

STATE OF INDIANA ) IN THE ELKHART CIRCUIT COURT
) SS:
ELKHART COUNTY ) CAUSE NO. 20C01-2212-CT-\_\_\_\_\_

JANE DOE, )
)
Plaintiff, )
)
vs. )
)
TIMOTHY P. BARBER, )
)
Defendant. )

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Jane Doe, by counsel, states the following claim against former South Bend Police Officer Timothy P. Barber ("Barber"):

RESERVATION OF CLAIMS CONTAINED IN TORT CLAIMS ACT NOTICE TO CITY OF SOUTH BEND POLICE DEPARTMENT

The events described in this Complaint arise from a series of sexual assaults perpetrated by Barber while he was in uniform and on duty as a South Bend Police Officer. Jane Doe has served four separate Tort Claims Act Notices on the City of South Bend Police Department ("SBPD") pursuant to IC 34-13-3-1 et seq. for the actions of Barber and SBPD. These Tort Claim Act Notices state, in part:

South Bend Police Officer Timothy Barber, while in the course and scope of his official duties as a South Bend Police Officer, used or exerted his professional relationship with [Jane Doe] to commit the crimes of Child Seduction (Count I), Child Seduction (Count II), Public Indecency, Public Nudity and Official Misconduct.

Because the Tort Claims Act Notices were served September 9, 2022 on SBPD and the claim has not yet been denied by SBPD, the Plaintiff is not making a claim under Indiana tort law

for the acts of Barber or SBPD described in the Tort Claims Act Notices at this time. The Plaintiff specifically reserves the right to add additional claims, including under Indiana tort law, against SBPD and Barber at the appropriate time.

### **CIVIL RIGHTS CLAIM AGAINST BARBER**

1. Plaintiff Jane Doe is a minor child who was 16 years old at the time of these events and resides in St. Joseph County, Indiana.

2. Officer Barber at all relevant times was a law enforcement officer and employee of the South Bend Police Department.

3. At all times material to the allegations in this Complaint, Officer Barber was acting under color of state law.

4. The City of South Bend is a municipality located in St. Joseph County, Indiana.

5. Officer Barber, despite pleading guilty to the conduct complained of in this Complaint, is a free man, a registered sex offender against children, and resides at 53798 County Road 7, Elkhart Indiana 46514.

6. Sexual assault of any kind should never be tolerated, ignored or minimized.

7. Sexual assault by a police officer of a minor is a monstrous crime. Police sexual misconduct in general and specifically against minor children is a growing problem within law enforcement communities nationwide. See. *Police, Heroes and Child Trafficking: Who cries when her attacker wears blue*. 18 Nev. L. J. 1007 (Spring, 2018). “Outside of homicidal acts, a police officer’s sexual abuse of a child simply has no experiential or conceptual equal. Indeed, courts and commentators, alike, have reasoned that due to the hero-like characteristics most children ascribe to police officers, and the wide authority bestowed upon police officers, the

harm caused by a police officer's sexual exploitation of a child is exponentially greater than that associated with a civilian abuser." *Id.* at \*1019.

8. Damages to a victim of sexual assault should reflect the real and intrinsic harm sexual assault causes to its victims and the need for justice to be meted out to the perpetrator and those who enable and tacitly condone this heinous conduct with inaction.

9. Officer Barber was a South Bend Police Officer, duly appointed and at all times relevant to this complaint employed by Defendant City of South Bend, and acting under color of law and in the course and scope of his employment.

10. Officer Barber began working as a sworn police officer with the South Bend Police Department in 2019.

11. The City of South Bend has had a decades long practice of turning a blind eye to police misconduct and sexual misconduct in particular.

12. The City of South Bend has de facto widespread customs, policies and practices of failing to investigate, discipline, or otherwise hold accountable its police officers whether on or off duty.

13. The custom of disregarding flagrant and harmful conduct is a department-wide issue that engenders a firm understanding among South Bend Police Officers that they are above the law and can act without fear of consequences.

14. The City of South Bend Police Department has an entrenched code of silence, and has had one for decades.

15. This code of silence not only calls for officers to not intervene to stop misconduct by other officers, but it also includes South Bend Police investigators covering up for such misconduct when faced with obvious instances and patterns of abuse.

16. In a 2020 press release, South Bend Police Chief Ruszkowski acknowledged the existence of a code of silence:

What is true, we need to do a better job of weeding out the bad ones. If good cops know there are bad ones, I rhetorically ask, where are those good cops? Granted, nobody can know what every cop is doing 24/7/365, but other cops do. If they are silent, they are worse. If they stay silent, the silence grows.

17. Indeed, in 2019, another SBPD Officer, Ryan O'Neill was known to have committed a sex act while on duty in May of 2019, but no action was taken by SBPD against Ryan O'Neill. It was only after the Indiana State Police began an investigation into a fatal shooting which involved O'Neill on June 16, 2019 that any action was taken against O'Neill by SBPD.

18. In the Summer of 2021, Jane Doe began working at Chick-fil-a on South Bend's south side.

19. Jane Doe aspired to work in law enforcement.

20. In 2021, the Chick-fil-a on the south side of South Bend was frequented by many South Bend Police officers, including Barber.

21. Beginning in July of 2021, Barber, while on-duty and in his police uniform, began a systematic and methodical process of grooming Jane Doe to be a victim of sexual abuse.

22. Grooming is a process by which a sexual predator befriends a child to gain trust and to lower the child's inhibitions in preparation for sexual abuse.

23. Barber would come into Chick-fil-a in full police uniform and talk to Jane Doe while she was working.

24. Jane Doe related to Barber that she wanted to become a police officer. This disclosure became the focal point of Barber's grooming and manipulation of Jane Doe.

25. Barber, while wearing his police uniform, asked Jane Doe for her phone number, which Jane Doe provided. Barber and Jane Doe continued to communicate with each other through messages and in person.

26. Barber began to become obsessed with Jane Doe. Barber would constantly come into Chick-fil-a while wearing his full police uniform and sit and watch her.

27. On days that Jane Doe was not working, Barber would come into Chick-fil-a, ask for Jane Doe and ask when she was next scheduled to work.

28. Barber's obsessive conduct was noticed by both Chick-fil-a employees and other South Bend Police officers, who would openly tease Jane Doe by referring to her as Barber's "girlfriend" and Barber as her "boyfriend."

29. Barber, while wearing his full police uniform, told Jane Doe he had sexual intercourse with a number of other females, including other minors, he had arrested or taken into custody.

30. Barber, while wearing his full police uniform, told Jane Doe that he couldn't get into trouble for any of his actions because other South Bend Police Officers would back him up and provide cover for him.

31. Barber told Jane Doe that he had talked about her with other South Bend Police Officers.

32. Barber told Jane Doe that other of his fellow South Bend Police Officers had sex on duty all the time.

33. Barber asked Jane Doe if he could give her telephone number to another South Bend Police Officer.

34. Barber would frequently meet with other SBPD officers at Chick-fil-a and would talk to Jane Doe in the presence of these other SBPD officers.

35. Barber told Jane Doe that some of these other SBPD officers had also had sex with girls in their police cars.

36. A large percentage of Barber's grooming of Jane Doe took place in the presence of other SBPD officers.

37. Barber would have Jane Doe sit with him during her breaks. At times, Jane Doe would sit with Barber and other South Bend Police Officers and other times Jane Doe would sit alone with Barber. A number of times that Jane Doe would sit alone with Barber, other South Bend Police officers were also in the restaurant.

38. In August of 2021, Barber, wearing his full police uniform, told Jane Doe that he would drive her home from work. Barber, in full police uniform and driving his police vehicle, picked Jane Doe up from Chick-fil-a and drove her to a secluded location. There, Barber sexually assaulted Jane Doe in his police vehicle while wearing his police uniform. Barber was on duty at the time of this sexual assault.

39. Later, in August of 2021, Jane Doe was working outside in the drive through at Chick-fil-a when Barber pulled through the drive through line in his police vehicle, and while wearing his police uniform, Barber exposed his genitals and masturbated in front of Jane Doe.

40. On another occasion, Jane Doe was working outside in the drive through at Chick-fil-a when Barber pulled through the drive through line in his police vehicle, and while wearing his police uniform, Barber exposed his genitals to Jane Doe and grabbed her hand and placed her hand on his exposed genitals.

41. On September 2, 2021, Barber, wearing his full police uniform, again told Jane Doe that he would drive her home from work. Again Barber, in full police uniform and driving his police vehicle, picked Jane Doe up from Chick-fil-a and drove her to a secluded location. There, Barber sexually assaulted Jane Doe in his police vehicle while wearing his police uniform. Barber was on duty at the time of this sexual assault.

42. Jane Doe felt intimidated by Barber because of his position of authority and felt that she was compelled to have sexual intercourse with him because he was a "cop."

43. At all times that Barber sexually assaulted and exposed himself to Jane Doe, Barber had his South Bend Police issued firearm on his person or nearby.

44. Between August 1, 2021 and September 2, 2021, Barber had contact with Jane Doe while acting within the scope of Barber's official law enforcement duties with respect to Jane Doe and used or exerted his professional relationship with Jane Doe to engage with Jane Doe in multiple acts of sexual intercourse.

45. There is an unlawful widespread practice in the South Bend Police Department, often labeled the "code of silence" - which is so widespread and permanent that it constitutes a practice with the force of law.

46. Under the Code of Silence, South Bend Police officers protect each other by covering up unlawful misconduct and the City of South Bend fails to properly discipline and train its officers in relation to this unlawful misconduct.

47. The Code of Silence is the moving force behind Jane Doe's constitutional injuries because it emboldened Barber to sexually assault and expose himself to Jane Doe without fear of repercussions, such as being investigated or disciplined.

48. Indeed, a large percentage of Barber's grooming of Jane Doe took place in the presence of other South Bend Police officers and Barber felt emboldened by the Code of Silence that he didn't have to worry about another law enforcement officer investigating why another police officer was spending so much time with a young fast-food employee.

49. Barber acted with deliberate indifference to Jane Doe's constitutional and statutory rights.

50. The actions and inactions of Barber were all done under color of state law in causing the deprivation of Jane Doe's civil rights and, accordingly, are subject to liability under 42 U.S.C. §§ 1983 and 1988.

51. As a direct and proximate result of these actions and inactions of Barber, Jane Doe has suffered severe emotional injuries, mental pain and suffering, and other damages.

52. Barber recklessly or callously disregarded the federally protected rights of Jane Doe and acted with deliberate indifference or reckless disregard for those rights, and the public interest in deterring such misconduct would be served by an award of punitive damages.

53. Plaintiff claims the following damages against Barber:

A. Damages for the violation of Jane Doe's constitutional rights;



- B. Compensatory damages for the emotional and mental pain sustained by Jane Doe;
- C. All medical and mental health expenses necessary because of the violation of Jane Doe's constitutional rights;
- D. The necessary and reasonable costs and expenses of prosecuting this action, including reasonable attorneys' fees;
- E. Punitive damages in an amount sufficient to punish the Defendant's misconduct and to deter such violations in the future; and
- F. All other relief available under 42 U.S.C. §§ 1983 and 1988.

WHEREFORE, Plaintiff requests judgment against Barber in an amount to be determined by the trier of fact, costs, and all other just and proper relief.



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**JURY DEMAND**

Plaintiff, by counsel, demands trial by jury.



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