

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION, AT DAYTON
CIVIL DIVISION

ANDREW C. GRIMM
233 Canterbury Drive
Springfield, Ohio 45503

and,

MELANIE J. GRIMM
233 Canterbury Drive
Springfield, Ohio 45503

and,

KBA NEWS, LLC
114 S. Main St.
New Carlisle, Ohio 45344

Plaintiffs,

-vs-

JACOB SHAW
(Individually & in his professional capacity
as a Clark County Deputy Sheriff)
120 N. Fountain Avenue
Springfield, Ohio 45502

and,

BOARD OF COUNTY COMMISSIONERS :
CLARK COUNTY, OHIO :
c/o County Administrator :
Jennifer Hutchinson :

Case No. 3:17-CV-422

Judge Thomas M. Rose

PLAINTIFFS' FIRST
AMENDED COMPLAINT

(Jury Demand Endorsed Hereon)

50 E. Columbia Street, Ste 543 :
Springfield, Ohio 45502 :
 :
and, :
 :
CITY OF NEW CARLISLE :
c/o City Manager Randy Bridge :
331 S. Church Street :
New Carlisle, Ohio 45344 :
 :
and, :
 :
CLARK COUNTY SHERIFF :
DEBORAH BURCHETT :
(Individually & in her professional :
capacity as the Clark County Sheriff) :
120 N. Fountain Ave. :
Springfield, Ohio 45502 :
 :
Defendants. :

Now come Plaintiffs, Andrew Grimm and Melanie Grimm (husband and wife) and KBA News, LLC, through their attorneys, and through their First Amended Complaint allege the following for their causes of action against the Defendants.

PRELIMINARY STATEMENT

1. This is a civil rights action for money damages for injuries sustained by Plaintiffs Andrew Grimm, Melanie Grimm, and KBA News, LLC, as a result of the unreasonable use of deadly force and violation of Andrew Grimm’s constitutional and common law rights by Defendant, Deputy Jacob Shaw, who was on duty as a Clark County Sheriff’s Deputy at the time of the incident, Clark County Sheriff Deborah Burchett, Board of Commissioners Clark County, and the City of New Carlisle.

2. During the evening hours of September 4, 2017, Andrew Grimm (“Andy”) was inexplicably shot by Defendant, Deputy Jacob Shaw (“Shaw”), who was on duty at the time of the incident. Andy posed no threat to anyone.

3. Judging the reasonableness of Shaw’s use of deadly force from the perspective of a reasonable officer on the scene, and not with the 20/20 vision of hindsight, the decision to fire at an unarmed photographer, seventy-five feet away, trying to set up a camera was unreasonable.

4. Andy asserts claims under 42 U.S.C. § 1983 for violations of his right to be free from unreasonable searches and seizures, and unreasonable deadly force under the protection of the Fourth and/or Fourteenth Amendments to the United States Constitution against Shaw.

5. Andy asserts Section 1983 Claims against Sheriff Deborah Burchett (“Sheriff Burchett”), Board of Commissioners Clark County (“Clark County”), and the City of New Carlisle (“New Carlisle”) for their failure to properly hire, train and supervise law enforcement in general and Shaw specifically, for ratifying Shaw’s unreasonable use of deadly force, and for promulgating customs, policies, and practices, which proximately caused the violation of Andy’s federal constitutional rights, all under the authority of *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978).

6. Andy also asserts pendant state law claims for battery and intentional infliction of serious emotional distress against all Defendants.

7. Melanie Grimm (“Melanie”) asserts loss of consortium claims as Andy’s wife and companion against all Defendants.

8. Andy and Melanie assert a claim for Intentional Infliction of Severe Emotional Distress for outrageous conduct by Shaw in shooting Andy.

9. Andy and Melanie assert a claim for Intentional Infliction of Severe Emotional Distress against Sheriff Burchett, Clark County, and New Carlisle for outrageous conduct after the shooting.

10. Plaintiffs KBA News, LLC (“KBA News”) and its owners Andy and Dale Grimm (“Dale”) assert damages against Clark County, Clark County Sheriff Deborah Burchett, and the City of New Carlisle under 42 U.S.C. § 1983, for violating the Equal Protection Clause by discriminating against Plaintiffs for arbitrary, vindictive, and malicious reasons.

11. KBA News asserts intentional interference with a contractual relationship that has caused loss of business profits as Defendants have willfully and intentionally discriminated and retaliated against the business in response to the events of September 4, 2017.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and § 1343, as certain claims asserted herein arise under the Constitution and laws of the United States, to wit, the Fourth, and/or Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

13. Supplemental jurisdiction over state law claims asserted herein is invoked pursuant to 28 U.S.C. § 1367.

14. The matter in controversy exceeds SEVENTY-FIVE-THOUSAND DOLLARS, (\$75,000.00), exclusive of interest and costs.

15. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b)(2), (e)(1) and (e)(2).

16. Joinder of Plaintiffs' claims is proper pursuant to Fed.R. Civ.P. 20(a) because Plaintiffs' claims arise from the same transaction/incident(s) or series of transactions/incident(s) and share common issues of law and fact.

PARTIES

17. Plaintiff Andrew Grimm is, and was at all times relevant, a citizen of the United States of America residing in the State of Ohio and entitled to the protection of the Constitution and laws of the United States of America and the State of Ohio. All who know him call him Andy.

18. Plaintiff Melanie Grimm is, and was at all times relevant, a citizen of the United States of America residing in the State of Ohio and entitled to the protection of the Constitution and laws of the United States of America and the State of Ohio. Melanie is the wife of Andy.

19. KBA News, LLC is a duly licensed Ohio limited liability company that is a family owned and operated business with the primary purpose of reporting the local news in the New Carlisle, Ohio area. It is known to many as the New Carlisle News. Andy and his father, Dale, are owners of the New Carlisle News, among other papers.

20. Defendant Jacob Shaw is, and was at all times relevant, a law enforcement officer employed by Clark County, Ohio, and under contract with the City of New Carlisle, who was acting under color of law within the course and scope and in furtherance of his employment. Defendant Shaw is a "person" under 42 U.S.C. § 1983. Defendant Shaw is sued herein in his individual and official capacities.

21. Defendant Board of Commissioners Clark County, Ohio is, and was at all relevant times, a political subdivision and unit of local government duly organized under the laws of the State of

Ohio, located in the Southern District of Ohio, and acting under the color of law. Defendant Clark County is a “person” under 42 U.S.C. § 1983.

22. Defendant City of New Carlisle, Ohio is, and was at all relevant times, a political subdivision and unit of local government duly organized under the laws of the State of Ohio, located in the Southern District of Ohio, and acting under the color of law. Defendant New Carlisle is a “person” under 42 U.S.C. § 1983.

23. Defendant Clark County Sheriff Deborah Burchett is, and was at all times relevant, the duly elected Sheriff of Clark County, Ohio, who was acting under color of law within the course and scope and in furtherance of her duties. Sheriff Burchett is a “person” under 42 U.S.C. § 1983. Defendant Sheriff Burchett is sued herein in her individual and official capacities.

STATEMENT OF FACTS

Defendant Shaw’s Insufficient Training

24. On January 19, 2015, Shaw was sworn in as a Clark County Deputy Sheriff by then Clark County Sheriff Gene Kelly.

25. Shaw was originally assigned to the Clark County jail.

26. New Carlisle contracts with Clark County for deputy services.

27. On May 30, 2017, Shaw was reassigned from the jail division to the New Carlisle Road Patrol.

28. Shaw was not the most qualified candidate to be put on road patrol.

29. Shaw received insufficient field training before he was given his own patrol.

30. Shaw had less than three weeks of field training before he was given his own patrol.

31. Shaw may have received as little as a few days of field training before he was given his own patrol, but records of his training are lost.
32. On June 3, 2017, Clark County Sheriff's Lt. Brad Barnhart emailed Shaw's direct supervisor that Shaw's training "falls short of the FTO program drastically."
33. The Field Training Officer (FTO) programs throughout Ohio require a minimum of 13 weeks of field training.
34. Shaw began his field training June 5th, 2017.
35. Shaw should have still be in field training through September 11th, 2017.
36. Shaw even requested additional road training before being given his own road patrol.
37. Clark County Sheriff Department policy requires that Shaw's Field Training Officer (FTO) complete daily evaluation sheets during his road training.
38. The Clark County Sheriff's Office cannot locate these evaluation sheets.
39. On information and belief, Sheriff Burchett, Clark County and New Carlisle have a reckless or intentional custom and practice of providing Deputies with insufficient field training before being put on a solo road patrol.
40. Shaw should never have been given his own road patrol due to his insufficient training.
41. Shaw would have still been in field training on September 4th, 2017—the day Shaw shot Andy—if he would have been given the additional field training required by FTO programs.
42. Shaw would not have shot Andy if he was not on a solo road patrol the night of the shooting, as another more experienced officer would have known that deadly force was unreasonable and unnecessary.
43. Shaw would not have shot Andy had he been given sufficient training.

Defendant Shaw's Lack of Handgun Certification

44. In November 2016, Sheriff Burchett was elected Clark County Sheriff by the citizens of Clark County.

45. On May 18, 2017, Sheriff Burchett issued Clark County Sheriff's Office General Order 103, entitled "Response to Resistance/Aggression/Weapons."

46. Section (A)(1) of the Order states: "No Clark County Sheriff's Office deputy shall be authorized to carry or use any firearm or other lethal or less lethal weapon until the following have occurred:

(a) The deputy has received a copy of the General Order 103 and received instructions to the contents of General Order 103 (Response to Resistance/Aggression/Weapons).

(b) The employee has demonstrated proficiency to a qualified instructor by achieving a qualifying score on the prescribed course for the weapon(s) which includes: familiarization, safe handling, and proper use and application of the weapon(s)."

47. Section 1(A)(5) of that Order states: "At least annually, each deputy authorized to carry firearms will at the minimum pass the State of Ohio requalification course with the weapon(s) he/she is authorized to carry or use. The requalification will be conducted with an approved Clark County Sheriff's Office firearms instructor. The qualified instructor(s) will document the proficiency."

48. Shaw received his initial training to carry his glock 22 service weapon on September 19, 2015.

49. Shaw received his requalification training to carry his glock 22 service weapon on January 13, 2016.

50. Sheriff Burchett said “Yes” and “Correct” to the deposition questions: “that certification (January 13, 2016) covered another year” and “Which would have been 1-13-2017.”

51. Sheriff Burchett said “Yes” to the deposition question: “Would that mean that Jacob Shaw was not recertified and should not have been carrying a gun on duty past 1-13-2017.”

52. Sheriff Burchett said: “If there’s no other paperwork anywhere, yes it means he (Shaw) should not have been carrying a firearm.”

53. There is no other paperwork anywhere.

54. Sheriff Burchett said “Correct” to the deposition question “And that means he (Shaw) wouldn’t have had a gun on September 4th, 2017.”

55. Sheriff Burchett said “Correct” to the deposition question: “And that he wouldn’t have been able to shoot Andy Grimm, correct.”

56. Shaw was carrying his glock 22 on his person, as a service weapon on September 4, 2017.

57. Shaw was illegally carrying a gun the night he shot Andy on September 4, 2017.

58. On September, 4, 2017, Shaw had not been recertified to carry his glock 22 on his person for over 19 months.

59. Under General Order 103, Shaw was required to recertify to carry his glock 22 annually or every 12 months.

60. On information and belief, Sheriff Burchett, Clark County, and New Carlisle have a reckless or intentional custom and practice of failing to recertify Deputies on gun training annually and failing to remove uncertified Deputies from road patrol according to Order 103.

61. If Shaw had been removed from road patrol as required by Order 103 for failing to recertify his gun training, Andy would not have been shot by Shaw.

Defendant Deputy Jacob Shaw's Abuse of Anabolic Steroids

62. Shaw is an abuser of illegal anabolic steroids.

63. Among other things, anabolic steroids increase testosterone levels which have the effect of making the user more aggressive.

64. Due to his abuse of anabolic steroids, Shaw should not have been on the road patrol on September 4, 2017, and would not have been able to shoot Andy.

65. Shaw would not have shot Andy had he not been an abuser of anabolic steroids and had a heightened testosterone level that made Shaw more aggressive.

Defendant Shaw's Prior Incidents

66. Defendant Shaw has a history of sub-standard law enforcement work.

67. Prior to be assigned to the road patrol, Defendant Shaw was reprimanded for failing to follow procedures, after an investigation into the overdose death of an inmate.

68. On August 15, 2017, Deputy Shaw was involved in an on duty motor vehicle accident.

Defendant Shaw Unreasonably Shooting Andy on September 4, 2017

69. Shaw was working in his official capacity as a Clark County Deputy during all relevant times for purposes of this Complaint.

70. On September 4, 2017, Shaw was patrolling the City of New Carlisle.

71. Shaw initiated a traffic stop on North Main Street in New Carlisle at approximately 10:10 p.m. September 4, 2017, for a speed violation.

72. The stop was non-confrontational.

73. North Main Street is a main thoroughfare through New Carlisle.
74. Defendant Shaw asked for the driver's license and registration, which the driver provided.
75. Defendant Shaw returned to and sat in his patrol vehicle to verify the information obtained during the traffic stop. The patrol car emergency lights were engaged.
76. Andy is an owner and photographer for the local New Carlisle News.
77. He is a member of the local press corps in and around New Carlisle and the greater Miami Valley area.
78. Andy saw the stop and proceeded toward the stop that Defendant Shaw was conducting on North Main St., New Carlisle, Ohio.
79. The Dollar General next to the traffic stop was open, and there was pedestrian traffic in the Dollar General parking lot and vehicle traffic on the road.
80. Andy came upon the traffic stop that was being conducted by Shaw.
81. Andy pulled into the parking lot across the street from Shaw, circled the parking lot, and backed into a parking space—so that he was easily visible by Shaw.
82. Shaw watched Andy drive down the street, watched Andy pull into the parking lot, and continued to watch Andy through the rest of the events.
83. Deputy Shaw alleges that he activated his radar gun and determined Andy's vehicle to be speeding.
84. The parking lot services a shopping center with multiple shops and a restaurant with a large light in the middle of the lot and a street lamp right in front of where Andy parked.
85. Andy flashed his vehicle lights to visually warn Shaw of his presence.
86. Andy recognized Shaw and waved at him.

87. Shaw saw Andy's vehicle park in the Studebaker's restaurant parking lot.
88. At all times Andy was in plain view under the streetlamp.
89. Andy was wearing a white shirt with his press pass credentials around his neck.
90. Fully within Deputy Shaw's vision under a street light, Andy exited his jeep in a routine fashion, casually put out a cigarette, and proceeded to remove his Nikon camera and silver tripod from the back of his jeep.
91. Deputy Shaw saw Andy exit his vehicle.
92. Andy's back was to Defendant Shaw when Andy removed his Nikon camera and silver tripod.
93. Shaw provided no notification to Andy that Shaw believed Andy's actions were suspicious.
94. Shaw provided no verbal command or visual command to Andy despite watching Andy pull into a parking lot, circle the lot, park, exit his vehicle, and reach in the back of his jeep to remove a Nikon camera and silver tripod.
95. Shaw had ample time to give Andy a verbal command or visual command.
96. Shaw never gave Andy a verbal command.
97. Shaw never gave Andy a visual command.
98. Shaw never shined a light on Andy.
99. At approximately 10:15 p.m., Shaw, who was dressed in his official Clark County Sheriff Department uniform, wearing his Clark County issued body armor, and seated inside his official Clark County cruiser, quickly exited his cruiser and fired two shots upon Andy.
100. Shaw gave no warning prior to discharging his weapon.

101. Shaw could have taken cover behind the engine of his cruiser.
102. Shaw failed to adhere to his use of force training.
103. Shaw gave no warning despite the fact that Andy's back was facing Defendant Shaw when Andy reached into his jeep.
104. Andy was seventy-five feet away from Shaw.
105. Andy was clearly visible and the object in his hand was clearly visible.
106. Defendant Shaw shot Andy when he was turning to face him with his Nikon Camera and silver tripod at waist level.
107. Andy holding an object at his waist would have made a reasonable officer aware that that it was a harmless object.
108. Andy did not give Shaw a scintilla of evidence to believe that the Nikon camera and silver tripod was something dangerous, let alone a gun.
109. Andy could have been reaching for a million different objects, including a tire iron, a post for a sign, a piece of restaurant equipment, a tripod, or a million other harmless objects.
110. Shaw shot to kill Andy without warning when Andy was only carrying a Nikon camera and silver tripod.
111. Reasonable officers are required to give a warning when feasible.
- 112.. Shaw could have feasibly given a warning before firing two deadly shots.
113. Shaw had approximately two minutes to give a warning to Andy.
114. One of Shaw's bullets ripped through Andy's stomach.
115. The other bullet grazed Andy's shoulder.
116. Shaw intended to shoot at Andy.

117. Shaw intended to kill or cause serious bodily injury to Andy.
118. Andy did not possess any weapons, only a Nikon camera and silver tripod.
119. Andy presented no danger to himself or anyone around him.
120. After shooting, Shaw ran toward Andy.
121. Shaw immediately recognized Andy and the wrongfulness of his decision, and told Andy: “I’m sorry; you’re going to be okay.”
122. Andy was bleeding heavily from both the entry and exit wounds.
123. Andy wanted his phone so that he could call his wife.
124. Andy wanted his camera protected because it was his livelihood.
125. Andy waited a total of five minutes for emergency responders to arrive on scene.
126. When additional officers arrived, Shaw was escorted away from the scene.
127. Shaw was advised to not discuss the shooting with anyone until he returned to the Sheriff’s Department.
128. Andy was transported by ambulance to Miami Valley Hospital and underwent treatment for his gunshot wounds.
129. While being transported, Chief Trusty called Melanie.
130. Melanie was terrified that her husband would die: she asked, “Is he going to die?”
131. Andy arrived at Miami Valley Hospital at 10:55 p.m. on September 4, 2017.
132. Upon examination, Andy suffered a gunshot entrance wound in the left lower anterior chest wall with a second exit wound in the left lower posterior chest wall.
133. Andy was taken to Pre-Op at 11:15 p.m. on September 4, 2017.

134. Andy was escorted to the Operating Room at 11:44 p.m. Anesthesia was prepared and administered at 11:50 p.m.

135. Surgeons performed a laparoscopy upon Andy at 12:06 a.m. on September 5, 2017.

136. Surgeons cleaned and packed the wounds at 12:22 a.m. on September 5, 2017. Andy was taken out of the Operating Room at 12:33 a.m. and was taken to the postanesthesia care unit.

137. Andy came out of anesthesia at 12:38 a.m. where doctors and nurses continued to monitor and care for him.

138. On that same day, at 5:07 a.m. and again at 1:15 p.m., the personal medical records of Andy were unlawfully accessed by employees of Premier Health.

139. Why and for whom that information was unlawfully accessed is currently unknown.

140. As a proximate result of Shaw's unreasonable use of deadly force, Andy sustained injuries to his body, which caused him to miss time at his business.

141. As a proximate result of Shaw's unreasonable use of deadly force, Andy has suffered from an assortment of symptoms, including headaches, shaking, anxiety, difficulty sleeping, and lowered self-confidence, as well as feelings of hopelessness, embarrassment, paranoia, helplessness, confusion, fear, and nervousness.

142. As a proximate result of Shaw's unreasonable use of deadly force, Andy is suffering from severe emotional distress.

143. As a proximate result of Shaw's unreasonable use of deadly force, Andy's professional career has suffered.

144. As a proximate result of Shaw's unreasonable use of deadly force, Andy now suffers from Post Traumatic Stress Disorder and is on medication for such disorder.

145. As a proximate result of Shaw's unreasonable use of deadly force, Andy's personality has changed.

146. As a proximate result of Shaw's unreasonable use of deadly force, Andy will suffer permanently.

147. Andy did not experience any of the above symptoms and injuries before Shaw shot him.

148. As a proximate result of Shaw's unreasonable use of deadly force, Melanie cared for her husband's wounds, and is suffering severe emotional distress and loss of consortium with her husband.

149. As a proximate result of Shaw's unreasonable use of deadly force, Andy lost wages for time taken off to heal from the injury.

150. As a proximate result of Shaw's unreasonable use of deadly force, Andy was and is no longer offered business opportunities because of the infamy this situation has brought to himself and his family.

Defendant Shaw's Conduct Ratified

151. Shaw was placed on Administrative Leave effective September 5, 2017 where the personnel order stated that he was not to perform any duties in his capacity as a Clark County Sheriff Deputy until released from Administrative Leave.

152. Shortly after the incident, Shaw was on duty with his service weapon at the Northwestern High School football game on October 20, 2017.

153. Sheriff Burchett immediately recalled Defendant Shaw when she was informed he was on duty with his service weapon on October 20, 2017.

154. Shaw was in violation of a personnel order regarding his Administrative Leave by being on duty at the Northwestern High School football game on October 20, 2017.

155. Shaw was released from Administrative Leave on October 21, 2017.

156. Ohio Bureau of Criminal Investigation (“BCI”) was in the middle of an ongoing criminal investigation against Shaw during the whole month of October, 2017.

157. The Clark County Sheriff’s Department concluded its internal investigation of Shaw on July 16, 2018.

158. Shaw was placed back on active duty, with a firearm, prior to the resolution of the criminal investigation performed by Ohio Bureau of Criminal Investigation (“BCI”) and the conclusion of the Internal Investigation by Clark County Sheriff’s Department.

159. On information and belief, neither New Carlisle nor Clark County have taken any disciplinary action against Shaw.

160. Sheriff Burchett and Clark County ratified Shaw’s conduct described herein by allowing him to return to his Sheriff duties before the results of BCI’s criminal investigation were released.

161. Sheriff Burchett, Clark County, and New Carlisle ratified Defendant Shaw’s conduct described herein by allowing him to return to his post as a deputy on road patrol in New Carlisle prior to the Internal Investigation being released to the public.

Outrageous Conduct of Sheriff Burchett, Clark County, and New Carlisle

162. Prior to the shooting the Sheriff’s Department had a positive view toward Andy and the New Carlisle News.

163. Prior to the shooting, Sheriff Burchett called Andy her favorite reporter: “Oh [*sic*] course Andy is my favorite news reporter.”

164. Prior to the shooting, the Sheriff’s Department programed Andy’s scanner so that he could quickly get to crime scenes.

165. Prior to the shooting, the Sheriff’s Department would take Andy on police ride-alongs.

166. Prior to the shooting, the Sheriff’s Department—not a single officer within the Sheriff’s Department—ever made a complaint of suspicious or unsafe behavior from Andy.

167. Prior to the shooting, not a single officer within the Sheriff’s Department ever brought up unsafe behavior on the part of Andy to the Sheriff’s Department leadership.

168. After the shooting, officers of the Sheriff’s Department falsely fabricated and exaggerated stories about Andy unsafely approaching police officers.

169. After the shooting, those false and falsely exaggerated stories about Andy were done at the behest of Sheriff Burchett.

170. After the shooting, Sheriff Burchett had a personal vendetta to discredit Andy and destroy Andy’s livelihood.

171. After the shooting, Sheriff Burchett described Andy in text messages as:

- “He is an ass”;
- “Well fuck him”;
- “All about money, Put someone on him”
- “It’s ok we are smarter than him”

172. After the shooting, Sheriff Burchett had a vendetta against Andy and KBA News.

173. After the shooting, Sheriff Burchett tried to destroy Andy's credibility as a person and as a member of the free press.

174. After the shooting, New Carlisle, Clark County, and Sheriff Burchett have withheld and/or delayed providing KBA News information regarding the community.

175. On September 9, 2017, Sheriff Burchett sent a text message to one of her subordinates that stated, "And Andy said Jake tried to kill him. He will get no news from us."

176. Jake Shaw did try to kill Andy when Shaw shot Andy twice.

177. Sheriff Burchett is recklessly or intentionally discriminating and retaliating against Andy and KBA News in reaction to Andy getting shot on September 4, 2017.

178. Sheriff Burchett had surrogates, including Sandy Reed, post disparaging online comments against Andy to discredit him, place him in a false light, and damage the reputation of his newspaper.

179. When asked if "Have you ever asked Ms Reed to post anything on your behalf regarding the Andy Grimm case", Sheriff Burchett responded:

- "Not that I know of. Why would I."
- "Maybe if there was something that was—that I felt wasn't right, but nothing, you know, that would be discriminatory or anything."
- "Maybe yeah; I'm not sure."

180. For example, Sandy Reed posted: "With all the officers being killed you would think as a reporter he of all people should know better.! Thank god Andy was blessed he was not hurt bad and he has the support of many. What a nightmare for both men. Andy sure did change his story up after he seen that he could make big \$\$\$\$\$ off of this! And I don't mean he should not have

his medical paid, he should and money for pain. His equipment was already replaced, And he knows how blessed he was there that he got better then the equipment then he had. I AM JUST SAYING HE IS PLAYING THIS ALL IT WORTH. And what's that say about him.”

181. As a result of this outrageous behavior, Andy and Melanie have suffered severe emotional distress.

182. As a result of this outrageous behavior, Andy's and his father Dale's newspapers, KBA News, lost subscribers and income.

FIRST CLAIM FOR RELIEF

(Andy 42 U.S.C. § 1983 Against Defendant Shaw for Unreasonable Use of Deadly Force in Violation of the Fourth and/or Fourteenth Amendment)

183. Andy repeats, reiterates, and realleges each and every allegation contained in this Complaint with the same force and effect as if fully set forth herein.

184. At the aforementioned time and place, Shaw, acting under color of law and within the course and scope of his employment as a law enforcement officer with Clark County and New Carlisle unreasonably used deadly force on Andy in violation of his clearly established rights guaranteed by the Fourth and/or Fourteenth Amendments to the United States Constitution.

185. Shaw acted unreasonably because he did not reasonably have probable cause to believe that Andy posed an imminent threat of serious physical harm to the officer.

186. Shaw acted unreasonably because Andy only held a camera and tripod, similar to clearly established rights in Fourth Amendment case law.

187. Shaw acted unreasonably when he failed to give a warning before using deadly force because such warning was feasible, similar to clearly established rights in Fourth Amendment case law.

188. Shaw's unreasonable use of deadly force, as described herein, constitutes wanton, willful, reckless, unjustifiable, and malicious conduct warranting the imposition of exemplary punitive damages.

189. Faced with the circumstances present at the aforementioned time and place, reasonably prudent law enforcement officers/personnel would or should have known that the unreasonable use of deadly force described herein violated Andy's clearly established Fourth Amendment right to be free from unreasonable searches and seizures and/or his clearly established Fourteenth Amendment liberty interest in bodily integrity protected by the substantive component of the due process clause and that the activity engaged in "shocks the conscience."

190. Shaw callously and recklessly disregarded Andy's federally protected rights.

191. Shaw acted unreasonably when he abused illegal anabolic steroids.

192. As a direct and proximate result of Shaw's unreasonable use of deadly force in violation of Andy's clearly established Fourth and/or Fourteenth Amendment rights, Andy was forced to endure and suffer, and continues to endure and suffer, extreme physical, mental, and emotional pain and suffering and pecuniary loss.

WHEREFORE, Plaintiff Andy prays for judgment against Defendant Shaw for:

a. Compensatory damages in an amount that will fully and fairly compensate Andy for his injury, damage, and loss;

b. Punitive damages in an amount that will serve to adequately punish and deter the conduct alleged herein;

c. Costs of suit and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and

d. All such other relief which the Court deems appropriate.

SECOND CLAIM FOR RELIEF

(Andy 42 U.S.C. § 1983 Against Defendants Sheriff Burchett, Clark County, and New Carlisle, for Failure to Hire, Train, and Supervise and for Customs, Policies, and Practices Causing Violations of the Fourth Amendment)

193. Andy repeats, reiterates, and realleges each and every allegation contained in this Complaint with the same force and effect as if fully set forth herein.

194. Sheriff Burchett, Clark County, and New Carlisle acted with deliberate indifference when failing to properly screen potential Sheriff Deputy candidates through the background review process.

195. Shaw has a history of substandard deputy work.

196. Sheriff Burchett, Clark County, and New Carlisle acted with deliberate indifference when failing to adequately and properly train and/or supervise Shaw.

197. Sheriff Burchett and Clark County ratified Shaw's conduct described herein by allowing him to return to his duties as a Sheriff Deputy before the results of BCI's criminal investigation were concluded.

198. Sheriff Burchett, Clark County, and New Carlisle ratified Defendant Shaw's conduct described herein by allowing him to return to his post as a deputy on road patrol in New Carlisle prior to the internal investigation being released to the public.

199. The aforementioned deliberate indifference by Sheriff Burchett, Clark County, and New Carlisle caused Shaw's unreasonable use of deadly force against Andy.

200. Shaw would not have been on a solo patrol with a gun when he unreasonably used deadly force against Andy had it not been for the deliberate indifference of Sheriff Burchett, Clark County, and New Carlisle.

201. On information and belief, Sheriff Burchett, Clark County, and New Carlisle with deliberate indifference failed to train Shaw on mistaken identity and ambush training.

202. On information and belief, Sheriff Burchett, Clark County, and New Carlisle, implemented customs and policies for training and supervision of Clark County Deputies on searches and seizures, that, on their face, violate the Fourth Amendment. Alternatively, on information and belief, Clark County Sheriff Burchett, Clark County and New Carlisle implemented otherwise facially valid customs and policies in a manner such that constitutional violations were likely to be and were visited upon those inhabiting, visiting, or otherwise within the jurisdictional limits of the Clark County area, including Andy.

203. As a direct and proximate result of Sheriff Burchett, Clark County, and New Carlisle's customs, policies, and practices described herein, which violate the Fourth Amendment on their face, or otherwise are applied in a manner such that Fourth Amendment violations are likely to occur, Andy was forced to endure and suffer, and continues to endure and suffer, extreme physical, mental, and emotional pain and suffering and pecuniary loss.

WHEREFORE, Andy prays for judgment against Sheriff Burchett, Clark County and New Carlisle, jointly and severally, for:

a. Compensatory damages in an amount that will fully and fairly compensate him for his injury, damage, and loss;

b. Punitive damages in an amount that will serve to adequately punish and deter the conduct alleged herein;

c. Costs of suit and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and

d. All such other relief which the Court deems appropriate

THIRD CLAIM FOR RELIEF

(Andy Common Law Assault and Battery Against Defendants Shaw, Sheriff Burchett, Clark County, and New Carlisle)

204. Plaintiffs repeat, reiterate, and reallege each and every paragraph contained in this Complaint with the same force and effect as if fully set forth herein.

205. On September 4, 2017, Shaw threatened bodily harm against Andy by pointing and discharging his service weapon towards Andy, which caused Andy to be in fear of imminent peril and death.

206. On September 4, 2017, Shaw had apparent authority and ability to carry out bodily harm and, in fact did, intentionally and without permission or warning, touch and injure Andy.

207. At all times relevant, Shaw was acting within the course, scope, and in furtherance of his employment with the Sheriff Burchett, Clark County, and New Carlisle, rendering them vicariously liable for his conduct.

208. Shaw battered Andy with malicious purpose, in bad faith, and in a reckless or wanton manner.

209. As a direct and proximate result of being assaulted and battered by Shaw, Andy was forced to endure and suffer, and continues to endure and suffer, extreme physical, mental, and emotional pain and suffering.

WHEREFORE, Plaintiff Andy prays for judgment against Defendants Shaw, Sheriff Burchett, Clark County and New Carlisle, jointly and severally, for:

- a. Compensatory damages in an amount that will fully and fairly compensate Andy for his injury, damage, and loss;
- b. Punitive damages in an amount that will serve to adequately punish and deter the conduct alleged herein;
- c. Costs of suit and reasonable attorneys' fees; and
- d. All such other relief which the Court deems appropriate

FOURTH CLAIM FOR RELIEF

(Melanie Loss of Consortium Against Defendants Shaw, Sheriff Burchett, Clark County and New Carlisle)

210. Plaintiffs repeat, reiterate, and reallege each and every paragraph contained in this Complaint with the same force and effect as if fully set forth herein.

211. As a direct and proximate result of Defendants' actions, Andy suffered a traumatic injury. The nature of the injury has caused Melanie to suffer the loss of consortium and companionship of her husband. The loss of consortium and companionship suffered by Melanie is serious and of a nature that no reasonable person could be expected to endure.

212. Defendant Shaw was acting within the course, scope, and in furtherance of his

employment with Defendants Clark County, Ohio, Sheriff Burchett, in her Official Capacity, and the City of New Carlisle.

WHEREFORE, Plaintiff Melanie prays for judgment against Defendants Shaw, Sheriff Burchett, Clark County, and New Carlisle, jointly and severally, for:

a. Compensatory damages in an amount that will fully and fairly compensate her for her injury, damage, and loss;

b. Punitive damages in an amount that will serve to adequately punish and deter the conduct alleged herein;

c. Costs of suit and reasonable attorneys' fees; and

d. All such other relief which the Court deems appropriate

FIFTH CLAIM FOR RELIEF

(Andy and Melanie Common Law Intentional Infliction of Severe Emotional Distress

Claims Against Defendant Shaw)

213. Plaintiffs Andy and Melanie repeat, reiterate, and reallege each and every paragraph contained in this Complaint with the same force and effect as if fully set forth herein.

214. Defendant Shaw's conduct in shooting Andy was so extreme and outrageous as to go beyond all possible bounds of decency and was utterly intolerable in a civilized society.

215. Shaw in shooting Andy either intended to cause severe emotional distress, or knew or should have known that their actions would result in severe emotional distress, or recklessly disregarded the probability of causing severe emotional distress to Andy and his wife Melanie.

216. Shaw's conduct in shooting Andy was the direct and proximate cause of such severe emotional distress and emotional injury to Andy and his wife Melanie.

217. As a direct and proximate result of Shaw's conduct in shooting Andy, Andy and Melanie suffered severe psychic injury; and the mental anguish suffered by Andy and Melanie is serious and of a nature that no reasonable person could be expected to endure.

218. The conduct of the Defendant Shaw in shooting Andy constituted the Intentional Infliction of Severe Emotional Distress against Andy and his wife Melanie.

WHEREFORE, Plaintiff Andy and Melanie prays for judgment against Defendant Shaw for:

a. Compensatory damages in an amount that will fully and fairly compensate them for their injury, damage, and loss;

b. Punitive damages in an amount that will serve to adequately punish and deter the conduct alleged herein;

c. Costs of suit and reasonable attorneys' fees; and

d. All such other relief which the Court deems appropriate.

SIXTH CLAIM FOR RELIEF

(Andy and Melanie Common Law Intentional Infliction of Severe Emotional Distress

Claims Against Defendants Sheriff Burchett, Clark County and New Carlisle)

219. Plaintiffs repeat, reiterate, and reallege each and every paragraph contained in this Complaint with the same force and effect as if fully set forth herein.

220. Defendants' conduct in making of false, defamatory, and libelous statements about Andy was so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community

221. Defendants' conduct in ordering subordinates and others to make false, defamatory and libelous statements about Andy was so outrageous in character, and so extreme in degree, as to

go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

222. Defendants' conduct in ordering subordinates to put someone on Andy was so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

223. Defendants' conduct ordering subordinates to withhold information from Andy was so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

224. Defendants' conduct in trying to destroy the reputation and livelihood of Andy was so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

225. Defendants in their outrageous conduct either intended to cause severe emotional distress, or knew or should have known that their actions would result in severe emotional distress, or recklessly disregarded the probability of causing severe emotional distress to Andy and his wife Melanie.

226. Defendants' outrageous conduct were the direct and proximate cause of such severe emotional distress and emotional injury to Andy and his wife Melanie.

227. As a direct and proximate result of Defendants' outrageous conduct, Andy and Melanie suffered severe psychic injury; and the mental anguish suffered by Andy and Melanie is serious and of a nature that no reasonable person could be expected to endure.

228. The conduct of the Defendants Sheriff Burchett, Clark County, and New Carlisle constitute the Intentional Infliction of Severe Emotional Distress against Andy and his wife Melanie.

WHEREFORE, Plaintiffs prays for judgment against Defendants Sheriff Burchett, Clark County, and New Carlisle, jointly and severally, for:

- a. Compensatory damages in an amount that will fully and fairly compensate them for their injury, damage, and loss;
- b. Punitive damages in an amount that will serve to adequately punish and deter the conduct alleged herein;
- c. Costs of suit and reasonable attorneys' fees; and
- d. All such other relief which the Court deems appropriate.

SEVENTH CLAIM FOR RELIEF

(Andy and KBA News Claim of an Equal Protection Violation against Defendants Sheriff Burchett, Clark County, and New Carlisle)

229. Plaintiffs repeat, reiterate, and reallege each and every paragraph contained in this Complaint with the same force and effect as if fully set forth herein.

230. Sheriff Burchett, Clark County, and New Carlisle for arbitrary, vindictive and malicious reasons has violated Andy and KBA News's Equal Protection Rights.

231. Sheriff Burchett, Clark County, and New Carlisle intentionally and without justification withheld public documents from Andy and KBA News for solely personal reasons and with discriminatory intent and effect.

232. As a direct and proximate result of Defendants' actions, Plaintiffs Andy and KBA News suffered economic and emotional damages.

233. As a direct and proximate result of Defendants' actions, Plaintiffs business pursuits have been frustrated, their reputation has been damaged, and Andy has suffered non-economic damages.

WHEREFORE, Plaintiffs Andy and KBA News prays for judgment against Defendants Sheriff Burchett, Clark County, and New Carlisle, jointly and severally, for:

a. Compensatory damages in an amount that will fully and fairly compensate him for his injury, damage, and loss;

b. Punitive damages in an amount that will serve to adequately punish and deter the conduct alleged herein;

c. Costs of suit and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and

d. All such other relief which the Court deems appropriate.

EIGHTH CLAIM FOR RELIEF

(KBA News Claim of Intentional Interference with Contractual Relations Against Defendants Sheriff Burchett, Clark County, and New Carlisle)

234. Plaintiffs repeat, reiterate, and reallege each and every paragraph contained in this Complaint with the same force and effect as if fully set forth herein.

235. KBA News has a contractual relationship with its subscribers for the New Carlisle News, among other papers.

236. Sheriff Burchett, Clark County, and New Carlisle are willfully and intentionally discriminating and retaliating against KBA News for the unlawful action of Shaw shooting Andy

by smearing Andy and KBA News' reputation, and withholding and delaying access to news regarding accessing information that KBA News' readers rely upon and value.

237. Sheriff Burchett, Clark County, and New Carlisle are willfully and intentionally trying to destroy KBA News and get subscribers to cancel their subscription.

238. This retaliation is making the New Carlisle News and other papers owned by KBA News much less valuable to its subscribers.

239. As a direct and proximate result of Sheriff Burchett, Clark County, and New Carlisle's actions, subscribers have ended their contractual relationship with the New Carlisle News and other papers owned by KBA News.

240. Subscribers have ended their contractual relationship with the New Carlisle News and other papers owned by KBA News.

241. KBA News income and number of subscriptions have been reduced due to the intentional interference of a contractual relationship by Sheriff Burchett, Clark County, and New Carlisle.

WHEREFORE, KBA News prays for judgment against Defendants Sheriff Burchett, Clark County, and New Carlisle, jointly and severally, for:

a. Compensatory damages in an amount that will fully and fairly compensate it for its injury, damage, and loss;

b. Punitive damages in an amount that will serve to adequately punish and deter the conduct alleged herein;

c. Costs of suit and reasonable attorneys' fees; and

d. All such other relief which the Court deems appropriate.

Respectfully submitted

/s/ Argeri A. Lagos

Argeri A. Lagos, Esq. (0086403)

LAGOS & LAGOS, P.L.L.

5057 Troy Road

Springfield, Ohio 45502

(937) 323-5555 Phone

(937) 323-6564 Facsimile

Argeri@LagosGroups.com

Counsel for Plaintiffs

/s/ Yianni D. Lagos

Yianni D. Lagos, Esq. (0087689)

LAGOS & LAGOS, P.L.L.

5057 Troy Road

Springfield, Ohio 45502

(937) 323-5555 Phone

(937) 323-6564 Facsimile

Yianni@LagosGroups.com

Counsel for Plaintiffs

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable

/s/ Argeri A. Lagos

Argeri A. Lagos, Esq. (0086403)

LAGOS & LAGOS, P.L.L.

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2018, a copy of the foregoing was sent via electronic mail to Andrew Yosowitz, counsel for Defendants at ayosowitz@isaacwiles.com and Lynnette Dinkler, counsel for Defendants at lynnette@dinklerpregon.com.

/s/ Argeri A. Lagos

Argeri A. Lagos, Esq. (0086403)

LAGOS & LAGOS, P.L.L.

Counsel for Plaintiffs