

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

MARQUAYLE MARTIN,)	
)	
Plaintiff,)	CAUSE NO.
)	
v.)	
)	
CITY OF FORT WAYNE,)	
)	
Defendant.)	

COMPLAINT – CLASS ACTION

COMES NOW Plaintiff, MarQuayle Martin, on behalf of himself and all other similarly-situated individuals, by counsel, and pursuant to Rule 23 of the Federal Rules of Civil Procedure, alleges against the Defendant City of Fort Wayne as follows:

1. Representative Plaintiff MarQuayle Martin resides in the City of Fort Wayne, Indiana. He brings this class action lawsuit on behalf of himself and all other similarly-situated persons, to wit, the “Class” of putative class members, which is defined as follows:

Individuals who from August 17, 2013 until the present time, were subjected to traffic stops by City of Fort Wayne police officers, and had their vehicles immediately seized, towed and impounded without a warrant, the owners’ consent, or any sufficient legal justification to do so. These vehicle seizures furthermore occurred without any pre-deprivation notice and/or hearing prior to the seizure, towing, and impoundment, and City officers failed to permit the vehicles’ owners to have a licensed driver of their choice retrieve the vehicle and drive it from the scene; Rather, City officers automatically towed and impounded the vehicles, which unreasonable as a matter of law. The seizures of the individuals’ vehicles were in violation of their rights to be free from unreasonable seizure and right to due process, under the Fourth and /or Fourteenth Amendments to the Constitution and 42 U.S.C. § 1983.

2. The Defendant City of Fort Wayne (“City”), is responsible for the policies, practices, procedures and customs that are and have been in effect at the Fort Wayne Police

Department regarding the seizure and automatic impoundment of vehicles. The City is named in its official capacity pursuant to 42 U.S.C. § 1983. The City's policies, practices, procedures, and customs (or lack of) pertaining to the seizure and automatic tow and impoundment of vehicles without allowing owners of the vehicles to contact alternative drivers, or without allowing licensed drivers on the scene to drive the vehicles away, are unreasonable and unconstitutional and constitute unreasonable seizures of the Fourth Amendment of the United States Constitution and constitute a denial of procedural due process under the Fourteenth Amendment of the United States Constitution (failing to provide notice and an opportunity for a hearing prior to depriving owners of their vehicles). Furthermore, the City and the Chief of Police of the City of Fort Wayne failed to train and supervise its police officers regarding the seizure and automatic towing and impoundment of vehicles without allowing the owners to find alternative drivers and/or without allowing licensed drivers on the scene to drive the vehicles away.

3. MarQuayle Martin was driving his vehicle in Fort Wayne Indiana on June 27, 2014, when he was stopped by City of Fort Wayne Police Officers, and then arrested. A licensed driver was in the car at the time of the vehicle stop, who was willing to drive the Plaintiff's car away from the scene when Plaintiff was arrested. The Plaintiff asked that the individual be permitted to drive the car away, but his requests were denied by the officers.

4. The Plaintiff objected to the officers' seizure and towing of his vehicle, and repeatedly

asked why his car had to be towed and impounded, when a licensed drivers at the scene had indicated they could drive the vehicle home. Nevertheless, the Fort Wayne City police officers decided to tow the Plaintiff's vehicle and automatically impound it, even though they had no warrant for seizure of the car, no probable cause to seizure the car, and even though they had given the Plaintiff no pre-deprivation notice or hearing as to why automatic impoundment was required.

5. As a result of the automatic towing and impoundment, MarQuayle Martin's Fourth Amendment right against unreasonable seizure of his property was violated, and his Fourteenth Amendment right to procedural due process was violated (he received no notice or hearing prior to the seizure).
6. The wrongful and unlawful seizure of the Plaintiff's vehicle was the result of the Defendant City of Fort Wayne's unconstitutional/ constitutionally defective policies, practices, procedures, and/or customs that were in effect governing the seizure and automatic impoundment of vehicles. In addition, the City failed to adequately train and supervise its personnel on the appropriate versus inappropriate seizure, automatic towing of vehicles, and impoundment of vehicles, such as where the owner has consented to a licensed driver to drive the vehicle from the scene, and/or where the owner of the has not been permitted the opportunity even to find an alternative licensed driver to drive the vehicle away.
7. As a result of the officers' unreasonable seizure of Plaintiff's vehicle, and as a result of depriving Plaintiff of procedural due process by automatically seizing, towing and impounding the vehicle without any pre-deprivation notice or hearing (violation of due process under the Fourteenth Amendment), the Plaintiff suffered otherwise avoidable

towing charges and storage fees, the loss of the benefit of the value and use of his vehicle, and Plaintiff suffered inconvenience, emotional distress, and other damages and injuries.

8. Pursuant to Local Rule 23.1 of the Local Rules of the United States District Court of Northern District of Indiana, set forth below are references to the portions of the Fed. R. Civ. P. 23 under which it is claimed that this suit is properly maintained as a class action:

a) Plaintiff maintains that:

1) The class is so numerous that joinder of all putative class members would be impracticable,

2) There are questions of law or fact common to the class;

3) The claims of the class representative (MarQuayle Martin) are typical of the claims of the class members, and

4) The class representative will fairly and adequately protect the interests of the class.

b) This action is maintainable as a class action because the prerequisites of Rule 23 (a) are satisfied, and in addition:

1) The Defendant City of Fort Wayne has acted or has refused to act, on the grounds that apply generally to the class (having an illegal custom and practice of automatically towing and impounding vehicles), so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole, and that pursuant to Rule 23 (b) (2), the class representative and the members he represents seek an injunction from seizing, towing, and automatically impounding vehicles, and seek

an order of the court requiring that the City of Fort Wayne and its police officers allow for persons to be contacted prior to the automatic towing/impounding of their vehicle and/or allow license drivers on the scene to drive the vehicle from the scene opposed to automatically towing and impounding the vehicle, and to otherwise act in accordance with the Fourth and Fourteenth Amendment of the United States Constitution; and

2) Plaintiff requests that the City of Fort Wayne's policy, practice and custom be declared unconstitutional and that the court issue injunctive relief including a permanent prohibition against the Defendant's practices and customs found to be unconstitutional and require that the City of Fort Wayne utilize best practices in training its police officers to allow for arrested drivers to contact alternative licensed drivers or permit licensed drivers at the scene to drive the owner's vehicle consistent with the Fourth Amendment and Fourteenth United States Constitution.

3) There are questions of law or fact common to the members of the class which predominate over any questions affecting only individual members, and that pursuant to Rule 23 (b) (3) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, and:

(A) There is no interest of members of the class in individually controlling the prosecution of separate actions;

(B) There is no collateral litigation to this case which has been commenced by other putative class members, at least such litigation is unknown to either the named Plaintiff or his counsel;

(C) It would be desirable of concentrating the litigation of any and all claims similar to that of the Plaintiffs in one (1) forum (this Court); and

(D) There are no known difficulties likely to be encountered in the management of this class action).

WHEREFORE, Plaintiff MarQuayle Martin, on behalf of himself and putative class members who are similarly situated, respectfully request a judgment against the Defendant City of Fort Wayne for compensatory damages, for a declaratory judgment and for injunctive relief, for cost of the action including attorneys' fees and costs under 42 U.S.C. §§ 1983 and 1988, and for all other just and proper relief in the premises.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury in this action.

Respectfully submitted,

CHRISTOPHER C. MYERS & ASSOCIATES

/s/ Christopher C. Myers
Cristopher C. Myers, #10043-02
809 South Calhoun Street, Suite 400
Fort Wayne, IN 46802
Telephone: (260) 424-0600
Facsimile: (260) 424-0712
Attorney for Plaintiffs

CCM/jdg