

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

LEE MARTIN,)	
)	
Plaintiff,)	
)	Cause No.:
v.)	
)	
GARDNER M. POTTORFF, in his official)	
and individual capacities,)	
HOLD SERVICE)	
)	
KEENEN O. SHOUSE, in his official)	JURY TRIAL DEMANDED
and individual capacities,)	
HOLD SERVICE)	
)	
COLUMBIA POLICE DEPARTMENT,)	
HOLD SERVICE)	
)	
and)	
)	
CITY OF COLUMBIA, MISSOURI,)	
HOLD SERVICE)	
)	
Defendants.)	

COMPLAINT

Comes Now, Plaintiff Lee Martin, by and through his attorneys, and for his Complaint against Defendants Gardner M. Pottorff, Keenen O. Shouse, Columbia Police Department, and City of Columbia, states as follows:

PARTIES

1. At all times relevant hereto, Plaintiff Lee Martin (hereinafter “Plaintiff”) was a resident of Cole County, Missouri.

2. At all times relevant hereto, Defendant Gardner Pottorff (hereinafter “Pottorff”) was a police officer for the Columbia Police Department. He is sued in his individual and official capacities.

3. At all times relevant hereto, Defendant Keenen Shouse (hereinafter “Shouse”) was a police officer for the Columbia Police Department. He is sued in his individual and official capacities.

4. Defendant Columbia Police Department (hereinafter “CPD”) is the local government agency that hired and employed Defendants Pottorff and Shouse, and that administered policies, practices, and customs regarding the training and supervision of its police officers at all times relevant hereto.

5. Defendant City of Columbia, Missouri (hereinafter “City”) is a municipal corporation organized and existing under the laws of the State of Missouri as a charter city. Upon information and belief, Defendant City maintains the CPD and, through it, hired and employed Defendants Pottorff and Shouse, and administered policies, practices, and customs regarding the training and supervision of its police officers at all times relevant hereto.

JURISDICTION AND VENUE

6. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1998, and the Fourth and/or Fourteenth Amendments to the United States Constitution, and therefore this Court has jurisdiction pursuant to 28 U.S.C. § 1331.

7. Plaintiff further invokes the supplemental jurisdiction of this Court to hear and decide claims arising under state law pursuant to 28 U.S.C. § 1367.

8. Venue in this District is proper pursuant to 28 U.S.C. § 1391(b), as some or all of the Defendants reside in this judicial district and a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

FACTS COMMON TO ALL COUNTS

9. On or about May 7, 2023, Plaintiff was a customer at Harpo's Bar & Grill at or near 29 S. 10th Street, Columbia, MO 65201.

10. At one point on the day of the incident, a disagreement began outside of the entrance to Harpo's Bar & Grill between Plaintiff and at least two of Defendant Harpo's employees (hereinafter "Harpo's Employees").

11. At some point thereafter, Defendants Pottorff and Shouse arrived at Harpo's.

12. At the time Defendants Pottorff and Shouse arrived at the scene, Plaintiff was restrained face-down on the ground by the Harpo's Employees and was immobile as a result.

13. Defendants Pottorff and Shouse did not attempt to talk to Plaintiff, determine what occurred prior to their arrival at the scene, or de-escalate in any way, but instead immediately became physically aggressive with Plaintiff despite Mr. Martin already being restrained and in no way posing a threat to the officers or others in the area.

14. Upon arriving at the scene, and without any justification for doing so, Defendants Pottorff and Shouse attacked Plaintiff by inflicting physical force to his arms and body and then used an aerosol debilitating spray (i.e., pepper spray, mace) on Plaintiff multiple times. This all occurred within approximately fifteen (15) seconds of the officers' arrival at the scene.

15. Defendants Pottorff and Shouse then forced Plaintiff back onto the ground, pinning Plaintiff's arms behind him.

16. While forcing Plaintiff back onto the ground, Defendant Pottorff tased Mr. Martin.

17. While Lee Martin was pinned to the ground by the officers, Defendant Pottorff then punched Plaintiff in the face multiple times, causing great bodily harm.

18. Defendant Pottorff used his knees to pin Plaintiff's right leg and arm, while Defendant Shouse laid on top of the rest of Plaintiff's body, including his neck.

19. While Plaintiff was forcibly restrained to the ground by the officers, Defendant Pottorff tased Plaintiff multiple times.

20. The Defendant-officers never advised Plaintiffhe was under arrest until after the excessive force was administered.

21. Defendant Shouse did nothing during the incident discussed above to stop Defendant Pottorff's repeated and excessive uses of force against Plaintiff.

22. The entire incident discussed above happened within approximately less than two (2) minutes from the officers' arrival at the scene.

23. Upon information and belief, the Defendant-officers have been the subjects of claims and investigations of excessive force prior to the incident discussed above. Notably, it is believed that Defendant Pottorff was investigated for his involvement in a fatal shooting on November 14, 2021.

24. It is believed that Defendants Pottorff and Shouse are no longer employed as police officers with the CPD and/or the City.

25. As a direct and proximate result of the acts and/or omissions of the Defendants alleged herein, Plaintiff has sustained bodily injury, including, but not limited to, his arms, legs, back, neck, and head.

26. Plaintiff further suffered and continues to suffer severe emotional distress as a direct and proximate result of the acts and/or omissions of the Defendants alleged herein. Not only was Plaintiff subjected to unreasonable and excessive force — including being grabbed, sat on, maced, tased, and punched repeatedly — in front of a large group of onlookers on a public sidewalk in the middle of a popular entertainment district, but videos of the incident subsequently went “viral” on news outlets and online.

27. Due to his injuries, Plaintiff has required, and will continue to require, medical care and treatment at substantial expense.

COUNT I
§ 1983 EXCESSIVE FORCE
(AGAINST DEFENDANT POTTORFF)

28. Plaintiff realleges and restates all preceding paragraphs set forth above and incorporates each of those paragraphs herein by reference.

29. At all times relevant herein, Defendant Pottorff was acting under color of state law.

30. While acting under color of state law, Defendant Pottorff forcibly grabbed, laid on, pinned down, maced, tased, and/or punched Plaintiff repeatedly despite Plaintiff being partially or totally immobilized, compliant with the officers’ orders, and clearly confused about why he was being arrested. Plaintiff was seized by Defendant Pottorff.

31. The use of force by Defendant Pottorff was objectively unreasonable and excessive in light of the circumstances then confronting the officers, any force required to be used against Plaintiff, and the injury inflicted against Plaintiff.

32. A reasonable officer would not have used such force against Plaintiff under the same or similar circumstances.

33. Defendant Pottorff's actions were not taken in good faith and were in violation of clearly established law.

34. Defendant Pottorff's actions violated the constitutional rights guaranteed to Plaintiff by the Fourth Amendment of the United States Constitution.

35. Defendant Pottorff's actions were motivated by evil motive or intent and involved a reckless or callous indifference to Plaintiff's Fourth and/or Fourteenth Amendment rights in that the Defendant immediately pursued severe physical aggression against Plaintiff without attempting any alternative methods for arrest despite Plaintiff's already being subdued on the ground, and then continued to use excessive force despite Plaintiff not resisting or posing any threat to the officers.

36. As a direct and proximate result of the excessive use of force by Defendant Pottorff, Plaintiff has suffered and will continue to suffer physical and emotional injuries and has suffered and will continue to suffer pain of the body and mind, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, and stress.

37. As a direct and proximate result of the excessive use of force by Defendant Pottorff, Plaintiff has incurred and will continue to incur expenses related to reasonable and necessary medical care and treatment.

WHEREFORE, Plaintiff prays judgment pursuant to 42 U.S.C. § 1983 against Defendant Pottorff for compensatory damages in an amount that is fair and reasonable, for the costs of this action (including, but not limited to, attorney's fees, whether pursuant to 42 U.S.C. § 1988 or otherwise), for punitive damages, for an award of prejudgment interest, and for such other and further relief as the Court deems fair and appropriate under the circumstances.

COUNT II
§ 1983 EXCESSIVE FORCE
(AGAINST DEFENDANT SHOUSE)

38. Plaintiff realleges and restates all preceding paragraphs set forth above and incorporates each of those paragraphs herein by reference.

39. At all times relevant herein, Defendant Shouse was acting under color of state law.

40. While acting under color of state law, Defendant Shouse forcibly grabbed, laid on, pinned down, and/or maced Plaintiff repeatedly despite Plaintiff being partially or totally immobilized, compliant with the officers' orders, and clearly confused about why he was being arrested. Plaintiff was seized by Defendant Shouse.

41. The use of force by Defendant Shouse was objectively unreasonable and excessive in light of the circumstances then confronting the officers, any force required to be used against Plaintiff, and the injury inflicted against Plaintiff.

42. A reasonable officer would not have used such force against Plaintiff under the same or similar circumstances.

43. Defendant Shouse's actions were not taken in good faith and were in violation of clearly established law.

44. Defendant Shouse's actions violated the constitutional rights guaranteed to Mr. Martin by the Fourth Amendment of the United States Constitution.

45. Defendant Shouse's actions were motivated by evil motive or intent and involved a reckless or callous indifference to Mr. Martin's Fourth and/or Fourteenth Amendment rights in that the Defendant immediately pursued severe physical aggression against Plaintiff without attempting any alternative methods for arrest despite Plaintiff already being subdued on the

ground, and then continued to use excessive force despite Plaintiff not resisting or posing any threat to the officers.

46. As a direct and proximate result of the excessive use of force by Defendant Shouse, Mr. Martin has suffered and will continue to suffer physical and emotional injuries and has suffered and will continue to suffer pain of the body and mind, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, and stress.

47. As a direct and proximate result of the excessive use of force by Defendant Shouse, Plaintiff has incurred and will continue to incur expenses related to reasonable and necessary medical care and treatment.

WHEREFORE, Plaintiff prays judgment pursuant to 42 U.S.C. § 1983 against Defendant Shouse for compensatory damages in an amount that is fair and reasonable, for the costs of this action (including, but not limited to, attorney's fees, whether pursuant to 42 U.S.C. § 1988 or otherwise), for punitive damages, for an award of prejudgment interest, and for such other and further relief as the Court deems fair and appropriate under the circumstances.

COUNT III
§ 1983 FAILURE TO INTERVENE
(AGAINST DEFENDANT POTTORFF)

48. Plaintiff realleges and restates all preceding paragraphs set forth above and incorporates each of those paragraphs herein by reference.

49. At all times relevant herein, Defendant Pottorff was acting under color of state law.

50. While acting under color of state law, Defendant Pottorff witnessed Defendant Shouse violating Plaintiff's Fourth Amendment rights through the use of unreasonable and excessive force.

51. Specifically, Defendant Pottorff witnessed Defendant Shouse immediately grab Plaintiff without making any effort to de-escalate, talk to Plaintiff, or determine what occurred prior to his arrival at the scene. Defendant Pottorff further witnessed Defendant Shouse repeatedly grab and/or mace Plaintiff despite Plaintiff's being partially or totally immobilized, compliant with the officers' orders, and clearly confused about why he was being arrested.

52. Defendant Pottorff knew or had reason to know that the force used by Defendant Shouse was unreasonable, excessive, not in good faith, and in violation of clearly established law.

53. Defendant Pottorff had a reasonable opportunity to stop or prevent the excessive force used by Defendant Shouse but failed to do so.

54. Defendant Pottorff's actions and omissions were motivated by evil motive or intent and involved a reckless or callous indifference to Plaintiff's constitutional rights.

55. As a direct and proximate result of Defendant Pottorff's failure to intervene in the abovementioned use of excessive force, Plaintiff has suffered and will continue to suffer physical and emotional injuries and has suffered and will continue to suffer pain of the body and mind, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, and stress.

56. As a direct and proximate result of Defendant Pottorff's failure to intervene in the abovementioned use of excessive force, Plaintiff has incurred and will continue to incur expenses related to reasonable and necessary medical care and treatment.

WHEREFORE, Plaintiff prays judgment pursuant to 42 U.S.C. § 1983 against Defendant Pottorff for compensatory damages in an amount that is fair and reasonable, for the costs of this action (including, but not limited to, attorney's fees, whether pursuant to 42 U.S.C. § 1988 or otherwise), for punitive damages, and for such other and further relief as the Court deems fair and appropriate under the circumstances.

COUNT IV
§ 1983 FAILURE TO INTERVENE
(AGAINST DEFENDANT SHOUSE)

57. Plaintiff realleges and restates all preceding paragraphs set forth above and incorporates each of those paragraphs herein by reference.

58. At all times relevant herein, Defendant Shouse was acting under color of state law.

59. While acting under color of state law, Defendant Shouse witnessed Defendant Pottorff violating Plaintiff's Fourth Amendment rights through the use of unreasonable and excessive force.

60. Specifically, Defendant Shouse witnessed Defendant Pottorff immediately grab Mr. Martin without making any effort to de-escalate, talk to Plaintiff, or determine what occurred prior to his arrival at the scene. Defendant Shouse further witnessed Defendant Pottorff repeatedly grab, mace, tase, and/or punch Mr. Martin despite Mr. Martin's being partially or totally immobilized, compliant with the officers' orders, and clearly confused about why he was being arrested.

61. Defendant Shouse knew or had reason to know that the force used by Defendant Pottorff was unreasonable, excessive, not in good faith, and in violation of clearly established law.

62. Defendant Shouse had a reasonable opportunity to stop or prevent the excessive force used by Defendant Pottorff but failed to do so.

63. Defendant Shouse's actions and omissions were motivated by evil motive or intent and involved a reckless or callous indifference to Mr. Martin's constitutional rights.

64. As a direct and proximate result of Defendant Shouse's failure to intervene in the abovementioned use of excessive force, Plaintiff has suffered and will continue to suffer physical and emotional injuries and has suffered and will continue to suffer pain of the body and mind, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, and stress.

65. As a direct and proximate result of Defendant Shouse's failure to intervene in the abovementioned use of excessive force, Plaintiff has incurred and will continue to incur expenses related to reasonable and necessary medical care and treatment.

WHEREFORE, Plaintiff prays judgment pursuant to 42 U.S.C. § 1983 against Defendant Shouse for compensatory damages in an amount that is fair and reasonable, for the costs of this action (including, but not limited to, attorney's fees, whether pursuant to 42 U.S.C. § 1988 or otherwise), for punitive damages, and for such other and further relief as the Court deems fair and appropriate under the circumstances.

COUNT V
ASSAULT
(AGAINST DEFENDANT POTTORFF)

66. Plaintiff realleges and restates all preceding paragraphs set forth above and incorporates each of those paragraphs herein by reference.

67. After arriving at the scene, Defendant Pottorff immediately approached Plaintiff with the intent to cause bodily harm or offensive contact, or apprehension of either, to Plaintiff by, among other things, reaching to grab Plaintiff and/or holding an aerosol debilitating spray device.

68. The conduct of Defendant Pottorff — including, but not limited to, the Defendant's failure to de-escalate, talk to Plaintiff, or determine what occurred prior to his arrival at the scene despite Plaintiff already being on the ground — indicated his intent to cause bodily harm or offensive contact, or apprehension of either, to Plaintiff.

69. Defendant Pottorff's conduct placed Mr. Martin in fear and apprehension of bodily harm or offensive contact.

70. Defendant Pottorff's actions were motivated by evil motive or intent and involved a reckless or callous indifference to the consequences.

71. As a direct and proximate result of Defendant Pottorff's intentional assault, Plaintiff has suffered and will continue to suffer physical and emotional injuries and has suffered and will continue to suffer pain of the body and mind, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, and stress.

72. As a direct and proximate result of Defendant Pottorff's intentional assault, Plaintiff has incurred and will continue to incur expenses related to reasonable and necessary medical care and treatment.

WHEREFORE, Plaintiff prays judgment against Defendant Pottorff for damages in an amount that is fair and reasonable, for the costs of this action (including, but not limited to, attorney's fees), for punitive damages, for prejudgment interest, and for such other and further relief as the Court deems fair and appropriate under the circumstances.

COUNT VI
ASSAULT
(AGAINST DEFENDANT SHOUSE)

73. Plaintiff realleges and restates all preceding paragraphs set forth above and incorporates each of those paragraphs herein by reference.

74. After arriving at the scene, Defendant Shouse immediately approached Plaintiff with the intent to cause bodily harm or offensive contact, or apprehension of either, to Plaintiff by, among other things, reaching to grab Plaintiff and/or holding an aerosol debilitating spray device.

75. The conduct of Defendant Shouse — including, but not limited to, the Defendant’s failure to de-escalate, talk to Plaintiff, or determine what occurred prior to his arrival at the scene despite Mr. Martin already being on the ground — indicated his intent to cause bodily harm or offensive contact, or apprehension of either, to Plaintiff.

76. Defendant Shouse’s conduct placed Mr. Martin in fear and apprehension of bodily harm or offensive contact.

77. Defendant Shouse’s actions were motivated by evil motive or intent and involved a reckless or callous indifference to the consequences.

78. As a direct and proximate result of Defendant Shouse’s intentional assault, Plaintiff has suffered and will continue to suffer physical and emotional injuries and has suffered and will continue to suffer pain of the body and mind, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, and stress.

79. As a direct and proximate result of Defendant Shouse’s intentional assault, Plaintiff has incurred and will continue to incur expenses related to reasonable and necessary medical care and treatment.

WHEREFORE, Plaintiff prays judgment against Defendant Shouse for damages in an amount that is fair and reasonable, for the costs of this action (including, but not limited to, attorney’s fees), for punitive damages, for prejudgment interest, and for such other and further relief as the Court deems fair and appropriate under the circumstances.

COUNT VII
BATTERY
(AGAINST DEFENDANT POTTORFF)

80. Plaintiff realleges and restates all preceding paragraphs set forth above and incorporates each of those paragraphs herein by reference.

81. Defendant Pottorff intentionally grabbed, laid on, pinned down, maced, tased, and/or punched Plaintiff.

82. The abovementioned actions by Defendant Pottorff constituted an intended, offensive bodily contact with Plaintiff.

83. In so doing, Defendant Pottorff did not act reasonably, in good faith, or in self-defense. In so doing, Defendant Pottorff caused Plaintiff to be in apprehension of bodily harm or offensive contact.

84. Defendant Pottorff's actions were motivated by evil motive or intent and involved a reckless or callous indifference to the consequences in that the Defendant immediately pursued severe physical aggression against Plaintiff without attempting any alternative methods for arrest, despite Plaintiff already being subdued on the ground, and then continued to use excessive force despite Plaintiff not resisting or posing any threat to the officers.

85. As a direct and proximate result of Defendant Pottorff's intentional battery Plaintiff has suffered and will continue to suffer physical and emotional injuries and has suffered and will continue to suffer pain of the body and mind, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, and stress.

86. As a direct and proximate result of Defendant Pottorff's intentional battery, Plaintiff has incurred and will continue to incur expenses related to reasonable and necessary medical care and treatment.

WHEREFORE, Plaintiff prays judgment against Defendant Pottorff for damages in an amount that is fair and reasonable, for the costs of this action (including, but not limited to, attorney's fees), for punitive damages, for prejudgment interest, and for such other and further relief as the Court deems fair and appropriate under the circumstances.

COUNT VII
BATTERY
(AGAINST DEFENDANT SHOUSE)

87. Plaintiff realleges and restates all preceding paragraphs set forth above and incorporates each of those paragraphs herein by reference.

88. Defendant Shouse intentionally grabbed, laid on, pinned down, and/or maced Plaintiff.

89. The abovementioned actions by Defendant Shouse constituted an intended, offensive bodily contact with Plaintiff.

90. In so doing, Defendant Shouse did not act reasonably, in good faith, or in self-defense. In so doing, Defendant Shous caused Plaintiff to be in apprehension of bodily harm or offensive contact.

91. Defendant Shouse's actions were motivated by evil motive or intent and involved a reckless or callous indifference to the consequences in that the Defendant immediately pursued severe physical aggression against Plaintiff without attempting any alternative methods for arrest, despite Plaintiff already being subdued on the ground, and then continued to use excessive force despite Plaintiff not resisting or posing any threat to the officers.

92. As a direct and proximate result of Defendant Shouse's intentional battery, Plaintiff has suffered and will continue to suffer physical and emotional injuries and has suffered and will continue to suffer pain of the body and mind, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, and stress.

93. As a direct and proximate result of Defendant Shouse's intentional battery, Plaintiff has incurred and will continue to incur expenses related to reasonable and necessary medical care and treatment.

WHEREFORE, Plaintiff prays judgment against Defendant Shouse for damages in an amount that is fair and reasonable, for the costs of this action (including, but not limited to, attorney's fees), for punitive damages, for prejudgment interest, and for such other and further relief as the Court deems fair and appropriate under the circumstances.

COUNT VIII
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(AGAINST DEFENDANT POTTORFF)

94. Plaintiff realleges and restates all preceding paragraphs set forth above and incorporates each of those paragraphs herein by reference.

95. Defendant Pottorff owed a duty to use reasonable care with regard to Plaintiff, particularly in effectuating his arrest.

96. Defendant Pottorff breached his duty of care when he grabbed, laid on, pinned down, maced, tased, and/or punched Plaintiff repeatedly despite Plaintiff being partially or totally immobilized, compliant with the officers' orders, and clearly confused about why he was being arrested.

97. Defendant Pottorff should have realized that his conduct involved an unreasonable risk of causing distress. That risk was particularly apparent in light of the public location (i.e., a public sidewalk in front of a popular bar in a heavily trafficked part of town), the large number of onlookers (many of whom were recording the incident), Plaintiff's apparent confusion, and the power imbalance between the officers and Plaintiff.

98. At the time, Defendant Pottorff knew or had reason to know that there was a high probability that his actions would result in injury.

99. As a direct and proximate result of Defendant Pottorff's negligent infliction of emotional distress, Plaintiff has suffered and will continue to suffer medically diagnosable and medically significant emotional injuries, pain of the body and mind, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, and stress.

100. As a direct and proximate result of Defendant Pottorff's negligent infliction of emotional distress, Plaintiff has incurred and will continue to incur expenses related to reasonable and necessary medical care and treatment.

WHEREFORE, Plaintiff prays judgment against Defendant Pottorff for damages in an amount that is fair and reasonable, for the costs of this action (including, but not limited to, attorney's fees), for punitive damages, for prejudgment interest, and for such other and further relief as the Court deems fair and appropriate under the circumstances.

COUNT IX
NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS
(AGAINST DEFENDANT SHOUSE)

101. Plaintiff realleges and restates all preceding paragraphs set forth above and incorporates each of those paragraphs herein by reference.

102. Defendant Shouse owed a duty to use reasonable care with regard to Plaintiff, particularly in effectuating his arrest.

103. Defendant Shouse breached his duty of care when he grabbed, laid on, pinned down, and/or maced Mr. Martin repeatedly despite Mr. Martin's being partially or totally immobilized, compliant with the officers' orders, and clearly confused about why he was being arrested.

104. Defendant Shouse should have realized that his conduct involved an unreasonable risk of causing distress. That risk was particularly apparent in light of the public location (i.e., a public sidewalk in front of a popular bar in a heavily trafficked part of town), the large number of onlookers (many of whom were recording the incident), Mr. Martin's apparent confusion, and the power imbalance between the officers and Mr. Martin.

105. At the time, Defendant Shouse knew or had reason to know that there was a high probability that his actions would result in injury.

106. As a direct and proximate result of Defendant Shouse's negligent infliction of emotional distress, Mr. Martin has suffered and will continue to suffer medically diagnosable and medically significant emotional injuries, pain of the body and mind, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, and stress.

107. As a direct and proximate result of Defendant Shouse's negligent infliction of emotional distress, Mr. Martin has incurred and will continue to incur expenses related to reasonable and necessary medical care and treatment.

WHEREFORE, Plaintiff prays judgment against Defendant Shouse for damages in an amount that is fair and reasonable, for the costs of this action (including, but not limited to, attorney's fees), for punitive damages, for prejudgment interest, and for such other and further relief as the Court deems fair and appropriate under the circumstances.

COUNT X
INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS
(AGAINST DEFENDANT POTTORFF)

108. Plaintiff realleges and restates all preceding paragraphs set forth above and incorporates each of those paragraphs herein by reference.

109. Defendant Pottorff acted intentionally and/or recklessly when he grabbed, laid on, pinned down, maced, tased, and/or punched Plaintiff repeatedly despite Plaintiff being partially or totally immobilized, compliant with the officers' orders, and clearly confused about why he was being arrested.

110. Defendant Pottorff's actions on their own were extreme and outrageous but were made considerably more extreme and outrageous in light of the public location (i.e., a public sidewalk in front of a popular bar in a heavily trafficked part of town), the large number of onlookers (many of whom were recording the incident), Plaintiff's apparent confusion, the power imbalance between the officers and Plaintiff, and the impact of the subsequent online "virality" of recordings of the incident.

111. Defendant Pottorff's conduct was so outrageous in character and so extreme in degree that it was beyond all possible bounds of decency and utterly intolerable in a civilized community.

112. Defendant Pottorff's actions were motivated by evil motive or intent and involved a reckless or callous indifference to the consequences.

113. Defendant Pottorff's conduct caused Plaintiff to suffer severe emotional distress resulting in bodily harm.

114. As a direct and proximate result of Defendant Pottorff's intentional infliction of emotional distress, Plaintiff has suffered and will continue to suffer physical and emotional injuries and has suffered and will continue to suffer pain of the body and mind, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, and stress.

115. As a direct and proximate result of Defendant Pottorff's intentional infliction of emotional distress, Plaintiff has incurred and will continue to incur expenses related to reasonable and necessary medical care and treatment.

WHEREFORE, Plaintiff prays judgment against Defendant Pottorff for damages in an amount that is fair and reasonable, for the costs of this action (including, but not limited to, attorney's fees), for punitive damages, for prejudgment interest, and for such other and further relief as the Court deems fair and appropriate under the circumstances.

COUNT XI
INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS
(AGAINST DEFENDANT SHOUSE)

116. Plaintiff realleges and restates all preceding paragraphs set forth above and incorporates each of those paragraphs herein by reference.

117. Defendant Shouse acted intentionally and/or recklessly when they grabbed, laid on, pinned down, and/or maced Plaintiff repeatedly despite Plaintiff being partially or totally immobilized, compliant with the officers' orders, and clearly confused about why he was being arrested.

118. Defendant Shouse's actions on their own were extreme and outrageous but were made considerably more extreme and outrageous in light of the public location (i.e., a public sidewalk in front of a popular bar in a heavily trafficked part of town), the large number of onlookers (many of whom were recording the incident), Plaintiff's apparent confusion, the power imbalance between the officers and Plaintiff, and the impact of the subsequent online "virality" of recordings of the incident.

119. Defendant Shouse's conduct was so outrageous in character and so extreme in degree that it was beyond all possible bounds of decency and utterly intolerable in a civilized community.

120. Defendant Shouse's actions were motivated by evil motive or intent and involved a reckless or callous indifference to the consequences.

121. Defendant Shouse's conduct caused Plaintiff to suffer severe emotional distress resulting in bodily harm.

122. As a direct and proximate result of Defendant Shouse's intentional infliction of emotional distress, Plaintiff has suffered and will continue to suffer physical and emotional injuries and has suffered and will continue to suffer pain of the body and mind, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, and stress.

123. As a direct and proximate result of Defendant Shouse's intentional infliction of emotional distress, Plaintiff has incurred and will continue to incur expenses related to reasonable and necessary medical care and treatment.

WHEREFORE, Plaintiff prays judgment against Defendant Shouse for damages in an amount that is fair and reasonable, for the costs of this action (including, but not limited to, attorney's fees), for punitive damages, for prejudgment interest, and for such other and further relief as the Court deems fair and appropriate under the circumstances.

COUNT XII
§ 1983 FAILURE TO TRAIN AND/OR SUPERVISE
(AGAINST DEFENDANT CPD)

124. Plaintiff realleges and restates all preceding paragraphs set forth above and incorporates each of those paragraphs herein by reference.

125. Defendant CPD hired Defendants Pottorff and Shouse, and employed the same at all times relevant herein.

126. Plaintiff's constitutional rights were violated, as described in detail above.

127. Defendant CPD's training and supervision practices were inadequate and Defendant CPD had notice that its training procedures and supervision were inadequate.

128. Within the CPD, there existed at the time of the incident widespread customs and practices so pervasive that they constituted policies, including, but not limited to:

- a. Use of excessive force;
- b. Failing to de-escalate or mitigate the use of force when reasonable;
- c. Failing to intervene in the face of constitutional deprivations;
- d. Ignoring the policies and procedures of the CPD by encouraging and/or permitting the use of excessive force and other constitutional violations;
- e. Failing to adequately train, supervise, control, and/or discipline police officers to assure compliance with CPD policies, state and federal laws, and the Constitution of the United States.

129. The CPD's failure to adequately train, supervise, control, and/or discipline police officers demonstrated a deliberate indifference to the rights of others, such that the CPD's failure to adequately train, supervise, control, and/or discipline police officers was a result of deliberate, conscious, and/or tacitly authorized choices.

130. The CPD's failure to adequately train, supervise, control, and/or discipline police officers caused Plaintiff's constitutional deprivations, as described in detail above.

131. There was a pattern of similar constitutional violations by untrained CPD employees.

132. Defendant CPD's actions and/or omissions, jointly and separately, were motivated by evil motive or intent and involved a reckless or callous indifference to Plaintiff's constitutional rights.

133. As a direct and proximate result of Defendant CPD's actions and/or omissions, Plaintiff suffered and will continue to suffer physical and emotional injuries and has suffered and will continue to suffer pain of the body and mind, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, and stress.

134. As a direct and proximate result of Defendant CPD's actions and/or omissions, Mr. Martin has incurred and will continue to incur expenses related to reasonable and necessary medical care and treatment.

WHEREFORE, Plaintiff prays judgment pursuant to 42 U.S.C. § 1983 against Defendant CPD for compensatory damages in an amount that is fair and reasonable, for the costs of this action (including, but not limited to, attorney's fees, whether pursuant to 42 U.S.C. § 1988 or otherwise), for punitive damages, for prejudgment interest, and for such other and further relief as the Court deems fair and appropriate under the circumstances.

COUNT XIII
§ 1983 FAILURE TO TRAIN AND/OR SUPERVISE
(AGAINST DEFENDANT CITY)

135. Plaintiff realleges and restates all preceding paragraphs set forth above and incorporates each of those paragraphs herein by reference.

136. Defendant City hired Defendants Pottorff and Shouse, and employed the same at all times relevant herein.

137. Plaintiff's constitutional rights were violated, as described in detail above.

138. Defendant City's training and supervision practices were inadequate and Defendant City had notice that its training procedures and supervision were inadequate.

139. Within the City, there existed at the time of the incident widespread customs and practices so pervasive that they constituted policies, including, but not limited to:

- a. Use of excessive force;
- b. Failing to de-escalate or mitigate the use of force when reasonable;
- c. Failing to intervene in the face of constitutional deprivations;
- d. Ignoring the policies and procedures of the City by encouraging and/or permitting the use of excessive force and other constitutional violations;
- e. Failing to adequately train, supervise, control, and/or discipline police officers to assure compliance with City policies, state and federal laws, and the Constitution of the United States.

140. The City's failure to adequately train, supervise, control, and/or discipline police officers demonstrated a deliberate indifference to the rights of others, such that City's failure to adequately train, supervise, control, and/or discipline police officers was a result of deliberate, conscious, and/or tacitly authorized choices.

141. The City's failure to adequately train, supervise, control, and/or discipline police officers caused Plaintiff's constitutional deprivations, as described in detail above.

142. There was a pattern of similar constitutional violations by untrained City employees.

143. Defendant City's actions and/or omissions, jointly and separately, were motivated by evil motive or intent and involved a reckless or callous indifference to Plaintiff's constitutional rights.

144. As a direct and proximate result of Defendant City's actions and/or omissions, Plaintiff suffered and will continue to suffer physical and emotional injuries and has suffered and will continue to suffer pain of the body and mind, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, and stress.

145. As a direct and proximate result of Defendant City's actions and/or omissions, Plaintiff has incurred and will continue to incur expenses related to reasonable and necessary medical care and treatment.

WHEREFORE, Plaintiff prays judgment pursuant to 42 U.S.C. § 1983 against Defendant City for compensatory damages in an amount that is fair and reasonable, for the costs of this action (including, but not limited to, attorney's fees, whether pursuant to 42 U.S.C. § 1988 or otherwise), for punitive damages, for prejudgment interest, and for such other and further relief as the Court deems fair and appropriate under the circumstances.

COUNT XIV
NEGLIGENT HIRING, RETENTION, AND/OR TRAINING
(AGAINST DEFENDANT CPD)

146. Plaintiff realleges and restates all preceding paragraphs set forth above and incorporates each of those paragraphs herein by reference.

147. Upon information and belief, Defendants Pottorff and Shouse have been the subjects of claims and investigations of excessive force prior to the incident discussed above. Notably, it is believed that Defendant Pottorff was investigated for his involvement in a fatal shooting on November 14, 2021.

148. As a result, Defendant CPD knew or should have known of Defendants Pottorff and/or Shouse's dangerous proclivities.

149. Defendant CPD was negligent, including, but not limited to, in one or more of the following ways:

- a. Hiring Defendants Pottorff and/or Shouse despite their dangerous proclivities that Defendant CPD knew or should have known of;
- b. Retaining Defendants Pottorff and/or Shouse despite their dangerous proclivities that Defendant CPD knew or should have known of;
- c. Failing to adequately train Defendants Pottorff and/or Shouse;
- d. Failing to adequately discipline Defendants Pottorff and/or Shouse.

150. At the time, Defendant CPD knew or had reason to know there was a high degree of probability that its actions and/or omissions would result in injury.

151. Defendant CPD's actions and/or inactions were performed for the benefit or profit of CPD as a corporate entity.

152. The negligence of Defendant CPD was the proximate cause of Plaintiff's injuries as the misconduct by Defendants Pottorff and/or Shouse was consistent with their dangerous proclivities, i.e., use of excessive force.

153. As a direct and proximate result of Defendant CPD's actions and/or omissions, Plaintiff suffered and will continue to suffer physical and emotional injuries and has suffered and will continue to suffer pain of the body and mind, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, and stress.

154. As a direct and proximate result of Defendant CPD's actions and/or omissions, Plaintiff has incurred and will continue to incur expenses related to reasonable and necessary medical care and treatment.

WHEREFORE, Plaintiff prays judgment against Defendant CPD for damages in an amount that is fair and reasonable, for the costs of this action (including, but not limited to, attorney's fees), for punitive damages, for prejudgment interest, and for such other and further relief as the Court deems fair and appropriate under the circumstances.

COUNT XV
NEGLIGENT HIRING, RETENTION, AND/OR TRAINING
(AGAINST DEFENDANT CITY)

155. Plaintiff realleges and restates all preceding paragraphs set forth above and incorporates each of those paragraphs herein by reference.

156. Upon information and belief, Defendants Pottorff and Shouse have been the subjects of claims and investigations of excessive force prior to the incident discussed above. Notably, it is believed that Defendant Pottorff was investigated for his involvement in a fatal shooting on November 14, 2021.

157. As a result, Defendant City knew or should have known of Defendants Pottorff and/or Shouse's dangerous proclivities.

158. Defendant City was negligent, including, but not limited to, in one or more of the following ways:

- a. Hiring Defendants Pottorff and/or Shouse despite their dangerous proclivities that Defendant City knew or should have known of;
- b. Retaining Defendants Pottorff and/or Shouse despite their dangerous proclivities that Defendant City knew or should have known of;
- c. Failing to adequately train Defendants Pottorff and/or Shouse;
- d. Failing to adequately discipline Defendants Pottorff and/or Shouse.

159. At the time, Defendant City knew or had reason to know there was a high degree of probability that their actions and/or omissions would result in injury.

160. Defendant City's actions and/or inactions were performed for the benefit or profit of CPD as a corporate entity.

161. The negligence of Defendant City was the proximate cause of Plaintiff's injuries as the misconduct by Defendants Pottorff and/or Shouse was consistent with their dangerous proclivities, i.e., use of excessive force.

162. As a direct and proximate result of Defendant City's actions and/or omissions, Plaintiff suffered and will continue to suffer physical and emotional injuries and has suffered and will continue to suffer pain of the body and mind, mental anguish, inconvenience, humiliation, embarrassment, loss of enjoyment of life, and stress.

163. As a direct and proximate result of Defendant City's actions and/or omissions, Plaintiff has incurred and will continue to incur expenses related to reasonable and necessary medical care and treatment.

WHEREFORE, Plaintiff prays judgment against Defendant City for damages in an amount that is fair and reasonable, for the costs of this action (including, but not limited to, attorney's fees), for punitive damages, for prejudgment interest, and for such other and further relief as the Court deems fair and appropriate under the circumstances.

COUNT XVI
RESPONDEAT SUPERIOR
(AGAINST DEFENDANTS CPD AND CITY)

164. Plaintiff realleges and restates all preceding paragraphs set forth above and incorporates each of those paragraphs herein by reference.

165. At all times relevant hereto, Defendants Pottorff and Shouse were employed as police officers with Defendants CPD and/or City.

166. The wrongful actions and/or omissions by Defendants Pottorff and Shouse, as described in greater detail above, were committed within the scope of their employment as police officers and were done as a means or for the purpose of doing the work assigned by Defendants CPD and/or City.

167. At the time, the wrongful actions and/or omissions by Defendants Pottorff and Shouse were motivated by evil motive or intent and involved a reckless or callous indifference to the consequences and Plaintiff's constitutional rights, and/or were committed despite the fact that Defendants Pottorff and Shouse knew or had reason to know there was a high degree of probability that their actions and/or omissions would result in injury.

168. The wrongful actions and/or omissions by Defendants Pottorff and Shouse, as described in greater detail above, were of the same general nature as that authorized, or incidental to the conduct authorized, by Defendants CPD and/or City.

169. Defendants CPD and/or City are therefore vicariously liable pursuant to the doctrine of respondeat superior for the wrongful actions and/or omissions by Defendants Pottorff and Shouse alleged herein.

WHEREFORE, Plaintiff prays judgment against Defendants CPD and/or City for damages in an amount that is fair and reasonable, for the costs of this action (including, but not limited to, attorney's fees), for punitive damages, for prejudgment interest, and for such other and further relief as the Court deems fair and appropriate under the circumstances.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

HEPLERBROOM LLC

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Dated: December 14, 2023