

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 20-cv-1616

AGAZI ABAY,
GABRIEL THORN,
AMY SCHNEIDER, and
MICHAEL McDANIEL, on behalf of themselves
and other similarly situated individuals

Plaintiffs,

v.

CITY AND COUNTY OF DENVER,

Defendant.

NOTICE OF REMOVAL

Defendant City and County of Denver (“Denver”), through undersigned counsel, submits this Notice of Removal pursuant to 28 U.S.C. §§ 1331, 1441, and 1446.

AS GROUNDS THEREFOR, Defendant Denver states as follows:

1. Plaintiffs Agazi Abay, Gabriel Thorn, Amy Schneider, and Michael McDaniel commenced this action by filing their Complaint in the District Court for the City and County of Denver, State of Colorado, Case No. 2020CV31927, on June 4, 2020. *See Exhibit A.* This Notice of Removal is filed within thirty days after receipt of the Complaint and, therefore, is timely filed pursuant to 28 U.S.C. §1446(b).

2. Plaintiffs’ Complaint sets forth two claims pursuant to 42 U.S.C. § 1983, alleging that members of the Denver Police Department violated their rights under the First and Fourth Amendments of the United States Constitution during public protests between May 28, 2020 and

June 1, 2020. *See Exhibit A*, at ¶¶ 40-71, 87-108. Plaintiff's Complaint also alleges that Denver has a purported policy, practice, or custom of violating the freedom of expression of protesters and of using excessive force against such protesters as well failing to train its police officers. *Id.* at ¶¶ 72-77. Plaintiffs are attempting to assert these claims as a class action for prospective relief on behalf of themselves and others who they contend are similarly situated. *Id.* at ¶¶ 78-86.

3. Plaintiff seeks uncalculated monetary damages and other relief, including costs, fees, declarations, class certification, preliminary and permanent injunctive relief, and attorney's fees recoverable pursuant to 42 U.S.C. § 1988. **Exhibit A**, at p. 25.

4. Denver submits this Notice of Removal pursuant to 28 U.S.C. 1441(a), which provides:

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

This Court has original jurisdiction over this case pursuant to 28 U.S.C. § 1331, which provides that “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” Plaintiff's allegations of a violation of the United States Constitution and assertion of claims pursuant to 42 U.S.C. § 1983 present a federal question over which this Court properly has jurisdiction under 28 U.S.C. § 1331. This action may therefore be removed to this Court pursuant to 28 U.S.C. §§ 1441 and 1446.

5. Pursuant to 28 U.S.C. § 1446(a) and D.C.COLO.LCivR 81.1, copies of all state court pleadings, motions and other papers are attached hereto. These pleadings consist of the following:

- a. Complaint and Jury Demand (**Exhibit A**);
- b. District Court Civil Case Cover Sheet (**Exhibit B**);
- c. District Court Summons (**Exhibit C**)
- d. Notice of In-Person Status Conference [10:00 a.m. on 6/5/2020] (**Exhibit D**)
- e. Pre-Trial Order (**Exhibit E**)
- f. Delay Reduction Order (**Exhibit F**)

A current docket sheet (register of actions) for the state case is submitted as **Exhibit G**.

6. 28 U.S.C. § 1446(b)(2)(A) requires that in a civil action removed solely under section 1441(a), “all defendants who have been properly joined and served must join in or consent to the removal of the action.” Denver is the only defendant in this lawsuit.

7. An in-person status conference has been set in the Colorado state court case (District Court for the City and County of Denver, State of Colorado, Case No. 2020CV31927) for Friday, June 5, 2020, at 10:00 a.m. in Denver District Court, Courtroom 280, at 1437 Bannock Street, Denver, Colorado 80202 before the Hon. Christopher J. Baumann, Denver District Court Judge. In accordance with D.C.Colo.LCivR 81.1(c), undersigned counsel certifies that she will also separately notify the state court judge forthwith of this removal.

8. Pursuant to 28 U.S.C. § 1446(d) and D.C.Colo.LCivR 81.1(b), undersigned counsel certifies that this Notice of Removal has been sent to all other parties in this action as indicated on the certificate of service and is being filed with the clerk of the District Court for the City and County of Denver, State of Colorado, forthwith.

DATED this 4th day of June, 2020.

Respectfully submitted,

s/ Melanie B. Lewis

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s/ Conor D. Farley

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Counsel for Defendant City and County of Denver

CERTIFICATE OF SERVICE

I certify that on this 4th day of June, 2020, I electronically filed the foregoing **NOTICE OF REMOVAL**, with exhibits, with the Clerk of the Court using the CM/ECF system and emailed a true and accurate copy of the same to the following:

Edward Milo Schwab, Esq.
Ascend Counsel, LLC
Email: milo@ascendcounsel.co
Counsel for Plaintiffs

s/ Melanie B. Lewis _____
Denver City Attorney's Office