train, supervise, monitor, investigate, discipline, transfer, counsel and/or control officer misconduct and the code of silence are interrelated and exacerbate the effects of each other, to institutionalize lying and immunize officers from discipline.

200. That the unconstitutional actions of the Defendants as alleged in this complaint were part and parcel of a widespread City policy, practice, and custom is further established by the involvement in, and ratification of, these acts by supervisors and other officials and officers of the Toledo Police Department.

201. The Chief of the Toledo Police Department, along with Defendant Deputy Chief Troendle and other TPD brass were present for, ordered, encouraged, and condoned the use of force against unarmed, nonviolent protesters who were not presenting a threat or committing any crimes.

202. The City of Toledo, at all times relevant herein, was deliberately indifferent to, approved, authorized, and acquiesced in the unlawful and unconstitutional conduct of its respective employees and/or agents and consequently is directly liable for the acts of those agents, pursuant to 42 U.S.C. § 1983.

203. The City of Toledo therefore acted as the moving force behind and the direct and proximate causes of the violations of Plaintiff's constitutional rights and all injuries and damages suffered by him.

204. Defendants are jointly and severally liable for this conduct.

SEVENTH CLAIM FOR RELIEF:

**State Law Claim for Negligence – Willful, Wanton and Reckless Conduct
against Defendants Deputy Chief Michael Troendle, Robert Orwig, and John Does 1-35**

205. All of the foregoing paragraphs are incorporated as though fully set forth here.

206. Defendant Michael Toendle acted negligently when he ordered the use of force against unarmed, nonviolent protesters and did nothing to stop the force Toledo Police officers continues to deploy less lethal weapons directly at protesters, including Plaintiffs, causing injury.

207. Defendant Robert Orwig and John Doe Officers 1-35 acted negligently when they used excessive force against Plaintiffs.

208. Defendants committed the acts alleged in this complaint in a reckless, willful and/or wanton manner while working as police officers for the Toledo Division of Police.

209. Defendants' misconduct directly and proximately caused the injuries and damages suffered by Plaintiffs as described above.

210. Defendants are jointly and severally liable for this conduct.

EIGHTH CLAIM FOR RELIEF:

**State Law Claim for Assault and Battery
against Defendants Orwig and John Does 1-35**

211. All of the foregoing paragraphs are incorporated as though fully set forth here.

212. The actions of Defendant Officers Orwig and John Does 1-35 towards Plaintiffs Saray Pratt, Katey David, Robert Kowalski, Jason Steward, Terrance Johns Jr., Benjamin Hinsey, Robert Barner, Christopher Banks, Robert Hillier, Shelby Hillier, Michael Carpenter, Taylor Harrison, Chase Keller, Devin Ruiz, Keryn Werdehoff, Cameron Singleton, Sienna Salas by and through her mother Kimberly Welch, Zachary Dempster, Alyx Kendzierski, Elijah Young, Isabella Brazzil and Dean McNeal created in them the apprehension of an imminent,

harmful, and offensive touching and constituted a harmful touching, knowingly and without legal justification.

213. Defendants are jointly and severally liable for this conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demands that judgement be entered in their favor on all counts and prays the Court award the following relief:

- A. Compensatory damages in an amount exceeding the jurisdictional amount in controversy requirement, to be determined at trial for the violation of Plaintiffs' rights;
- B. Punitive damages in an amount to be determined at trial for the Defendants' willful, wanton, malicious, and reckless conduct;
- C. Declaratory and injunctive relief against the City of Toledo enjoining unlawful policies, practices, and customs and ordering the institution of policies, procedures, and training for the Toledo Division of Police to bring them into compliance with constitutional standards;
- D. Attorneys' fees and the costs of this action pursuant to law; and
- E. All other relief which this Honorable Court deems equitable and just.

TRIAL BY JURY ON ALL CLAIMS FOR RELIEF HEREBY DEMANDED.

/s/ Sarah Gelsomino
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Counsel for Plaintiffs

Dated June 1, 2021

CIVIL COVER SHEET

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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Saray Pratt, et al.

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Friedman, Gilbert + Gerhardstein / 50 Public Square, Ste. 1900, Cleveland, OH 44113 / (216) 241-1430 Johnson and Associates / 2927 N. McCord Rd., Ste. 100

DEFENDANTS

City of Toledo, et al.

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

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

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, HABEAS CORPUS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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 - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 USC Section 1983 and U.S. Constitution. Brief description of cause: First Amendment, Monell claim, unconstitutional seizure, pendant state law claims

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE: Jun 1, 2021 SIGNATURE OF ATTORNEY OF RECORD: Sarah Gelsomino

Digitally signed by Sarah Gelsomino Date: 2021.06.01 18:23:0400'

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

I. Civil Categories: (Please check one category only.)

- 1. [checked] General Civil
2. [] Administrative Review/Social Security
3. [] Habeas Corpus Death Penalty

*If under Title 28, §2255, name the SENTENCING JUDGE: _____

CASE NUMBER: _____

II. RELATED OR REFILED CASES See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action: [] is RELATED to another PENDING civil case [] is a REFILED case [] was PREVIOUSLY REMANDED

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

III. In accordance with Local Civil Rule 3.8, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) Resident defendant If the defendant resides in a county within this district, please set forth the name of such county

COUNTY:

Corporation For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.

(2) Non-Resident defendant. If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.

COUNTY:

(3) Other Cases. If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.

COUNTY:

IV. The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

EASTERN DIVISION

[]
[]
[]

AKRON
CLEVELAND
YOUNGSTOWN

(Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne)
(Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland)
(Counties: Columbiana, Mahoning and Trumbull)

WESTERN DIVISION

[checked]

TOLEDO

(Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca VanWert, Williams, Wood and Wyandot)