

IN THE CIRCUIT COURT OF PULASKI COUNTY ARKANSAS
CIVIL DIVISION

ALICE FULK

PLAINTIFF

VS.

NO. _____

CITY OF LITTLE ROCK, ARKANSAS;
STUART THOMAS, in his official capacity
As Chief of Police and in his individual capacity;
WAYNE BEWLEY, individually; and
HAYWARD FINKS, individually

DEFENDANTS

COMPLAINT

The Plaintiff, Alice Fulk, respectfully come before this Court, by and through her attorneys Chisenhall, Nestrud & Julian, P.A., and for her cause of action against the Defendants, states and alleges:

I. JURISDICTION

1. This is an action to enjoin discrimination in employment pursuant to the Arkansas Civil Rights Act, A.C.A. §16-123-107; Article 2, Arkansas Constitution; and the Arkansas Civil Service Act, A.C.A. §14-31-101 et seq. and jurisdiction is properly in this Court.

II. PARTIES

2. Plaintiff Alice Fulk is a female resident of Pulaski County, Arkansas, and an employee of the City of Little Rock, Arkansas.

3. Defendant City of Little Rock, Arkansas is a municipal corporation existing under the laws of the State of Arkansas. At all relevant times, the City of Little Rock was an employer as defined under the Arkansas Civil Rights Act.

6. Defendant Stuart Thomas is a resident of Little Rock, Pulaski County, Arkansas,

and is the Chief of Police for the City of Little Rock, Arkansas and took part in the acts complained of herein by Plaintiff.

7. Defendant Wayne Bewley is a male and resident of Saline County, Arkansas; and Defendant Hayward Finks is a male and resident of Pulaski County, Arkansas. They are necessary parties for complete relief to be afforded Plaintiff and are added as parties for the equitable relief sought.

III. STATEMENT OF FACTS

8. Plaintiff is employed by Defendant City of Little Rock, Arkansas as a captain in the Little Rock Police Department. She holds a master's degree and has worked for the Little Rock Police Department over the course of her long career in law enforcement, having worked herself up to be the ranking officer over the Major Crimes Division.

9. On June 28, 2012, Plaintiff successfully completed the Assistant Police Chief Promotion process, together with five other applicants.

10. The Little Rock Civil Service Commission certified that Plaintiff ranked second on the list of applicants who had completed the promotional process and were eligible for promotion.

11. In the beginning of 2012, Defendant Chief Thomas assigned Wayne Bewley to serve as an interim assistant police chief, without the benefit of an open competitive examination. This action was in contravention of Arkansas law which provides that an interim appointment without competitive examination cannot extend beyond a period of sixty days. Ark. C. Ann. §15-501-301(a)(B).

12. The decision to place Bewley in an extended interim position allowed Bewley to gain an unfair competitive advantage for promotion to the position once Defendant Chief Thomas elected to open the position for competitive examination. The decision to delay the promotional

process was made by Defendant Chief Thomas.

13. Plaintiff was not given consideration or opportunity to serve as assistant police chief in an interim capacity.

14. On June 28, 2012, Defendant Chief Thomas selected for promotion to Assistant Police Chief Bewley, who ranked number one on the promotion eligibility list.

15. On June 28, 2012, Defendant Chief Thomas also promoted Hayward Finks to Assistant Police Chief. He ranked number three on the promotion eligibility list.

16. The promotion eligibility list was certified by the Little Rock Civil Service Commission to be used for the promotional process for the term of one year. There have been no other promotions since June 28, 2012, from the Assistant Police Chief Promotion process eligibility list.

17. Plaintiff met with Defendant Chief Thomas on June 28, 2012 and was informed by him that she had been skipped over in the eligibility list so that assistant Chief Hayward Finks received the promotion out of sequence based upon the ranking on the list. Defendant Chief Thomas did not provide any reason for her non-selection except to state that he needed someone who capable of managing at that level right then and that she was not yet there but would be soon. He commended her for how well she was performing in her captain's position. Plaintiff stated that there is a "glass ceiling" at the Little Rock Police Department.

18. Under Chief Thomas, no female has been selected to serve as an assistant police chief, or an interim assistant police chief.

19. The examination process for assistant chief was not open competitive testing the relative fitness of the candidates and the promotional process violated Arkansas Civil Service laws

by giving an unfair advantage to Assistant Police Chief Bewley.

20. The City of Little Rock is required by Arkansas statute to use a testing procedure which must be conducted to allow reasonable means for judicial review is possible to see that the process is fair and impartial.

21. The City of Little Rock failed to comply with the provisions of the Civil Service Statute by failing to provide a procedure which includes an objective judicially reviewable standard or create a judicially reviewable record.

22. The City of Little Rock failed to comply with the provisions of the Civil Service Statute by failing to provide a procedure which does not discriminate against females and therefore failed to provide a procedure which is fair.

23. Even if the system is found to have been fair and judicially reviewable, the application of the process to Plaintiff was unfair. Historically, Defendant Chief Thomas has always promoted the highest ranking applicants in their order of their ranking. Defendant Chief Thomas deviated from that practice to de-select Plaintiff and promote a second male applicant, because of her gender.

24. Plaintiff timely filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC). The EEOC has completed processing that charge and a right to sue was issued by the EEOC. The issuance of the right to sue completes the administrative review and Plaintiff's exhaustion of administrative remedies. (Exhibit A)

IV. VIOLATIONS OF LAW

Count 1

25. Plaintiff is a member of a protected class, female.

26. At all times relevant to this Complaint, she was adequately performing the position

of Captain with the Little Rock Police Department.

27. Plaintiff timely applied for and was qualified for promotion to the positions of Assistant Police Chief.

28. A less qualified male was selected for the position.

29. Defendants denied Plaintiff promotion to Assistant Police Chief because of her sex and made employment decisions concerning the terms and conditions of her employment, on the basis of sex in employment, pay, and other terms and conditions of employment in violation of the Arkansas Civil Rights Act and her rights guaranteed under the Arkansas Constitution, Article 2, §18.

Count 2

30. Defendants violated the provisions of the Arkansas Civil Service statute by conducting subjective interviews and by failing to have a judicially reviewable record for the promotional process.

31. Because Defendants violated the provisions of the Arkansas Civil Service statute, the promotions of Hayward Finks and Wayne Bewley should be declared null and void, their promotions voided and vacated.

VII. PRAYER FOR RELIEF

32. As relief for the above described violations, Plaintiffs' requests that this Court:

a. Grant a declaratory judgment that the actions taken against Plaintiff were discrimination in violation of the Arkansas Civil Rights Act;

b. Grant a declaratory judgment that the actions taken against Plaintiff were in violation of the Arkansas Civil Service Act;

c. Award Plaintiff her back pay, front pay, pre-judgment interest,

post-judgment interest, attorney's fees, costs, and other such sums as will make her whole for the unlawful actions taken against her and instate her into the position she should have been in but for the illegal discrimination against her;

d. Grant Plaintiff injunctive relief including reinstatement to the assistant police chief position and enjoining Defendant from any further acts of discrimination and any retaliation against her.

e. Grant a declaratory judgment that the Defendants violated her Constitutional rights of Equal Protection of the law and violated state statute in failing to promote her.

f. Award Plaintiff damages for violation of her Constitutional rights and violation of her rights protected under state statute.

g. Grant Plaintiff a trial by jury.

Respectfully submitted,

/s/ Denise Reid Hoggard

DENISE REID HOGGARD, Bar # 84072

Chisenhall, Nestrud & Julian, P.A.

400 West Capitol Ave., Suite 2840

Little Rock, Arkansas 72201-3415

(501) 372-5800 Telephone

(501) 372-4941 Fax

dhoggard@cnjlaw.com

Attorneys for Plaintiff

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

IN UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS JAMES W. McCORMACK CLERK
WESTERN DIVISION By: *J. Rachel*

MAR 15 2013

DEP CLERK

BETTY FLEMING

PLAINTIFF

vs.

Case No. 4:13-cv-148 JLH

CITY OF LITTLE ROCK, ARKANSAS;
COREY HALL, Individually and In His
Official Capacity as a Little Rock Police Sergeant; and
JASON GILBERT, Individually and In His
Official Capacity as a Little Rock Police Officer

DEFENDANTS

COMPLAINT

Plaintiff Betty Fleming, by and through the Koch Law Firm, P.A., for her Complaint
 against Defendants, states:

This cause assigned to District Judge Holmer
Volpe

A. PARTIES AND JURISDICTION

1. Plaintiff is a United States citizen and a resident of the State of Arkansas.
2. Defendant City of Little Rock is a municipal corporation organized and existing under the laws of the State of Arkansas that has as one of its departments the Little Rock Police Department. Defendant Corey Hall and Defendant Jason Gilbert were, at all times relevant to this case, residents of Pulaski County, Arkansas, and were employed by the Little Rock Police Department in Pulaski County, Arkansas.
3. All of the facts and events giving rise to this litigation occurred in Pulaski County, Arkansas.
4. This is an action to secure a remedy for damages to a female citizen against law enforcement officers for false arrest, excessive use of force, unlawful search and seizure, and similar claims pursuant to 42 U.S.C. § 1983; the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution; the Arkansas Civil Rights Act of 1993, codified at Ark. Stat. Ann.

See Payment Spreadsheet included for payment information

§ 16-123-105; the Constitution of the State of Arkansas; and the Arkansas common law torts of assault, battery, false imprisonment, malicious prosecution, outrage, and other state law claims.

5. This Court therefore has subject matter jurisdiction over Plaintiff's federal claims under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3), and supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1337. This Court has personal jurisdiction over the parties, and venue is proper under 28 U.S.C. § 1331(b).

B. GENERAL ALLEGATIONS OF FACT

6. On or about August 12, 2010, Separate Defendant Jason Gilbert (hereinafter "Gilbert") was employed and working as a uniformed police officer for Separate Defendant City of Little Rock, Arkansas (hereinafter "LRPD"); in his duties as a police officer, Gilbert was working and acting at all times under the color of law.

7. On or about that date, Gilbert responded to a motor vehicle accident involving Plaintiff and another individual named Desire Walker. While investigating the accident, Gilbert—wholly without reason, justification, or provocation—grabbed Plaintiff's arm and elevated it behind her back, placed Plaintiff in handcuffs, and placed her under arrest. Gilbert's only explanation for the arrest was his opinion that Plaintiff was talking to him like he was a child.

8. Gilbert then shoved Plaintiff into the back of his patrol car with such force that he injured her head and broke her teeth. Gilbert then left Plaintiff in the back of the patrol car during the heat of an August day with the windows up and no air conditioning for an extended period of time.

9. Eventually, other Little Rock police officers arrived on scene, including Gilbert's supervisor, Separate Defendant Corey Hall (hereinafter "Hall"), whose rank was sergeant and who was also acting under color of law.

10. Plaintiff pleaded with the Gilbert, Hall, and other officers to open a window and to help her, but they refused; instead Sgt. Hall and others only laughed at Plaintiff and lectured her about how next time she would learn to show police officers more respect.

11. Gilbert and Hall subsequently charged Plaintiff with disorderly conduct, attempting to influence a public official, and terroristic threatening, all with no basis in fact or probable cause whatsoever. These events were recorded with video and audio.

12. Plaintiff was taken to jail where she was strip searched, photographed, and incarcerated. While in jail, Plaintiff was purposefully subjected to horrible conditions and abuse.

13. Notwithstanding her innocence, Plaintiff was forced to remain in jail for approximately eight days. During this time, Gilbert and his supervisors at LRPD had access to the audiovisual recording of the incident which clearly shows the events and the lack of any culpable conduct on the part of Plaintiff.

14. Once Plaintiff was able to get legal representation, all of the criminal charges against her were dismissed because they were wholly without merit.

15. LRPD and Sgt. Corey had information and reason to believe that Officer Gilbert was not police officer material at all; rather that Gilbert was a criminal and that he regularly participated in criminal conduct both on and off duty. Nevertheless, LRPD and Sgt. Corey ignored Gilbert's deplorable and criminal behavior and allowed him to continue working as a law enforcement officer. LRPD and Sgt. Corey, pursuant to the pattern, practice, custom, and policy of the LRPD, failed to properly train and supervise Gilbert.

16. Plaintiff suffered significant physical and emotional injury from this incident.

C. VIOLATIONS

17. Pursuant to 42 U.S.C. § 1983, Plaintiff brings and alleges the following violations of constitutional protections and laws:

COUNT ONE: FOURTH AMENDMENT TO THE U.S. CONSTITUTION

18. Plaintiff realleges the foregoing general allegations of fact as if fully set out under this count.

19. Defendants' actions as stated herein deprived Plaintiff of her rights against unreasonable search, seizure, procedural due process, and substantive due process under the Fourth Amendment to the United States Constitution. Defendants' actions in falsely arresting and incarcerating Plaintiff and in using excessive force against her violated Plaintiff's rights under the Fourth Amendment.

20. The actions of the individual defendants sued in their individual capacities herein were intentional, malicious, and sufficiently egregious such as to justify an award of punitive damages against them.

COUNT TWO: FIFTH AMENDMENT TO THE U.S. CONSTITUTION

21. Plaintiff realleges the foregoing general allegations of fact as if fully set out under this count.

22. Defendants' actions as stated herein deprived Plaintiff of her liberty and property without due process of law in violation of the Fifth Amendment to the United States Constitution.

23. The actions of the individual defendants sued in their individual capacities herein were intentional, malicious, and sufficiently egregious such as to justify an award of punitive damages against them.

COUNT THREE: EIGHTH AMENDMENT TO THE U.S. CONSTITUTION

24. Plaintiff realleges the foregoing general allegations of fact as if fully set out under this count.

25. Defendant's actions as stated herein—during and after her arrest and incarceration—deprived Plaintiff of her right against cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

26. The actions of the individual defendants sued in their individual capacities herein were intentional, malicious, and sufficiently egregious such as to justify an award of punitive damages against them.

COUNT FOUR: FAILURE TO TRAIN AND SUPERVISE

27. Plaintiff realleges the foregoing general allegations of fact as if fully set out under this count.

28. The actions of Defendant LRPD and Defendant Corey Hall as described herein amount to a deliberate indifference of Plaintiff's rights under the United States Constitution and its amendments, as well as the Arkansas Constitution and other laws.

29. Defendant Corey Hall's actions—in his individual capacity—were sufficiently egregious to support an award of punitive damages against Hall.

COUNT FIVE: THE ARKANSAS CONSTITUTION VIA THE ARKANSAS CIVIL RIGHTS ACT, ARK. CODE ANN. § 16-123-105

30. Plaintiff realleges the foregoing general allegations of fact as if fully set out under this count.

31. Defendants' actions as stated herein deprived Plaintiff of her rights against unlawful search and seizure, unlawful arrest, unlawful use of force, the deprivation of liberty and property under due process of law, and cruel and unusual punishment as set forth and prohibited in the Arkansas Constitution.

32. The actions of the individual defendants sued in their individual capacities herein were intentional, malicious, and sufficiently egregious such as to justify an award of punitive damages against them.

COUNT SIX: STATUTORY AND COMMON LAW ASSAULT AND/OR BATTERY

33. Plaintiff realleges the foregoing general allegations of fact as if fully set out under this count.

34. Defendants' actions as stated herein amount to the tort of Assault, Attempted Assault, Battery, and/or Attempted Battery, as prohibited by Arkansas statute and common law.

35. The actions of the individual defendants sued in their individual capacities herein were intentional, malicious, and sufficiently egregious such as to justify an award of punitive damages against them.

COUNT SEVEN: FALSE IMPRISONMENT

36. Plaintiff realleges the foregoing general allegations of fact as if fully set out under this count.

37. Defendants' actions as stated herein amount to false imprisonment, as prohibited by Arkansas statute and common law.

38. The actions of the individual defendants sued in their individual capacities herein were intentional, malicious, and sufficiently egregious such as to justify an award of punitive damages against them.

COUNT EIGHT: ARKANSAS FELONY TORT STATUTE

39. Plaintiff realleges the foregoing general allegations of fact as if fully set out under this count.

40. Defendants' actions as described herein would constitute a felony (felony battery under Ark. Code Ann. § 5-13-202, and other felonies) under Arkansas law, Plaintiff was the victim of Defendants' felonious behavior, and Defendants' actions as described herein are thus actionable under Ark. Code Ann. § 16-118-107 (the felony tort statute).

41. The actions of the individual defendants sued in their individual capacities herein were intentional, malicious, and sufficiently egregious such as to justify an award of punitive damages against them.

COUNT NINE: OUTRAGE

42. Plaintiff realleges the foregoing general allegations of fact as if fully set out under this count.

43. Defendants' actions as described herein were extreme and outrageous conduct, were beyond all possible bounds of decency, and were atrocious and utterly intolerable in a civilized society; Defendants' actions as described herein therefore amount the tort of outrage as described and prohibited by Arkansas statute and common law.

COUNT TEN: MALICIOUS PROSECUTION AND/OR ABUSE OF PROCESS

44. Plaintiff realleges the foregoing general allegations of fact as if fully set out under this count.

45. Defendants' actions as described herein amount to malicious prosecution and/or abuse of process under Arkansas statute and common law.

46. The actions of the individual defendants sued in their individual capacities herein were intentional, malicious, and sufficiently egregious such as to justify an award of punitive damages against them.

D. DAMAGES

47. As a direct result of Defendants actions as described in this Complaint, Plaintiff suffered physical injury, emotional injury, financial injury, loss of employment, loss of reputation, and other damages in amounts to be proved at trial.

E. JURY TRIAL DEMAND

48. Plaintiff respectfully demands a trial by jury on all counts.

WHEREFORE, Plaintiff prays for judgment against Defendants, for compensatory damages against all Defendants, for punitive damages against the individuals sued in their individual capacity herein, for costs and attorney fees, and for all other proper relief to which she is entitled.

Respectfully submitted,

Koch Law Firm, P.A.
2024 Arkansas Valley Drive, Suite 707
Little Rock, Arkansas 72212
(501) 223-5310 office
(501) 223-5311 facsimile
reggie@reggiekoch.com

By:



Reggie Koch, Ark. Bar #2005125

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
DIVISION, CIVIL DIVISION

BRANDON GURLEY

PLAINTIFF

V.

CASE NO. _____

CITY OF LITTLE ROCK and
KENTON BUCKNER, individually
and in his official capacity

DEFENDANTS

COMPLAINT

COMES NOW, the Plaintiff, BRANDON GURLEY, by and through his attorneys, and for his Complaint against Defendants, CITY OF LITTLE ROCK, and KENTON BUCKNER, states as follows:

JURISDICTION

1. Jurisdiction of this Court is invoked pursuant to the provision of Arkansas Code Annotated § 16-13-201 *et seq.* Venue is proper in this Court in that the Defendants are residents of Pulaski County, Arkansas.

2. This action is authorized by provisions of the Arkansas Civil Rights Act, § 16-123-101 *et seq.*, the Arkansas Whistleblower Act, § 21-1-601, *et seq.*, and Wrongful Termination.

BACKGROUND FACTS

3. Plaintiff, BRANDON GURLEY (hereafter "Plaintiff"), is a resident of Pulaski County, Arkansas. Plaintiff, at all times material to this cause of action, was an employee of the CITY OF LITTLE ROCK (hereafter "CITY"), and employed as a Little Rock Police Department (hereafter "LRPD") police recruit. Plaintiff is an African-American male who is a citizen of the United States of America and the State of Arkansas.

4. The CITY is a municipality of the State of Arkansas and is a person within the meaning of the Arkansas Civil Rights Act as amended. The Arkansas Whistleblower Act defines

See Payment Spreadsheet included for payment information

“public employer” as a municipality, *inter alia*. At all relevant times, KENTON BUCKNER, was the LRPD police chief and final policymaker, who is authorized to terminate LRPD officers and recruits. At all relevant times, KENTON BUCKNER was operating within the scope of his employment for the CITY.

5. Plaintiff began LRPD recruit training on August 21, 2017. From the early weeks onward, Plaintiff was the victim of racial jokes, a racially hostile workplace, personal attacks, harassment, hazing and retaliation. During his training period, Plaintiff overheard racist comments from white recruit, Brandon Schiefelbein (hereafter “Schiefelbein”) which included references to fried chicken, watermelon and other stereotypical racist concepts.

6. Schiefelbein’s racist comments are reminiscent of a 1992 matter involving white LRPD officer Kevin Tindell (hereafter “Tindell”), who dressed in blackface at a Fraternal Order of Police (hereafter “FOP”) party, holding a watermelon, with his girlfriend who was dressed like a fried chicken drumstick. The FOP defended Tindell’s actions at the party, and even paid for his legal defense.

7. At some point during Plaintiff’s recruit training, a black recruit showed him screenshots from Schiefelbein’s Facebook page which depicted an African-American army solider asleep in his bunk with a caption authored by Schiefelbein, which read: “Go night night nigga. Go night night.”

8. This racist Facebook post is reminiscent of a matter involving Josh Hastings, a white LRPD recruit who had attended a Ku Klux Klan meeting prior to becoming a LRPD recruit, and was subsequently untruthful about that fact. Even though these issues became known to the chief of police during Josh Hastings’ period as a recruit, he nonetheless was allowed to continue his training and become a LRPD police officer, over the objection of a high-

ranking black officer on the hiring committee. A few years later, Josh Hastings shot and killed an African-American 15-year-old boy and then lied about the circumstances of the shooting. His employment with the LRPD was terminated only after he killed the 15-year-old.

9. Josh Hastings' attendance at the KKK meeting was concealed from the public until after he had become a LRPD officer, which precluded any meaningful debate on the propriety of hiring such an individual.

10. After Plaintiff saw Schiefelbein's racist Facebook post, he asked LRPD officer Elisha Ramer (hereafter "Officer Ramer") if he could talk about a matter that transpired during his recruit training with someone outside his chain of command. Officer Ramer responded to Plaintiff that he could do this, giving him permission for such a conversation.

11. After receiving Officer Ramer's permission to discuss a matter outside his chain of command, and in reliance thereupon, Plaintiff contacted LRPD Sgt. Willie Davis, and voiced his concern about Schiefelbein's racist Facebook post, and other instances of possible misconduct and policy violations occurring during his training period. Upon hearing this information, Sgt. Davis informed LRPD officials, including KENTON BUCKNER, and soon thereafter, the matter became known to the public.

12. The CITY opened an investigation into the matter wherein Plaintiff, Schiefelbein, Jones, and Sgt. Davis were questioned, among others. Plaintiff explained how he came to learn about Schiefelbein's racist Facebook posting, and described other experiences and observations during his training which reflected racial animus with the LRPD and a hostile work environment where he was repeatedly harassed by recruits and officers.

13. During Plaintiff's questioning, his interviewers, Sgt. Jim Bob Stephens (hereafter "Sgt. Stephens") and Sgt. Christina Plummer (hereafter "Sgt. Plummer"), had no interest in

determining whether there was an atmosphere of racial hostility and other police misconduct permeating LRPD recruit training, despite their charge as Internal Affairs investigators.

14. Instead, they sought to poke holes in Plaintiff's narrative, to downplay his legitimate workplace concerns and, ultimately, to punish him for coming forward and reporting the misconduct. They sought to trap Plaintiff into violating policy by asking confusing questions, by asking leading questions and by being generally hostile with him.

15. Sgt. Stephens and Sgt. Plummer tried to establish that Plaintiff was not offended by what he had seen and heard, even though how workplace harassment is perceived is not a prerequisite to a finding of workplace harassment, as expressed in the CITY's harassment policy. They chastised Plaintiff for not coming forward, attempting to intimidate him and cast doubt on his account.

16. Sgt. Plummer, for one, had no business chastising Plaintiff on such matters. In her career as a LRPD officer, Sgt. Plummer has been sustained on violations of neglect of duty, providing inadequate police services and failing to search a subject in custody. Additionally, Sgt. Plummer has a sustained violation of GO 316 for de-activating her video camera while on duty, which is an act of deception.

17. For Schiefelbein's questioning, LRPD officer John Gilchrist was his companion officer. Upon information and belief, at that time, Officer Gilchrist was a member of the FOP board. Schiefelbein has since filed a civil rights lawsuit against the CITY and, upon information and belief, is represented by a lawyer who is being paid by the FOP.

18. During the investigation, Sgt. Stephens question Officer Ramer about Plaintiff's statement that he received her permission to discuss matters with an officer outside his chain of

command prior to contacting Sgt. Davis. Officer Ramer denied that she gave permission to Plaintiff to discuss matters outside her chain of command.

19. However, Sgt. Stephens had reason to doubt Officer Ramer's veracity, insofar as, during her career as a LRPD officer, she was untruthful during an investigation stemming from a citizen's complaint that Officer Ramer harassed the ex-husband of her then-girlfriend. When Officer Ramer told Sgt. Stephens that she never gave Plaintiff permission to discuss matters with officers outside of his chain of command, she was untruthful during an official LRPD investigation.

20. On December 8, 2017, Plaintiff was terminated by KENTON BUCKNER, who cited three reasons for the termination: 1) untruthfulness in violation of RR 1/8003.00; 2) a violation of Basic Recruit Training Manual On/Off Duty Incidents #G; and 3) a violation of 1/4003.00 related to a social media post discovered by the LRPD after Plaintiff complained about Schiefelbein's racist Facebook post.

21. These reasons for terminating Plaintiff were pre-textual and designed to conceal the real reason he was terminated, which was because he came forward about racism, harassment and misconduct during the LRPD recruit process. This is evidenced by the aforementioned cases of Tindell and Josh Hastings, as well as many other instances of white LRPD recruits and white LRPD officers not being terminated for far more serious misconduct.

22. There is a difference between an African-American using the term "nigger" or "nigga" within the African-American community and a white person directing those terms toward a black person or using the terms to describe a black person.

23. Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (hereafter “EEOC”) and, on April 19, 2018, the EEOC issued him a dismissal and Notice of Rights, a copy of which is attached hereto as Exhibit A.

24. The instant lawsuit is being filed within the requisite ninety (90) days of Plaintiff’s receipt of his EEOC Dismissal and Notice of Rights Letter.

COUNT I
ARKANSAS CIVIL RIGHTS ACT
CITY AND KENTON BUCKNER

25. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through twenty-four (24) as though fully alleged in Count I.

26. Plaintiff, who is black, is a member of a protected class. Plaintiff was subjected to racial animus in the workplace, a hostile work environment, retaliation and selective enforcement of discipline, all of which was based on his African-American race.

27. Defendants, CITY and KENTON BUCKNER, violated the Arkansas Civil Rights Act, § 16-123-101 *et seq.* described above in Plaintiff’s complaint.

28. The deprivation of Plaintiff’s constitutional rights under the Arkansas Civil Rights Act and the Arkansas Constitution which was committed by Defendants, and each of them, was unnecessary, unreasonable and willfully malicious. Therefore, Defendants, and each of them, are liable in damages to Plaintiff, including compensatory damages, actual damages, punitive damages, costs and attorney’s fees.

COUNT II
ARKANSAS WHISTLEBLOWER ACT
CITY AND KENTON BUCKNER

29. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through twenty-eight (28) as though fully alleged in Count II.

30. Under Arkansas law, a public employer—or an agent of the public employer—shall not take adverse action against a public employee because the public employee communicates, in good faith to an appropriate authority, the existence of bias, a waste of public funds or a violation or suspected violation of a law, rule or regulation adopted under the laws of the State of Arkansas or a political subdivision of the state. *See Ark. Code. Ann. § 21-1-603(a)(1).*

31. Additionally, Arkansas law provides that a public employer—or an agent of the public employer—shall not take an adverse action against a public employee because the employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review. *See Ark. Code. Ann. § 21-1-603(c).*

32. Within the meaning of the Arkansas Whistleblower’s Act, “adverse action” means “discharge, threaten, or otherwise discriminate or retaliate against a public employee in any manner that affects the employee’s employment, including compensation, job location, rights, immunities, promotions, or privileges.” *See Ark. Code Ann. § 21-1-602(1).*

33. In order to make a claim under the Arkansas Whistleblower Act, a plaintiff must establish, by the preponderance of the evidence, that he or she suffered an adverse action because he or she engaged or intended to engage in an activity protected under the Act. A public employer has an affirmative defense to a whistleblower lawsuit if the adverse action taken against the public employee was due to employee misconduct, poor job performance, or a reduction in workforce unrelated to a whistleblowing communication.

34. Plaintiff spoke out against bias, waste and/or misconduct. In turn, the CITY, and its agents, retaliated against him, in violation of the Arkansas Whistleblower Act.

35. As a result of the aforementioned violations of the Arkansas Whistleblower Act, Plaintiff is entitled to compensation for the following actual damages under Ark. Code Ann. § 21-1-604, in an amount to be established by the evidence adduced at trial:

- (1) Reinstatement;
- (2) Lost wages for days suspended without pay;
- (3) Lost future wages;
- (4) Court costs; and
- (5) Attorney's fees incurred in bringing this action.

36. Plaintiff is further entitled to punitive damages, pursuant to Arkansas Code Ann. § 16-55-206, because he is entitled to compensatory damages and:

- (1) the CITY, and its agents, knew or should have known that its conduct would naturally and probably result in injury or damage, and it continued the conduct with malice or in reckless disregard of the consequences, from which malice may be inferred; or
- (2) the CITY, and its agents, intentionally pursued a course of conduct for the purpose of causing injury or damage to Plaintiffs, and each of them.

37. Plaintiff is also entitled to injunctive relief, pursuant to Arkansas Code Ann. § 21-1-604(a), in the form of an injunction prohibiting the CITY from taking any further retaliatory action against Plaintiff and an order of reinstatement.

38. The deprivation of Plaintiff's rights which are protected under the Arkansas Whistleblower Act, was committed by Defendants, and each of them, and was unnecessary, unreasonable and willfully malicious. Therefore, Defendants, and each of them, are liable in damages to Plaintiff, including compensatory damages, actual damages, punitive damages, costs and attorney's fees.

COUNT III
ARKANSAS WRONGFUL TERMINATION
CITY AND KENTON BUCKNER

39. Plaintiff incorporates and re-alleges Paragraphs one (1) through thirty-eight (38) as though fully alleged in Count III.

40. Plaintiff's discharge was wrongful and amounted to an outrage. Plaintiff was discharged. Plaintiff explained how he came to learn about Schiefelbein's racist Facebook posting, and described other experiences and observations during his training which reflected racial animus with the LRPD and a hostile work environment where he was repeatedly harassed by recruits and officers.

41. During Plaintiff's questioning, his interviewers, Sgt. Jim Bob Stephens (hereafter "Sgt. Stephens") and Sgt. Christina Plummer (hereafter "Sgt. Plummer"), had no interest in determining whether there was an atmosphere of racial hostility and other police misconduct permeating LRPD recruit training, despite their charge as Internal Affairs investigators.

42. Instead, they sought to poke holes in Plaintiff's narrative, to downplay his legitimate workplace concerns and, ultimately, to punish him for coming forward and reporting the misconduct. They sought to trap Plaintiff into violating policy by asking confusing questions, by asking leading questions and by being generally hostile with him.

43. Plaintiffs' discharge was against public policy in that plaintiff was performing his job and terminated for no reason.

JURY TRIAL DEMANDED

44. Plaintiff requests a trial by jury on all issues triable by a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, BRANDON GURLEY, by and through his attorneys, seeks the following relief for the unlawful employment practices and unconstitutional conduct described above:

1. That the Court order the CITY to restore Plaintiff to his rightful position as a recruit of the LRPD in any class being conducted at the time of the hearing in this case in the approximate week he was terminated;
2. That the Court issue an injunction for the purpose of prohibiting further acts of race discrimination in the future;
3. That the CITY be required to pay Plaintiff's compensatory damages, including back pay;
4. That the CITY be required to pay punitive damages;
5. That CITY be required to pay reasonable costs and attorney fees; and
6. That Plaintiff receive any other equitable, legal and just relief as this Honorable Court deems appropriate.

Respectfully submitted,

/s/Willard Proctor, Jr.
Arkansas Bar Number 87136
Willard Proctor, Jr. P.A.
2500 South State Street
Little Rock, AR 72206-2162
willard@wpjrlaw.com
Telephone: (501) 378-7720
Facsimile: (501) 325-4959

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

BRANDON SCHIEFELBEIN and
KATINA JONES

PLAINTIFFS

V.

CASE NO.

THE CITY OF LITTLE ROCK and
KENTON BUCKNER, individually
and in his official capacity as
Chief of Police for the City of
Little Rock

DEFENDANTS

COMPLAINT

COMES now, the Plaintiffs by and through their attorney Robert Newcomb and for their Complaint against the Defendant state:

JURISDICTION

1. Jurisdiction of this Court is invoked pursuant to the provision of A.C.A. §16-13-201 *et seq.*
2. Venue is proper in this Court in that the Defendants are residents of Pulaski County, Arkansas.
3. Plaintiff Katina Jones, is a resident of Pulaski County, Arkansas.
4. Plaintiff Brandon Schiefelbein is a resident of Lonoke County, Arkansas.
5. This action is authorized by provisions of the Arkansas Civil Rights Act, §16-123-101 *et seq.*

FACTS

6. Plaintiff Brandon Schiefelbein at all times material to this cause of action was an employee of the City of Little Rock as a police recruit.

See Payment Spreadsheet included for payment information

7. Plaintiff Brandon Schiefelbein is a white male who is a citizen of the United States and the State of Arkansas.
8. Plaintiff Katina Jones is an African American Female, who at all times material to this cause of action was a recruit in the Little Rock Police Department School.
9. The City of Little Rock is a municipality of the State of Arkansas and is a person within the meaning of the Arkansas Civil Rights Act as amended.
10. The City of Little Rock has ratified the actions of the Defendant Kenton Buckner by the fact that the City Board of Directors were made aware of the actions of Defendant Kenton Buckner in terminating the Plaintiffs from employment in violation of their rights under the Arkansas Civil Rights Act and the Arkansas Constitution specifically Article 2, Section 6, on freedom of speech.
11. The Plaintiffs through counsel submitted a letter to the City Manager Bruce Moore, Mayor Mark Stodola, and the individual members of the City Board of Directors asking that they review and set aside the actions of Defendant Buckner in terminating the Plaintiffs and explaining that the reason for termination was speech, that was made while they Plaintiffs were citizens and not employees of the City of Little Rock.

12.Upon reasonable belief it is believed that Mark Stodola acting as Mayor decided that the City Board of Directors would not reviews or act upon the request by the Plaintiffs.

13.Defendant Bruce Moore who is the direct Supervisor of the Defendant Buckner failed to take any action to overturn the actions of Defendant Buckner therefore ratifying the actions and reasons of the acts of the Defendant terminating the recruits.

14.Upon reasonable belief the Plaintiff believed that there were African American males who had the word “Nigga” on Facebook posts and were investigated but not terminated.

15.Plaaintiff Jones was meeting the expectations of her employer by successfully doing all of the requirements of recruit school up to the time of her termination.

16.Plaaintiff Jones had made her Facebook, password protected.

17.The Little Rock Police Department accepted information concerning posts made by the Plaintiff Jones of approximately 9 years ago that contained song lyrics that had the word “Nigga” in the lyrics that were obtained by the provider or someone acting on their behalf, breaking the password in violation of Arkansas and Federal Law.

18.Defendant Buckner knowing that the evidence against Plaintiff Jones were illegally obtained, nevertheless used it to terminate her claiming that she was in subordinate by not finding the information on her Facebook that was almost 10 years old and deleting it. The posts were

made not as an employee of the City of Little Rock but as a citizen protected by the Arkansas Constitution.

19. The Plaintiff Jones was treated differently than African American males, who had posts on their Facebook containing the word "Nigga."
20. The Defendant Kenton Buckner personally approves of the use of the word "Nigga" by his defense of employee Victoria Brown posting on the official Little Rock Police Department Facebook page a like for a musician referred to as 21 Savage, who in his lyrics glorifies drive-by shooting, anti-police positions, and uses the "Nigga" word plus making complete and derogatory remarks concerning women.
21. The Defendant Buckner while exercising his right to listen to a music that others would find offensive punished the Plaintiffs for language that he listens to and likes.
22. City Manager Moore was aware of the actions of Defendant Buckner approving of the like of 21 Savage by Victoria Brown as evidenced by his email sent to all members of Little Rock Police Department which is attached hereto and incorporated herein, as if said out word for word.
23. The City Manager took no action against Chief Buckner for his email.
24. City Manager approved his belief the conduct of former Fire Chief Greg Summers giving only a 72 hour suspension to Battalion Chief Oberste, who posted on Facebook the attached postings, which any reasonable person would find offensive to women. Further it is

reasonably believed that Battalion Chief Oberste in his capacity as a Little Rock Fire Department employee would supervise women.

- 25.The Plaintiff Brandon Schiefelbein when he was approximately 19 years old, posted over an individual the statement “Night, Nigh, Nigga” which was a direct quote from an African American comedian.
- 26.The Little Rock Police Department caused an investigation to made and learned that the individual who was tagged in the Facebook post was aware of it, when it occurred, thought it was humorous at the time and could not believe that the Little Rock Police Department was wasting its time investigating it. All these facts were known to the Defendant Buckner and should have been known to the City of Little Rock Board of Directors and the City Manager since they were available in the official Little Rock File.
- 27.The Plaintiff Brandon Schiefelbein had removed the Facebook posting prior to the Complaint being made against him by a individual who had also posted similar language and then lied in his Internal Affairs investigation.
- 28.The Defendants deprived Plaintiff Brandon Schiefelbein of equal treatment to all other recruits of the Little Rock Police Department by allowing all others to clean up their Facebook posts instead of being punished while punishing a white male who had already removed the post prior to any investigation.

29.The City of Little Rock has allowed police officers to remain employed who have had posts that were disrespectful of President of Obama to the point that it raised concerns by the United States Secret Service and other individuals who had posted information that a sizable portion of the public would find offensive.

LEGAL CLAIMS

30.The actions of the City of Little Rock in treating Plaintiff Jones differently than males were treated, violates the Arkansas Civil Rights Act based upon her gender.

31.The actions of the City of Little Rock in retaliating against her for statements made as a citizen when she was 16 years old violates the provisions of Arkansas Constitution, Article 2, Section 6.

32.The Arkansas Constitution, Article 2, Section 6 provides that, "The free communication of thoughts and opinions is one of the invaluable rights of man; and all persons made freely to wright and publish their sentiments on all subjects, being responsible for the abuse of such right."

33.The actions of the Plaintiffs did not abuse their right under Article 2, Section 6 of the Arkansas Constitution.

34.Defendant Buckner treated the Plaintiff Brandon Schiefelbein differently than he had treated black males, thereby depriving the Plaintiff of the right to equal protection of the law under the Arkansas Constitution and difference in employment because of race.

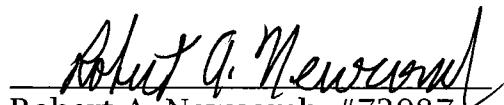
RELIEF REQUESTED

35. The Plaintiffs request that this Court Order the City of Little Rock to restore them to their rightful position as recruits of the Little Rock Police Department in any class being conducted at the time of the hearing in this case in the approximate week that they were terminated.
36. That this Court award the Plaintiffs back wages, minus whatever they may have earned; that the Court order the City of Little Rock not to punish recruits in the future for postings they made as private citizens prior to them being employed; that the Court order reasonable attorney's fees and litigation costs.

JURY TRIAL DEMANDED

37. The Plaintiffs request a trial by jury on all issues triable by the jury.

Respectfully submitted,



Robert A. Newcomb, #73087
Attorney at Law
P.O. Box 149
Little Rock, AR 72203
robertnwcmr@aol.com
P: 501-372-5577
F: 501-372-6025

From: "Buckner, Kenton"
<kbuckner@littlerock.gov<mailto:kbuckner@littlerock.gov>>
Date: July 31, 2017 at 11:07:14 PM CDT
To: Police Dept. <LRPD@littlerock.gov<mailto:LRPD@littlerock.gov>>
Subject: Social Media

Good evening family. I hope this note finds you in good spirits. It has been brought to my attention that a Twitter post with a quote from Hip Hop artist 21 Savage did not go over well with some of you. I think it is safe to say that everyone is entitled to their opinion about a variety of things.

Lets unpack this topic:

1. FYI, I am a huge rap music fan. Most recent purchases, 2 Chainz (Pretty Girls Like Trap Music) and Jay Z (4:44). However, I am not wearing my music hat for this post.
2. The fact that I like rap doesn't mean i have to be anti Jimmy Buffet (Margaritaville my favorite). Now, I realize much of the anger came from photos of 21 Savage online depicting what many police would consider violent images. Intelligent argument! However, Victoria advised he said " its cool to be a police officer". What some of us find distasteful, others find cool, inspiring, humorous, or artistic. I have attached the press release from the forum held at the NOBLE conference. It sheds light on the topic of music and law enforcement coming together to reach young people.

Again, not everyone will agree with the content, or avenue discussed to attempt to connect with young people.

3. THIS IS WHY WE DO CULTURAL DIVERSITY TRAINING. It is not to get us all to like the same music. The purpose is to get us to respect that fact that we dance to different beats.

Lastly, social media is a communications platform. It is also important to note that disagreements are a part of respectful conversations. Our

audience is broad and growing. It is impossible to please everyone when you have several thousand followers. We will always try to be professional and respectful. However, we must also attempt to speak to as many different people as possible through a variety of different avenues.

Thank you in advance for keeping an open mind!

Chief



FRATERNAL ORDER OF POLICE®

Little Rock Fraternal Order of Police, Lodge #17

P.O. Box 34351, Little Rock, AR 72203

(501) 376-6875

www.lrfop.org

August 1, 2017

TO: ALL LITTLE ROCK FRATERNAL ORDER OF POLICE MEMBERS
FROM: THE LITTLE ROCK FRATERNAL ORDER OF POLICE EXECUTIVE BOARD

On July 31, 2017, the Little Rock Fraternal Order of Police received numerous complaints from its members regarding a post made by Victoria Brown on the official Little Rock Police Department Facebook Page. Ms. Brown is the Public Affairs Coordinator for the Little Rock Police Department and she was attending the National Organization of Black Law Enforcement Executives (NOBLE) conference at the time of her post. Ms. Brown is attending the NOBLE conference with others from the department's executive staff.

Ms. Brown's post was a video of her interviewing rapper 21Savage and the headline for her post read "*Public Affairs Coord. Victoria with @21savage @#NOBLE2017 as he encourages positive relationships between youth and law enforcement! Thank you for your ideas*" Unfortunately, 21Savage's song lyrics and photos on his social media pages are anti-police and they encourage and glorify gang violence, drive-by shootings, and drugs. Below is just a sample of lyrics from two (2) of 21Savage's songs. Sadly, the lyrics depicted below are from two of his less controversial songs. There were many song lyrics that were just so disgusting and inflammatory that they could not be cited here.

"Nothin New" 21 Savage

*"Ayy, fuck that other side, we gon' shoot up your Sprinter/I used to sell that crack and spray that MAC out that rental/N***a's run and hide when we roll down the window/Got a extendo and a hoodie, he can't wait 'til December/Got a extendo and a hoodie, he gon' shoot you on camera/Lost his faith in Jesus Christ, he prayin' to a bandana/Police gunned his brother down, this shit too hard to handle>Loading up his chopper, he gon' show 'em Black lives matter"*

"Close My Eyes" 21 Savage

*"Have you ever did a real homicide, n***a?/Have you ever made a n***a mama cry, n***a?/Do or die n***a gotta do or die, n***a/If you ain't the one doing it, you gon' die, n***a/Sometimes I look at God and I wonder why, n***a/Why my n***s had to be the ones that had to die, n***a/They killed one, we gon' kill 5, n***a/Winter time, we gon' set your block on fire, n***a"*

August 1, 2017

When people took exception to Ms. Brown's Facebook post by posting responses questioning her judgement in interviewing an individual who promotes gang violence on the official LRPD Facebook page, her response was "*the goal is to simply connect with the same youth who look up to these artists to show that we are working to develop relationships with kids regardless of what music they listen to, etc. to reduce crime and improve relationships...*"

Once the Little Rock Fraternal Order of Police Executive Board was made aware of Ms. Brown's posted interview with 21Savage, they contacted the Public Affairs Office, who after researching 21 Savage's history and lyrics, agreed that the post was inappropriate and it was immediately removed. Unfortunately, at 11:07 p.m., Chief Buckner sent an email to all LRPD employees expressing his support for Victoria Brown's posted interview of 21Savage on the official LRPD social media pages. Part of Chief Buckner's email stated:

"Now, I realize much of the anger came from photos of 21 Savage online depicting what many police would consider violent images. Intelligent argument! However, Victoria advised he said 'it's cool to be a police officer'. What some of us find distasteful, others find cool, inspiring, humorous, or artistic"

Inspiring? Artistic? One only has to go back a few weeks to the mass shooting that occurred right here in Little Rock, Arkansas when another rap music "artist", Finese2Tymes, was performing at the Power Ultra Lounge. Twenty-five (25) people were shot at that performance by people who were "inspired" by his lyrics. The timing of Ms. Brown's social media post with 21Savage and Chief Buckner's endorsement of it could not have been worse. In addition to 21Savage's disgusting, violent lyrics, he also has photos of himself on his social media pages holding guns and throwing gang signs—very similar to the photo of Finese2Tymes Little Rock concert flyer—and we all know how that turned out.

The Little Rock Fraternal Order of Police Executive Board and its members believe it is time for City of Little Rock and Police Department leaders to stop meeting with and glorifying gang members. We believe it is time for LRPD to stop spending money for command staff to travel across the United States just to talk about violence in Little Rock. It is time to put money and resources into actually fighting crime, not just talking about it. The actual front-line police officers and detectives need vehicles, computers, and equipment, and they are not getting them in a timely manner and no one seems to be concerned about it. We have almost 100 vacancies in the Little Rock Police Department and only 18 graduating this week. We believe the LRPD social media pages should be used more effectively to recruit and promote those we would want to serve the citizens of Little Rock, not those "inspired" by violent rap lyrics. As Jimmy Buffet says, maybe we all need some "changes in latitudes and changes in attitudes".

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

OCT 26 2012

JAMES W. McCORMACK, CLERK
By: Zambo
DEP CLERK

CHRIS ERWIN
T. BLAKE MITCHELL

PLAINTIFFS

VS.

NO. 4:12 cv 671 JMM

DAVID HUDSON, individually, and in his Official capacity as a Police Officer in and for the City of Little Rock, Arkansas, and STUART THOMAS, Chief of Police, individually and in his official capacity as Chief of Police for the Little Rock Police Department, and the CITY OF LITTLE ROCK, ARKANSAS, and FERNEAU, LLC, DONNIE FERNEAU, FF RESTAURANTS, LLC, JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, JOHN DOE 4, JOHN DOE 5, JOHN DOE 6, JOHN DOE 7, JOHN DOE 8, JOHN DOE 9, and JOHN DOE 10

This case assigned to District Judge Moony
and to Magistrate Judge Perc

DEFENDANTS

Complaint

Come now the Plaintiffs, Chris Erwin and T. Blake Mitchell, by and through their attorneys, Keith Hall and Erin Cassinelli, and for their cause of action, state as follows:

Jurisdiction and Venue

1. The Plaintiffs bring this claim against the Defendants pursuant to 42 U.S.C. § 1983 and the Fourth, Fifth, Eighth, and Fourteenth amendments to the Constitution of the United States and the corresponding provisions of the Arkansas Constitution and other laws of the State of Arkansas.

2. Jurisdiction is proper pursuant to 28 U.S.C. §§ 1331 and 1333(a)(3) & (4). This

Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

3. All conduct at issue in this Complaint took place in Pulaski County, Arkansas, and therefore, venue is properly established in this judicial district pursuant to 28 U.S.C. § 1391(b). Plaintiff seeks an award of attorney's fees pursuant to 42 U.S.C. § 1988.

Parties

4. At all times relevant to this Complaint, Plaintiff Chris Erwin ("Erwin") was a resident of Little Rock, in Pulaski County, Arkansas.

5. At all times relevant to this Complaint, Plaintiff T. Blake Mitchell ("Mitchell") was a resident of Little Rock, in Pulaski County, Arkansas.

6. At all times relevant to this Complaint, Defendant David Hudson ("Hudson") was employed by the City of Little Rock as a police officer for the Little Rock Police Department ("LRPD") and acted under color of state law. The acts of Hudson were undertaken in connection with his employment with the LRPD. He is sued both individually and in his official capacity. As a police officer, Defendant Hudson was responsible for acting to protect citizens of Little Rock and under a duty not to deprive citizens of their constitutional rights.

7. At all times relevant to this Complaint, Defendant Stuart Thomas ('Thomas') was employed by the City of Little Rock as the police chief of the LRPD and acted under color of state law. The LRPD is located at 700 West Markham, Little Rock, in Pulaski County, Arkansas.

8. At all relevant times, Defendant Thomas had the ultimate responsibility within the LRPD for the protection of life, preservation of law and order, investigation of all crimes and the enforcement of state laws and city ordinances. As police chief, he is responsible for supervising the training, instruction, discipline, control, and conduct of LRPD officers, including Defendant David Hudson. At all relevant times, Defendant Thomas had final policy making authority in terms of

Settlement Payment to Erwin was \$15,000.00

creating, adopting and/or implementing police policies within the LRPD, whether formal or informal. Defendant Thomas had authority to approve weapons to be used by members of LRPD and had authority to provide training and instruct on the use of various weapons and varying degrees of force. He is sued both individually and in his official capacity.

9. At all relevant times, Defendant City of Little Rock was a municipality within the State of Arkansas, organized, acting, and existing pursuant to the laws of the State of Arkansas. At all relevant times, Defendant City of Little Rock was located in Pulaski County, in the State of Arkansas and was the employer of the individually named defendants. Defendant City of Little Rock is charged with and responsible for appointing and promoting the members of the LRPD and for the supervision, training, instruction, discipline, control and conduct of the LRPD and its personnel. At all times relevant to this Complaint, Defendant City of Little Rock had the power, right, and duty to control the manner in which the individual defendants carried out the objectives of their employment and to see that all orders, rules, instructions, regulations promulgated for the LRPD were consistent with the applicable state and federal laws and constitutions.

10. At all times relevant to this Complaint, Defendants Hudson and Thomas were acting as representatives and agents of the LRPD, and thus Defendant City of Little Rock, under color of law and pursuant to their authority as police officers. At all relevant times, Defendant City of Little Rock is and was empowered, funded, and directed to pay any § 1983 civil rights judgment for compensatory damages, actual damages, punitive damages and attorney's fees for which any City of Little Rock employee acting under color of state law is found liable. All of the acts and conduct complained of herein were performed under color of state law and all of the acts and conduct complained of herein were performed pursuant to LRPD policies and procedures and consistent with past practices and customs of the LRPD. Accordingly, Defendant City of Little Rock is an

indemnification party for the City of Little Rock's employees found liable in this cause of action.

11. As used herein, the term "government Defendants" refers to Defendants Hudson and Thomas, individually and as an officers and chief of the LRPD, and the City of Little Rock, unless otherwise noted.

12. Defendant Ferneau was a restaurant located at 2601 Kavanaugh, Little Rock, in Pulaski County, Arkansas. Upon information and belief, it was owned by Ferneau LLC, an Arkansas limited liability company. Upon information and belief, Donnie Ferneau was a member of Ferneau LLC and part owner of Ferneau. Donnie Ferneau was responsible for hiring Defendant Hudson to work at Ferneau. John Does 1 through 10 represent the unknown additional members of Ferneau LLC. FF Restaurants, LLC is an Arkansas limited liability company that currently owns and operates Ferneau a/k/a Rocket 21.

13. The term "Defendant Ferneau" used herein collectively refers to Defendants Ferneau LLC, Donnie Ferneau, FF Restaurants, LLC, and John Does 1 through 10, unless otherwise noted.

14. On October 29, 2011, and for months prior thereto, Defendant Ferneau employed off-duty police officers, including Defendant Hudson, to provide security services to the restaurant. Defendant Ferneau compensated these officers, including Defendant Hudson, for security services.

Allegations of Fact

15. On October 29, 2011, Defendant Hudson, in his LRPD uniform, was working as a security guard at Ferneau with the knowledge and approval of the LRPD. Plaintiffs were patrons at Ferneau that evening. While in Ferneau, Defendant Hudson demanded Plaintiffs leave Ferneau.

16. Outside Ferneau, on the public sidewalk, Defendant Hudson beat Plaintiff Erwin repeatedly in the face, threw him to the ground, and continued to punch and kick him. Defendant

Hudson arrested Plaintiffs Erwin and Mitchell without cause to believe either had in fact committed any criminal offense. The assault was captured and video-taped by a restaurant guest. Plaintiff Erwin suffered serious physical injuries.

17. Plaintiff Erwin was taken in to police custody and transported to the Pulaski County Jail. He was charged with criminal trespass, resisting arrest, and disorderly conduct. Defendant Hudson lacked probable cause to arrest Plaintiff Erwin for these, or any other, criminal offenses.

18. Plaintiff Mitchell was taken in to police custody and transported to the Pulaski County Jail. He was charged with obstructing governmental operations, criminal trespass, disorderly conduct, and public intoxication. Defendant Hudson lacked probable cause to arrest Plaintiff Mitchell for these, or any other, criminal offenses.

19. Defendant Ferneau had previously retained the services of Defendant Hudson. Defendant Hudson had previously assaulted, battered, and arrested a patron of the establishment. Defendant Ferneau took no steps to prevent similar future conduct and continued to employ Defendant Hudson despite the prior assault.

20. At the time of the events alleged herein, Defendant Ferneau permitted and solicited Defendant Hudson to remove Plaintiffs from a private area that was not marked "private" but was instead open and advertised as a public area. Defendant Ferneau treated Plaintiffs as if they were in a public area.

21. The acts of Defendant Hudson complained of herein were part of a pattern of conduct at LRPD. Defendant Thomas and Defendant City of Little Rock were aware of Defendant Hudson's history of similar conduct. The LRPD has publicly supported Defendant Hudson's actions, despite the clear evidence he used unreasonable force.

22. The acts and conduct of Defendant Hudson complained of herein were done knowingly, purposely, willfully, and maliciously. The acts and conduct of all Defendants complained of above was willful and malicious and purposefully calculated to, and did in fact, cause Plaintiffs extreme harm, pain, personal anguish, embarrassment, and humiliation.

23. The acts and conduct of Defendant Hudson complained of herein were intended to cause and did, in fact, create a reasonable apprehension of immediate harmful or offensive contact upon Plaintiff Erwin's person in violation of the laws of the State of Arkansas.

24. On March 20, 2012, Sherwood District Court Judge Milas Hale III dismissed the criminal charges against Plaintiffs Erwin and Mitchell as a result of Defendants Thomas and the City of Little Rock's willful violations of the Court's discovery orders. Defendants Thomas and the City of Little Rock refused to disclose in a timely manner information concerning Defendant Hudson's prior uses of excessive force and statements relating to this and prior incidents. The criminal case resolved in favor of Plaintiffs Erwin and Mitchell.

25. On November 4, 2011, both Plaintiffs filed citizen complaints against Defendant Hudson. As of the filing of this Complaint, no action has been taken against Defendant Hudson as a result of his conduct.

FIRST CLAIM FOR RELIEF
(Violation of Plaintiff Erwin's Federal Civil Rights by use of excessive force)

26. Plaintiffs incorporate all paragraphs, above, as though specifically set forth word-for-word.

27. As set forth above, on or about October 29, 2011, acting under color of law, Defendant Hudson physically assaulted Plaintiff Erwin. There was no legal justification for

Defendant Hudson's actions, though he acted under color of state law. The physical attack was completely unjustified, a grossly excessive use of force, and an abuse of police power.

28. Defendant Hudson's actions were a violation of Plaintiff Erwin's civil rights, specifically his Fourth Amendment right to be free from unreasonable search and seizure.

29. Defendant Hudson's actions violated Plaintiff Erwin's rights under the Eighth Amendment to be free from cruel and unusual punishment and his Fifth and Fourteenth Amendment rights to due process of law.

30. Plaintiff Erwin's rights were clearly established at the time of the alleged violations, and Defendant Hudson's actions were not in furtherance of a legitimate state interest.

31. Defendant Hudson's actions were malicious, willful, wanton deprivations of Plaintiff Erwin's rights, shocking to the conscience of ordinary citizens, and are sufficiently egregious to justify an award of punitive damages. Defendant Hudson's actions were part of a policy, pattern, or custom at LRPD.

32. Defendant Thomas and the City of Little Rock failed to properly train its officers, including Defendant Hudson, in the proper use of force and to supply them tools for use of lesser degrees of force. There has been a custom of Defendant City of Little Rock to allow officers to use unnecessary and excessive force against citizens the officers then arrested. Defendant Thomas and the City of Little Rock were aware of Defendant Hudson's prior uses of excessive force and failure to utilize lesser degrees of force when appropriate. Defendants Thomas and the City of Little Rock's failure to train its employees in the use of force, and its failure to take adequate action against officers, including Defendant Hudson, after prior incidents amounted to deliberate indifference to the rights of persons with whom untrained officers come in to contact.

Defendants Thomas and the City of Little Rock disregarded known and obvious risks and consequences of failing to properly train Defendant Hudson.

33. Defendants Thomas and the City of Little Rock have a duty to ensure officers are properly trained and equipped, and that law-breaking officers are removed from the police force. With knowledge of the risks, these Defendants' failed to take reasonable steps to assure the public would not be harassed or injured by its officers. These Defendants' blatant disregard of their duties and responsibilities, and the need to deter future misconduct, justify punitive damages.

34. As a direct and proximate result of the acts and conduct of all Defendants complained of in this First Claim above, Plaintiff Erwin suffered extreme physical pain, injury and emotional pain and suffering and other damages as alleged herein in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF
(Violation of Plaintiff Erwin's State Civil Rights by use of excessive force)

35. Plaintiffs incorporate all paragraphs, above, as though specifically set forth word-for-word.

36. The government Defendants' actions alleged herein also violated Plaintiff Erwin's rights under Article II, § 8 of the Arkansas Constitution and the Arkansas Civil Rights Act, Ark. Code Ann. §§ 16-123-101 *et. seq.* to be free from unreasonable seizure, cruel and unusual punishment, and excessive force, and to be afforded due process of law.

37. Plaintiff Erwin's rights were clearly established at the time of the alleged violations, and the government Defendants' actions were not in furtherance of a legitimate state interest.

38. Defendant Hudson's actions were malicious, willful, wanton deprivation of Plaintiffs' rights and justify an award of punitive damages.

39. Defendant Thomas and the City of Little Rock failed to properly train its officers, including Hudson, in the proper use of force. Defendant Hudson's actions were part of a pattern or custom at LRPD. These Defendants' blatant disregard of its duties and responsibilities, and the need to deter future misconduct, justifies the award of punitive damages.

40. As a direct and proximate result of the acts and conduct of all Defendants complained of in this Second Claim above, Plaintiff Erwin suffered extreme physical pain, injury and emotional pain and suffering, and other damages as alleged herein in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF

(Violation of Plaintiff Erwin and Mitchell's Federal Civil Rights by unlawful arrest)

41. Plaintiffs incorporate all paragraphs, above, as though specifically set forth word-for-word.

42. As set forth above, on or about October 29, 2011, Defendant Hudson falsely and without legal justification arrested and illegally seized Plaintiffs Erwin and Mitchell. There was no legal justification for Defendant Hudson's actions, though all were performed under color of state law. Defendant Hudson did substantially limit Plaintiffs Erwin and Mitchell's freedom of movement and effect arrests without a reasonable basis to believe that Plaintiffs had committed a crime. Defendant City of Little Rock participated in and sanctioned these false arrests.

43. The government Defendants' actions were a violation of Plaintiffs' civil rights under the Fourth Amendment to the United States Constitution to be free from unreasonable

search and seizure.

44. The government Defendants' actions violated Plaintiff Erwin and Mitchell's Fifth and Fourteenth Amendment rights to due process of law.

45. Plaintiffs rights were clearly established at the time of the alleged violations, and the government Defendants' actions were not in furtherance of a legitimate state interest.

46. Defendant Hudson's actions were malicious, willful, wanton deprivations of Plaintiffs' rights and justify awards of punitive damages.

47. Defendants Thomas and the City of Little Rock failed to properly train its officers, including Defendant Hudson, in the proper use of the police powers. This failure to train included a failure to ensure officers accurately applied the law consistent with the federal and state constitutions. Defendants Thomas and the City of Little Rock's failure to adequately train its employees in this regard amounted to deliberate indifference to the rights of person with whom untrained employees come into contact. Defendants Thomas and the City of Little Rock disregarded known and obvious risks and consequences of the actions of its officers resulting from this failure to adequately train. Defendants Thomas and the City of Little Rock also withheld material evidence to the detriment of Plaintiffs and to protect Defendants during the pendency of the criminal case against Plaintiffs, further evidencing an intentional, or deliberately indifferent, disregard for the constitutional rights of the Plaintiffs.

48. Defendants Thomas and City of Little Rock's blatant disregard of their duties and responsibilities, and the need to deter future misconduct, justify punitive damages.

49. As a direct and proximate result of the acts and conduct of all Defendants complained of in this Third Claim above, Plaintiffs Erwin and Mitchell suffered the loss of their right to be free from unreasonable seizure, emotional pain and suffering, and other damages as

alleged herein in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF
**(Violation of Plaintiffs Erwin and Mitchell's State Civil Rights
by unlawful arrest)**

50. Plaintiffs incorporate all paragraphs, above, as though specifically set forth word-for-word.

51. The government Defendants' actions alleged herein also violated the Plaintiffs' rights under Article II, § 8 of the Arkansas Constitution and the Arkansas Civil Rights Act, Ark. Code Ann. §§ 16-123-101 *et. seq.* to be free from unreasonable seizure and excessive force, and to be afforded due process of law.

52. Plaintiffs rights were clearly established at the time of the alleged violations, and the government Defendants' actions were not in furtherance of a legitimate state interest.

53. Defendant Hudson's actions were malicious, willful, wanton deprivations of Plaintiffs' rights and justify an award of punitive damages.

54. Defendants Thomas and the City of Little Rock failed to properly train its officers, including Defendant Hudson, in the proper use of the police powers. This failure to train included a failure to ensure officers accurately applied the law consistent with the federal and state constitutions. These Defendants' blatant disregard of its duties and responsibilities, and the need to deter future misconduct, justifies the award of punitive damages.

55. As a direct and proximate result of the acts and conduct of all Defendants complained of in this Fourth Claim above, Plaintiffs Erwin and Mitchell suffered the loss of their right to be free from unreasonable seizure, emotional pain and suffering, economic damages, and other damages as alleged herein in an amount to be proven at trial.

FIFTH CLAIM FOR RELIEF
(Assault and Battery of Plaintiff Erwin)

56. Plaintiffs incorporate all paragraphs, above, as though specifically set forth word-for-word.

57. On or about October 29, 2011, Defendant Hudson, acting under color of law, without provocation or reasonable justification, made physical contact with Plaintiff Erwin including but not limited to the following:

- a. unlawfully striking him in the face;
- b. unlawfully throwing him against a wall;
- c. unlawfully throwing him to the ground;
- d. unlawfully kicking him;
- e. unlawfully punching him in the torso;
- f. unlawfully arresting him;
- g. unlawfully searching him.

58. Defendant Hudson used deadly force during the assault by using a closed fist and striking Plaintiff Erwin repeatedly in the head. His conduct was very likely to, and did in fact, cause serious, permanent physical injuries and potentially death. His conduct was captured by a video camera.

59. Defendant Hudson's physical contact was intentional, knowing, willful, malicious, and caused serious bodily injury to Erwin.

60. Defendants Thomas and City of Little Rock failed to properly train officers in the proper use of force and to provide them tools for use of lesser force, including Defendant Hudson. Instead, the battery was part of a policy, pattern, and practice at LRPD and was

sanctioned by LRPD, who was aware of Defendant Hudson's history of using such force. Defendants Thomas and the City of Little Rock attempted to keep information about Defendant Hudson's prior uses of force from the knowledge of the Plaintiffs, even after being court ordered to disclose the information. Defendants Thomas and the City of Little Rock's failure to train Defendant Hudson in the proper use of force, and to provide adequate tools to use proper force, amounted to deliberate indifference to the rights of person with whom Defendant Hudson came into contact. Defendants Thomas and the City of Little Rock disregarded known and obvious risks and consequences of its failure to train Defendant Hudson.

61. The above-described actions amounted to common law battery under Arkansas law.

62. Defendant Hudson's actions were malicious, willful, wanton deprivations of Plaintiff's rights, shocking to the conscience of ordinary citizens, and are sufficiently egregious to justify an award of punitive damages. Defendants Thomas and the City of Little Rock's blatant disregard of its duties and responsibilities, and the need to deter future misconduct, justifies the award of punitive damages.

63. As a direct and proximate result of battery, as complained of in this Fifth Claim above, Plaintiff Erwin suffered extensive injuries and damages as alleged herein in an amount to be proven at trial.

SIXTH CLAIM FOR RELIEF
(Erwin and Mitchell/False Imprisonment)

64. Plaintiffs incorporate all paragraphs, above, as though specifically set forth word-for-word.

65. The government Defendants' actions against the Plaintiffs as described herein amounted to common law false imprisonment under Arkansas law. Both Plaintiffs' constitutional rights were violated by the Defendants, as their detention was without legal authority.

66. Defendants Thomas and the City of Little Rock failed to properly train its officers, including Defendant Hudson, in the proper use of the police powers. This failure to train included a failure to ensure officers accurately applied the law consistent with the federal and state constitutions. These Defendants' blatant disregard of its duties and responsibilities, and the need to deter future misconduct, justifies the award of punitive damages.

67. Defendants' actions were malicious, willful, wanton deprivations of Plaintiffs' rights and justify an award of punitive damages.

68. As a direct and proximate result of the acts and conduct of all Defendants complained of in this Sixth Claim above, Plaintiffs Erwin and Mitchell suffered false imprisonment, the loss of their right to be free from unreasonable seizure, emotional pain and suffering, economic damages, and other damages as alleged herein in an amount to be proven at trial.

SEVENTH CLAIM FOR RELIEF
(Erwin and Mitchell/Malicious Prosecution)

69. Plaintiffs incorporate all paragraphs, above, as though specifically set forth word-for-word.

70. The government Defendants' actions as described herein amount to the tort of Malicious Prosecution under Arkansas law.

71. The government Defendant's actions as described herein were sufficiently willful and egregious to justify an award of punitive damages against the government Defendants under this count. Defendants wrongfully used the legal system to avoid responsibility for the assault on Plaintiff Erwin. Defendants City of Little Rock and Thomas aided in covering up Defendant Hudson's conduct, including refusing to comply with court orders for information relating to the criminal charges.

72. Defendants Thomas and the City of Little Rock failed to properly train its officers, including Defendant Hudson, in the proper use of the police powers. This failure to train included a failure to ensure officers accurately applied the law consistent with the federal and state constitutions. Defendant Thomas and City of Little Rock also failed take action against Defendant Hudson in an attempt to remedy the wrong and in fact assisted in covering it up. These Defendants' blatant disregard of its duties and responsibilities, and the need to deter future misconduct, justifies the award of punitive damages.

73. As a direct and proximate result of the acts and conduct of all Defendants complained of in this Seventh Claim above, Plaintiffs Erwin and Mitchell suffered malicious prosecution, the loss of their right to be free from unreasonable seizure, emotional pain and suffering, economic damages, attorney's fees, and other damages as alleged herein in an amount to be proven at trial.

EIGHTH CLAIM FOR RELIEF
(Intentional Infliction of Emotional Distress on Plaintiff Erwin)

74. Plaintiffs incorporate all paragraphs, above, as though specifically set forth word-for-word.

75. Defendant Hudson's unjustifiable attack on Plaintiff Erwin constituted extreme

and outrageous conduct going beyond the grounds of decency in a civilized society. Defendant Hudson intended to cause, and did in fact cause, Plaintiff Erwin severe and permanent physical and emotional distress.

76. Defendant Hudson's conduct was willful and wanton and under color of state law.

77. As a direct and proximate result of the above described outrageous conduct, complained of in this Eighth Claim above, Plaintiff Erwin suffered injuries and damages as alleged herein in an amount to be proven at trial.

NINTH CLAIM FOR RELIEF
(Ferneau negligence)

78. Plaintiffs incorporate all paragraphs, above, as though specifically set forth word-for-word.

79. Defendant Ferneau breached its duty to protect its patrons from harm and to act in a manner as to avoid unnecessary injury or humiliation to its patrons.

80. Defendant Ferneau breached its duty to advise its patrons of known risks.

81. Defendant Ferneau breached its duty to adequately serve notice to patrons of any area inside that was private, temporary or otherwise.

82. Defendant Ferneau breached its duty to use reasonable care in the selection and retention of safe and competent employees and contractors so as to avoid exposing its patrons to an unreasonable risk of harm. Ferneau breached its duty to use reasonable care to hire and retain only persons competent and fit for the task assigned.

83. Defendant Ferneau breached its duty to restrict or terminate its employment of Defendant Hudson, who Defendant Ferneau knew or should have known was unfit or incompetent to perform the task assigned.

84. Defendant Ferneau was aware of Defendant Hudson's prior use of force against a patron at its establishment. Defendant Ferneau was aware of injuries sustained by that patron as a result of Defendant Hudson's use of extreme physical force against that patron at Ferneau.

85. Defendant Ferneau negligently hired and paid Defendant Hudson to work as security, knowing the risks of doing so. Defendant Ferneau negligently failed to take any steps to ensure Defendant Hudson did not harm its patrons. Defendant Ferneau, in fact, negligently continued to employ Hudson after the prior use of force and specifically requested Defendant Hudson work at Ferneau all the time knowing the foreseeable risks. Defendant Ferneau imposed no safeguards or restrictions based on past experiences to protect its patrons from Defendant Hudson.

86. Defendant Ferneau also failed to differentiate between its public space and the space purportedly private the evening of October 29, 2011, and, in fact, represented all spaces to be open to the public.

87. Defendant Ferneau's reckless indifference to the well-being of its patrons and to the risk of employing Defendant Hudson justifies an award of punitive damages.

88. As a direct and proximate result of Defendant Ferneaus' negligence, complained of in this Ninth Claim above, Plaintiffs Erwin and Mitchell suffered injuries and damages as alleged herein in an amount to be proven at trial.

TENTH CLAIM FOR RELIEF
(Respondeat Superior Liability of Defendant Ferneau)

89. Plaintiffs incorporate all paragraphs, above, as though specifically set forth word-for-word.

90. At all times relevant to this Complaint, Defendant Hudson was an employee

and/or agent of Defendant Ferneau. At all times relevant to this Complaint, Defendant Hudson was acting with the express or implied approval of Defendant Ferneau. At all times relevant to this Complaint, Defendant Hudson was acting within the scope of his employment and/or agency with Defendant Ferneau.

91. At all times relevant to this Complaint, Defendant Hudson had express or implied authorization from Defendant Ferneau to be in the particular place where the events in this Complaint occurred. At all times relevant to this Complaint, Defendant Hudson was acting within the actual or apparent authority in his actions.

92. Because of the employment and/or agency relationship existing between Defendant Hudson and Ferneau, and because Defendant Ferneau was aware of prior, similar conduct by Defendant Hudson under similar circumstances, Defendant Ferneau is directly and/or vicariously liable for the negligence and other wrongful acts of Defendant Hudson.

93. Defendant Ferneau's reckless indifference to the well-being of its patrons and to the risk of employing Defendant Hudson justifies an award of punitive damages.

94. As a direct and proximate result of Defendant Hudson's negligence and wrongful acts for which Defendant Ferneau is directly and/or proximately vicariously liable, complained of in this Tenth Claim above, Plaintiffs suffered injuries and damages as alleged herein in an amount to be proven at trial.

ELEVENTH CLAIM FOR RELIEF
**(Against Chief Thomas for Permitting, and Maintaining a Widespread Custom of
Permitting Excessive Force)**

95. Plaintiffs incorporate all paragraphs, above, as though specifically set forth word-for-word.

96. At all relevant times, including a period of years prior to October 29, 2012, Defendant Thomas knowingly, and/or with reckless or callous indifference to the constitutional rights of the citizens of Little Rock, permitted and/or maintained a widespread custom and practice of permitting acts of excessive force and unlawful arrest by LRPD officers by covering up allegations of police excessive force and/or performing meaningless internal affairs investigations intended to exonerate officers against whom such allegations were charged. This pattern of police misconduct is so pervasive as to constitute a ‘custom or usage’ with the force of law.

97. The customs and practices described above were the moving force behind violations of Plaintiffs’ constitutional rights committed by Defendant Hudson and proximately caused Plaintiffs’ personal injuries, economic injuries, pain, suffering and other injuries.

98. Based upon the principles set forth in *Monell v. New York City Department of Social Services*, Defendant Thomas is liable for any harm done to Plaintiffs as set forth above.

99. As a result of the customs and practices described above, Plaintiffs were subjected to excessive force and unlawful arrest and were injured thereby and, as a result, Defendant Thomas is liable to Plaintiff for damages under 42 U.S.C. § 1983, including physical injuries, emotional pain and suffering and punitive damages.

TWELFTH CLAIM FOR RELIEF
(Against the City of Little Rock for Permitting, and Maintaining a Widespread Custom of Permitting Excessive Force)

89. Plaintiffs incorporate all paragraphs, above, as though specifically set forth word-for-word.

90. At all relevant times, including a period of years prior to October 29, 2012, Defendant City of Little Rock knowingly, and/or with reckless or callous indifference to the

constitutional rights of the citizens of Little Rock, permitted and/or maintained a widespread custom and practice of permitting acts of excessive force and unlawful arrest by LRPD officers by covering up allegations of police excessive force and/or performing meaningless internal affairs investigations intended to exonerate officers against whom such allegations were charged. This pattern of police misconduct is so pervasive as to constitute a ‘custom or usage’ with the force of law.

91. The customs and practices described above, were the moving force behind violations of Plaintiffs’ constitutional rights committed by Defendant Hudson and proximately caused Plaintiffs’ personal injuries, economic injuries, pain, suffering and other injuries.

92. Based upon the principles set forth in *Monell v. New York City Department of Social Services*, Defendant City of Little Rock is liable for any harm done to Plaintiffs as set forth above.

93. As a result of the customs and practices described above, Plaintiffs were subjected to excessive force and unlawful arrest and were injured thereby and, as a result, Defendant City of Little Rock is liable to Plaintiff for damages under 42 U.S.C. § 1983, including physical injuries, emotional pain and suffering and punitive damages.

Demand for Jury Trial

94. Plaintiffs demand a trial by jury on all claims and issues alleged herein.

Prayer for Relief

WHEREFORE, Plaintiffs Erwin and Mitchell respectfully pray for the following relief from this Court, jointly and severally, against all defendants:

95. A finding that the acts and conduct complained of herein constitute unreasonable seizures and cruel and unusual punishment, and deprived the complainants of due process of law,

all in violation of their rights under the Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States, and Article II, § 8 of the Arkansas Constitution, specifically that Defendant Hudson arrested Plaintiffs without a reasonable basis to believe that either of them had committed a crime and that Hudson used force greater than that necessary to effect the arrest of Plaintiff Erwin;

96. A finding that the acts and conduct of Defendants constitute assault and battery against Plaintiff Erwin in violation of the laws of the State of Arkansas;

97. A finding that the acts and conduct of Defendants constitutes false imprisonment against Plaintiffs in violation of the laws of the State of Arkansas;

98. A finding that the acts and conduct of Defendants constitutes malicious prosecution against Plaintiffs in violation of the laws of the State of Arkansas;

99. A finding that the acts and conduct of Defendants constitutes intentional infliction of emotional distress against Plaintiff Erwin in violation of the laws of the State of Arkansas;

100. A finding that Defendant Ferneau was negligent and is otherwise liable for the acts of Defendant Hudson;

101. A finding that Defendants Thomas and the City of Little Rock permitted and maintained a widespread custom of permitting the use of excessive force by its officers;

102. A finding that Defendants deprived the Plaintiffs of their liberty and dignity, and that as a result of Defendants' conduct, Plaintiffs suffered unlawful arrests and detention, physical harm, financial harm, humiliation, embarrassment, mental and emotional anguish, personal and professional degradation and other harms, directly and proximately resulting in damages, including but not limited to medical expenses, lost wages, pain and suffering, other economic losses, attorney's fees and emotional distress.

103. A finding that punitive damages are appropriate and an award of punitive damages against Defendant Hudson, Thomas, and the City of Little Rock and Ferneau;

104. An award of Plaintiffs' costs incurred in bringing this action, as well as the costs of defending their malicious prosecutions, including reasonable attorney's fees, pursuant to 42 U.S.C. Section 1988;

105. Injunctive relief preventing similar, future conduct of the Defendants in violation of Arkansas citizens' constitutional rights;

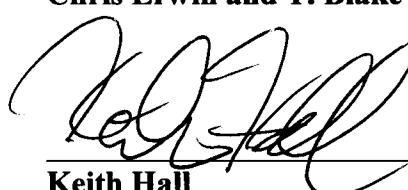
106. And any other award of damages or other relief that may become relevant and apparent during the course of this litigation.

WHEREFORE, Plaintiffs pray for judgment against Defendants in their individual and official capacities, as alleged and plead herein, and for any other relief to which they are entitled.

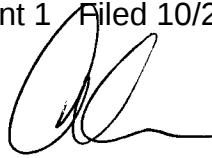
DATED this 26 day of October, 2012.

Respectfully submitted,
Chris Erwin and T. Blake Mitchell

By:


Keith Hall
Arkansas Bar No. 89031
220 W. 6th, Ste. 100
Little Rock, AR 72201
Office Telephone: 501.374.4899
Facsimile: 501.244.2170
Email: keithhalllawyer@swbell.net

By:


Erin Cassinelli, ABN 2005118
erin@lcarklaw.com

LASSITER& CASSINELLI
813 West Third Street
Little Rock, AR 72201
Telephone: (501) 370-9300
Facsimile: (501) 370-9306

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JUL 21 2009

JAMES W. McCORMACK CLERK
By: *[Signature]*

Demetrius Curtis

(Enter above the full name of the plaintiff(s)
in this action.)

v Cheif Stewart CASE NO. 4:09cv00519 BSM
Little Rock Police Dept.

(Enter above the full name of the defendant(s)
in this action.)

1. Previous Lawsuits

- a) Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes _____ No

- b) If your answer to "a" is "Yes", describe each lawsuit in the space below including the exact plaintiff name or alias used. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

1. Parties to this lawsuit

Plaintiffs: _____

*This case assigned to District Judge Miller
and to Magistrate Judge Jones*

Defendants: _____

2. Court (if federal court, name the district; if state, name the county): _____

3. Docket Number: _____

- 4) Name of judge to whom case was assigned: _____
- 5) Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?): _____
- 6) Approximate date of filing lawsuit: _____
- 7) Approximate date of disposition: _____

II. Place of Present Confinement: _____

III. There is a prisoner grievance procedure in the Arkansas Department of Corrections.
Failure to complete the grievance procedure may affect your case in federal court.

- a) Did you present the facts relating to your complaint in the state prisoner grievance procedure?
Yes _____ No
- b) If your answer is "yes", attached copies evidencing completion of the final step of the grievance appeal procedure. **FAILURE TO ATTACH THE REQUIRED COPIES MAY RESULT IN THE DISMISSAL OF YOUR COMPLAINT.**
- c) If your answer is "no", explain why not: _____

IV. Parties

(In item "a" below, place your name in the first blank and place your present address in the second blank.)

- a) Name of Plaintiff: Demetrius Curtis
Address: P.O. BOX 600
Grady Ark. 71644-0600

Name of Plaintiff: _____

Address: _____

(In item "b" below, place the full name of the defendant in the first blank, his official position in the second blank, his place of employment in the third blank, and his address in the fourth blank.)

b) Defendant: Chief Stewart

Position: Chief of Little Police Dept.

Place of Employment: LRPD

Address: 601 W. Markham LR Ark.

Defendant: Little Rock Police Dept.

Position: _____

Place of Employment: _____

Address: 601 W. Markham St. LR, Ark 72201

Defendant: Officer Temple

Position: LITTLE Rock Police Dept.

Place of Employment: Little Rock Police Dept.

Address: 601 W. Markham St. LR Ark 72201

Defendant: Officer Johannn

Position: Police Officer

Place of Employment: LRPD

Address: 601 W. Markham St. LR, Ark 72201

V. Statement of Claim

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheets if necessary.)

I was attack by Officer Temple and Officer Joanna of the LRPD and there was a video of the Incident that LRPD will not release a copy of it nor the IA investigation of the complaint that

VI. Relief

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

To obtain the IA files and to awarded me a substain amount ~~and~~ for pain and suffering and for my rights being violated

I declare under penalty of perjury (18 U.S.C. § 1621) that the foregoing is true and correct.

Executed this 10 day of July, 2009.

Demetrios Curtis

Signature(s) of Plaintiff(s)

that was filed on April 11, 2008
for Excessive force and violation of
my Civil Right. Now LRPD is ~~said~~ saying
that they don't have the video TA files
on the charges. The Incident happen on
Apr. 10 at 12th St. and Woodrow St. They
Prolong the investigation for a year so
I couldn't file Legal proceeding against
So Now I'm trying to files.

ERIC O'NEAL

VS.

THOMAS MOORE, Individually

NO. 4:09-(V-942 JLH)

PLAINTIFF

DEFENDANT

COMPLAINT

This case assigned to District Judge Holmes
and to Magistrate Judge Young

Comes Plaintiff and for his complaint states:

1. This is an action for money damages brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth and Fourteenth Amendments to the United States Constitution, and under the law of the State of Arkansas. Jurisdiction is based upon 28 U.S.C. §§ 1331 and 1343 and on the pendent jurisdiction of this Court to entertain claims arising under state law.

2. This Court has jurisdiction of both the subject matter and the parties to this action.

3. Plaintiff Eric O'Neal is a citizen and resident of Saline County, Arkansas in the Eastern District of Arkansas.

4. Defendant Thomas Moore is a police officer employed by the City of Little Rock, Arkansas.

5. Defendant Thomas Moore at all times relevant to the events described below was a police officer of the City of Little Rock, Arkansas, acting under color of law of the State of Arkansas.

6. Plaintiff is suing Defendant Moore as an individual in this action.

7. At approximately 10:30 p.m. on or about December 20, 2008, Plaintiff Eric O'Neal was on the premises of the Valero gas station-convenience store at 8821

Fouche Dam Pike in the City of Little Rock, Arkansas. Plaintiff had purchased some food and drinks in the store and was waiting in the parking lot with friends for another friend, one Travis Spoon, to meet him there. Plaintiff had learned Spoon had been assaulted earlier that night and Plaintiff was waiting on him to arrive.

8. While waiting, he observed a male and female couple pull up to the gas pumps in a white SUV when the male began hitting the female. She got out of the SUV and ran into the store. The male followed her shouting profanities at her. Plaintiff got out of his car to tell the male to leave, which he did on foot. As soon as he left, the woman came out, got into the SUV and left. Within a few minutes a Little Rock police car arrived carrying two Little Rock police officers. Plaintiff told the officers what had occurred. Soon thereafter the conversation became more general and Plaintiff advised the officers of the assault on his friend.

9. While Plaintiff was conversing with the officers, another officer, Defendant Tommy Moore, drove up in his squad car. Moore ordered Plaintiff to leave the premises, but Plaintiff explained he was waiting on a friend. Moore then told Plaintiff he needed to wait inside the building. Plaintiff complied. While he did so, both squad cars drove across the street to a Shell station. Soon Spoon arrived at the station and Plaintiff went into the parking lot to see him. It was apparent to Plaintiff Spoon was injured.

10. As Plaintiff got into the parking lot, Moore drove back from across the street, parked his car beside Plaintiff, got out of the car, and said to Plaintiff, "If I have to tell you again to leave, I'll have to do something about it." Plaintiff responded by saying,

“Can you do something about this?”—gesturing to Spoon’s injury from the earlier assault.

11. At that, Moore got out of the squad car, asked Plaintiff if he knew “which f***ing cop you are messing with?” and grabbed Plaintiff by his left shoulder, which had been injured months earlier, then moved his grip toward Plaintiff’s neck, and slammed Plaintiff’s head onto the hood of his squad car. He then grabbed Plaintiff’s left arm, holding it behind Plaintiff’s back, patted Plaintiff down, and pushed him into the back seat of the squad car.

12. Throughout the events described in the preceding paragraph Defendant was yelling at Plaintiff that he, Plaintiff, was messing with the wrong “f***ing cop” and that Defendant should box Plaintiff’s head in, would beat him up, etc.

13. Once Plaintiff was in the squad car Defendant ordered Plaintiff to show identification, which Plaintiff did. Defendant looked at it and saw that Plaintiff has a Saline County address. Defendant then told Plaintiff, “You don’t have any reason to leave Saline County, don’t come back to Little Rock, you have no reason to be here. If I see you here, I’ll write you up for everything I can find on you.” He then shut the squad car door and walked off. By then the other squad car that had been on the scene earlier came back from across the street. Defendant spoke to those officers and other civilians who had gathered around. He then allowed Plaintiff to get out of the squad car but otherwise said nothing to Plaintiff.

14. On December 30, 2008, following the incident described above, Plaintiff filed a complaint with the Little Rock Police internal affairs department about the treatment given him by Defendant.

15. On March 14, 2009, Plaintiff again stopped at the Valero station on Fouche Dam Pike. As Plaintiff parked his car, he saw Defendant Moore in the gas station speaking to several customers. At that same time, he also Travis Spoon who was also on the premises walk toward the store's entrance.

16. Plaintiff then observed Defendant come out the door and walk toward Spoon and stop to talk to him. Upon information and belief Defendant inquired of Spoon about the whereabouts of Plaintiff. Spoon then went into the store. At that point Plaintiff got out his car and went into the store, walking past Defendant. Defendant said, "How's it going, Mr. O'Neal" and Plaintiff said, "Okay" and walked into the station, where several other officers were located. Two were sitting down eating, one was standing nearby.

17. Once inside the store, Plaintiff got a soft drink from the cooler and stood in line to pay for it and purchase cigarettes. While Plaintiff stood in line, he received a cell phone call from a friend in the parking lot who said, "There's a cop shining his light into your windows and trying to get into your truck."

18. Within a few moments Defendant Moore came into the store, stood beside another officer and stared at Plaintiff. Plaintiff paid for his drink and cigarettes and began to walk out of the store. He heard Defendant say to the officer beside him, "Are you ready to do this?" and the other officer said, "yes." Both officers followed Plaintiff to his truck.

19. Upon arrival at the truck Defendant said to Plaintiff, "Mr. O'Neal, I need you to open your truck." Plaintiff complied. Defendant shined his flashlight onto a beer bottle in Plaintiff's truck and remarked to Plaintiff that it is illegal to have an open beer

bottle in his truck. He then ordered him to throw it away. Plaintiff complied by putting the bottle into the trash can next to the truck. Defendant then ordered Plaintiff to put the items he had purchased into the truck. Plaintiff put them into the seat.

20. Once Plaintiff put his things into the truck, Defendant told Plaintiff to follow him to his squad car, which Plaintiff did. Defendant then ordered Plaintiff to put his hands on the patrol car which Plaintiff did. Defendant then searched Plaintiff and advised him that he was under arrest and then put Plaintiff into his squad car.

21. While Defendant was searching the Plaintiff's person, the other officers on the premises came to the squad car. While Plaintiff was in the squad car, Defendant ran a check on Plaintiff on the car's computer. Defendant then asked the other officers what offenses he could charge Plaintiff with. They said no proof of insurance and drinking in public. Defendant asked them if he could charge Plaintiff with DWI, but they said no. Defendant then wrote tickets charging the Plaintiff with no proof of insurance and drinking in public. Defendant then directed Plaintiff to sign the tickets. Upon doing so, Plaintiff was released.

22. Plaintiff was later acquitted in Little Rock District Court of the charge of drinking in public. He paid a fine for having no proof of insurance.

23. At the time of the events described above Plaintiff had committed no crime or done anything that provided Defendant justification for the actions he took under color of law and his authority as a police officer.

24. During the events described above, Plaintiff never resisted or assaulted the Defendant in any way and never failed to do as he was ordered.

25. The force used against Plaintiff by Defendant was unnecessary, unreasonable, and excessive. The seizure of Plaintiff was unreasonable.

26. As a proximate result of the acts of Defendants described above, Plaintiff suffered a loss of his physical liberty, and suffered a violation of rights guaranteed to him under the Fourth and Fourteenth Amendments to the United States Constitution to be free from unreasonable search and seizure. In addition, Plaintiff suffered painful personal injuries.

27. In addition to being guilty of violating Plaintiff's rights under the United States Constitution and federal law, Defendant was guilty of assault and battery under the common law of the State of Arkansas.

Wherefore, Plaintiff Eric O'Neal prays for a judgment for damages against the Defendant Thomas Moore in an amount adequate to compensate him for the injuries he has suffered. Plaintiff further prays for costs, attorneys' fees and all other proper relief. Plaintiff demands a trial by jury.

Respectfully submitted,

BAKER & SCHULZE, LLP
303 President Clinton Ave, Suite D
Little Rock, Arkansas 72201
(501) 537-1000

By:

Darryl E. Baker

#78008

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

ERIC WILSON

PLAINTIFF

v.

Case No. 4:17cv191-BSM
JURY TRIAL DEMANDED

CITY OF LITTLE ROCK, ARKANSAS;
KENTON BUCKNER, in his individual and official
capacity as Chief of Police for the City of Little Rock;
WILLIE CHRISTOPHER, in his individual and official capacity as a
Little Rock Police Officer; and
JOHN COMEAU, in his individual and official capacity
as a Little Rock Police Officer

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

MAR 28 2017

By: JAMES W. McCORMACK, CLERK
Miller DE CLERK

DEFENDANTS

COMPLAINT This case assigned to District Judge
and to Magistrate Judge Miller Deere

Plaintiff, Eric Wilson, by and through counsel, the Koch Law Firm, P.A., for his
Complaint against Defendants, states:

INTRODUCTION

1. The United States finds itself in a crisis involving the public perception of police misconduct. In one city after another across the nation there have been events ranging from peaceful demonstrations to violent riots and murders of police officers, usually immediately following—and clearly in response to—the use of force by police against citizens. Often, these use of force incidents are accompanied by videos that purport to show wrongdoing on the part of police.

2. With the development of digital camera and cellular telephone technology, public video recording is now very widespread. A large percentage of persons now have cell phones in their constant possession, and many of these cell phones are equipped with high quality cameras. Likewise, the ability to record and store hours of digital images in a cost-effective manner has

prompted some law enforcement agencies—partially because of the large number of complaints against police in our nation—to outfit their police vehicles and police uniforms with cameras that capture video and audio of all or most interactions that those police have with the citizens they are sworn to protect. Also, many business and private property owners have installed video cameras that capture events on their property, including events involving police interactions with citizens.

3. Other developments in technology have provided a forum for the public to share and view these videos in a simple manner without significant cost or technical expertise. Unlike years past—when a video would only receive widespread viewing and attention if it were picked up by a large news agency—a private individual now has the ability to post videos to online sources (such as YouTube and Facebook) that can be shared and seen by worldwide audiences. Videos may be posted within a few minutes of being recorded with very little cost or resources, while requiring the person posting the video to have minimal technical skills.

4. Police have resisted the rights of citizens to record police activities. Recognizing the value of such videography, some states (including Arkansas) have enacted legislation specifically protecting an individual's rights to record police activity, and to prohibit police from interfering with—or retaliating against—these filmmakers.

5. Indeed, incidents where police have tried to destroy or erase this type of film footage have prompted some civil rights organizations, including the ACLU, to create “mobile justice” applications for cellular telephones that will cause video footage to be automatically uploaded to a media “cloud,” thus protecting the digital images from destruction or deletion by police.

6. The result of this proliferation of video paints a discouraging picture of the reliability and conduct of our nation's police departments and police culture.

7. This widespread use of digital camera technology has resulted in the discovery nationwide of thousands of examples—perhaps beginning with the famous Rodney King case—of police officers apparently abusing their authority, violating the civil rights of citizens, and violating the law themselves, in spite of their oath and duty to serve and protect the public and to obey the laws of our land. Social media, news websites, and other media outlets are replete with examples of police stating in their written reports that one series of events occurred to justify their use of physical force and/or arrest, while a subsequent review of film footage of the incident shows a completely different series of events than those described in the police report.

8. The near-constant flow of videos of police misbehaving is the largest factor pushing the current police crisis in the United States, leading to civil unrest, violence, deaths, and demands for changes to our system of policing in this country. This has caused a loss of faith in our law enforcement officers, and it threatens to plunge our society into more violence and unrest if it is not addressed by our law enforcement agencies and our courts.

9. In the United States—before the widespread availability of digital video—police have enjoyed several decades of overwhelming support by our communities and our courts.

10. Internal complaints against police officers seldom have resulted, historically, in any action being taken against the officers. One recent study found that of 29,000 complaints filed against police over a four-year period from 2011-2015 in the city of Chicago, only 2.6 percent were sustained. (An even lower percentage of complaints by African American citizens were sustained.) See “Police Abuse Complaints by Black Chicagoans Dismissed Nearly 99 Percent Of The Time,” *Huffington Post*, December 17, 2015.

11. Plaintiffs in federal lawsuits against police don't fare much better. Through legal defenses such as qualified immunity, and via the manner that courts currently use the summary judgment process to disallow most lawsuits involving police from ever reaching a jury, victims of police misconduct find that trying to seek a lawful path to justice for the wrongs they have suffered at the hands of police officers is an unnecessarily long, difficult, expensive, and discouraging process. Many victims of civil rights violations—while they may not be so poor as to qualify to proceed *in forma pauperis*—simply cannot afford the expensive filing fees, depositions, and other costs associated with such litigation. Attorneys willing to take on such expensive and time-consuming litigation, especially considering the poor likelihood of surviving summary judgment and profiting from the cases, are sparse.

12. Indeed, many in our society have decided that there is no justice to be found in our courts when the plaintiff is a person without a voice in society, and the defendant is a police officer. Therefore, some groups have decided that the only remedy or relief available to them—and the only hope for positive change—is in the form of the demonstrations and riots that have caused millions of dollars in property damage, as well as violence that has resulted in numerous injuries and deaths on both sides of the issue.

13. This attitude of hopelessness by victims of police brutality and misconduct is apparently justified, as each day more videos prove to us that police have misused their authority—and gotten away with it—in violation of the public trust. Thus, the result of this wholehearted and blind faith support of police by our communities and courts—wherein police administrators and courts have ignored, disregarded, and dismissed all but the most egregious cases wherein plaintiffs show clear and convincing evidence of wrongdoing (usually through video, because absent video the testimony of police is almost always credited over the testimony

of other witnesses)—has not been successful or justified, and it threatens to tear at the social fabric that maintains law and order in our country. That is, this blind faith in our police has had the opposite result that was intended: instead of instilling faith in our police, it has actually led to a serious and widespread breakdown in the public trust for police; instead of ensuring peace and tranquility in our communities, it has resulted in fear, mistrust, violence, and unrest.

14. Indeed, our refusal as a nation to take seriously those complaints against police who victimize our citizens (as well as the failure to hold accountable and punish the agencies that continue to employ these sub-standard police officers and/or fail to train them) has put the lives and wellbeing of our *good* police officers at risk.

15. Of course, the most egregious allegations against police involve death or serious physical injury; these are the cases that get the most media attention and that lead to demonstrations and riots in our cities. Cases involving police misconduct that result in less severe physical injuries and other damages, such as the one being brought before the Court herein today, go largely un-addressed.

16. It is apparent that positive change will have to begin on a case-by-case basis that includes confronting police who violate civil rights even when nobody gets killed. If we always wait until there is a loss of life, change is likely to be slow, expensive, and painful for our nation. According to the now-famous “broken window theory” of criminology, reducing crimes in society can best be accomplished by aggressively addressing lower-level offenses that do not lead to physical injury or death, rather than reacting only to the most severe cases.

17. To that end, the Plaintiff herein brings before the Court the following Complaint:

PARTIES AND JURISDICTION

18. This is an action to secure a remedy for damages to an African American citizen against law enforcement officers for unlawful detention and excessive use of force under 42 U.S.C. § 1983, the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution; the Arkansas Civil Rights Act of 1993, codified at Ark. Stat. Ann. § 16-123-105; and the Constitution of the State of Arkansas.

19. Plaintiff Eric Wilson was at all times relevant to this Complaint an adult resident of Pulaski County, Arkansas.

20. Defendant City of Little Rock is a municipal corporation organized and existing under the laws of the State of Arkansas and located in Pulaski County, Arkansas. The Little Rock Police Department (hereinafter “LRPD”) is a department of the City of Little Rock.

21. Defendant Kenton Buckner was at all times relevant to this Complaint the chief of police of Little Rock, Arkansas. Defendant Buckner was responsible for the day-to-day operation of the Little Rock Police Department, was responsible for the training, supervision, and discipline of the police officers of the department, and was the final policymaker with respect to law enforcement operations for Little Rock, Arkansas.

22. Defendant Willie Christopher was at all times relevant to this Complaint employed as a police officer in Little Rock, Arkansas.

23. Defendant John Comeau was at all times relevant to this Complaint employed as a police officer for Little Rock, Arkansas.

24. This Court has jurisdiction over Plaintiff’s federal claims under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3), and this Court has supplemental jurisdiction over Plaintiff’s state law

claims under 28 U.S.C. § 1367. This Court has personal jurisdiction over the parties, and venue is proper under 28 U.S.C. § 1391(b).

GENERAL ALLEGATIONS OF FACT

25. Plaintiff is legally blind, and can only see basic shapes and images. He usually uses a cane to assist him in walking, but can walk without his cane in certain areas if he is very familiar with his surroundings.

26. On or about June 1, 2015, Plaintiff was walking on 65th Street in Little Rock, without the assistance of his cane. Plaintiff was alone, was not close to any other people, was walking normally toward his nearby residence, and was simply minding his own business.

27. Defendants John Comeau and Christopher approached Plaintiff near 65th Street and Wakefield Drive, reportedly for the purpose of checking his “welfare.”

28. Comeau and Christopher had no probable cause nor reasonable suspicion to detain Plaintiff or to check his identification. If concerned about his “welfare,” they could have observed him as he walked down the street toward his home, but they had no reason to make demands of him.

29. Nevertheless, these officers got out of their patrol car and approached Plaintiff, shouting for him to leave his pathway and come over to them. Plaintiff complied.

30. Defendant Christopher grabbed Plaintiff and threw him violently to the ground, causing injury, then Christopher handcuffed Plaintiff and made Plaintiff sit for several minutes on the sidewalk while the officers investigated Plaintiff’s identity.

31. Eventually, Plaintiff was released without charges.

32. The police officers filed a report wherein they stated that Wilson did not follow their orders and resisted efforts to be handcuffed. A video of the encounter belies report written by Comeau and Christopher.

33. Plaintiff subsequently filed a formal complaint against the officers with Defendants Buckner and the City of Little Rock.

34. Representatives of the City of Little Rock stated that they investigated this matter thoroughly and reported that Defendants Comeau and Christopher properly followed the policies and procedures of the City of Little Rock, thus ratifying the officers' behavior and actions.

35. Defendants Buckner and City of Little Rock train police officers to approach and detain citizens—especially African American citizens—with reasonable suspicion or probable cause.

36. Defendants Buckner and City of Little Rock train LRPD police officers to use excessive and unnecessary force, especially against African American citizens.

37. Defendants Buckner and City of Little Rock have failed to train LRPD police officers to properly interact with persons with disabilities.

COUNT ONE: 42 U.S.C. § 1983

38. Plaintiff realleges the foregoing as if fully set out herein.

39. The above-described use of force by the City of Little Rock and the members of the Little Rock Police Department was a violation of 42 U.S.C. § 1983, via the following constitutional rights:

- a. The due process clause of the Fourteenth Amendment to the United States Constitution;
- b. The due process clause of the Fifth Amendment to the United States Constitution;
- c. The right to be free from unreasonable search and seizure under the Fourth Amendment to the United States Constitution;

40. The actions of Defendant Comeau and Defendant Christopher on this count were sufficiently egregious such as to justify punitive damages against them individually.

COUNT TWO: THE ARKANSAS CIVIL RIGHTS ACT

41. Plaintiff realleges the foregoing as if fully set out herein.

42. The above-described use of force by the City of Little Rock and the members of the Little Rock Police Department was a violation of Arkansas Civil Rights Act as codified at Ark. Stat. Ann. § 16-123-105, based on the protections of the Arkansas State Constitution and other applicable rights and protections under Arkansas law.

43. The actions of Defendant Comeau and Defendant Christopher on this count were sufficiently egregious such as to justify punitive damages against them individually.

COUNT THREE: VIOLATIONS OF THE ARKANSAS CONSTITUTION

44. Plaintiff realleges the foregoing as if fully set out herein.

45. The above-described use of force by the City of Little Rock and the members of the Little Rock Police Department was a violation of Arkansas Constitution's guarantees of due process and the right to be free from unreasonable search and seizure.

46. The actions of Defendant Comeau and Defendant Christopher on this count were sufficiently egregious such as to justify punitive damages against them individually.

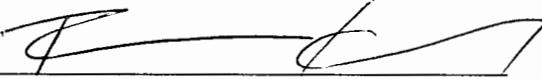
DAMAGES

47. As a direct and proximate result of said violations of Plaintiff's constitutional and statutory rights, Plaintiff was made to suffer physical and emotional trauma, humiliation, indignity, and embarrassment. Furthermore, Plaintiff was unlawfully deprived of his liberty.

WHEREFORE, Plaintiff prays for judgment against Defendants, for compensatory damages against all Defendants, for punitive damages against Defendants Comeau and Christopher, for costs and attorney fees, and for all other proper relief to which he is entitled.

Respectfully submitted,

Koch Law Firm
2024 Arkansas Valley Drive, Suite 707
Little Rock, Arkansas 72212
(501) 223-5310 office
(501) 223-5311 facsimile
reggie@reggiekoch.com

By: 
Reggie Koch, Ark. Bar #2005125

JS 44 (Rev. 08/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

4:17-cv-191-BSM

I. (a) PLAINTIFFS

ERIC WILSON

(b) County of Residence of First Listed Plaintiff PULASKI

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

KOCHE LAW FIRM, P.A., 2024 ARKANSAS VALLEY DR, #707,
LITTLE ROCK, AR, 72212
501-223-5310**DEFENDANTS**CITY OF LITTLE ROCK, CHIEF KENTON BUCKNER, OFFICER
WILLIE CHRISTOPHER, AND OFFICER JOHN COMEAUCounty of Residence of First Listed Defendant PULASKI

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question
(U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)(3))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 330 Federal Employers' Liability	PROPERTY RIGHTS	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	PERSONAL PROPERTY	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	LABOR	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 380 Other Personal Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 388 Product Liability	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 890 Other Statutory Actions
			<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 891 Agricultural Acts
			<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 893 Environmental Matters
				<input type="checkbox"/> 895 Freedom of Information Act
				<input type="checkbox"/> 896 Arbitration
				<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
				<input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation	<input checked="" type="checkbox"/> 440 Other Civil Rights	Habeas Corpus:	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence		
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General		
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty		
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	Other:		
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other		
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
			SOCIAL SECURITY	
			<input type="checkbox"/> 861 HIA (1395ff)	
			<input type="checkbox"/> 862 Black Lung (923)	
			<input type="checkbox"/> 863 DIWC/DIWW (405(g))	
			<input type="checkbox"/> 864 SSDI Title XVI	
			<input type="checkbox"/> 865 RSI (405(g))	
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application	
			<input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|--|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
|---|---|--|---|--|--|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. 1983**VI. CAUSE OF ACTION**Brief description of cause:
EXCESSIVE FORCE**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION
UNDER RULE 23, F.R.Cv.P.**DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE 3/28/17 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS.

JENNIFER McDOWELL

PLAINTIFF

VS.

NO.

CITY OF LITTLE ROCK;
LITTLE ROCK CIVIL SERVICE
COMMISSION and CHIEF GREG
SUMMERS

DEFENDANTS

COMPLAINT

Comes now, Jennifer McDowell, by and through her attorney, Robert A. Newcomb, and for her Complaint states:

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to A.C.A. §16-13-201 to enforce rights granted to the Plaintiff pursuant to A.C.A. §16-107 and rights granted to the Plaintiff pursuant to A.C.A. §14-51-301 et seq.

PARTIES

2. The Plaintiff is a white female who is employed by the City of Little Rock, Arkansas Fire Department as a fire fighter. She is a female citizen of the State of Arkansas and a resident of Pulaski County, Arkansas.

3. The City of Little Rock, Arkansas is a municipality organized under the laws of the State of Arkansas and is the employer of the Plaintiff.

See Payment Spreadsheet included for payment information

4. The Little Rock Civil Service Commission is an entity organized pursuant to the provisions of A.C.A. §14-51-301 et seq. with the responsibility of conducting examinations for promotions within the Little Rock Fire Department.

5. Greg Summers who is being sued in his official capacity and individually is a fire chief of the City of Little Rock with authority to promote individuals within the Fire Department from one rank to the next if they are within the top three candidates for promotion.

FACTS

6. The City of Little Rock, Arkansas has adopted civil service procedures for promotions within the Little Rock Fire Department.

7. Pursuant to A.C.A. §14-51-301 (b) (9) (A) (IV), the Defendant the Little Rock Civil Service Commission has determined eligibility list for promotions based upon "open, competitive examinations that may include a rating of applicants based on results of written, oral, practical examinations, length of service, efficiency ratings, and educational or vocational qualifications"

8. A.C.A. §14-51-306 requires that all examinations provided for in this chapter shall be fair and impartial and such as to test the qualifications of the applicants for the particular service and position to be filled.

9. On Thursday December 12, 2012 the Defendant, Little Rock Civil Service Commission certified a list of those eligible for promotion to the rank of engineer in the Little Rock Fire Department but excluded the Plaintiff from said list.

10. The Plaintiff successfully passed the written test for promotion to engineer and was to complete certain practical exam portions including a road test, driving test, and two pumping tests.

11. The Plaintiff successfully completed the first pumping exercise of pumping into a one and three quarter inch hand line with onboard water and then after water was successfully pumped from the storage tank to connect to a hydrant and establish a permanent water source.

12. The Plaintiff successfully completed the road and driving portions of the test.

13. The second pumping exercise was to set the fire engine in such a way as to deliver water from a hydrant through the pump of the engine after connecting two three inch lines to an aerial truck then pump water after determining the proper pump discharge pressure.

14. The Plaintiff was to first determine the proper pump discharge pressure and provide that number to her rater after writing it down and signing the paper.

15. The Plaintiff prepared the pump discharge pressure at a number of three hundred and forty four (344) which was an erroneous number.

16. The rules and regulations of the testing process stated that if the pump discharge pressure was inaccurately calculated by more than eleven or less P.S.I. that there would be a twenty point deduction from the candidates score.

17. The Defendant, City of Little Rock, Arkansas failed to comply with its own scenario by not providing an aerial truck for the exercise.

18. The City of Little Rock, Arkansas, if it had used an aerial truck, would have presented a realistic examination and further if there was excessive pressure pumped due to a miscalculation a factory set valve would have released sufficient water to prevent any damage to equipment well below the three hundred and forty four (344) P.S.I. calculation.

19. The City of Little Rock, Arkansas acting through its City Personnel Department and the City Fire Department without authority of the Defendant, Little Rock Civil Service Commission substituted pumping water to a stand pipe inside of an aerial truck as the scenario called for.

20. The City of Little Rock, Arkansas arbitrarily and unfairly concluded that a danger to damage to equipment would occur if the P.S.I. for the pump discharge pressure exceeded three hundred pounds when in fact a stand pipe is rated a three hundred and fifty (350) P.S.I.

21. The Plaintiff was determined was disqualified for consideration for promotion for the purported reason of creating a danger of damage to equipment by

pumping in excess of three hundred pounds (300) P.S.I. into a stand pipe when in fact that did not create a potential for equipment failure.

22. A black male fire fighter named Antwain Vernon Senior, in performing his pumping evolution during the shutdown phase left the pump throttled up and stated to disengage the drive to it which would have caused substantial damage to the equipment necessitating the fire engine being taken out of service and costing a substantial sum of money but was not disqualified under the purported theory that his time for completion of the exam exercise had been done with his pumping of water even though part of the grade included property shut down process.

23. The Plaintiff appealed her disqualification to the Human Resource Department to the City of Little Rock, Arkansas and was denied the remedy of having a twenty point deduction from her score as provided for missing the proper pump discharge pressure by plus or minus eleven (11) P.S.I.

24. The City of Little Rock, without notice to the Plaintiff claimed that she also created a cavitation in the water pump which is caused when more water is being pumped out than is coming into the pump. The Plaintiff was never notified of this to rebut it.

25. Assistant Chief Doug Coney testified that the cavitation occurred when the pump exceeded one hundred and ten (110) P.S.I. which would therefore mean that cavitation would have prevented the pressure from increasing as high as it did.

26. The Plaintiff was treated differently than a black male who committed a unsafe act.

RELIEF REQUESTED

27. That this Court issue a preliminary injunction and permanent injunction prohibiting the promotion of any further individual to the rank of engineer from the existing list until the Plaintiff's proper place on the list is determined.

28. That this Court rule that the testing procedure and grading procedure used as to the Plaintiff was in violation of A.C.A. §14-51-306 by having her disqualified instead of finding that she missed the proper P.S.I. for her pump discharge pressure which was known to the rater before the exercise started and prior to the Plaintiff stating to pump water.

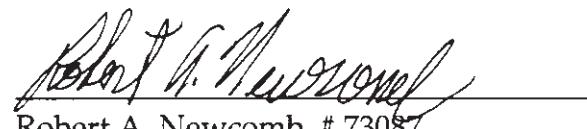
29. That this Court find that the City of Little Rock violated the Plaintiff's rights to equal protection and her rights under the Arkansas Civil Rights Act by being treated differently because she is a female in that she was disqualified for a potential safety violation that could have caused damage to equipment which if fact was not accurate while a male was not disqualified for doing an act which potentially would have caused substantial damage to equipment and left the City of Little Rock, Arkansas with one less fire apparatus for a substantial period of time.

30. That this Court enter an order requiring all the Defendants to place the Plaintiff in her rightful position on the promotion list for engineer.

31. That this Court award reasonable attorneys' fees and court costs.

WHEREFORE It is respectfully prayed that this Court will grant the Plaintiff the relief she seeks herein.

Respectfully submitted,



Robert A. Newcomb, # 73087
Attorney at Law
P.O. Box 149
Little Rock, AR 72203
(501) 372-5577 - Phone

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

NATASHA SIMS

PLAINTIFF

VS.

CASE NO: _____

STUART THOMAS, Individually and in his Official Capacity as CHIEF OF POLICE OF THE CITY OF LITTLE ROCK and JAMES HUDSON

DEFENDANTS

**COMPLAINT WITH PLAINTIFF'S FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

COMES the Plaintiff, by and through counsel, and for this Complaint, she states:

PARTIES AND JURISDICTION

1. Plaintiff is a resident and citizen of the State of Arkansas, who formerly worked as a police officer for the City of Little Rock, a municipal corporation organized and existing under the laws of the State of Arkansas. James Hudson who is sued in his official capacity. Stuart Thomas is the duly appointed and acting Chief of Police of the City of Little Rock, Arkansas, who is sued in his individual and official capacities, who terminated the Plaintiff with the advice and consent of the Mayor and the City Council. Defendants each are a policymaker in matters such as those encompassed within this Complaint. All actions taken by the Defendant, and its officers, employees, and Commission Members, were taken under color of state law. This is an action to redress deprivation of Plaintiff's state constitutional rights to Due Process, free speech, life, liberty, and the pursuit of happiness granted to her by the Arkansas Constitution under the Arkansas Civil Rights Act of 1993. Plaintiff also brings claims for denial of her Due Process rights to name-clearing hearing, as allowed by 42 USC 1983. The City is a public entity, who employed more than 300 people in 2012 and 2013. Since the acts giving rise to this matter arose within this Court's county, venue is proper. This Court has personal subject matter jurisdiction. All actions were taken under color of law and according to the policy of the City of Little Rock. This action is brought within one year of a nonsuit.

See Payment Spreadsheet included for payment information

GENERAL ALLEGATIONS OF FACT

2. Plaintiff started working for the Little Rock police department about 17 years ago.

3. Plaintiff was a police officer. Defendant Thomas terminated because she filed a Complaint of gender discrimination and harassment against him shortly before she was fired in violation of the Arkansas Civil Rights Act of 1993. After she made her Complaint, Plaintiff was subjected to stricter scrutiny, then fired under circumstances similarly situated males or persons who had not engaged in a protected activity were not. As an example, David Hudson, a male who had not engaged in any protected activity, has committed far more serious violations of policy than Plaintiff has, yet he has not been terminated.

4. Plaintiff was fired in a way that made the newspaper and has left allegations in his personnel file that has damaged Plaintiff, both in her public standing and in trying to find other jobs. Plaintiff was accused of being deceptive. Plaintiff has been upset emotionally, and it has upset her husband. Plaintiff has lost wages and cannot work anywhere.

5. Plaintiff asked for a name-clearing hearing both before she was terminated and during the hearing. Defendants refused. This is a result of a failure to train.

6. When Plaintiff arrived at the hearing, she had several witnesses to her character and regarding the incidents at issue, as well as the custom of the police department. These witnesses would have established publicly that she was not deceptive. Plaintiff has not stolen time and has not engaged in deceptive behavior.

7. The Commission would not let Plaintiff call her witnesses or cross examine witnesses against him in a manner designed to clear her name, as well as consistent with Hall v. Little Rock. Indeed, the Commission entered an Order that directly conflicts with Hall v. City of Little Rock, with regard to the scope of evidence presented. The hearing is presently being conducted and is causing Plaintiff irreparable harm. Immediate relief is request, requiring the Commission to adjourn.

8. Plaintiff has also been denied an effective name clearing hearing because she was not given an unrestricted right to speak.

COUNT I

9. Plaintiff re-alleges the foregoing as if fully set out herein.

10. Plaintiff has been denied Due Process in violation of the Arkansas Constitution and United States Constitution.

11. It is a clearly established right to have an unrestricted right to speak at a name-clearing hearing. Defendants have refused to grant Plaintiff this right. Hudson Ordered Plaintiff and her counsel not to speak about other instances of policy violations. Such information would have cleared Plaintiff's name.

12. Plaintiff requested a name-clearing hearing on multiple occasions. But Defendants, all policymakers, denied this request because they were not trained or because of a City policy or Custom.

13. Defendant had publicized information leading the public to believe that Plaintiff was a liar. However, this was not true, and Plaintiff has been stigmatized in the community as a result of several newspaper articles.

14. Indeed, before the Civil Service hearing even began, Plaintiff requested a name-clearing hearing, but her request was denied out of hand. At the hearing, she was not given an unrestricted right to speak, the opportunity to present witnesses, nor cross-examine the decision-makers in this case in a manner consistent with Hall v. City of Little Rock and the Arkansas and Federal Constitution.

15. Consequently, Plaintiff has been denied an effective name-clearing hearing and has been denied jobs as a result.

16. As a direct and proximate cause of the denial of a name-clearing hearing, Plaintiff has been denied due process, and has suffered severe mental and emotional distress,

loss of reputation, and incurred other damages in an amount to be proven at trial. Damage to reputation is irreparable, and Plaintiff is entitled to immediate and permanent injunctive relief.

COUNT II

9. Plaintiff re-alleges the foregoing as if fully set out herein.

10. Plaintiff was terminated because she is female and filed a Complaint against Chief Thomas for gender discrimination and hostile work environment in May, 2013 in violation of Section 105, Section 107, and Section 108 of the Arkansas Civil Rights Act of 1993.

11. Plaintiff was terminated under circumstances similarly situated males were not. One example is David Hudson. Twenty-eight citizen complaints and other allegations of misconduct have been lodged against the David Hudson involved in a much-publicized incident outside of Ferneau restaurant since he was hired in 1978, according to internal LRPD files.

12. Hudson has been suspended four times during his career: Ten days in Sept. 1983 for unspecified misconduct and two days in May 1986, five days in Dec. 1987 and one day in April 1991 for car accidents.

13. There are also about 15 complaints lodged against Hudson. Of those 15, five are citizen complaints of physical abuse or excessive force. After internal investigations, Hudson was exonerated from two complaints, meaning the investigation found that he behaved lawfully and "within the scope of his authority." Another was deemed "unfounded," meaning investigators determined the alleged incident did not occur. Other investigations include:

*May 1996: a complainant claims that \$11,629 worth of property went missing the execution of a search warrant. Outcome of the Internal Affairs investigation: not sustained

*July 1996: a complainant claims that \$2,400 worth of jewelry went missing following the execution of a search and seizure warrant. Outcome: not sustained.

*Oct. 1996: a complainant claimed that a \$100 bill was missing from his wallet following execution of a search and seizure warrant. Outcome: A ruling of "misconduct not based on original complaint - inappropriate handling of money" with the complainant reimbursed \$100.

*Feb. 2007: a complainant claims officers used excessive force while searching his vehicle and took \$1,000. Outcome: Exonerated.

*Oct. 2009, a complainant claims he was "thrown to the ground and spit on by Lt. Hudson." Outcome: Complaint withdrawn.

But these investigations were not undertaken with the same scrutiny as Plaintiff's investigations.

14. On two complaints, Hudson received letters of reprimand but wasn't suspended.

A Nov. 24, 2006, complaint is described as: "Internal investigation authorized by Chief Thomas pursuant to allegations of failure to supervise." A June 1, 2007, complaint is described as: "Lost or stole property Glock Model 22 .40 caliber pistol SN GFD640/ Su Fire Tactical Light and Glock paddle holster."

15. Hudson, a male, has never complained of sex discrimination or harassment.

16. Defendants have discriminated against the Plaintiff on the basis of her gender and have retaliated against her in violation of the ACRA.

17. Defendants, all policymakers, terminated Plaintiff because they were not trained or because of a City policy or Custom.

18. As a direct and proximate cause of Defendant's retaliation and discrimination, Plaintiff has suffered severe mental and emotional distress, loss of reputation, and incurred other damages in an amount to be proven at trial.

19. Damage to reputation is irreparable, and Plaintiff is entitled to immediate and permanent injunctive relief.

20. **Exhibit A** attached hereto and annexed are Plaintiff's First Set of Interrogatories and Requests for Production of Documents and served contemporaneously herewith.

WHEREFORE, Plaintiff prays for appropriate compensatory damages exceeding seventy-five thousand dollars, punitive damages against all parties under State law and the individuals under Federal law, for an injunction requiring that the Defendant allow Plaintiff an effective name-clearing hearing, to include, but not limited to, a right to present witnesses, and cross examine the witnesses in a public forum during the hearing that is now proceeding, for a

TRO requiring the Commission to adjourn, for declaratory judgment that Plaintiff was not afforded a name clearing hearing, for reinstatement for a trial by jury, for an injunction requiring the City to modify its policy, for a reasonable attorney's fee, for costs, and for all other proper relief.

Respectfully submitted,

SUTTER & GILLHAM, P.L.L.C.
Attorneys at Law
P.O. Box 2012
Benton, AR 72018
501-315-1910 Office
501-315-1916 Facsimile
Attorney for the Plaintiff

By: /s/ Luther Oneal Sutter
Luther Oneal Sutter, ARBN 95031
luthersutter.law@gmail.com

G:\doc\Sims, Natasha\PLD\PLD 60CV-16\2016 03-17 COM - Sims Natasha.doc

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

NOV 05 2012

NIKITA HAWKINS, as Personal Representative
of the Estate of LANDRIS HAWKINS, deceased,

Plaintiff,

v.

JAMES CHRIST and JASON ROBERTS, in their
individual and official capacities, STUART THOMAS,
in his individual and official capacities and the
CITY OF LITTLE ROCK, a municipality,

Defendants.

JAMES W. McCORMACK, CLERK
By: D Brown
DEP CLERK

Case No. 4:12-cv-094 BSM

JURY TRIAL DEMANDED

This case assigned to District Judge Miller
and to Magistrate Judge Volpe

COMPLAINT

COMES NOW, Plaintiff, NIKITA HAWKINS, Personal Representative of the Estate of LANDRIS HAWKINS, deceased, by and through her attorneys, Michael J. Laux and Laux Law Group, and for her cause of action, states as follows:

JURISDICTION and VENUE

1. This action arises under the United States Constitution, particularly under the Fourth and Fourteenth Amendments, and under law, particularly the Civil Rights Act of 1871 and 42 U.S.C. § 1983. This Honorable Court has jurisdiction by virtue of 28 U.S.C. §§ 1331 and 1337.
2. Venue is founded in this Court upon 28 U.S.C. § 1391 as the acts of which Plaintiff complains arose in this District.

PARTIES

3. At all relevant times, LANDRIS HAWKINS ("LANDRIS") was a citizen of the United States of America and was, therefore, entitled to all legal and constitutional rights

See Payment Spreadsheet included for payment information

afforded citizens of the United States of America. On November 3, 2009, and at all relevant times, LANDRIS resided at the 5915 Carlyle Avenue, Little Rock, Arkansas.

4. The heirs-at-law of LANDRIS, namely NIKITA HAWKINS ("PLAINTIFF" and LANDRIS' mother), Robert Murry (father), Deshuna Hawkins (sister) and Levonne Steele (sister), are all citizens of the United States of America and, therefore, they are entitled to all legal and constitutional rights afforded citizens of the United States of America. PLAINTIFF is the court-appointed administrator of the Estate of LANDRIS HAWKINS. *See* November 5, 2012 Order attached as *Exhibit A*. PLAINTIFF brings this action on behalf of the estate and on behalf of LANDRIS' heirs-at-law above.

5. On November 3, 2009, and at all relevant times, JAMES CHRIST ("CHRIST"), was employed by the CITY OF LITTLE ROCK as a police officer and was acting under the color of state law, within the scope of his employment. Prior to November 3, 2009, CHRIST was fully trained in police work, including, but not limited to, the Fourth Amendment of the United States Constitution, and was fully apprised of LRPD General Orders ("G.O.'s"), including G.O. 303 (use of deadly force) and G.O. 309 (handling mentally ill persons).

6. On November 3, 2009, and at all relevant times, JASON ROBERTS ("ROBERTS"), was employed by the CITY OF LITTLE ROCK as a police officer and was acting under the color of state law. Prior to November 3, 2009, ROBERTS was fully trained in police work, including, but not limited to, the Fourth Amendment of the United States Constitution, and was fully apprised of LRPD G.O.'s, including G.O. 303 and G.O. 309.

7. On November 3, 2009, and at all relevant times, STUART THOMAS, ("THOMAS"), was employed by the CITY OF LITTLE ROCK as police chief of the Little Rock Police Department ("LRPD") and acted under the color of state law. At all relevant times,

THOMAS had the ultimate responsibility within the LRPD for the protection of life, preservation of law and order, investigation of all crimes and the enforcement of state laws and city ordinances.

8. On November 3, 2009, and at all relevant times, THOMAS had final policy-making authority in terms of creating, adopting and/or implementing police policies within the LRPD whether formal or informal. At all relevant times, THOMAS was responsible for assuring the enforcement of LRPD G.O.'s, including G.O. 303 and G.O. 309, among LRPD officers.

9. On November 3, 2009, and at all relevant times, all LRPD patrol officers were required to be apprised of the Fourth Amendment of the United States Constitution, and were required to follow all LRPD G.O.'s, including G.O. 303 and G.O. 309 at all times.

10. On November 3, 2009, and at all relevant times, the CITY OF LITTLE ROCK, ("CITY") was a municipality organized and existing under the laws of the State of Arkansas. At all relevant times, the CITY was located in the County of Pulaski, State of Arkansas, and was the employer of the individually-named Defendants. At all relevant times, the CITY is and was empowered, funded and directed to pay any § 1983 civil rights judgment for compensatory damages, actual damages and attorney fees for which any CITY employee acting within the scope of his or her employment is found liable. Accordingly, the CITY is an indemnification party regarding the acts and/or omissions of which PLAINTIFF complains.

11. On November 3, 2009, and at all relevant times, the CITY participated in the Municipal Legal Defense Program. The acts and/or omissions of which PLAINTIFF complains constitute a civil rights lawsuit against the CITY and the individually-named Defendants. Accordingly, the Municipal Legal Defense Program is a primary or secondary indemnification

party regarding the acts and/or omissions of CITY and the individually-named Defendants of which PLAINTIFF complains.

FACTUAL ALLEGATIONS

12. On November 3, 2009, at approximately 2:20 p.m., Neomia Hawkins ("Ms. Hawkins"), LANDRIS' grandmother who also resided at 5915 Carlyle Avenue, called 911 and explained to the 911 dispatch operator, a CITY employee, that LANDRIS was acting unusually, brandishing a knife and threatening to cut his throat.

13. By 2:22 p.m., the operator understood from Ms. Hawkins' call that LANDRIS was threatening to kill himself and had cut himself on the neck.

14. Ms. Hawkins asked the operator to send someone to help her because LANDRIS was too large in stature for her physically to take the knife from him.

15. A few moments later, Ms. Hawkins informed the operator that LANDRIS was now, in fact, repeatedly stabbing himself in the neck.

16. Throughout the call, Ms. Hawkins continued trying to take the knife away from LANDRIS, without success, and the operator was aware of her efforts.

17. Ms. Hawkins told the operator that she was cut on her hand.

18. Upon information and belief, Ms. Hawkins informed the operator that she cut her hand attempting to grab the knife from LANDRIS.

19. The operator broadcasted the call over the LRPD radio, stating "[f]emale states that her grandson had a knife and was threatening to kill his self (sic). He has now cut his self (sic) on the throat and she has- and her hand is cut as well."

20. The Little Rock Fire Department ("LRFD") arrived in the vicinity of 5915 Carlyle Avenue in response to an "attempted suicide." Shortly thereafter, CHRIST and ROBERTS

arrived at the residence. CHRIST and ROBERTS ordered the LRFD to stay back while they approached the residence.

21. When CHRIST and ROBERTS approached the front porch of the residence they each had their guns drawn.

22. CHRIST and ROBERTS, and each of them, ran to the front door with their guns drawn.

23. When CHRIST and ROBERTS reached the front porch of the residence, they stopped at the front porch. The front door was a glass storm door.

24. At that time, CHRIST and/or ROBERTS had a discussion with Ms. Hawkins who was at the doorway.

25. At that time, CHRIST and/or ROBERTS asked Ms. Hawkins if she was hurt and she responded at least twice that she was "not hurt."

26. Even after CHRIST and ROBERTS arrived, Ms. Hawkins continued to try to take the knife from LANDRIS.

27. When CHRIST and ROBERTS saw LANDRIS inside the residence, he was holding a knife to his neck and had blood all over his shirt.

28. CHRIST and/or ROBERTS opened the glass storm door to the residence toward them and looked deeper inside. ROBERTS propped the glass door open with his leg. Both CHRIST and ROBERTS remained on the front porch and did not go inside.

29. From the front porch, CHRIST and ROBERTS observed LANDRIS walk back and forth down an inside hallway while still holding a knife to his neck.

30. LANDRIS was pacing.

31. LANDRIS was in an agitated state.

32. Around this time, ROBERTS noticed that LANDRIS' demeanor and actions began to change.

33. Around this time, LANDRIS quickened his pace.

34. According to ROBERTS, LANDRIS was in a rage.

35. LANDRIS never removed the knife from the area of his neck.

36. CHRIST and ROBERTS guns' were still drawn.

37. From the front porch, outside the residence, CHRIST and ROBERTS shot at LANDRIS, who was inside the residence.

38. CHRIST shot LANDRIS through the glass door, shattering it with his bullets.

39. The closest LANDRIS ever got in physical proximity to CHRIST and/or ROBERTS before they shot him was approximately four (4) feet.

40. LANDRIS never went outside the residence prior to CHRIST and ROBERTS shooting him. Neither CHRIST nor ROBERTS went inside the residence prior to shooting LANDRIS.

41. CHRIST understood LANDRIS to be in a suicidal state prior to shooting him.

42. LANDRIS was pronounced dead at 3:40 p.m. on November 3, 2009. His toxicology report showed the absence of any illegal drugs or alcohol at the time of his death.

COUNT I
**CHRIST and ROBERTS for EXCESSIVE FORCE
in VIOLATION of the FOURTH AMENDMENT**

43. PLAINTIFF hereby incorporates and re-alleges Paragraphs one (1) through forty (42) as and for Paragraph forty-three (43) of Count I.

44. CHRIST and ROBERTS, and each of them, used excessive force against LANDRIS' person, causing great injury, pain and death.

45. CHRIST and ROBERTS, and each of them, violated LRPD G.O.'s, including G.O. 303 and G.O. 309 when they shot and killed LANDRIS.

46. The force used by each was unnecessary and unreasonable, and LANDRIS' great injury, pain and death resulted directly from the use of said force which was excessive.

47. By reason of the conduct of CHRIST and ROBERTS, and each of them, LANDRIS and his heirs-at-law were deprived of rights, privileges and immunities secured to them by the Fourth and Fourteenth Amendments to the United States Constitution, including due process, and laws enacted thereunder.

48. The violence committed by CHRIST and ROBERTS, and each of them, and inflicted upon LANDRIS was unnecessary, objectively unreasonable and excessive and was, therefore, in violation of his Fourth Amendment Rights. Therefore, CHRIST and ROBERTS are liable to PLAINTIFF in damages pursuant to 42 U.S.C. § 1983, including loss of life, loss of liberty interest, conscious pain and suffering and punitive damages.

COUNT II

**THOMAS and/or the CITY for PERMITTING and MAINTAINING
a WIDESPREAD CUSTOM OF EXCESSIVE FORCE and
DISREGARD for LRPD GENERAL ORDERS (*Monell*)**

49. PLAINTIFF hereby incorporates and re-alleges Paragraphs one (1) through forty-eight (48) above as and for Paragraph forty-nine (49) of Count II.

50. At all relevant times, including November 3, 2009 and for years prior thereto, THOMAS and/or the CITY knowingly, and/or with reckless or callous indifference to the constitutional rights of the citizens of Little Rock, permitted and/or maintained a widespread "custom" of tolerating violations of LRPD General Orders by LRPD officers and allowing acts of excessive force by LRPD officers. THOMAS and/or the CITY allowed this custom by:

- a) disregarding, ignoring and/or covering up allegations or facts of excessive force committed by LRPD officers in the field;
- b) tolerating LRPD officers' disregard of facts and behavior indicating mental illness in persons during police encounters;
- c) tolerating use of deadly force against persons exhibiting mental illness attributes and/or behavior;
- d) failing to discipline violations of G.O.'s by LRPD officers;
- e) failing to adequately discipline violations of G.O.'s by LRPD officers;
- f) failing to discipline LRPD officers who violate LRPD G.O. 303;
- g) failing to adequately discipline LRPD officers who violate LRPD G.O. 303;
- h) failing to discipline LRPD officers who violate LRPD G.O. 309; and
- i) failing to adequately discipline LRPD officers who violate LRPD G.O. 309.

51. This pattern of police misconduct and violations of police general orders was so pervasive as to constitute a "custom or usage" with the force of law.

52. The customs described above were the moving force behind the violations of LANDRIS' constitutional rights committed by CHRIST and ROBERTS, and each of them, and proximately caused LANDRIS' personal injuries, great pain and death. The custom described above also proximately caused a deprivation of the rights, privileges and immunities secured to LANDRIS and his heirs-at-law by the Fourth and Fourteenth Amendments to the United States Constitution, including due process, and laws enacted thereunder.

53. As a result of the customs described above, LANDRIS was subjected to excessive force and caused to die. Therefore, THOMAS and/or the CITY is liable to PLAINTIFF in damages under 42 U.S.C. § 1983, including loss of life, loss of liberty interest, conscious pain and suffering and punitive damages.

COUNT III
CHRIST and ROBERTS for WRONGFUL DEATH/NEGLIGENCE
Pursuant to Arkansas Code § 16-62-102(a) and (b)

54. PLAINTIFF hereby incorporates and re-alleges Paragraphs one (1) through fifty-three (53) above as and for Paragraph fifty-four (54) of Count III.

55. On November 3, 2009, CHRIST and ROBERTS, and each of them, owed LANDRIS a duty to maintain public order and to enforce at all times all such laws, ordinances and regulations for the preservation of good order and the public welfare, including the duty to follow all such laws, ordinances and regulations.

56. Disregarding those duties, CHRIST and ROBERTS, and each of them, were guilty of one more of the following acts which proximately caused LANDRIS' death:

- a) shot and killed LANDRIS without legal justification.

57. By reason of the wrongful death of LANDRIS, LANDRIS and his heirs-at-law have incurred pecuniary damages and severe mental anguish.

58. PLAINTIFF brings Count III pursuant to Ark. Code. Ann. § 16-62-102(a) and (b) which provides for damages whenever the death of a person shall be caused by a wrongful act notwithstanding the death of the person.

WHEREFORE, PLAINTIFF prays for judgment against CHRIST and ROBERTS, and each of them, in an amount which will fully and fairly compensate PLAINTIFF for damages suffered.

COUNT IV

**CHRIST and ROBERTS for SURVIVAL
Pursuant to Arkansas Code § 16-62-101(a)(1)**

59. PLAINTIFF hereby incorporates and re-alleges Paragraphs one (1) through fifty-eight (58) above as and for Paragraph fifty-nine (59) of Count IV.

60. On November 3, 2009, prior to his death, LANDRIS suffered personal injuries and great pain proximately caused by the wrongful acts and/or omissions of CHRIST and ROBERTS, and each of them, which included shooting LANDRIS multiples times.

61. By reason of the wrongful acts and/or omissions of CHRIST and ROBERTS, and each of them, LANDRIS incurred personal injuries and great pain as well as damages in the form of loss of life.

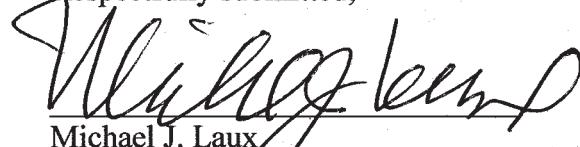
62. PLAINTIFF brings Count IV pursuant to Ark. Code. Ann. § 16-62-101(a)(1) which provides for damages for wrongs done to a person and further provides that such an action may be brought after the death of the person by his executor.

WHEREFORE, PLAINTIFF prays for judgment against CHRIST and ROBERTS, and each of them, in an amount which will fully and fairly compensate PLAINTIFF for damages suffered by LANDRIS.

WHEREFORE, Plaintiff, NIKITA HAWKINS, by and through her attorneys, Michael J. Laux and Laux Law Group, and requests judgment against the Defendants and each of them:

1. That Defendants be required to pay PLAINTIFF's compensatory damages;
2. That Defendants be required to pay actual damages;
3. That Defendants be required to pay attorney fees per 42 U.S.C. § 1988; and
4. That PLAINTIFF have any other such relief as this Honorable Court deems just and proper.

Respectfully submitted,


Michael J. Laux
E. Dist. Arkansas Bar No. 6278834
One of the Attorneys for PLAINTIFF
Laux Law Group
201 E. Ohio St., 3rd Floor
Chicago, IL 60611
Telephone: (312) 564-5657
Facsimile: (312) 376-8751
E-mail: mlaux@lauxlawgroup.com

ELECTRONICALLY FILED
2012-Nov-05 11:11:40
60PR-12-2048

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
PROBATE DIVISION

IN THE MATTER OF THE ESTATE OF
LANDRIS HAWKINS, DECEASED,

)
PROBATE NO.
60PR2012 2048
)
)

ORDER APPOINTING ESTATE ADMINISTRATOR

THIS MATTER being heard on the petition of Petitioner, NIKITA HAWKINS, to be appointed the administrator of the Estate of LANDRIS HAWKINS, due notice being formally waived and this Honorable Court being fully apprised in the premises,

IT IS HEREBY ORDERED:

1. NIKITA HAWKINS' petition to be appointed administrator of the Estate of LANDRIS HAWKINS is GRANTED.
2. Administrator, NIKITA HAWKINS, will faithfully discharge all duties associated with the administration of the Estate of LANDRIS HAWKINS, will proceed in compliance with all aspects of the Arkansas Probate Code and will follow all orders entered by this Honorable Court.

Entered this date: Nov 5, 2012


JUDGE

Nikita Hawkins
27 S. Meadowcliff Drive
Little Rock, AR 72209

EXHIBIT A

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

PATRICE SMITH

PLAINTIFF

VS.

CASE NO:

CITY OF LITTLE ROCK,
ARKANSAS, STUART
THOMAS, individually; WAYNE
BEWLEY, individually; and HAYWARD
FINKS individually

DEFENDANTS

COMPLAINT

Comes now the Plaintiff, by and through her attorney, Robert A. Newcomb, and for her complaint against the Defendants, states:

1. Jurisdiction of this Court is invoked pursuant to Arkansas Code Annotated § 16-13-201 to enforce rights granted to the Plaintiff under Article 2 of the Arkansas Constitution; the Arkansas Civil Rights Act A.C.A. §16-123-107; and the Arkansas Civil Service Act A.C.A. §14-51-301 et seq.

2. The Plaintiff is an African American female employed by the City of Little Rock, Arkansas as a Captain in the Little Rock Police Department.

3. The City of Little Rock, Arkansas is a municipal corporation organized under that laws of the State of Arkansas and is the employer of the Plaintiff as defined by A.C.A. §16-123-101 et. seq.

4. Stuart Thomas at all times material of this cause of action was the Chief of Police of the City of Little Rock, Arkansas acting under state law. Stuart Thomas is being sued in his individual capacity.

See Payment Spreadsheet included for payment information

FACTS

5. The Plaintiff was originally hired by the Little Rock Police Department July 5, 1982. She presently holds the rank of Captain with the Little Rock Police Department having held that rank since July 20, 1996.

6. The Plaintiff filed a charge of discrimination with the Equal Opportunity Commission (herein EEOC).

7. Subsequent to filing the charge of discrimination with the EEOC the Plaintiff was retaliated against by Defendant Thomas by being removed from the position of Captain over training and placed in a newly created position of Special Projects Commander, supervising a total of one other person. The Special Projects Commander has no job description with the City of Little Rock, Arkansas.

8. The Defendant has placed the Plaintiff in the position of Special Projects Commander and the only two assignments given to Plaintiff so far are the Panky Community Association Building and the 12th Street Project. The command structure of the Little Rock Police Department and the City Manager's Office have not followed even the recommendations made by the Plaintiff objecting to the City proposing to enter into a contract with the Panky Association to rent 1000 square feet at \$10.00 per square foot per month for the first five years then increases to \$10.50 for the remaining of the contract

9. Defendant Thomas and the City of Little Rock, Arkansas have excluded the Plaintiff from meetings held between manager Bruce Moore, Chief Stuart Thomas, and Chief Eric Higgins with representatives of the Panky

Community Center to marginalize and demean the Plaintiff.

10. The responsibility for the 12th Street Project is marginal at the present time because nothing is being done of a substantive basis regarding the development of the plans for the substation that will be located in the 12th street area.

11. The 12th Street Project is a meaningless assignment in that the only work remaining for the Plaintiff to do is to work with the City Attorney's Office in acquiring a few remaining parcels of property. When the Project starts construction it is the Plaintiff's understanding that it will be a project that is completely managed by whomever the City selects to be the general contractor on the Project.

12. There was recently a vacancy for two assistant chiefs in the Little Rock Police Department.

13. Defendant Thomas selected Wayne Bewley, a white male, to act as assistant Chief while the vacancies were open.

14. Defendant Stuart Thomas did not give any other Captain including the Plaintiff the opportunity to get experience acting as assistant Chief even though the vacancies existed for six (6) months.

15. Defendant Thomas did not give it to the Plaintiff even though she was the most senior Captain having been a Captain approximately twice as long as the nearest other Captain and having served as a Captain in the training division, patrol division, and detective division.

16. The appointment of Wayne Bewley as acting assistant Chief was

done without an open competitive examination so therefore was limited by the provisions of A.C.A. §14-51-301 (a) (B) to a period of no longer than sixty (60) days. Without authority Defendant Thomas allowed then Captain Bewley to gain an unfair competitive advantage for permanent appointment by serving in the position and learning the duties.

17. The examination for assistant Chief was not open competitive testing the relative fitness of the candidates and violated State Civil Service Laws by Defendant Thomas allowing Wayne Bewley to gain an unfair advantage by acting as assistant Chief for six (6) months.

18. The Arkansas Civil Service Statute requires that the exam for promotion may be on the results of written, oral, or practical examinations, length of service, efficiency ratings, and educational or vocational qualifications.

19. The testing procedure used for Civil Service requires that the testing components be subject to judicial review in providing meaningful record.

20. The City of Little Rock, Arkansas failed to comply with the provisions of the Civil Service Statute by having the candidates for promotion prepare an accomplishment/experience review that does not include an objective judicially reviewable standard for assessing and grading the accomplishments/experience review.

21. In the promotion process for assistant chief, the City of Little Rock, Arkansas did not make a judicially reviewable record of the structured

interview which counted fifty points (50) for a promotion by failing to either video or audio record the responses which were all an oral response.

22. Subsequent to the Plaintiff filing her EEOC charge with the Federal Equal Opportunity Employment Commission complaining of discrimination and not being allowed to act as assistant chief, Defendant Thomas and the City of Little Rock, Arkansas gave all other Captains a raise in pay but did not give any pay raise to the Plaintiff even though the pay raise were not being given as merit raises but just a generalized pay increase for both those who were newly promoted and those who had served for as long as nine (9) years as Captain while the Plaintiff did not receive any increase even though she is not at the top of the pay grade.

23. The Plaintiff had served as a Captain for sixteen years (16) with the Little Rock Police Department.

CAUSE OF ACTION I

24. The City of Little Rock, Arkansas violated the provisions of the Arkansas Civil Service statute by failing to have a judicially reviewable record created for the structured interview for assistant chief and by failing to have judicially reviewable record created for the accomplishment/experience review component.

25. This Court should find that the City of Little Rock violated the Civil Service Statute by failing to have judicially reviewable components and declare the promotions of Hayard Finks and Wayne Bewley null and void and direct that their promotions be voided and new examinations be conducted for the rank of

assistant police chief.

26. The City of Little Rock, Arkansas did not conduct and open competitive and fair examination process by allowing Stuart Thomas to have Wayne Bewley act as assistant police chief in violation of Civil Service Statute for a period of six months (6) also giving him an unfair competitive advantage in the testing for assistance chief. The Court should therefore declare the testing procedure for assistant chief at the Little Rock Police Department null and void and vacate the promotions of Hayward Finks and Wayne Bewley.

CAUSE OF ACTION II

27. The City of Little Rock, Arkansas and Stuart Thomas individually retaliated against the Plaintiff in violation of A.C.A. §16-123-108 for her complaint about discrimination on allowing Wayne Bewley to act as assistant chief and not giving her the opportunity because of her gender and race.

28. The City of Little Rock, Arkansas retaliated by placing the Plaintiff into a newly created make work position of Commander of Special Projects and having her supervise a total of one other individual where all the other Captains supervised a minimum of fifteen (15) officers to an excess of fifty (50) officers.

29. The Defendants' further marginalize the Plaintiff's work by disregarding her complaints that the City of Little Rock, Arkansas was going to enter into a lease with the Panky Community Group that would cost the tax payers of the City of Little Rock, Arkansas over the term of the lease approximately \$3,000,000.00 to a private organization.

RELIEF REQUESTED

30. The Plaintiff prays that this Court will find that the promotion process used for the selection of the assistant chief of the City of Little Rock, Arkansas violated the Arkansas Civil Service Act and declare the promotions of Hayward Finks and Wayne Bewley null and void and declare their positions vacant.

31. That this Court enter an injunction ordering the City of Little Rock, Arkansas to develop a testing procedure for assistant chief that provides open competitive examination testing the relative finesse of the candidates by having components of the test be subject to review by judicial action by creating a reviewable record of the grades.

32. That this Court find that allowing Wayne Bewley to act as assistant chief for period longer than sixty (60) days violated the Arkansas Civil Service Act.

33. That the City of Little Rock, Arkansas and Chief Stuart Thomas retaliated against the Plaintiff for filing complaints against racial discrimination and award her compensatory damages for emotional distress and humiliation.

34. Direct that the City of Little Rock, Arkansas return the Plaintiff to a meaningful position as a Captain within the Little Rock Police Department in one of the traditional divisions.

35. That the Court find that the actions of Chief Stuart Thomas in retaliating against the Plaintiff by placing her in a position that was basically meaningless and not even following her suggestions or complaints about the

citizens of Little Rock, Arkansas unnecessarily spending three to seven million dollars with a private organization with wonton and willful violation of the Plaintiffs' rights warranting the imposition of punitive damages against Stuart Thomas in his individual capacity.

36. That this Court award reasonable attorney's fees and litigation cost to the Plaintiff.

37. That the City of Little Rock, Arkansas be ordered to give the Plaintiff a percentage increase in pay equal to at least the minimum percentage increase given any other Captain and award her back pay from the day the pay increase was granted to the other Captains until the date of trial.

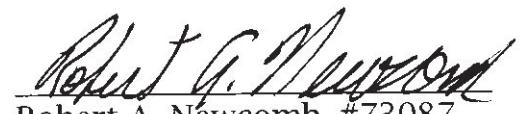
38. That the Court in ordering a retesting for the position of assistant chief limit those candidate for promotion to those who are eligible at the time of the original testing.

JURY TRIAL DEMANDED

39. The Plaintiff requests a trial by jury on all issues triable by jury.

WHEREFORE, it is respectfully prayed that this Court will grant Plaintiff the relief requested herein and all other relief to which she is entitled

Respectfully submitted:



Robert A. Newcomb, #73087

Attorney at Law

P.O. Box 149

Little Rock, AR 72203

(501) 372-5577 - Phone

(501) 372-6025 - Fax

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

2ND DIVISION

SANDRA WESSON

VS.

60CV 2012 650

FILED 02/07/12 15:35:08
Larry Creath, Plaintiff
Circuit Clerk
CRM

CW

CITY OF LITTLE ROCK, ARKANSAS and
GREG SUMMERS

DEFENDANTS

COMPLAINT

Comes now the Plaintiff, by and through her attorney, Robert A. Newcomb, and for her Complaint against the Defendants states:

1. Jurisdiction of this Court is invoked pursuant to the provision of Ark. Stat. Ann. §16-13-201.

2. Venue is proper in this Court in that the Defendants are residents of Pulaski County, Arkansas and the cause of action arose in Pulaski County, Arkansas.

3. Plaintiff is a white female citizen of the United States and a residence of Little Rock, Arkansas.

4. The Plaintiff, at all times material of this cause of action was employed as a fire fighter with the rank of captain with the Little Rock Fire Department, which is a department of the City of Little Rock.

5. The Defendant Greg Summers, at all time material of this cause of action was a resident of Little Rock, Arkansas and held the position of the Chief of the fire department. Some of the acts complained of herein by Greg Summers were done under color of state law.

6. This is an action to enforce rights granted for Plaintiff by the Arkansas Civil Rights Act.

7. This action also involves claims for abuse of process.

See Payment Spreadsheet included for payment information

60CV-12-650 601-60100037936-019
SANDRA WESSON V CITY OF LITT 6 Pages
PULASKI CO 02/07/2012 03:33 PM
CIRCUIT COURT CC05\$

8. The Defendant Greg Summers who is being sued both individually and as fire chief of the city of Little Rock at all times material of this cause of action acted under color of state law.

9. The City of Little Rock is a municipal corporation organized under the laws of the State of Arkansas with its principle place of business located in Little Rock, Arkansas.

10. The City of Little Rock for the purposes of the Arkansas Civil Rights Act is the employer of the Plaintiff.

11. The Plaintiff has been subjected by the City of Little Rock acting through Greg Summers to gender discrimination in the terms and conditions of her employment including but not limited to not being provided with separate sleeping quarters at different fire stations that she has been assigned to and may be assigned to in the future requiring her to sleep in the same dorm on occasion with male fire fighters.

12. The Court should under Rule 23 of the Arkansas Rules of Civil Procedure declare this to be a class action for injunctive relief on behalf of all female fire fighters presently employed with the City of Little Rock Fire Department and who may be employed by the City of Little Rock as fire fighters in the future.

13. The City of Little Rock has allowed Greg Summers to discipline individuals differently based upon their race and or gender including but not limited to imposing a three shift suspension on the Plaintiff for failing to respond to a carbon monoxide alarm when there was no one in danger and CenterPoint was called. The Plaintiff could not have provided any services at that alarm due to the fact that that Greg Summers either intentional or by gross neglegance had failed to provide carbon monoxide detectors to the different fire stations throughtout the City of Little Rock.

14. The Defendant, Greg Summers, required the Plaintiff to transfer stations when based upon her seniority she could have stayed at station 11 but was compelled to transfer to station 7 contrary to her wishes.

15. The Defendant, Greg Summers, has not imposed punishment and in fact has promoted Joe Gray, an African American male, who failed to respond to a fire in his district knowing that said structure was on fire neglecting to do so even after being informed by a female fire fighter that the fire was within his district. At said fire a fireman was injured who may not have been injured if Joe Gray had responded thereby endangering the safety of fellow fire fighters in clear neglect of duty and in violation of rules concerning conduct if brought to the attention of the public would cause discredit upon the Little Rock Fire Department but he was not punished while the Plaintiff was punished for similar alleged conduct that was even less serious since there was no clear requirement for her to respond.

16. The Defendant, Greg Summers, took no action against Mark Cravens, a fire fighter who without following proper procedure took his assigned fire engine out of service and placed it in the Martin Luther King parade, left his fire engine and drove his personal vehicle in the parade while on duty without notice to his Battalion chief or any other superial thereby endangering service and the citizen of the district in which he was supposed to be. Aware of Mark Cravens' behavior, the Defendant Greg Summers took no action against him.

17. Defendant, Greg Summers, imposed a punishment against Plaintiff, Sandra Wesson, in part as retaliation for her complaining about the sleeping conditions women are subjected to in Little Rock Fire Department.

18. When the Plaintiff appealed her disciplinary action to the Little Rock Civil Service Commission and filed a Freedom of Information Act request

for certain records of the Little Rock Fire Department that would show that chief Greg Summers interfered in a fire marshal matter. Greg Summers in retaliation for the Plaintiff exercising her rights to petition for a redress of grievances and her rights under the Arkansas Freedom of Information Act initiated or caused to be initiated a criminal investigation of her which was found not to have any bases for prosecution but was done for the purpose of intimidating and retaliating against the Plaintiff chilling her right to petition under the Arkansas constitution and for an improper purpose other than proper legal process constituting the tort of abusive process.

19. The City of Little Rock at a number of the fire stations females are assigned to and fire stations that the Plaintiff has been assigned to or may be assigned to in the future fails to provide separate bathing and bathroom facilities for the female fire fighters subjecting them to gender discrimination and the terms and conditions of employment.

20. This Court should award compensatory damages against the Defendant Greg Summers and the City of Little Rock for emotional distress, attorney fees and embarrassment.

21. The Plaintiff filed a Charge of Descriimination with the E.E.O.C. as charge No: 493-2011-01252.

22. This action is filed within 90 days of the charge being filed.

23. The failure to provide separate bathroom facilities amounts to disparate treatment on the basis of gender.

24. The acts of Defendant, Greg Summers, in failing to provide separate facilities violates equal protection as provided for by the Arkansas Constitution.

25. The Court should order the City of Little Rock to modify its fire stations to provide separate sleeping quarters and separate bathing quarters

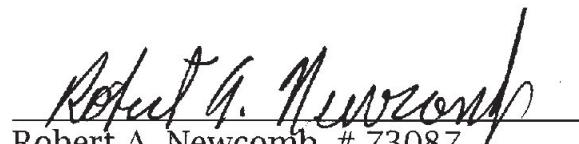
and bathroom facilities for its female fire fighters at all of the fire stations within the City of Little Rock.

25. The Court should award punitive damages against Greg Summers in his individual compacity for the violation of the rights granted to the Plaintiff under the Arkansas Constitution enforceable through the Arkansas Civil Rights Act; for retaliation against the Plaintiff for complaining about gender discrimination as a protected activity under the Arkansas Civil Rights Act and for the torte of abusive process by initiating a legal proceeding ie a police investigation of the Plaintiff.

26. The Plaintiff requests a trial by jury.

WHEREFORE, it is prayed that this Court will grant the relief sought herein, award the Plaintiff her costs and attorney's fees and such other relief to which she is entitled.

Respectfully submitted:



Robert A. Newcomb, # 73087
Attorney at Law
Post Office Box 149
Little Rock, AR 72203
(501) 372-5577

Multiple claims. If a complaint asserts multiple claims which involve different subject matter divisions of the circuit court, the cover sheet for that division which is most definitive of the nature of the case should be selected and completed.

COVER SHEET
STATE OF ARKANSAS
CIRCUIT COURT: CIVIL

To Save a copy of this form to your computer, please click the disk icon on the toolbar above.

The civil reporting form and the information contained herein shall not be admissible as evidence in any court proceeding or replace or supplement the filing and service of pleadings, orders, or other papers as required by law or Supreme Court Rule. This form is required pursuant to Administrative Order Number 8. Instructions are located on the back of the form.

County: PULASKI FILING INFORMATION District: 6 Docket Number: CV-12-650

Judge: Piazza Division: 2 Filing Date: 2-7-2012

Plaintiff: SANDRA WESSON Defendant: CITY OF LITTLE ROCK, AR AND GREG SUMMERS

Attorney Providing Information: ROBERT A. NEWCOMB P.O. BOX 149, LITTLE ROCK, AR 72203
 Plaintiff Defendant Intervenor Address

Litigant, if Pro Se: _____ Address _____

Related Case(s): Judge _____ Case Number(s) _____

Type of Case:

Torts

- (NM) Negligence: Motor Vehicle
 (NO) Negligence: Other
 (BF) Bad Faith
 (FR) Fraud
 (MP) Malpractice
 (PL) Product Liability
 (OD) Other _____

Equity

- (FC) Foreclosure
 (QT) Quiet Title
 (IJ) Injunction
 (PT) Partition
 (OT) Other _____

Miscellaneous

- (CD) Condemnation
 (RE) Replevin
 (DJ) Declaratory Judgment
 (UD) Unlawful Detainer
 (IN) Incorporation
 (EL) Election
 (FJ) Foreign Judgment
 (WT) Writs _____
 (AA) Administrative Appeal
 (CF) Property Forfeiture
 (RD) Remove Disabilities
 (NC) Name Change
 (OM) Other CIVIL RIGHTS

Jury Trial Requested: Yes No

Manner of Filing: Original Re-open Transfer
 Return from Federal/Bankruptcy Court

DISPOSITION INFORMATION

Disposition Date: _____ Bench Trial Non-Trial Jury Trial

Judgment Type:

- (DJ) Default Judgment
 (SJ) Summary Judgment
 (CJ) Consent Judgment
 (TJ) Trial Judgment
 (OJ) Other Judgment
 (PG) Petition Granted
 (PD) Petition Denied
 (DF) Decree of Foreclosure

Dismissal Type:

- (DW) Dismissed with Prejudice
 (DN) Dismissed without Prejudice

Other:

- (TR) Transferred to Another Jurisdiction
 (RB) Removed to Bankruptcy Court
 (RF) Removed to Federal Court
 (AR) Arbitration

Judgment For:

- Plaintiff Defendant Both

Judgment Amount: \$ _____

Clerk's Signature

AOC 23 10-01
625 Marshall Street
Little Rock, AR 72201

Date

Send 1 paper or electronic copy to AOC upon filing.
Send 1 paper or electronic copy to AOC upon disposition.
Keep original in court file.

ELECTRONICALLY FILED
2013-Nov-19 10:18:59
60CV-13-4496

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

TERRY HAYHURST

PLAINTIFF

vs.

CASE NO. _____

**CITY OF LITTLE ROCK
CENTRAL ARKANSAS LIBRARY SYSTEM
and
JOHN DOES 1-3**

DEFENDANT

COMPLAINT

COMES the Plaintiff, by and through counsel, and for his Complaint he states:

PARTIES AND JURISDICTION

1. Plaintiff is a resident and citizen of the State of Arkansas, who regularly uses the public facilities owned, operated or subsidized by the City of Little Rock and the Central Arkansas Library Systems. Each is a public entity, organized and existing under the laws of the State of Arkansas, who is a federal financial aid recipient as that term is defined by § 504 of the Rehabilitation Act of 1973. This is an action brought for disability discrimination under Title II of the Americans with Disabilities Act of 1990, §504 of the Rehabilitation Act of 1973, and the Arkansas Civil Rights Act of 1993. This Court has personal and subject matter jurisdiction. Since the facts arose in this County, venue is proper.

GENERAL ALLEGATIONS OF FACT

2. Plaintiff is a person with a disability, who requires the use of a service animal in order to safely walk.

3. Accordingly, Plaintiff has mobility impairment sufficient to be considered a person with a disability entitled to program access under federal and state law.

See Payment Spreadsheet included for payment information

4. Each Defendant has failed to comply with both state and federal law when it ejected Plaintiff from the Little Rock Public Library Main Branch in July 2012 and caused him to be cited for insisting on his rights under the ADA and Section 504.

5. Each Defendant continues to fail to comply with both state and federal law by continuing to ban Plaintiff from entering the Little Rock Public Library Main Branch.

6. Indeed, while Plaintiff was visiting the Little Rock Public Library Main Branch along with his service dog which is an appropriate mobility aid for Plaintiff's disability, Plaintiff was forcibly removed from the premises.

7. Plaintiff had been inside the library approximately fifteen (15) minutes near the meeting rooms in the back of the library waiting to begin participation in a meeting.

8. While waiting for a guard from the library to open the room, the guard demanded that Plaintiff provide the guard with "paperwork" for his service dog.

9. Plaintiff explained to the guard that no such paperwork existed for his service dog as no such paperwork is issued by the State of Arkansas or by the federal government.

10. Plaintiff explained this clearly to the security guard and even asked the guard to review the Americans with Disabilities Act guidelines regarding service animals by showing the guard these guidelines on Plaintiff's cell phone.

11. The security guard refused to review the guidelines on Plaintiff's phone and, instead, told Plaintiff that he would have to leave the library immediately.

12. Plaintiff refused to leave the library and instead went into the now unlocked meeting room to participate in the meeting.

13. After approximately thirty (30) minutes, the security guard returned to the meeting room with the Little Rock Police Department where two police officers attempted to handcuff Plaintiff.

14. After the officers had handcuffed Plaintiff's left hand, Plaintiff informed the police officers that he was unable to walk in handcuffs due to his disability.

15. After receiving this information regarding Plaintiff's disability, the police officers removed the handcuffs from Plaintiff's left hand and led him toward the front entrance of the library.

16. The police then placed Plaintiff in the back of a police car telling Plaintiff that Plaintiff was being charged with criminal trespass.

17. Plaintiff was then driven to the Little Rock Police Department substation on Clinton Avenue to process Plaintiff.

18. At the police substation, Plaintiff's driver's license was photocopied and Plaintiff was told that this photocopy would be given to the front desk at the library resulting in Plaintiff not being allowed to return to the library.

19. Plaintiff was provided with paperwork showing his charge for criminal trespass and told to appear in court as a result of the citation. The Charges were ultimately dismissed because Plaintiff was exercising rights granted to him under Section 504 and Title II of the ADA

20. Plaintiff continues to travel the streets and sidewalks of the City of Little Rock, as well as use, or attempt to use, facilities owned, leased, administered, or subsidized by the Defendants. But he has been barred from the library.

21. Defendants have been put on notice of its violations of state and federal laws with regard to service animals by the Plaintiff yet Defendants have failed to change its policy

regarding such service animals on its premises or to allow Plaintiff to return to the library with his service animal unimpeded.

COUNT 1

22. Plaintiff re-alleges the foregoing as if fully set out herein.
23. The City of Little Rock was under a court order to complete its transition plan in a timely manner. However, the City of Little Rock has failed to do so.
24. Indeed, each Defendant was required to continue to evaluate its services and programs in order to assure compliance with the Americans with Disabilities Act of 1990, and § 504 of the Rehabilitation Act of 1973.
25. However, the City of Little Rock has intentionally failed to comply with these obligations.
26. Indeed, despite knowing that it was under an obligation not to create access barriers to persons with disabilities, under not only state and federal law, but this court's order, entered in *Coates v. City of Little Rock*, the city of Little Rock has nonetheless erected access barriers within its facilities.
27. As a direct and proximate cause of the Defendant's acts and omissions alleged herein, Plaintiff has been incurred fees, emotional distress, and continues to encounter access barriers.

COUNT 1I

28. Plaintiff re-alleges the foregoing as if fully set out herein.
29. By virtue of the facts alleged herein, Plaintiff was falsely imprisoned by Little Rock officers and subjected to malicious prosecution.

30. Plaintiff had a clearly established right to be free from unreasonable searches and seizures under the 4th Amendment and the Arkansas Constitution.

31. Defendants, acting in concert, violated these rights, so Plaintiff brings suit to redress these violations, as allowed by 42 USC 1983 and the Arkansas Civil Rights Act of 1993.

32. Defendants failed to train their employees, leading to these violations. In fact, Defendants actions were ratified by their respective policymakers.

33. As a direct and proximate cause of the Defendant's acts and omissions alleged herein, Plaintiff has been incurred fees, emotional distress, and continues to encounter access barriers.

WHEREFORE, Plaintiff prays for appropriate compensatory damages, for reasonable attorney's fees, for costs, for an injunction requiring the Defendant to comply with this court's previous order entered in *Coates v. City of Little Rock*, for an order requiring the Defendant to timely and appropriately complete its transition plan, for an order requiring the Defendant to remove access barriers within its facility such as, but not limited to, the libraries, and all other proper relief to which she may be entitled.

Respectfully submitted,

Harrill & Sutter, P.L.L.C.
Attorneys at Law
Post Office Box 2012
Benton, AR 72018-2012
(501) 315-1910

By:

Luther Oneal Sutter, Ark. Bar No. 95031

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

OCT 17 2011

TROY ELLISON, as Personal Representative
of the Estate of Eugene Ellison, deceased,

JAMES W. McCORMACK, CLERK
By: S Davis
DEP' CLERK

Plaintiff,

v.

DONNA LESHER, TABITHA MCCRILLIS, individually
and in their official capacities, STUART THOMAS,
individually and in his official capacity, THE CITY OF
LITTLE ROCK, a municipality, and BIG COUNTRY
CHATEAU APARTMENTS, d/b/a, BIG COUNTRY
CHATEAU, LLC, a corporation,

Defendants.

Case No. 4:11 cv 752 Bsm

* JURY TRIAL DEMANDED

This case assigned to District Judge Miller
and to Magistrate Judge Deere

COMPLAINT

COMES NOW, Plaintiff, Troy Ellison, Personal Representative of the Estate of Eugene Ellison, deceased, by and through his attorneys, Michael J. Laux and Balkin & Eisbrouch, LLC, and for his cause of action, states as follows:

JURISDICTION and VENUE

1. This action arises under the United States Constitution, particularly under the Fourth and Fourteenth Amendments, and under federal law, particularly the Civil Rights Act of 1871 (42 U.S.C. §1983), and the laws of the State of Arkansas. This Honorable Court has jurisdiction by virtue of 28 U.S.C. §§ 1331 and 1337.

2. Venue is founded in this Court upon 28 U.S.C. § 1391 as the acts of which Plaintiff complains arose in this District.

PARTIES

3. At all relevant times, Eugene Ellison ("Ellison") was a citizen of the United States of America and was, therefore, entitled to all legal and constitutional rights afforded citizens of

See Payment Spreadsheet included for payment information

the United States of America. On December 9, 2010, and at all relevant times, Ellison resided at the Big Country Chateau Apartments, located at 6200 Colonel Glenn, Unit #213, Little Rock, Arkansas.

4. Troy Ellison (“Plaintiff”) and Spencer Ellison, the two surviving biological children of Ellison, are citizens of the United States of America and, therefore, entitled to all legal and constitutional rights afforded citizens of the United States of America. Plaintiff is the court-appointed Personal Representative of the Estate of Eugene Ellison. See October 4, 2011 Order attached as Exhibit A. Plaintiff brings this action on behalf of the estate and on behalf of Ellison’s heirs.

5. At all relevant times, including December 9, 2010, Donna Lesher (“Lesher”), was employed by the City of Little Rock as a police officer and acted under the color of state law. Prior to December 9, 2010, Lesher was fully trained in police work, including, but not limited to, the Fourth Amendment of the United States Constitution and the appropriate use of force.

6. At all relevant times, including December 9, 2010, Tabitha McCrillis (“McCrillis”), was employed by the City of Little Rock as a police officer and acted under the color of state law. Prior to December 9, 2010, McCrillis was fully trained in police work, including, but not limited to, the Fourth Amendment of the United States Constitution and the appropriate use of force.

7. At all relevant times, and prior to December 9, 2010, Little Rock Police Chief of Police, Stuart Thomas, (“Thomas”), was employed by the City of Little Rock as police chief of the Little Rock Police Department (“LRPD”) and acted under the color of state law. At all relevant times, Thomas had the ultimate responsibility within the LRPD for the protection of life, preservation of law and order, investigation of all crimes and the enforcement of state laws and

city ordinances. At all relevant times, and prior to December 9, 2010, Thomas had final policy-making authority in terms of creating, adopting and/or implementing police policies within the LRPD whether formal or informal.

8. At all relevant times, the City of Little Rock (“City”) was a municipality organized and existing under the laws of the State of Arkansas. At all relevant times, the City was located in the County of Pulaski, State of Arkansas, and was the employer of the individually-named defendants. At all relevant times, the City is and was empowered, funded and directed to pay any §1983 civil rights judgment for compensatory damages, actual damages, punitive damages and attorney fees for which any City employee acting under color of state law is found liable. Accordingly, the City is an indemnification party for those liable in the acts of which Plaintiff complains.

9. At all relevant times, the City was a municipality which participated in the Municipal Legal Defense Program. The acts of which Plaintiff complains constitute a civil rights lawsuit against the City and the other City-employed defendants. Accordingly, the Municipal Legal Defense Program is a primary or secondary indemnification party regarding the acts of City and the other City-employed defendants of which Plaintiff complains.

10. At all relevant times, Big Country Chateau, LLC (“BCC”), was a corporation doing business as Big Country Chateau Apartments (“the complex”), located at 6200 Colonel Glenn, Little Rock, Arkansas. On December 9, 2010 and for months prior thereto, BCC employed off-duty LRPD officers, including Lesher and McCrillis, to provide security services on the physical premises of the complex. BCC compensated these LRPD officers, including Lesher and McCrillis, monetarily for their security services. At all relevant times, Lesher and McCrillis, and each of them, were acting within the scope of their employment with BCC.

FACTUAL ALLEGATIONS

11. On December 9, 2010, Lesher and McCrillis were working off-duty as security guards at the complex with each wearing LRPD-issued police clothing. On said date, at approximately 8:30 pm, Lesher and McCrillis noticed a partially opened door at Unit #213 on the second floor and decided to check the unit.

12. When Lesher and McCrillis reached Unit #213, they saw Ellison seated on his couch, leaning on his walking cane. They asked Ellison if he was okay, to which he responded affirmatively. They again asked Ellison if he was okay, to which he again responded affirmatively with a request that Lesher and McCrillis leave him alone and leave his premises. Lesher and/or McCrillis further engaged Ellison with questions.

13. McCrillis then entered Ellison's home.

14. After McCrillis entered Ellison's home, Ellison got up from his couch and approached the front door.

15. Lesher then entered Ellison's home.

16. At the time McCrillis and Lesher entered Ellison's home, they had not secured a warrant to allow for entry into Ellison's home.

17. At the time McCrillis and Lesher entered Ellison's home, they did not believe that their entry was necessary to prevent physical harm to themselves or others.

18. At the time McCrillis and Lesher entered Ellison's home, they did not believe that such entry was necessary to prevent the destruction of relevant evidence or the escape of a suspect. At the time McCrillis and Lesher entered Ellison's home, they did not believe that such entry was necessary to prevent the frustration of any legitimate law enforcement effort.

19. McCrillis initiated physical contact with Ellison by shoving him.

20. After McCrillis shoved Ellison, a physical struggle ensued between Ellison, McCrillis and Lesher inside Ellison's home. During the struggle, Ellison was subjected to repeated blows by the hands of both McCrillis and Lesher, as well as those delivered with their LRPD-issued ASP batons.

21. During the struggle, McCrillis left Unit #213 and requested back-up over radio dispatch.

22. LRPD officers Vincent Lucio (hereafter "Lucio") and Brad Boyce (hereafter "Boyce") heard the dispatch and drove to the complex to assist.

23. When they reached the unit, they saw McCrillis standing outside the doorway, directly in front of an open door. McCrillis' LRPD-issued ASP baton was lying on the ground next to her and was not on her person.

24. Lucio looked in the unit and saw Lesher crouched in a corner. Lucio reached inside and pulled Lesher out of the unit.

25. At that time, after Lucio pulled Lesher from the unit, Lesher, McCrillis, Lucio and Boyce were all outside the unit. At that time, only Ellison was inside the unit.

26. Ellison then went further into his unit to retrieve his cane.

27. Both Lesher and McCrillis, and each of them, were aware that Ellison was going to retrieve his cane.

28. Using her LRPD-issued firearm, Lesher shot twice into the unit, striking Ellison twice in the chest while Ellison was still in his unit. At the time Lesher discharged her firearm, she was outside Ellison's unit.

29. Ellison died as a result of the gunshots fired by Lesher.

30. Neither Lucio nor Boyce witnessed any physical contact between Ellison and Lesher or Ellison and McCrillis.

COUNT I
**AGAINST MCCRILLIS FOR WARRANTLESS, NON-EXIGENT SEARCH AND
SEIZURE IN VIOLATION OF FOURTH AMENDMENT**

31. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through thirty (30) as though fully alleged in Count I.

32. McCrillis did not believe that her entry into Ellison's home was necessary to prevent physical harm to herself or others, the destruction of relevant evidence, the escape of a suspect or the frustration of any legitimate law enforcement effort.

33. McCrillis' conduct proximately caused a deprivation of the rights, privileges and immunities secured to Ellison by the Fourth and Fourteenth Amendments to the United States Constitution and laws enacted thereunder. With this conduct, McCrillis showed a reckless or callous indifference to Ellison's federally-protected rights.

34. The search and seizure of Ellison committed by McCrillis when she entered Ellison's home was unnecessary, unreasonable and excessive. Therefore, McCrillis is liable in damages to Plaintiff pursuant to 42 U.S.C. § 1983, including punitive damages.

COUNT II
**AGAINST LESHER FOR WARRANTLESS, NON-EXIGENT SEARCH AND SEIZURE
IN VIOLATION OF FOURTH AMENDMENT**

35. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through thirty-four (34) as though fully alleged in Count II.

36. Lesher did not believe that her entry into Ellison's home was necessary to prevent physical harm to herself or others, the destruction of relevant evidence, the escape of a suspect or the frustration of any legitimate law enforcement effort.

37. Lesher's conduct proximately caused a deprivation of the rights, privileges and immunities secured to Ellison by the Fourth and Fourteenth Amendments to the United States Constitution and laws enacted thereunder. With this conduct, Lesher showed a reckless or callous indifference to Ellison's federally-protected rights.

38. The search and seizure of Ellison committed by Lesher when she entered Ellison's home was unnecessary, unreasonable and excessive. Therefore, Lesher is liable in damages to Plaintiff pursuant to 42 U.S.C. § 1983, including punitive damages.

COUNT III
AGAINST MCCRILLIS FOR EXCESSIVE FORCE
IN VIOLATION OF FOURTH AMENDMENT

39. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through thirty-eight (38) as though fully alleged in Count III.

40. The force used by McCrillis was excessive, unnecessary and objectively unreasonable, and proximately caused Ellison's personal injuries, great pain and death.

41. McCrillis' conduct proximately caused a deprivation of the rights, privileges and immunities secured to Ellison, Plaintiff and Spencer Ellison by the Fourth and Fourteenth Amendments to the United States Constitution and laws enacted thereunder. With this conduct, McCrillis showed a reckless or callous indifference to the federally-protected rights of Ellison, Plaintiff and Spencer Ellison.

42. The violence committed by McCrillis and inflicted upon Ellison was in violation of his Fourth Amendment Rights. Therefore, McCrillis is liable to Plaintiff in damages pursuant to 42 U.S.C. § 1983, including loss of life, conscious pain and suffering and punitive damages.

COUNT VI
**AGAINST LESHER FOR EXCESSIVE FORCE
IN VIOLATION OF FOURTH AMENDMENT**

43. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through forty-two (42) as though fully alleged in Count VI.

44. The force used by Lesher was excessive, unnecessary and objectively unreasonable, and proximately caused Ellison's personal injuries, great pain and death.

45. Lesher's conduct proximately caused a deprivation of the rights, privileges and immunities secured to Ellison, Plaintiff and Spencer Ellison by the Fourth and Fourteenth Amendments to the United States Constitution and laws enacted thereunder. With this conduct, Lesher showed a reckless or callous indifference to the federally-protected rights of Ellison, Plaintiff and Spencer Ellison.

46. The violence committed by Lesher and inflicted upon Ellison was in violation of his Fourth Amendment Rights. Therefore, Lesher is liable to Plaintiff in damages pursuant to 42 U.S.C. § 1983, including loss of life, conscious pain and suffering and punitive damages.

COUNT V
**AGAINST CHIEF THOMAS FOR PERMITTING AND MAINTAINING
A WIDESPREAD CUSTOM OF PERMITTING EXCESSIVE FORCE AND
WARRANTLESS ENTRIES (*MONELL*)**

47. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through forty-six (46) as though fully alleged in Count V.

48. At all relevant times, including a period of years prior to December 9, 2010, Thomas knowingly, and/or with reckless or callous indifference to the Constitutional rights of the citizens of Little Rock, permitted and/or maintained a widespread custom and practice of permitting warrantless entries and acts of excessive force by LRPD officers by covering up allegations of police excessive force and/or performing meaningless internal investigations

intended to exonerate officers against whom such allegations are charged. This pattern of police misconduct was so pervasive as to constitute a “custom or usage” with the force of law.

49. The customs and practices described above, were the moving force behind the violations of Ellison’s constitutional rights committed by Lesher and/or McCrillis and proximately caused Ellison’s personal injuries, great pain and death.

50. Based upon the principles set forth in *Monell v. New York City Department of Social Services*, Thomas is liable for any harm done to Plaintiff as set forth above.

51. As a result of the customs and practices described above, Ellison was subjected to excessive force and caused to die and, as a result, Thomas is liable to Plaintiff in damages under 42 U.S.C. § 1983, including loss of life, conscious pain and suffering and punitive damages.

COUNT VI

**AGAINST THE CITY OF LITTLE ROCK FOR PERMITTING AND MAINTAINING
A WIDESPREAD CUSTOM OF EXCESSIVE FORCE AND WARRANTLESS ENTRIES
(MONELL)**

52. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through fifty-one (51) as though fully alleged in Count VI.

53. At all relevant times, including a period of years prior to December 9, 2010, the City knowingly, and/or with reckless or callous indifference to the Constitutional rights of the citizens of Little Rock, permitted and/or maintained a widespread custom and practice of permitting warrantless entries and acts of excessive force by LRPD officers by covering up allegations of police excessive force and/or performing meaningless internal investigations intended to exonerate officers against whom such allegations are charged. This pattern of police misconduct was so pervasive as to constitute a “custom or usage” with the force of law.

54. The customs and practices described above, were the moving force behind the violations of Ellison's constitutional rights committed by Lesher and/or McCrillis and proximately caused Ellison's great injury, pain and death.

55. Based upon the principles set forth in *Monell v. New York City Department of Social Services*, the City is liable for any harm done to Plaintiff as set forth above.

56. As a result of the customs and practices described above, Ellison was subjected to excessive force and caused to die and, as a result, Thomas is liable to Plaintiff in damages under 42 U.S.C. § 1983, including loss of life and conscious pain and suffering.

COUNT VII
AGAINST LESHER and MCCRILLIS FOR WRONGFUL DEATH
PURSUANT TO ARKANSAS CODE § 16-62-102(a) and (b)

57. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through fifty-six (56) as though fully alleged in Count VII.

58. On December 9, 2010, Lesher and McCrillis, and each of them, owed Ellison the duty to exercise reasonable care in the performance of their security duties at the complex so as not to cause injury to Ellison.

59. Disregarding that duty, Lesher and McCrillis, and each of them, were guilty of the following acts which proximately caused Ellison's death:

- a) entered Ellison's home without legal justification;
- b) shot and killed Ellison without legal justification to do so.

60. By reason of the wrongful death of Ellison, Plaintiff and Spencer Ellison have incurred pecuniary damages and severe mental anguish.

61. Plaintiff brings Count VII pursuant to Ark. Code. Ann. § 16-62-102(a) and (b) which provides for damages whenever the death of a person shall be caused by a wrongful act notwithstanding the death of the person.

62. WHEREFORE, Plaintiff prays for judgment against Lesher and McCrillis in an amount which will fully and fairly compensate Plaintiff for damages suffered.

COUNT VIII
AGAINST MCCRILLIS and LESHER FOR SURVIVAL
PURSUANT TO ARKANSAS CODE § 16-62-101(a)(1)

63. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through sixty-two (62) as though fully alleged in Count VIII.

64. On December 9, 2010, prior to his death, Ellison suffered personal injuries and great pain proximately caused by Lesher and McCrillis' wrongful acts which included repeated blows to Ellison's body with their hands and LRPD-issued ASP batons and the firing of Lesher's LRPD-issued firearm at Ellison.

65. Plaintiff brings Count VIII pursuant to Ark. Code. Ann. § 16-62-101(a)(1) which provides for damages for wrongs done to a person and further provides that such an action may be brought after the death of the person by his executor.

66. By reason of the wrongful acts of Lesher and McCrillis, and each of them, Ellison incurred personal injuries and great pain as well as damages in the form of loss of life.

67. WHEREFORE, Plaintiff prays for judgment against Lesher and McCrillis in an amount which will fully and fairly compensate Plaintiff for damages suffered.

COUNT IX

**AGAINST BCC by and through LESHER and MCCRILLIS FOR WRONGFUL DEATH
PURSUANT TO ARKANSAS CODE § 16-62-102(a) and (b) (*Respondeat Superior*)**

68. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through sixty-seven (67) as though fully alleged in Count IX.

69. At all relevant times, including December 9, 2010, both Lesher and McCrillis, and each of them, were agents, servants and/or employees of BCC.

70. On December 9, 2010, BCC by and through its agents, servants and/or employees, including Lesher and McCrillis, owed Ellison the duty to exercise reasonable care in the performance of their security duties at the complex so as not to cause injury to Ellison.

71. Disregarding that duty, BCC by and through its agents, servants and/or employees, including Lesher and McCrillis, were guilty of the following acts which proximately caused Ellison's death:

- a) entered Ellison's home without legal justification;
- b) shot and killed Ellison without legal justification to do so.

72. By reason of the wrongful death of Ellison, Plaintiff and Spencer Ellison have incurred pecuniary damages and severe mental anguish.

73. Plaintiff brings Count IX pursuant to Ark. Code. Ann. § 16-62-102(a) and (b) which provides for damages whenever the death of a person shall be caused by a wrongful act notwithstanding the death of the person.

74. WHEREFORE, Plaintiff prays for judgment against BCC in an amount which will fully and fairly compensate Plaintiff for damages suffered.

COUNT X
AGAINST BCC FOR WRONGFUL DEATH PURSUANT TO ARKANSAS CODE
§ 16-62-102(a) and (b)

75. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through seventy-four (74) as though fully alleged in Count X.

76. On December 9, 2010, BCC owed Ellison a duty to exercise reasonable care in the training, monitoring and/or supervision of its security guard employees, including Lesher and McCrillis.

77. Disregarding that duty, BCC was guilty of the following acts which proximately caused Ellison's death:

- a) failed to require their security guard employees to familiarize themselves with the residents of the complex;
- b) failed to provide a means of communication between security guard employees and the BCC office regarding residents of the complex and/or emergencies affecting residents;
- c) failed to provide its security guard employees with a roster of residents of the complex; and
- d) failed to provide a means of resident verification and/or identification.

78. By reason of the wrongful death of Ellison, Plaintiff and Spencer Ellison have incurred pecuniary damages and severe mental anguish.

79. Plaintiff brings Count X pursuant to Ark. Code. Ann. § 16-62-102(a) and (b) which provides for damages whenever the death of a person shall be caused by a wrongful act notwithstanding the death of the person.

80. WHEREFORE, Plaintiff prays for judgment against BCC in an amount which will fully and fairly compensate Plaintiff for damages suffered.

COUNT XI

AGAINST BCC FOR SURVIVAL PURSUANT TO ARKANSAS CODE § 16-62-101(a)(1)

81. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through eighty (80) as though fully alleged in Count XI.

82. On December 9, 2010, prior to his death, Ellison suffered personal injuries and great pain. proximately caused by BCC's wrongful acts which included the failure to train, monitor and supervise its security guard employees, including Lesher and McCrillis.

83. Plaintiff brings Count XI pursuant to Ark. Code. Ann. § 16-62-101(a)(1) which provides for damages for wrongs done to a person and further provides that such an action may be brought after the death of the person by his executor.

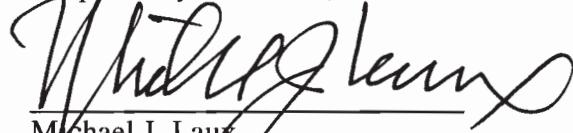
84. By reason of the wrongful acts of BCC, Ellison incurred personal injuries and great pain as well as damages in the form of loss of life.

85. WHEREFORE, Plaintiff prays for judgment against BCC in an amount which will fully and fairly compensate Plaintiff for damages suffered.

WHEREFORE, Plaintiff, Troy Ellison, by and through his attorneys, Michael J. Laux and Balkin & Eisbrouch, LLC, requests judgment against the defendants and each of them:

1. That defendants be required to pay Plaintiff's compensatory damages, including but not limited to loss of life and mental anguish;
2. That defendants be required to pay actual damages;
3. That Lesher, McCrillis and Thomas be required to pay punitive damages;
4. That Lesher, McCrillis, Thomas and the City be required to pay reasonable attorney fees per 42 U.S.C. § 1988; and
5. That Plaintiff receives any other such relief as this Honorable Court deems just and proper.

Respectfully submitted,



Michael J. Laux

E. Dist. Arkansas Bar No. 6278834

One of the Attorneys for Plaintiff

Balkin & Eisbrouch, LLC

Of Counsel

201 E. Ohio St., 3rd Floor

Chicago, Illinois 60611

Telephone: (312) 564-5657

E-mail: mlaux@lauxlawgroup.com

17TH DIVISION

COPY

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
PROBATE DIVISION

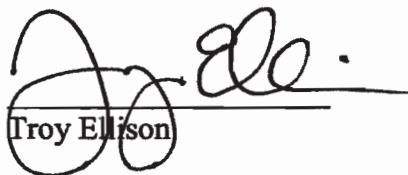
IN THE MATTER OF THE ESTATE OF
EUGENE ELLISON, DECEASED,

)
) PROBATE NO.
) 60PR2011 1750
)

ACCEPTANCE OF APPOINTMENT AS PERSONAL REPRESENTATIVE

The undersigned, Troy Ellison, having been appointed administrator of the estate of Eugene Ellison, deceased, accepts the appointment.

Date: September 28, 2011.


Troy Ellison

FILED 10/07/11 10:55:31 JS
Larry Crane Pulaski Circuit Clerk
CR02

Exhibit A

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

WILLIAM HEATH WILHITE and
AMY WILHITE

PLAINTIFFS

VS. NO.

CITY OF LITTLE ROCK and
SERGEANT RUSTY ROTHWELL
(Individually and his official capacity
as a Sergeant assigned to the Internal Affairs
Division of the Little Rock Police Department)

DEFENDANTS

COMPLAINT

Comes now the Plaintiffs, by and through their attorney, Robert A. Newcomb,
and for their Complaint states:

JURISDICTION AND VENUE

1. Court has jurisdiction of the parties and the subject matter pursuant to
A.C.A. §16-13-201 and 42 U.S.C. Section 1983 to enforce rights granted to the Plaintiffs
under Article II Section 15 of the Constitution of the State of Arkansas and the Fourth
Amendment Rights to the Constitution of the United States.

2. Venue is proper in this Court in that the Plaintiffs reside in Pulaski
County, Arkansas. The acts complained of occurred in Pulaski County, Arkansas and
the City of Little Rock is a municipality located in the City of Little Rock.

3. This action is authorized by the Civil Rights Act of 1963 A.C.A. §16-123-
105 and 42 U.S.C. Section 1983.

PARTIES

4. The Plaintiff, William Heath Wilhite, at all times material of this cause of action was employed as a Police Officer with the City of Little Rock.

5. The Plaintiff, Amy Wilhite, at all-time material of this cause of action was the spouse of Plaintiff.

6. The Defendant, Rusty Rothwell, at all times material of this cause of action acted under color of State law is a Sergeant with the City of Little Rock Police Department assigned to the Internal Affairs Division. Defendant Rothwell is being sued in his individual capacity and in his official capacity.

7. The Defendant, City of Little Rock, is a municipal corporation and is being sued for acts done pursuant to policies of the Little Rock Police Department that is reasonably believed was approved by the Little Rock City Board of Directors and or the Little Rock City Manager.

FACTS

8. On or about February 24, 2014 the Plaintiff, William Wilhite was being questioned by Defendant, Rusty Rothwell as part of an investigation being conducted by the Internal Affairs Division.

9. On or about February 24, 2014 Defendant, Rothwell asked Plaintiff, Wilhite to consent to Defendant, Rothwell downloading the contents of the Plaintiff's smartphone.

10. When the Plaintiff refused to consent to the search of his smart phone by Defendant Rothwell which right was clearly established that a general search of his smart phone was unreasonable and a search of the complete contents was unreasonable in its breath. Defendant Rothwell ordered the Plaintiff to give his smart phone to Defendant Rothwell.

11. Defendant Rothwell was conscience and indifferent to the Constitutional rights of the Plaintiff to be free from unreasonable searches or seizures by both the Fourteenth Amendment to the Constitution of the United States and Section 15 of Article II of the Arkansas Constitution used his authority as a Sergeant with the Little Rock Police Department to order the phone given to him. The Plaintiff knew that the refusal to obey the order could be considered insubordination and subjects him to termination or a length in suspension without pay.

12. The contents of the Plaintiff's smart phone contained communications with his wife that he and his wife had an expectation of privacy in, correspondence with his attorney that he had an expectation of privacy and in a legal privilege from being seized, and numerous other communications and information that were subject to protection under the Constitution of the State of Arkansas and the United States Constitution.

13. The general order of the Little Rock Police Department specifically G.O. 211 V.G. provides at the discretion of the Chief of Police, and order to further aid the

investigation "at the Department's expense", the employee may be ordered by the Internal Affairs Investigators to, *Inter alii*; produce specific documents reasonably related to an investigation "i.e. text messages, phone logs, etc.

14. The actions of Defendant Rothwell were not narrowly tailored in asking of a downloading of the entire contents of the cell phone.

15. The City of Little Rock did not properly supervise and train Defendant Rothwell to only narrowly seize information from a cell phone that was only specifically related to a proper investigation.

16. The United States Supreme Court in *Rylee v. California* 134 S.Ct. 2473 (2014) relying of precedent clearly stated that a search warrant was needed for searches of cell phone data and that an interest in preventing destruction of evidence did not justify dispensing with the warrant requirement for searched of cell phone data.

17. The Plaintiff Amy Wilhite had an expectation of privacy and her communications with her husband. The actions of the City of Little Rock and Defendant Rothwell were in complete disregard of the constitutional rights of the Plaintiff and were done by Defendant Rothwell with malice when he refused the phone voluntarily he used his position and authority as an investigator with the City of Little Rock and as a sergeant holding a supervisory position to order the release of the phone.

18. The City of Little Rock has no procedure for an officer to challenge the legality of a seizure until after he or she is disciplined which may include loss of employment.

RELIEF REQUESTED

19. The Court should enter an Order requiring the City of Little Rock to destroy all information it obtained from the smart phone of the Plaintiff and to destroy any computer hard drives that the information was stored on.

20. The Court should award attorney's fees and damages to the Plaintiffs for violation of their Fourth Amendment rights and emotion distress they suffered by having their privacy evaded and said compensatory damages to be awarded jointly and separately against the Defendants.

21. The actions of Defendant Rothwell were malicious and with intent to deliver and disregard the constitution and rights of the Plaintiffs warranting the imposition of punitive damages against him individually.

22. The Court should enter an injunction prohibiting the City of Little Rock from having any of its servants or employees order individuals or compelling individuals to release information from their cell phone or smart phone under penalty of being disciplined for refusing to do so.

23. The Court should order the City of Little Rock to train its employees to inform employees that they do not have to consent to a search of their cell phones.

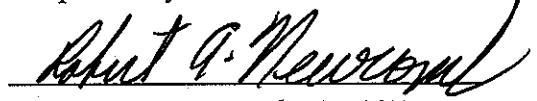
24. That the Court orders that any search of the content of a employee's cell phone be authorized by the Chief of Police in writing.
25. The Court should award reasonable attorney's fees and Court cost.

JURY TRIAL DEMANDED

26. The Plaintiffs request a trial by jury.

WHEREFORE it is prayed the Court will grant the Plaintiffs the relief they have requested herein.

Respectfully submitted



Robert A. Newcomb, #73087
Attorney at Law
P.O. Box 149
Little Rock, AR 72203
(501) 372-5577 - Phone
(501) 372-6025 – Fax