

JURISDICTION

4. The Court has jurisdiction of this lawsuit under 28 U.S.C. §1331, as it arises under the Constitution, laws or treatises of the United States of America.

VENUE

5. Venue is proper in this Court under 28 U.S.C. §1391(b), as this is the judicial district in which a substantial portion of the events or omissions giving rise to the claims occurred.

FACTS

6. Plaintiff, David Polkinghorn, is a mentally incapacitated 21-year-old.

7. Plaintiff's incapacity is immediately noticeable from his gait, physical mannerisms, and speech.

8. Plaintiff's mother, Lisa Polkinghorn, is his legal guardian.

9. On May 3, 2017, Lisa Polkinghorn drove Plaintiff to the Chick-Fil-A, located at 1321 W. Davis Street, Conroe, Texas 77304, to pick up dinner.

10. Plaintiff had received numerous Chick-Fil-A gift cards as birthday presents and was eager to use them.

11. Lisa Polkinghorn waited in the car while Plaintiff went inside to place an order.

12. On his way inside, Plaintiff removed the gift cards from a child's wallet he carried with him and tossing the wallet in the trash can.

13. Defendant allegedly observed Plaintiff throwing away his wallet and began to follow Plaintiff.

14. As Plaintiff was ordering his meal at the counter, in a laborious manner clearly indicating his disability, Defendant approached him and began interrogating him about where he got the gift cards he was using to pay for his meal.

15. Plaintiff was unable to understand the questions and became confused and flustered by the interrogation, causing him to walk away from the Defendant

16. At no time had Defendant indicated to Plaintiff that he was being detained or that he was under arrest.

17. As Plaintiff walked away, the Defendant grabbed Plaintiff's arm and tackled him to the ground. Defendant placed handcuffs on Plaintiff and held him on the ground for approximately 10 minutes.

18. Lisa Polkinghorn then entered the restaurant to check on Plaintiff and found him handcuffed by Defendant.

19. An ambulance was called to treat Plaintiff's swollen nose and forehead.

20. Plaintiff was not charged with any crime and was released after receiving treatment.

21. After the incident, Plaintiff was severely traumatized, refusing to speak to his parents and spending hours hiding under a blanket in his bed because he was afraid that Defendant "was going to kill him."

CAUSE OF ACTUON UNDER 42 U.S.C. § 1983

22. Plaintiffs hereby incorporate paragraphs 1 through 21 as if fully set forth herein.

23. 42 U.S.C. § 1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress . . .

24. Plaintiff is a citizen of the United States and Defendant, in her individual capacity, is a person for purposes of 42 U.S.C. § 1983.

25. Defendant, at all times relevant hereto, was acting under the color of state law in their capacity as Texas Department of Public Safety officer and her acts or omissions were conducted within the scope of her official duties or employment.

26. At the time of the complained of events, Plaintiff had a clearly established constitutional right under the Fourth Amendment to be secure in his person from unreasonable seizure through excessive force.

27. Plaintiff also had the clearly established Constitutional right under the Fourteenth Amendment to bodily integrity and to be free from excessive force by law enforcement.

28. Any reasonable police officer knew or should have known of these rights at the time of the complained of conduct as they were clearly established at that time.

29. Defendant's actions and use of force, as described herein, were objectively unreasonable in light of the facts and circumstances confronting them and violated these Fourth Amendment rights of Plaintiff.

30. Defendant's actions and use of force, as described herein, were also malicious and/or involved reckless, callous, and deliberate indifference to Plaintiff's federally protected rights. The force used by Defendant shocks the conscience and violated these Fourteenth Amendment rights of Plaintiff.

31. Defendant unlawfully seized Plaintiff by means of objectively unreasonable, excessive and conscious shocking physical force, thereby unreasonably restraining Plaintiff of his freedom.

32. Defendant engaged in the conduct described by this Complaint willfully, maliciously, in bad faith, and in reckless disregard of Plaintiff's federally protected constitutional rights.

33. Defendant did so with shocking and willful indifference to Plaintiff's rights and the conscious awareness that she would cause Plaintiff severe physical and emotional injuries.

34. The acts or omissions of Defendant as described herein intentionally deprived Plaintiff of his constitutional rights and caused him other damages.

35. The Defendant is not entitled to qualified immunity for the complained of conduct.

36. The Defendant, at all times relevant hereto, was acting pursuant to municipal/county/state custom, policy, decision, ordinance, regulation, widespread habit, usage, or practice in their actions pertaining to Plaintiff.

37. As a proximate result of Defendant's unlawful conduct, Plaintiff has suffered actual physical and emotional injuries, and other damages and losses as described herein entitling him to compensatory and special damages, in amounts to be determined at trial. As a further result of the Defendants' unlawful conduct, Plaintiff has incurred special damages, including medically related expenses and may continue to incur further medically and other special damages related expenses, in amounts to be established at trial.

38. In addition to compensatory, economic, consequential and special damages, Plaintiff is entitled to punitive damages Defendant under 42 U.S.C. § 1983, in that the actions of Defendant were malicious, willful or done with a reckless or wanton disregard of the constitutional rights of Plaintiff.

DAMAGES

39. As a direct and proximate result of the acts and omissions outlined above, Plaintiff has been severely damaged. Defendant's conduct caused physical pain, as well as emotional distress and mental anguish and trauma.

40. Plaintiffs seek compensatory damages in an amount deemed sufficient by the trier of fact to compensate them for their damages, which include physical pain, mental anguish, pain, and suffering.

41. Plaintiffs also seeks exemplary damages against Defendant.
42. Plaintiffs have retained the services of the undersigned attorneys, and claim entitlement to an award of reasonable and necessary attorney's fees under 42 U.S.C. §1983 and 1988.

JURY DEMAND

43. Plaintiffs respectfully request a trial by jury.

PRAYER

For these reasons, Plaintiffs seek judgment against Defendant for;

- a. compensatory and actual damages in an amount deemed sufficient by the trier of fact;
- b. exemplary damages;
- c. attorney's fees under 42 U.S.C. §1983 and §1988;
- d. costs of court;
- e. interest allowed by law for prejudgment and/or post-judgment interest.

Respectfully submitted,

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