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JAMES BONINI
CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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U.S. DISTRICT COURT
SOUTHERN DIST OHIO
WEST DIV CINCINNATI



GERALD J. LINDSLY
2022 Williams Avenue
Cincinnati, OH 45212

Plaintiff

v.

MICHAEL WORLEY
8371 Jackies Drive
Cincinnati, OH 45239

and

WILLY DALID
11453 Fiesta Court
Cincinnati, OH 45240

Defendants

Case No.

1:09 CV 375

Judge BECKWITH

J. HOGAN

COMPLAINT WITH JURY DEMAND

Introduction

1. On July 27, 2007, Plaintiff Gerald J. Lindsly filed a *Complaint with Jury Demand* in Gerald J. Lindsly v. Michael Worley, et al., Case No. C-1-07-cv-588, that alleged claims included in this re-filed Complaint.

2. Defendants Michael Worley and Willy Dalid were each timely served with a copy of the previous *Complaint with Jury Demand*, and Summons, and filed a responsive pleading.

3. On May 4, 2009, Judge Spiegel granted Defendants' Motion for Summary Judgment for failure to exhaust administrative remedies under the Prison Litigation Reform Act, and on a basis other than on the merits, and dismissed *without prejudice* Plaintiff's federal and state law claims and also Defendants' counterclaims.

4. Plaintiff now timely re-files his *Complaint with Jury Demand*, which contains the

same claims, within one year of the dismissal otherwise than upon the merits in accordance with the Ohio Saving Statute R.C. 2305.19.

Parties

5. Plaintiff Gerald J. Lindsly is a resident of the State of Ohio.
6. Defendants Michael Worley and Willy Dalid are residents of the State of Ohio.
7. On August 4, 2006, Defendants were each employed as Corrections Officers at the Hamilton County Justice Center in the City of Cincinnati, Hamilton County, Ohio.
8. Defendants each are being sued in their individual capacity.

Jurisdiction and Venue

9. This Court has original jurisdiction pursuant to 28 U.S.C. 1331 and 1343 (3) and (4).
10. This Court has supplemental jurisdiction to hear the state law claims pursuant to 28 U.S.C. 1367.
11. This Court has venue pursuant to 28 USC 1391 because the Defendants reside in this District, and because the events giving rise to Plaintiff's claims occurred within this District.

Factual Allegations

12. On August 4, 2006, Plaintiff Gerald Lindsly was a pre-trial detainee inmate at the Hamilton County Justice Center in Hamilton County, Ohio.
13. The Hamilton County Sheriff, Simon L. Leis, Jr., operated the detention cells and jail facilities at the Justice Center.
14. Sheriff Leis had issued General Order 208, Corrections Manual Procedure No. C.7, and other policies and procedures that concerned the use of force by Corrections Officers.
15. Corrections Officers were trained and expected to follow General Order 208,

Procedure No. C.7, and other policies and procedures concerning the use of force at all times.

16. On August 4, 2006, Corrections Officer Willy Dalid was escorting Mr. Lindsly to a court holding cell in the detention facilities on the first floor of the South Building at the Justice Center.

17. While escorting Mr. Lindsly, Officer Dalid accused Mr. Lindsley of purposely spitting on the hallway floor.

18. Corrections Officer Michael Worley, who was nearby, walked over to Officer Dalid and Mr. Lindsley.

19. Officer Worley or Officer Dalid directed Theodore Gentry, a nearby inmate orderly, to provide Mr. Lindsly a towel so he could wipe the floor.

20. Inmate Gentry did provide a towel to Mr. Lindsley who proceeded to wipe the floor.

21. When he finished wiping the floor with the towel, Mr. Lindsley tossed the towel in the direction of Mr. Gentry, the inmate orderly.

22. In response, Officers Michael Worley and Dalid instantly converged upon Mr. Lindsly.

23. Officers Worley and Dalid instantly applied physical force to Mr. Lindsly, including chokes, kicks, blows, and knee strikes, and forced him to the floor.

24. Officer Worley or Officer Dalid or both administered a knee strike directly to Mr. Lindsly's face.

25. Prior to the use of force, Mr. Lindsly at no time took any actions that required or permitted the use of force by Officers Worley and Dalid.

26. Officers Worly and Dalid improperly resorted to using excessive physical force on

Mr. Lindsly.

27. Officers Worley and Dalid acted in violation of General Order 208, Procedure No. C.7, and other policies and procedures of the Hamilton County Sheriff concerning the use of force.

28. Officers Worly and Dalid knew that their actions towards Mr. Lindsly were illegal, excessive, and in violation of General Order 208, Procedure No. C.7, and other policies and procedures of the Hamilton County Sheriff.

29. Officers Worly and Dalid attempted to cover up their actions by failing to report their use of force, which such reporting is required by General Order 208, Procedure No. C.7, and other policies and procedures of the Hamilton County Sheriff.

30. Officers Worly's and Dalid's actions concerning Mr. Lindsly were done with malicious purpose, in bad faith, and in a wanton or reckless manner.

31. As a direct and proximate result of the Officers' actions, Mr. Lindsly sustained serious bodily injuries that have required and will require in the future medical care and treatment.

32. Mr. Lindsly sustained injuries to his face, cheek, eye, jaw, back, and other parts of his body, including multiple facial fractures, a corneal abrasion, contusions, and abrasions.

33. Mr. Lindsly required hospital visits, physician visits, a surgical procedure for an open reduction, internal fixation of a comminuted right zygoma fracture, and medications.

34. Mr. Lindsly has incurred and will in the future incur reasonable and necessary hospital and medical expenses.

35. Mr. Lindsly has incurred and will in the future incur physical pain and mental suffering.

36. Mr. Lindsly has incurred permanent injury, facial disfigurement, and permanent restrictions.

First Claim - Deprivation of Rights - 42 U.S.C. 1983

37. Plaintiff incorporates in this Claim all the above paragraphs in this Complaint.

38. Defendants acted under the color of state or local law when they illegally attacked Mr. Lindsly.

39. Defendants acted under the color of state or local law when they illegally attempted to cover-up their actions.

40. Defendants' actions deprived Mr. Lindsly of his rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, including but not limited to the Fourth, Eighth, and Fourteenth Amendments.

41. Defendants' actions proximately caused Mr. Lindsly's injuries, losses, and damages as set forth above.

42. Mr. Lindsly is entitled to compensation from and judgment against Defendants Worley and Dalid.

Second Claim - Assault & Battery

43. Plaintiff incorporates in this Claim all the above paragraphs in this Complaint.

44. Defendants intentionally physically assaulted Plaintiff without authority or justification or consent.

45. Mr. Lindsly is entitled to compensation from and judgment against Defendants Worley and Dalid.

Third Claim - Negligence

46. Plaintiff incorporates in this Claim Paragraphs 1 - 29 above in this Complaint.

47. Defendants each had a special duty to use reasonable care to protect Mr. Lindsly who was in their custody from foreseeable harm.

48. Defendants each breached their duty of care towards Mr. Lindsly when he was assaulted by the other and each failed to prevent or stop the assault.

49. As a direct and proximate result of Defendants' breach of their duty of care, Mr. Lindsly sustained injuries, losses, and damages as set forth above.

50. Mr. Lindsly is entitled to compensation from and judgment against Defendants Worley and Dalid.

Fourth Claim - Punitive Damages

51. Plaintiff incorporates in this Claim all the above paragraphs in this Complaint.

52. Defendants' conduct was motivated by evil motive or intent, and it involved reckless or callous indifference to Mr. Lindsly's federally protected rights.

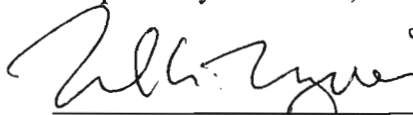
53. Defendants acted with actual malice towards Mr. Lindsly.

54. Defendants acted with a conscious disregard for the rights and safety of Mr. Lindsly that had a great probability of causing him substantial harm.

55. Mr. Lindsly is entitled to recover punitive damages from and judgment against Defendants Worley and Dalid.

WHEREFORE, Plaintiff Gerald Lindsly demands judgment for \$85,000 and more against Defendants Michael Worly and Willy Dalid for compensatory and punitive damages, attorney fees, case expenses, and court costs.

Respectfully submitted,

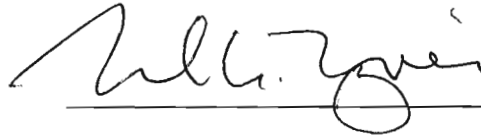


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Jury Demand

Plaintiff demands a trial by jury.



A handwritten signature in black ink, appearing to read "M. Napier", is written over a horizontal line. The signature is cursive and somewhat stylized.