

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GEORGE MARVASO, an individual;
MARY MARVASO, an individual;
GEORGE F. MARVASO, an individual;
SUNDAY GAINS, an individual; and
ELECTRIC STICK, INC., a Michigan
corporation;

No.:
Hon.:

Plaintiffs,

vs.

**COMPLAINT AND
JURY DEMAND**

JOHN ADAMS, in his individual capacity;
MICHAEL J. REDDY, JR., in his individual
capacity; MICHAEL J. REDDY, SR., in his
individual capacity; and RICHARD SANCHEZ
in his individual capacity;

Defendants.

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Plaintiffs, GEORGE MARVASO, MARY MARVASO, GEORGE F. MARVASO (“GEO”), SUNDAY GAINS, and ELECTRIC STICK INC., by and through their attorneys, MUELLER LAW FIRM, by Wolfgang Mueller, hereby complain against the Defendants, JOHN ADAMS (“ADAMS”), in his individual capacity, MICHAEL J. REDDY, JR. (“REDDY JR.”), in his individual capacity, MICHAEL REDDY, SR. (“REDDY SR”), individually and acting in his individual capacity, and RICHARD SANCHEZ (“SANCHEZ”), in his individual capacity, in a civil action, stating unto this Court as follows:

1. This is an action for damages brought pursuant to 42 USC §§1983 and 1998, the Fourth and Fourteenth Amendments to the United States Constitution, against Defendants, ADAMS, in his individual capacity; REDDY JR., in his individual capacity; REDDY SR., individually, and acting in his individual capacity; and SANCHEZ, in his individual capacity.

2. Jurisdiction is founded upon 28 USC §1331 and 28 USC §1343.

3. Venue is proper based on the situs of the incident, which occurred in the City of Westland, within the Eastern District of Michigan.

4 At all pertinent times Plaintiffs, GEORGE MARVASO and MARY MARVASO, were residents of the City of Novi, State of Michigan.

5. At all pertinent times Plaintiff, SUNDAY GAINS, was a resident of the City of Westland, State of Michigan. SUNDAY GAINS is George and Mary Marvaso's daughter and was an employee of the ELECTRIC STICK.

6. At all pertinent times Plaintiff, GEO MARVASO, was a resident of the City of Wayne, State of Michigan. GEO MARVASO is George and Mary Marvaso's son and was an employee of the ELECTRIC STICK.

7. At all pertinent times Plaintiff, ELECTRIC STICK, INC., was a Michigan corporation conducting business in the City of Westland, State of Michigan. ELECTRIC STICK INC. is owned by George and Mary Marvaso.

8. The Defendant, JOHN ADAMS, was at all times relevant hereto, a citizen of the State of Michigan and was employed as the Fire Marshal for the Wayne-Westland Fire Department.

9. The Defendant, MICHAEL J. REDDY, JR., is a citizen of the State of Michigan and was, at all times relevant hereto, employed as the Fire Chief for the Wayne-Westland Fire Department. REDDY JR. is currently the Deputy Mayor for the City of Westland.

10. The Defendant, MICHAEL REDDY, SR, was, at all times relevant hereto, a citizen of the State of Michigan, and is the now-retired Fire Chief for the Westland Fire Department.

11. The Defendant, RICHARD SANCHEZ, is a citizen of the State of Michigan and was, at all times relevant hereto, employed as a Detective-Sergeant with the Michigan State Police Department.

12. At the time of the events alleged in this Complaint, the Defendant, JOHN ADAMS, was acting under color of law in his individual capacity and within the scope of his employment as the Fire Marshal employed by the Wayne-Westland Fire Department.

13. At the time of the events alleged in this Complaint, the Defendant, REDDY JR., was acting under color of law in his individual capacity and within the scope of his employment as the Fire Chief employed by the Wayne-Westland Fire Department.

14. At the time of the events alleged in this Complaint, the Defendant, REDDY SR., was acting under color of law in his individual capacity.

15. At the time of the events alleged in this Complaint, SANCHEZ, was acting under color of law and within the scope of his employment with the Michigan State Police Department.

GENERAL ALLEGATIONS

16. On May 8, 2013, shortly before 8:16 a.m., a fire broke out in the kitchen of Marvaso's Italian Grille restaurant, located at 6581 Wayne Rd. in

Westland, Michigan, which was leased and operated by Plaintiffs. Smoke was reported coming out of the roof of the building.

17. The fire soon spread to the adjacent tenant space occupied by the Electric Stick pool hall/charity poker facility, also leased and operated by Plaintiffs.

18. At approximately 8:16 a.m., 911 emergency calls were made to report the fire.

19. At approximately 8:30 a.m., Mary Marvaso, co-owner of the businesses, arrived at the fire scene. She was approached by a fireman, who asked "Is anyone in the building?" Mrs. Marvaso replied "No – I am the owner and I have the keys to open up."

20. At approximately 8:23 a.m., probationary firefighter, Brian Woelke and two other firefighters made entry into the building with a 1 ½", 200-foot hose. After unsuccessfully locating the fire, and starting to run out of air on their self-contained breathing apparatus ("SCBA"), the lead firefighter ordered the other firefighters out of the building. Upon exiting the building at 8:40 a.m., the other two firefighters noticed that Woelke was not with them.

21. At approximately 8:43 a.m., Woelke answered a radio call, calling out his location as *“hoseline, back of the building, near the fire, near the kitchen.”*

22. At 8:44 a.m., a ladder company radioed that a roof-top air conditioning unit was about to come through the roof, and recommended that everybody inside the building evacuate immediately.

23. At 8:45 a.m., firefighter Woelke radioed that he was out of air.

24. At 8:46 a.m., the building was evacuated. Firefighter Woelke was still missing.

25. Over the next four minutes, radio calls went out for firefighter Woelke; there was no response.

26. At 8:50 a.m., ten minutes after losing track of firefighter Woelke, the dispatcher asks Command: *“Do you want a Mayday call?”* Command acknowledges *“Affirmative.”*

27. By 9:00 a.m., the roof at the north side of building had collapsed.

28. At 9:01 a.m., Engine 3 radioed: “Building down.” Engine 3 also radioed that all fire personnel were accounted for except firefighter Woelke.

29. At 9:01 a.m., defensive operations (spraying water from the outside of the building) began.

30. At 10:30 a.m., the fire was reported to be out.

31. At approximately 11:15 a.m., firefighter Woelke was found approximately six feet from an exit door at the rear of the building.

32. An autopsy report indicated that Brian Woelke died from smoke and soot inhalation after having run out of air.

33. On May 8, 2013, Michigan Occupational Safety and Health Administration (“MIOSHA”) representatives, charged with investigating places of employment for occupational health and safety conditions, met with Wayne-Westland fire officials in a “opening conference” for their investigation into the cause of Brian Woelke’s death.

34. Within days of the fire that resulted in firefighter Woelke’s death, Fire Marshal, JOHN ADAMS, an extremely experienced and knowledgeable fire origin and cause investigator, had completed his on-scene investigation and evidence-collecting activities. His investigation included canine units trained to detect accelerants. None were found. ADAMS was quoted in the local newspaper stating *“I can say there were no accelerants – gasoline or kerosene. We’ve had two accelerant-trained dogs out there. Based on their track record, I can say there were no accelerants.”*

35. The Wayne-Westland Fire Department (“WWFD”) leadership, including Defendants, ADAMS and REDDY, JR., had previously rejected an offer by the Michigan State Police Department to conduct the fire origin and cause investigation, to avoid the readily apparent conflict of interest, given that the Wayne-Westland Fire Department had lost one of its own firefighters in the fire, resulting in his death.

36. During the period of May 8 to June 30, 2013, MIOSHA conducted its investigation into the cause of Brian Woelke’s death.

37. On June 27, 2013, MIOSHA conducted its “closing conference” with Wayne-Westland Fire Department officials. At the closing conference, with REDDY JR. in attendance, the MIOSHA investigator(s) outlined the results of the investigation, and the citations to be issued against the WWFD for safety violations that resulted in Brian Woelke’s death.

38. During the month of July, 2013, JOHN ADAMS was able to view surveillance video of the inside of the Electric Stick/Italian Grille facilities, which clearly showed smoke originating from the kitchen area of the Italian Grille restaurant.

39. In the July 14, 2013, Wayne-Westland Observer newspaper, ADAMS is quoted, stating: *“It (the cause and origin of the fire) is still under*

investigation. I have released the scene to the insurance company so they can mitigate it. In the next couple of weeks, I will have the cause.”

40. During the summer of 2013, Defendant, REDDY SR. invited Plaintiff, Sunday Gains, to lunch. As they left the lunch, REDDY SR. told Sunday, *“I’ll do anything to protect my family.”*

41. On August 30, 2013, MIOSHA issued a citation to the City of Westland for a “serious” violation of health and safety regulations.

Specifically, the WWFD was cited for a violation of “Firefighting, Part 74, Rule 7451(1), which states: *“The fire department did not establish and implement written procedures for emergency operations which included all of the following: (a) a requirement that a nationally recognized incident management system be implemented at each emergency, (b) a requirement that a personnel accountability system be implemented at each emergency, (c) a statement that the procedures apply to all employees who are operating at the emergency, (d) a requirement for initial training and annual refresher training in emergency operations and the incident management system, and (e) a requirement that the procedures shall be in accordance with the ‘two in/two out’ rules as found in the provision of 1910.134(g)(4), which was adopted by reference in the*

occupational health standard Part 451. 'Respiratory Protection' being R325.60051 et seq. of the Michigan Administrative Code."

The MIOSHA Violations Worksheet also indicated a violation of Rule 408.17451(1), which states: *"Under emergency operations standards, the fire department failed to follow procedures for issuing a mayday call immediately when the entry team exited the structure with one member missing."* The severity of the consequences for a violation of the rule is listed as *"High, death has and can result from delayed response."*

A fine of \$3,500.00 was assessed against the WWFD.

42. Based upon information and belief, during the period of June 27, 2013, to early September, 2013, Defendants, ADAMS, REDDY JR. and REDDY SR., had one or more conversations directed toward concluding that the fire was intentionally set, and not the result of an accidental, natural, or undetermined cause.

43. The three above-named defendants conspired to change the cause to "incendiary" to ward off criticism of the Wayne-Westland Fire Department's leadership's lack of control over policies, procedures, and equipment checks, and violation of the cardinal "2-in/2-out" rule that resulted in the tragic loss of a young firefighter's life. The Wayne-Westland

Fire Department's inadequate policies and maintenance of equipment was a contributing factor to Brian Woelke's tragic and preventable death.

44. In or about mid-September, 2013, JOHN ADAMS had lunch with Westland City Council member, Bill Johnson, and informed Johnson that, despite having no new evidence, he was changing his conclusion to an incendiary cause of the fire. When Johnson inquired why Adams was changing his mind, after previously telling Johnson and others that it was an accidental, electrical fire, Adams responded "*Because a firefighter died, Bill.*"

45. On September 11, 2013, Wayne-Westland Assistant Fire Chief, Michael Olderman, sent a letter to MIOSHA stating that "*The City acknowledges the MIOSHA citation cites the Fire Department 'did not establish and implement written procedures for emergency operations which included ... [implementation of] a nationally recognized incident management system ... a personal (sic) accountability system ... a statement that ... procedures apply to all employees ... a requirement for initial training and annual refresher training ... that procedures shall be in accordance with the 'two in/two out' rules. . . .*" The letter continued: "*The purpose of this letter is to formally notify the MIOSHA that the City will pay the \$3,500 penalty that was assessed.*"

46. On October 24, 2013, in response to an email from George Marvaso asking for a definitive conclusion as to the origin and cause of the fire, Fire Marshal John Adams wrote: *“There had been a miscommunication between Detective Ponzetti and me on the action items we each needed. That is being taken care of and the status of the fire will be changing next week.”*

47. Around mid-November, 2013, despite having received no new evidence, Fire Marshal, JOHN ADAMS, suddenly reversed course, concluding that the fire had an incendiary cause. The fire investigation industry defines an *“incendiary”* fire as *“[a] classification of the cause of a fire that is intentionally ignited under circumstances in which the person igniting the fire knows the fire should not be ignited.”* See National Fire Protection Association (NFPA) 921, *Guide for Fire and Explosion Investigations*, (2011).

48. Only one category of fire cause can support an inference of a criminal act; namely, *“Incendiary.”*

49. Defendants, ADAMS, REDDY JR., and REDDY SR., all veteran fire professionals, knew that a finding of an intentionally set fire would trigger investigation into the owners of the businesses that burned; namely Electric Stick Inc., George and Mary Marvaso, and their family members.

50. Defendant, ADAMS, in furtherance of the conspiracy, knowingly submitted the false fire origin and cause report to the Michigan State Police and Wayne County Prosecutor's Office, which triggered a Michigan State Police homicide investigation that resulted in search warrants being executed for Plaintiffs' records and personal property, as well as the injuries and damages set forth below. To date, most of Plaintiffs' property has not been returned.

51. The conspiracy between ADAMS, REDDY JR., and REDDY SR., was designed to shift blame away from the fire department's inadequacies and gross negligence, and to shift the focus of a criminal investigation to Plaintiffs. Therefore, ADAMS, REDDY JR., and REDDY SR.'s intent was to subject Plaintiffs to a deprivation of a right secured by the Constitution and laws of the United States, namely, deprivation of their liberty and property rights without due process by one acting under color of law and search and seizure without probable cause, a violation of the Fourth Amendment.

52. On or about November 27, 2013, the statewide news media, including television, radio, and print, widely reported that ADAMS had declared that the fire was incendiary/arson, and that the Michigan State

Police were now going to open a homicide investigation into the murder of firefighter Brian Woelke.

53. To date, no fire origin and cause investigators who investigated the subject fire, including two experienced investigators for the landlord and tenant's insurance companies, have agreed with ADAMS' conclusion that the fire was "incendiary" in nature. They each concluded that the evidence suggested an "undetermined" origin and cause.

54. On or about December 12, 2013, Defendant, SANCHEZ, swore out an affidavit in support of a search warrant to seize numerous items from the homes of George and Mary Marvaso, Geo Marvaso, and Sunday Gains.

55. The facts to support the search warrant were knowingly false or were made with reckless disregard for the truth, and did not provide probable cause for the search warrant and the invasion of Plaintiffs' homes.

56. But for SANCHEZ' intentionally and/or recklessly-made false statements, and ADAMS' intentionally false conclusion as to the cause of the fire, *there would have been no probable cause to secure a search warrant, because there would have been no evidence of a crime.*

57. To date, three and a half years after the fire, there have been no arrests made, and none will be made, because there was never any

evidence of arson, other than ADAMS' intentionally false (not simply incorrect) conclusion.

58. On April 15, 2016, almost three years after the fire, and after an exhaustive governmental investigation into the Electric Stick fire, NIOSH investigators issued eleven recommendations designed to improve WWFD procedures to prevent future senseless deaths of its firefighters. Those recommendations included:

a. Fire departments should ensure that initial risk assessment is performed and continuous risk assessment is performed throughout the incident and the strategy and tactics match the conditions encountered. [The report noted: *"An offensive strategy (entering the building) may have been able to control a limited kitchen fire if the hoseline had been larger and the stretch had a more direct approach to the seat of the fire. In this case, the small hoseline (1 ½") and the length of the stretch from Side A almost to Side C, coupled with not being able to locate the likely seat of the fire in the large overhead concealed space, was a challenging operation.*

"The incident commander repeatedly asked for progress reports. However, there was little communication to command from interior crews, and there was little to no progress on fire control."]

b. Fire departments should ensure that crew integrity is maintained during fire suppression operations. [The report noted: *"In this incident, the fire fighter became separated from his crew and lost. He was a probationary fire fighter and by himself for a period of time. He did not have a great deal of experience in working fires (much less, commercial building fires) and was likely struggling to find his way out."]*

59. That due to the conduct of Defendants, ADAMS, REDDY JR., REDDY SR., and SANCHEZ, as set forth below, Plaintiffs have suffered the following injuries and damages:

- A. Each individual Plaintiff having their home illegally searched and property taken (and not returned) without probable cause;
- B. Severe emotional distress from the time the press released information that the fire was ruled an arson, and that the Michigan State Police had initiated a homicide investigation;
- C. Inability to rebuild the family business because the insurance company for the Electric Stick refused to pay the insurance proceeds, as it continued investigating the “intentionally set” fire;
- D. Physical manifestations of emotional distress including, but not limited to, sleeplessness, irritability, loss of appetite, headaches, and other symptoms;
- E. Fright, shock, indignity, humiliation and embarrassment;
- F. Loss of enjoyment of daily activities;
- G. Loss of employment;
- H. Incurring significant attorney fees litigating with the insurance company over insurance benefits;
- I. Many of Plaintiffs’ injuries and damages are likely to be permanent;
- J. Other damages which may be revealed through discovery.

COUNT I

CONSTITUTIONAL VIOLATIONS BY DEFENDANTS, ADAMS, REDDY JR., REDDY SR., and SANCHEZ

60. Plaintiffs incorporate by reference all preceding paragraphs as if fully stated herein.

61. Defendants violated the individual Plaintiffs' constitutionally-protected rights, including their right to liberty protected in the substantive components of the Due Process clause of the Fourteenth Amendment to the U. S. Constitution, as well as freedom from unreasonable seizure, pursuant to the Fourth Amendment, by the following conduct:

- A. ADAMS filing a false fire origin and cause report claiming the Electric Stick fire was incendiary in nature when ADAMS knew such a conclusion was false and, in fact, contrived;
- B. ADAMS, REDDY JR., and REDDY SR. conspiring to change the conclusion of the cause of the fire being incendiary in nature, in order to deflect media attention away from the WWFD's inadequacies and to have the Michigan State Police actively investigate the Marvaso family, the owners of the Electric Stick and Italian Grille restaurant;
- C. SANCHEZ submitting a knowingly false affidavit that lacked probable cause that a crime may have occurred, in support of search warrants for the individual Plaintiffs' homes;
- D. Other acts and violations that will be discovered during the course of the lawsuit.

62. That as a direct and proximate result of the Defendants' willful violation of Plaintiffs' constitutionally protected rights, Plaintiffs' personal property was seized without probable cause, and has not been returned in almost three years.

WHEREFORE, Plaintiffs pray for such compensatory damages as are available pursuant to federal law. Plaintiffs further seek punitive damages pursuant to 42 USC §1983 as to the individual Defendants, jointly and severally, together with pre-judgment interest, costs and attorney fees in an amount to be determined by the Court.

s/Wolfgang Mueller
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Dated: November 3, 2016

JURY DEMAND

Plaintiffs, by and through their attorneys, MUELLER LAW FIRM,
demand a jury trial in this matter.

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Dated: November 3, 2016