

3. in proper personam - Christian-Andre: Clark- Claimant

4. (a) in proper personam - Steven Johnson, Mathew Murphy, Mike Dent, Phil Campbell, Dimple Malhotra, Jesse Ibarra, Kimberly Legge - Defendant's

(b) in rem- The State of Texas, Travis County, Austin Texas, Austin Police Department, Travis County Sheriff's Department, County Court At Law Number 4, Travis County Correctional Complex, Travis County Central Booking, Cause No. C-1-CR-15-214701, Cause No. C-1-CR-16-500571- Defendant's

(c) The plaintiff is a domiciled on Travis County, Texas. The defendant is a resident of Travis County, Texas, where service of process may be had on Steven Johnson at 2006 East 4th street Austin, Texas 78702.

(d) The defendant is a resident of Travis County, Texas, where service of process may be had on Mathew Murphy at 2006 East 4th street Austin, Texas 78702,

(e) The plaintiff is a domiciled on Travis County, Texas. The defendant is a resident of Travis County, Texas, where service of process may be had on Mike Dent at 509 West 11th street, Austin, Texas 78701,

(f) The defendant is a resident of Travis County, Texas, where service of process may be had on Phil Campbell at 509 West 11th street, Austin, Texas 78701,

(g) The defendant is a resident of Travis County, Texas, where service of process may be had on Dimple Malhotra at 509 West 11th street Austin, Texas 78701,

(h) The defendant is a resident of Travis County, Texas, where service of process may be had on Jesse Ibarra at 509 West 11th street, Austin, Texas 78701,

(i) The defendant is a resident of Travis County, Texas, where service of process may be had on Kimberly Legge at 411 west 11th street Austin, Texas 78701,

(i) The defendant is in rem in Travis County, Texas, where service of process may be found after discovery,

D. JURISDICTION

5. Claimant believes Jurisdiction is proper because defendants committed torts, which is the subject of this suit, in whole or in part in Texas. The court has jurisdiction over all claims against all units of government under the laws of the land. Claimant believes waiver of sovereign and governmental immunity is proper due to bodily injury to claimant.

E. VENUE

6. Claimant believes venue is proper because this is a suit for an injunction against the execution of an undue process and this is the county where the process was rendered.

F. FACTS

7. (a) On the 29th of September 2015, at the location of 11305 Friendship drive Austin, Texas, Travis County. Steven Johnson and Mathew Murphy employees of the Austin Police Department held Christian-Andre Clark against his will and against the laws of this land, causing harm and emotional duress. (b) Murphy then unlawfully arrested Christian in his domicile without process or probable cause. (c) Johnson and Murphy then transported Christian to Travis County Central Booking location: 509 West 11th street, Austin, Texas. (d) Johnson and Murphy then transferred Christian to the Travis County Sheriff's jailers custody where (e) Christian was subjected to assaults, offensive touching, cruel and tortuous conditions to include forced nudity, forced fingerprinting, forced photography, and freezing temperatures. (f) Christian was then transported on the 1st of October 2015 to Travis County Correctional Complex location: 3614 Bill Price road, Del Valle, Texas where the assaults, offensive touching, cruel and tortuous conditions to include forced nudity continued. (g) On the 3rd of October 2015, Christian's family hired Charles Pooper for three hundred dollar (\$300.00) to secure his bond and Christian was then released from physical custody but has remained in constructive custody. (h) Christian was instructed to go to Travis County Court #4 (CC #4) on the 9th of October 2015. Christian believed he had been emasculated and a sense of outrage set in as his confidence in justice had diminished. (i) Christian met with acting judge Mike Dent for the first time on the 9th of October 2015. Christian unaware at the time on how to assert his rights, allegedly consented to the personal and subject matter jurisdiction of the "States" alleged claim without significant protest despite evidence of the gross due course violations. Dent and Christian agreed that Christian would seek competent counsel and return on the 30th of October 2015. Christian searched for competent counsel but was unable to find someone who was willing to file a counter claim against the "State". (j) Christian returned back to CC#4 on the 30th of October 2015 where Dent instructed Christian that he would appoint Phil Campbell as "shadow counsel" for his defense because Dent claimed Christian's motion to Dismiss was not severed in accordance to the rules of the court. Christian had never heard of a "Shadow Counsel" and the assistance of Campbell counsel was ineffective at best. Campbell's

refused to discuss the harm inflicted upon Christian was a telling sign for whom his loyalty belonged. (k) Christian was then instructed to return on the 2nd of December 2015. Christian returned to CC #4 on the 2nd of December 2015 and was introduced to Dimple Malhotra claiming to work for the "State" but refused to show any identification. Dent instructed Malhotra and Christian to select a date in which to come back for a hearing on Christian's motion to dismiss. (l) The date was selected and Christian returned on the 20th of January 2016 to CC #4 where Dent instructed Malhotra and Christian that a motion to suppress was the business of the day. Malhotra called two witnesses Johnson and Murphy and submitted evidence upon the instructions of Dent. (m) Malhotra informed the court that the complaining witness had called Malhotra and the witness did not recall the events in question. The conclusion of this meeting where Dent claiming probable cause and the jurisdictional bar had been met, despite the lack of a claimant. Christian was then instructed to return on the 11th of February 2016 to CC #4, (n) Christian hand wrote a correspondence to the clerk asking for the name and address of the plaintiff, to which no response was given. (o) Christian was then rescheduled for the 4th of March 2016. Christian hand wrote a notice of wavier to the presumed benefits he had been given without his creators consent. Campbell then instructed Christian that he was to return on the 28th day of June 2016 for a trial. (p) Christian returned with Jeanene Williams, Terri Wormely and Dana Randle on the 28th day of June 2016 where Christian was told after two hours that he had an active warrant and the trial had been canceled. Campbell informed Christian that Dent wanted him to come back on the 29th to resolve the warrant issue. (q) Christian, Terri and Dana returned on the 29th where Christian was informed that he would be arrested and tagged with a global position device (G.P.S.) if he did not accept Campbell services. Christian attempted to present an affidavit of non-prosecution from the complaining witness to which Dent said he would not be accepting evidence. (r) Christian then asked, wished, and demanded to see the warrant for his inspection. Christian was denied the right to inspect the document and was promptly falsely arrested by Jesse Ibarra. (s) Christian was then transported to Travis County Central Booking location: 509 West 11th street, Austin, Texas. Ibarra then transferred Christian to the Travis County Sheriffs jails where Christian was subjected to assaults, offensive touching, cruel and tortuous conditions to include forced nudity, forced fingerprinting, forced photography, and freezing temperatures. (t) Christian was subsequently released after the alleged complaining witness paid fifteen hundred dollars (\$1,500) to Bulldog Bail and one hundred and sixty four dollars (\$164.00) to Victim Safety First. (u) Christian was ordered by Dent or Malhotra to wear a G.P.S. device upon his person. Christian was also given two (2) orders 1) Christian was to have no contact with the alleged complaining witness, 2) report to Kimberly Legge of Pretrial Services location 411 west 11th street Austin, Texas and return to CC# 4 on the 6th of July 2016. (v) On the 1st of July Christian reported to Legge and was given further restriction on his liberty.

8. Claimant believes and has reason to believe he has been subjected without process to trespass, duress, nonconsensual intercourse, abuse of process, false imprisonment, harm to Claimant's person, assault to Claimant's person, corruption of blood upon Claimant's person, debt to Claimant's person, negligent infliction of emotional distress and ignoble conditions to Claimant's person. Claimant believes the

actions of the Defendants are not in accordance with the law of the land and as a result feels anguish, grief, humiliation, wounded pride, damaged self-confidence, diminished self-esteem, and loss of faith in our system of jurisprudence.

G. COUNT 1 – ABUSE OF PROCESS

Paragraphs 7 through 8 are incorporated by reference as though fully stated herein.

9. Claimant is alleged to be a party to proceedings styled: THE STATE OF TEXAS VS. CHRISTIAN CLARK CAUSE NO. C-1-CR-15-214701 COUNTY COURT AT LAW NO. 4 and THE STATE OF TEXAS VS. CHRISTIAN CLARK CAUSE NO. C-1-CR-16-500571 COUNTY COURT AT LAW NO. 4.

10. In these proceedings, defendants held Claimant to answer without an indictment from a grand jury, arrested without warrant and on view of a breach of the peace.

11. The arrest warrant was not presented for inspection to claimant thus rendering the warrant invalid, irregular, and improperly issued.

12. Defendant made improper use of process after issuance by forcing the claimant to render services absent claimant's consent or understanding.

13. Defendant's perverted use of the arrest warrant was based on defendant's ulterior motive or purpose and not on the process's legitimate purpose.

14. As a result of the defendant's perverted use of the arrest warrant, claimant's property was wrongfully seized. Claimant's person was actually interfered with from the 29th of September 2015 until present.

15. The unlawful seizure of claimant's property; person, name and likeness resulted in,

- a) Claimant's person being assaulted, unlawfully detained, tagged and taxed.
- b) Defamation to reputation and character of the claimant through the publishing of the name and likeness showing the claimant in a negative light without due process.
- c) Negligent infliction of emotional distress caused by defendant's malicious and or fraudulent behavior.

16. The unlawful interference to Claimant's substantive rights resulted in

(a) Claimant's belief that defendant's actions constitute a corruption of blood.

(b) Claimant lost earnings in his vocation while imprisoned and or rendering service to the defendants at a rate of one hundred and fifty dollars (\$150.00) a day

(c) Claimant has been assaulted, imprisoned, kidnapped, tagged and taxed by defendants.

(d) Defendant's negligent infliction of emotional distress caused by the defendant's reckless.

17. Defendant's wrongful acts caused injury to claimant, which resulted inflection of intangible elements of pain to the claimant's person and lost earnings in his vocation. Claimant seeks damages in the amount reasonable to the jury's discretion.

18. Claimant seeks damages within the general jurisdictional limits of this Court.

19. Exemplary damages: Defendants actions were beyond the scope of his or her assigned duties and thus lacks the care a civilized community wishes to enjoy from their servants.

Injuries:

(a) The results of defendant's actions of incompetency that reached the level of fraud and or malice.

(b) The defendant's inflection of intangible elements of pain to the claimant by way of assault, false imprisonment, and the deprivation of substantive due process rights causing a loss of liberty, anguish, grief, humiliation, wounded pride, damaged self-confidence, diminished self-esteem, loss of faith in friends, colleagues, and loss earnings.

**H. COUNT 2 - WRONGFUL
ATTACHMENT/ INJUNCTION/ SEQUESTRATION**

Paragraphs 7 through 8 are incorporated by reference as though fully stated herein.

20. In addition to other counts, defendants wrongfully attached, enjoined and sequestered claimant's property by way of a foreign process.

21. Claimant was compelled under duress to sign four (4) unilateral unconscionable contracts.

(1) On the 5th of October 2015 Claimant was presented a contract from defendant while under duress and imprisoned at Travis County Correctional Complex location: 3614 Bill Price road, Del Valle, Texas.

(a) Claimant autographed the unconscionable document styled SURTY BOND. see attachment:

(b) Claimant believed rescinding his consent and autograph by notice to the County Court At Law No. 4 was a good faith effort to correct the record of his mistake and intent. see attachment:

(c) Claimant seeks damages in the amount of three hundred dollars (\$300.00)

(2) On 29th of June 2016 the claimant was presented two contracts from the defendants while under duress and imprisoned at Travis County Central Booking location: 509 west 11th street, Austin, Texas.

(a) Claimant autographed the unconscionable documents styled SURETY BOND, Travis County Pretrial Services and Proactive GPS Monitoring. see attachment:

(b) Claimant believed that an assertion of non-assumpsit formed a general denial in any future action of assumpsit.

(c) Claimant's monies were not used to supply bail or pay the monitoring service down payment but claimant believes that he is entitled to damages.

(3) On 1st of July 2016 at 411 West 13th street Austin, Texas, Claimant while a G.P.S. device was upon his person claimant was presented a contract in connection with the G.P.S. device, from the defendants while under duress and imprisoned.

(a) Claimant autographed the unconscionable document styled, TRAVIS COUNTY PRETRIAL SERVICES RULES AND AGREEMENT. See attachment:

(b) Claimant believed that an assertion of non-assumpsit formed a general denial in any future action of assumpsit.

22. Defendants attached claimant's personal property without consent to foreign processes.

(A) Property description:

(1) Real estate with unalienable rights secured and protected by the laws of the state.

(2) One man with a dark hue and of the age of thirty-eight who's calling is Christian-Andre: Clark.

(3) Mark and likeness of Christian-Andre: Clark.

(B) Defendants enjoined claimant to the perverted proceedings styled: THE STATE OF TEXAS VS. CHRISTIAN CLARK CAUSE NO. C-1-CR-15-214701 COUNTY COURT AT LAW NO. 4; THE STATE OF TEXAS VS. CHRISTIAN CLARK CAUSE NO. C-1-CR-16-500571 COUNTY COURT AT LAW NO. 4; VICTIM SAFETY FIRST; TRAVIS COUNTY PRETRIAL SERVICES; two SURETY BONDS (i) CHARLES POPPER LAW OFFICE (ii) ALLEGHENY CASUALTY INTERNATIONAL FIDELITY BULLDOG BAIL BONDS JESSICA ZAK

(1) Claimant believes he was enjoined under an illegal process in violation of the due process clause of the law of the land.

(2) Claimant believes the global position device attached to his person is cruel and unusual punishment and repugnant to the laws of the land.

(3) Defendant sequestered claimant's person by way of unlawful attainder and false imprisonment.

(4) Claimant believes and has reason to believe that the Defendant's actions from 29th of September 2015 until present have been without due course of law.

23. Defendant's wrongful acts caused injury to claimant, which resulted in the following injuries: assault, false imprisonment, offensive touching, infliction of intangible elements of pain to the claimant's person and lost earnings in his vocation. Claimant seeks damages in the amount reasonable to the jury's discretion.

24. Claimant seeks damages within the general jurisdictional limits of this Court.

COUNT 3 – INTRUSION ON SECLUSION

Paragraphs 7 through 8 are incorporated by reference as though fully stated herein.

25. In addition to other counts, defendant intruded on claimant's seclusion.

26. Claimant was in his domicile when defendants held and falsely imprisoned claimant.

27. Defendants by way of G.P.S. device have rendered claimants seclusion null and void.

28. Defendant's wrongful acts caused injury to claimant, which resulted inflection of intangible elements of pain to the claimant's person and lost earnings in his vocation. Claimant seeks damages in the amount reasonable to the jury's discretion.

29. Claimant seeks damages within the general jurisdictional limits of this Court.

30. Exemplary damages. Claimant's injuries resulted from defendant's malice and or actual fraud, which entitles claimant to exemplary damages. As a result of defendant's inflection of intangible elements of pain to the claimant by way of assault, false imprisonment, and the deprecation of substantive rights causing anguish, grief, humiliation, wounded pride, damaged self-confidence, diminished self-esteem, loss of faith in friends and colleagues, claimant seeks damages reasonable to the jury's discretion.

J. COUNT 4 – FALSE IMPRISONMENT

Paragraphs 7 through 8 are incorporated by reference as though fully stated herein.

31. Defendants willfully detained claimant in his domicile on the 29th of September 2015 and transported claimant to Travis County Central Booking location: 509 west eleventh street, Austin, Texas and to the Travis County Correctional Complex location: 3614 Bill Price road, Del Valle, Texas.

32. Claimant did not consent to the detention or transportation of claimant's person/property/body.

33. Defendants had no legal authority or justification to detain claimant because claimant had not committed a breach of the peace within the view of the defendants and defendants failed to secure process through lawful means.

34. Defendant's wrongful acts caused injury to claimant, which resulted in the following injuries: assault, false imprisonment, offensive touching, inflection of intangible elements of pain to the claimant's person and lost earnings in his vocation.

35. Defendant's wrongful acts caused injury to claimant, which resulted inflection of intangible elements of pain to the claimant's person and lost earnings in his vocation. Claimant seeks damages in the amount reasonable to the jury's discretion.

36. Claimant seeks damages within the general jurisdictional limits of this Court.

K. COUNT 5 – FALSE IMPRISONMENT

Paragraphs 7 through 8 are incorporated by reference as though fully stated herein.

37. Defendants willfully detained claimant on the 29th of June 2016 at the Blackwell-Thurman Criminal Justice Center location: 509 west 11th street, Austin, Texas. and transported claimant to the Travis County Central Booking location: 509 west 11th street, Austin, Texas.

38. Claimant did not consent to the detention or transportation by defendants.

39. Defendants had no legal authority or justification to detain claimant because claimant had not committed a breach of the peace within the view of the defendants or witnesses and defendants failed to secure process through lawful means.

40. Defendant's wrongful acts caused injury to claimant, which resulted in the following injuries: assault, false imprisonment, offensive touching, infliction of intangible elements of pain to the claimant's person and lost earnings in his vocation.

41. Defendant's wrongful acts caused injury to claimant, which resulted in the infliction of intangible elements of pain to the claimant's person and lost earnings in his vocation. Claimant seeks damages in the amount reasonable to the jury's discretion.

42. Claimant seeks damages within the general jurisdictional limits of this Court.

L. COUNT 6 – INFLECTION OF BODILY INJURY

Paragraphs 7 through 8 are incorporated by reference as though fully stated herein.

43. Defendant first made physical contact with claimant's person at the location of 11305 Friendship drive Austin, Texas, on the 29th of September 2015 and continued until the 4th of October 2015 ending at Travis County Correctional Complex Location: 3614 Bill Price road, Del Valle, Texas.

(a) Defendant recklessly placed claimant in a wheelchair causing physical pain and discomfort to claimant's body.

(b) Defendant recklessly used metal restraints on claimant's wrist and legs causing physical pain and discomfort to claimant's legs and wrist.

(c) Defendant recklessly caused claimant's bodily injury to his wrist, legs and shoulders.

44. Defendant recklessly made physical contact with claimant's person on the 29th of June 2016 at the Blackwell-Torman Criminal Justice Center location: 509 west 11th street, Austin, Texas.

(a) Defendant recklessly used metal restraints on claimant's wrist causing physical pain and discomfort to claimant's wrists and shoulders.

(b) Defendant recklessly caused claimant's bodily injury to his wrists and shoulders.

45. Defendant's reckless actions resulted in the following injuries, assault, false imprisonment, offensive touching, lost earnings in his vocation and infliction of intangible elements of pain to the claimant's person.

46. Defendant's wrongful acts caused injury to claimant, which resulted inflection of intangible elements of pain to the claimant's person and lost earnings in his vocation. Claimant seeks damages in the amount reasonable to the jury's discretion.

47. Claimant seeks damages within the general jurisdictional limits of this Court.

48. Exemplary damages. Claimant's injuries resulted from defendant's malice and or actual fraud, which entitles claimant to exemplary damages. As a result of defendant's inflection of intangible elements of pain to the claimant by way of assault, false imprisonment, and the deprecation of substantive rights causing anguish, grief, humiliation, wounded pride, damaged self-confidence, diminished self-esteem, loss of faith in friends and colleagues, claimant seeks damages.

H. COUNT 7 – OFFENSIVE PHYSICAL CONTACT

Paragraphs 7 through 8 are incorporated by reference as though fully stated herein.

49. In addition to other counts, defendant made offensive physical contact with claimant's person.

50. Defendant recklessly used metal restraints on claimant's wrist and legs causing physical pain and discomfort to claimant's legs and wrist.

51. Defendant recklessly placed claimant in a wheelchair causing physical pain and discomfort to claimant's body.

52. Defendant placed a G.P.S device on claimant's person/property/body.

53. Defendant's reckless actions resulted in the following injuries, assault, false imprisonment, offensive touching, lost earnings in claimants vocation and inflection of intangible elements of pain to the claimant's person/property/body.

54. Defendant's wrongful acts caused injury to claimant, which resulted inflection of intangible elements of pain to the claimant's person and lost earnings in his vocation. Claimant seeks damages in the amount reasonable to the jury's discretion.

55. Claimant seeks damages within the general jurisdictional limits of this Court.

I. COUNT 8 – THREAT OF BODILY INJURY

Paragraphs 7 through 8 are incorporated by reference as though fully stated herein.

56. In addition to other counts, defendant threatened claimant with imminent bodily injury.

57. Defendant recklessly stated that he would not arrest the claimant if he would agree to allow his colleague to represent him.

58. Defendant recklessly stated that plaintiff would be charged with a crime if he removed the GPS device without a court order from County court # 4 .

59. Defendant's reckless actions resulted in the following injuries, assault, false imprisonment, offensive touching, lost earnings in his vocation and infliction of intangible elements of pain to the claimant's person.

60. Claimant seeks damages within the jurisdictional limits of this Court.

J. COUNT 9 – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Paragraphs 7 through 8 are incorporated by reference as though fully stated herein.

61. In the addition to all other counts, defendant recklessly caused claimant emotional distress.

62. Defendant's reckless disregard for life, liberty, process and the pursuit of happiness is in direct opposition to the beliefs of the claimant and the law of the land.

63. Defendant's acts of extreme and outrageous conduct started from the 29th of September 2015 until present.

64. Claimant spent four day (4) without shoes, clothes or a mat in a cell at very cold temperatures.

65. Defendant's created a condition of despair at Travis County Correctional Complex location: 509 west 11th street, Austin, Texas and at the Travis County Correctional Complex location: 3614 Bill Price road, Del Valle, Texas.

66. Claimant 's hair began falling out due to the stress and paranoia, which resulted in the claimant cutting all of his hair off.

67. Claimant's has reason to believe his offspring are having adverse affect due to the reckless actions and or inaction of the defendants.

68. Claimant seeks damages within the jurisdictional limits of this Court.

K. JURY DEMAND

69. Claimant demands a jury trial and tenders the appropriate fee with this petition.

L. REQUEST FOR DISCLOSURE

70. Indistinguishable from Texas Rule of Civil Procedure 194, claimant requests that defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

M. OBJECTION TO ASSOCIATE JUDGE

71. Claimant objects to the referral of this case to an associate judge for hearing a trial on the merits or presiding at a jury trial.

N. PRAYER

72. In the addition to claimant asks that the Court issue citation for defendant to appear, answer and remove G.P.S. device, and that claimant be awarded a judgment against defendant for the following:

- a. Actual damages.
- b. Exemplary damages.
- c. Prejudgment and postjudgment interest.
- d. Order Defendant to pay Claimant attorney fees and costs of court
- e. All other relief to which claimant is entitled.

Respectfully submitted,

Christian-Andre: Clark
General location:
7007 Greenock street
Austin, Texas
(cell) 512-817-7502
ChristianClark31@gmail.com

Unofficial copy Travis Co. District Clerk Velda L. Price

CAUSE NO: D-1-GN-16-002854

CHRISTIAN-ANDRE CLARK, Plaintiff,	§	IN THE DISTRICT COURT
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
STEVEN JOHNSON, MATTHEW MURPHY ET AL., Defendants.	§	
	§	
	§	201 st JUDICIAL DISTRICT

**DEFENDANT CITY OF AUSTIN’S ORIGINAL ANSWER, AFFIRMATIVE DEFENSES,
SPECIAL EXCEPTIONS, AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants Steven Johnson, Matthew Murphy and the Austin Police Department¹ (collectively City Defendants), file the Original Answer, Affirmative Defenses, Special Exceptions, and Request for Disclosures as follows:

I. General Denial

1. Pursuant to Texas Rule of Civil Procedure 92, City Defendants, deny generally the allegations in Plaintiff’s Original Petition (and any amendments or supplements thereto), and request that Plaintiff prove his claims and allegations as required by law.

II. Affirmative Defenses

City Defendants assert the following affirmative and other defenses:

2. **Official Immunity:** Defendants Steven Johnson and Matthew Murphy as employees of the Austin Police Department—a Department within the City of Austin, which is a home-rule municipality and political subdivision of the State of Texas² enjoy governmental

¹ The Austin Police Department is not a separate legal entity subject to suit. *See Darby v. Pasadena Police Dep’t.* 939 F.2d 311, 313-14 (5th Cir. 1991).

immunity both from suit and from liability, unless the Texas Legislature has provided a limited waiver of governmental immunity under the Texas Tort Claims Act. Defendants Johnson and hereby affirmatively plead and assert their defense of official immunity and their claim to and defenses under the Texas Tort Claims Act. Tex. Civ. Prac. & Rem. Code Ann. § 101.001 et seq.

3. City Defendants specifically assert that at all times relevant to this incident, they were acting in the course and scope of their employment with the City of Austin, and with a good faith belief that their actions were proper under the Constitution and the laws of the State of Texas.

4. City Defendants assert that they had legal authority, privilege and justification to arrest Plaintiff based upon a valid warrant issued by a court of competent jurisdiction.

5. **Notice:** Plaintiff has failed to provide the required notice under the Texas Tort Claims Act and the City Charter. Failure to provide timely notice of claim bars Plaintiff's cause of action.

6. **Intentional Torts:** Plaintiff's claims are barred under TCPRC § 101.057 to the extent the allegations suggest an intentional tort.

7. The City Defendants further assert that the Plaintiff's damages, if any, were solely caused or proximately caused by Plaintiff's own acts or omissions.

8. The City Defendants further assert that the Plaintiff has failed to mitigate damages, if any, and assert this failure to mitigate as both an affirmative defense and a reduction in the damage amount, if any.

9. In addition to the foregoing defenses, the City Defendants hereby reserve the right to add inferential rebuttals, amend or withdraw defenses, supplement allegations pertaining to

² City of Austin has not been named nor served with process under this case.

defenses already asserted upon completion of discovery and/or through leave of the Court.

III. Special Exceptions

10. The City Defendants specially except to Plaintiff's Original Petition in its entirety for the following reasons and respectfully requests this Honorable Court to order Plaintiff to replead and cure his pleading defects so that the City has fair notice of all claims. The City Defendants request that Plaintiff replead within thirty (30) days or that his pleadings be stricken.

11. The City Defendants specially except to Plaintiff's Original Petition for Plaintiff's failure to comply with Rule 47 of the Texas Rules of Civil Procedure, amended as of March 1, 2013. Accordingly, the City request that discovery is stayed until Plaintiff has amended his pleadings as required by the Texas Rules of Civil Procedure.

12. The City Defendants specially except to Plaintiff's Original Petition in its entirety for the reason that Plaintiff failed to plead all elements of a waiver of sovereign under the Texas Tort Claims Act.

IV. Request for Disclosure

13. Pursuant to Texas Rule of Civil Procedure 194, Defendant, City of Austin, requests that Plaintiff disclose, within 30 days of the service of this request, the information or material described in Rule 194.2.

V. Prayer

Defendants pray that Plaintiff take nothing by his suit. Defendants further request any and all other relief that it shows it is justly entitled.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF, LITIGATION DIVISION

/s/ Meghan L. Riley
MEGHAN L. RILEY
Assistant City Attorney
State Bar No. 24049373
City of Austin-Law Department
P. O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-2458
Facsimile: (512) 974-1311
meghan.riley@austintexas.gov

ATTORNEYS FOR CITY DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties, or their attorneys of record, in compliance with the Texas Rules of Civil Procedure, on this the 19th day of August, 2016, as follows:

Via CM RRR 91 7199 9991 7036 2378 1096, first class mail and email to:

Christian-Andre Clark
7007 Greenock Street
Austin, Texas 78749
Christianclark31@gmail.com

PRO SE

Via e-File to:

David A. Escamilla
Andrew M. Williams
Patrick M. Kelly
P.O. Box 1748
Austin, Texas 78767

ATTORNEYS FOR TRAVIS COUNTY DEFENDANTS

/s/ Meghan L Riley
MEGHAN L. RILEY
Assistant City Attorney

CAUSE NO. D-1-GN-16-002854

CHRISTIAN-ANDRE CLARK, Claimant,)	IN THE DISTRICT COURT
V.)	TRAVIS COUNTY, TEXAS
STEVEN JOHNSON, ET AL., Defendant(s).)	201ST JUDICIAL DISTRICT

DEFENDANT'S ORIGINAL ANSWER
JURY DEMAND AND REQUEST FOR DISCLOSURE

COMES NOW, Phil Campbell, Defendant, and files his Original Answer, Jury Demand and Request for Disclosure to Plaintiff's Original Petition.

GENERAL DENIAL

Defendant asserts a general denial as authorized by Rule 92 of the Texas Rules of Civil Procedure and respectfully requests that Plaintiff be required to prove the charges and allegations against Defendant by a preponderance of the evidence as required by the Constitution and laws of the State of Texas.

AFFIRMATIVE DEFENSES

Comparative Responsibility: Defendant asserts that Plaintiff's amount of recovery, if any, is affirmatively barred and/or limited by theories of comparative responsibility and/or contribution and/or failure to mitigate damages.

Proportionate Responsibility and Contribution: Defendant asserts that Plaintiff's own acts or omissions caused or contributed to Plaintiff's alleged injury.

JURY DEMAND

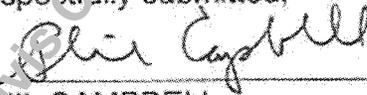
Defendant asserts his right to a trial by jury, under Texas constitution article 1, section 15, and makes this demand for a jury trial at least 30 days before the date this case is set for trial, in accordance with Texas rule of Civil Procedure 216.

REQUEST FOR DISCLOSURE

Pursuant to Rule 194 of the Texas rules of Civil Procedure, Defendant asks that the Plaintiff disclose the information and materials described in Rule 194.2.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff take nothing by reason of his suit and that Defendant recover his expenses, with all costs of court and any other and further relief to which they may show themselves justly entitled.

Respectfully submitted,



PHIL CAMPBELL

100 E. Whitestone Blvd., #148-272

Cedar Park, TX 78613

Fax: (512) 267-7999

(512) 825-3365

Bar No. 03702700

philcamp60@yahoo.com

CERTIFICATE OF SERVICE

I certify by my signature above that a true and correct copy of the foregoing was served in accordance with the Texas Rules of civil Procedure by electronic filing, electronic service and/or electronic mail on August 6, 2016, as follows:

Via Electronic Filing

Velva L. Price

Travis County District Clerk

1000 Guadalupe Street

Austin, Texas 78701

Via Electronic Service and
Electronic Mail ChristianClark21@gmail.com
Christian-Andre Clarkk
7007 Greenock Street
Austin, Texas 78749

Unofficial copy Travis Co. District Clerk Veva L. Price

CAUSE NO: D-1-GN-16-002854

CHRISTIAN-ANDRE CLARK, Plaintiff,	§	IN THE DISTRICT COURT
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
STEVEN JOHNSON, MATTHEW MURPHY ET AL., Defendants.	§	
	§	
	§	201 st JUDICIAL DISTRICT

DEFENDANTS STEVEN JOHNSON, MATTHEW MURPHY, AND AUSTIN POLICE DEPARTMENT’S MOTION TO DISMISS FOR LACK OF JURISDICTION

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants Steven Johnson, Matthew Murphy and the Austin Police Department¹ (collectively City Defendants)², file this Motion to Dismiss for Lack of Jurisdiction and would show as follows:

I.

FACTUAL BACKGROUND

On Tuesday, September 29, 2015 around 10:30PM, Austin Police Department Officers Steven Johnson and Matthew Murphy (the “Officers”) responded to a disturbance call located at 11305 Friendship Drive. Upon arrival, Officer Johnson could hear a male yelling from inside the house. Officer Johnson knocked on the door and announced that he was with the Austin Police Department. Christian-Andre Clark (“Plaintiff”) came to the door and stepped outside to talk with Officer Murphy. Officer Johnson then walked inside and made contact with Ebony Davis

¹ The Austin Police Department is not a separate legal entity subject to suit. *See Darby v. Pasadena Police Dep’t.* 939 F.2d 311, 313-14 (5th Cir. 1991).

² Note: The City of Austin has not been named nor served with process under this case.

(“Complainant”). Complainant stated that she and Plaintiff got into an argument and he punched her in the face with a closed right handed fist. At that point, the Plaintiff was detained until the Officers could further their investigation.

After further discussion with the Complainant the Officers had probable cause to believe that Plaintiff had committed a family violence assault against the Complainant. It was also believed that 3 minor children were present for the assault. Plaintiff was then searched incidental to the arrest and transported to the Travis County Jail where he was booked in for assault with injury - family violence Class A Misdemeanor.

II.

ARGUMENTS AND AUTHORITIES

A. Official Immunity – Police Officers Steven Johnson and Matthew Murphy

A plea to the jurisdiction challenges the trial court’s authority to determine the subject matter of the action. *Tex. Dep’t of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999). Whether the trial court has jurisdiction is a question of law. *Texas Nat. Res. Conserv. Com’n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002). The plaintiff has the burden of alleging facts that affirmatively establish the trial court’s jurisdiction. *Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 466 (Tex. 1993). The plaintiff must plead each element of each claim to establish jurisdiction. *Mission Consol. Independent School Dist. v. Garcia*, 372 S.W.3d 629, 637 (2012).

Official immunity “is an affirmative defense that protects a governmental employee from personal liability and, in doing so, preserves a governmental employer's sovereign immunity from suit for vicarious liability.” *Texas Dep’t of Pub. Safety v. Bonilla*, 481 S.W.3d 640, 642 (Tex. 2015). Specifically, “[a] governmental employee is entitled to official immunity: (1) for the performance of discretionary duties; (2) within the scope of the employee's authority; (3)

provided the employee acts in good faith. *Univ. of Houston v. Clark*, 38 S.W.3d 578, 580 (Tex. 2000).

Functions that are ministerial in nature are not protected by official immunity. *Kersey v. Wilson*, 69 S.W.3d 794, 798 (Tex. App.- Fort Worth, 2002). The distinction between ministerial and discretionary acts is that, “where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment, the act is ministerial.” *Id.* However, “where the act to be done involves the exercise of discretion of judgment in determining whether the duty exists, it is not to be deemed ministerial.” *Id.* Courts have determined that “[a]n officer’s decision regarding ‘if, how, and when to arrest a person’ is discretionary.” *Id.* at 799.

Additionally, Texas Penal Code Chapter 22 defines what constitutes the offense of assault and makes such an offense punishable as a Class A misdemeanor. Furthermore, a peace officer is permitted to arrest a person without a warrant provided they have probable cause to believe that an assault has occurred. Tex. Code of Crim. Pro. Art. 14.03. To make the determination that probable cause exists that a person has committed an offense, such as assault, requires personal deliberation and judgment. *Kersey*, at 799. The subsequent arrest is thus considered a discretionary act. *Id.* Additionally, courts have recognized official immunity in cases “involving allegations of intentional torts such as assault arising from police activity.” *Id.* And the Texas Tort Claims Act does not waive immunity for intentional torts. See TCPRC § 101.057.

Here, the Officers have official immunity for their actions in regards to the arrest of Plaintiff. Moreover, the Plaintiff has failed to articulate any waiver of official immunity. The Officers determined, based upon their investigation, that probable cause existed to believe that

Plaintiff had committed the offense of a Class A misdemeanor assault against Complainant. The act of arresting Plaintiff was a discretionary decision based on that judgment. And under the Texas Code of Criminal Procedure the arrest was within the scope of their authority as Police Officers for the City of Austin Police Department. Moreover, the Officers acted in good faith belief that the Plaintiff committed a criminal act based upon the credible allegations of the Complainant. Additionally, their acts were not ministerial because the law did not require the Officers to determine that an assault had occurred, nor did the law require them to arrest the Plaintiff (Note: the Code of Criminal Procedure states that an officer *may* arrest a suspect), instead they used their discretion and judgment in determining that they had a duty to arrest Plaintiff. In fact, the officers were required to make at least two discretionary decisions in effecting the arrest of Plaintiff according to the Code of Criminal Procedure: 1) that probable cause existed to believe that the assault had occurred; and 2) that probable cause existed to believe there was a danger of further bodily injury to the victim. See Tex. Code of Crim. Pro. Art. 14.03.

Finally, any alleged intentional tort against Plaintiff is also barred by immunity. Again, the courts have recognized that official immunity exists for intentional torts, and any assault that allegedly occurred during the Officers' arrest occurred under the exact same circumstance that already cloak their actions in official immunity. And the Texas Tort Claims Act explicitly provides that immunity is not waived under the Act for intentional torts.

In conclusion, the court should find that it does not have jurisdiction over the allegations against Officers Steven Johnson and Matthew Murphy because their actions are protected by official immunity. Therefore, the court should dismiss all causes of action against the Officers in their entirety with prejudice to the re-filing of same.

B. Lack of Jural Entity - Austin Police Department

The court does not have jurisdiction with regard to the allegations against the Austin Police Department because the Austin Police Department is not a legal entity subject to suit. See *Darby v. Pasadena Police Dep't.*, 939 F.2d 311, 313-14 (5th Cir. 1991). The City alone has the authority to designate whether one of its own departments is subject to suit as a separate legal entity. *Id.* For a plaintiff to sue a city department, it must enjoy the status of a separate legal existence. *Id.* And “unless the true political entity has taken explicit steps to grant the servient agency with jural authority, the agency cannot engage in any litigation except in concert with the government itself.” *Id.* Without such authority and existence, the plaintiff merely “seeks recovery from a legal entity that does not exist for his purposes.” *Id.* If no jural entity exists, the suit is subject to dismissal.

Here, the City has not designated the Austin Police Department to be a separate legal entity, and absent such designation it cannot be sued.

Therefore, the court does not have jurisdiction with regard to the allegations against the Austin Police Department, because it is not a legal entity, and the court must dismiss all causes of action against the Austin Police Department with prejudice to the re-filing of same.

III.

PRAYER

THEREFORE, Defendants pray that their Motion to Dismiss for Lack of Jurisdiction be set, and after a hearing, if necessary, that their Motion be granted, that the Plaintiff's causes of action be dismissed in their entirety with prejudice to the re-filing of same, that Plaintiff take nothing by this suit, all costs of court be assessed against each party, and that they be granted any additional relief to which they are entitled to under law or equity.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF, LITIGATION DIVISION

/s/ Brandon W. Carr
BRANDON W. CARR
Assistant City Attorney
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ATTORNEYS FOR CITY DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties, or their attorneys of record, in compliance with the Texas Rules of Civil Procedure, on this 16th day of September, 2016, as follows:

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(512) 854-4808 (Fax)

ATTORNEYS FOR TRAVIS COUNTY DEFENDANTS

/s/ Brandon W. Carr
BRANDON W. CARR

JAN 24 2017

CAUSE NO. D-1-GN-16-002854

At 12:23 P.M.
Velva L. Price, District Clerk

CLARK

v.

JOHNSON, *et al.*

§
§
§
§
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201ST JUDICIAL DISTRICT

ORDER GRANTING CHAPTER 13 MOTION TO DISMISS

The Court has considered Judge Mike Denton, Pretrial Officer III Kimberly Legge and Assistant County Attorney Dimple Malhotra's Chapter 13 Motion to Dismiss. After considering the pleadings, evidence and arguments of plaintiff and counsel for Travis County Attorney, the Court finds that the Chapter 13 Motion to Dismiss is meritorious and should be GRANTED. Therefore, it is ORDERED, ADJUDGED AND DECREED that Judge Mike Denton, Pretrial Officer III Kimberly Legge and Assistant County Attorney Dimple Malhotra's Chapter 13 Motion to Dismiss is in all things GRANTED and that all of plaintiff's claims against Judge Mike Denton, Pretrial Officer III Kimberly Legge and Assistant County Attorney Dimple Malhotra are hereby DISMISSED WITH PREJUDICE.

Signed this 24th day of January, 2017.


The Honorable Scott H. Jenkins

JAN 24 2017

At 12:23 P M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-16-002854

CLARK	§	IN THE DISTRICT COURT OF
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
JOHNSON, <i>et al.</i>	§	201 st JUDICIAL DISTRICT

**ORDER ON JOHNSON, MURPHY AND APD'S
MOTION TO DISMISS FOR LACK OF JURISDICTION**

The Court considered *Defendants Steven Johnson, Matthew Murphy, and Austin Police Department's Motion to Dismiss for Lack of Jurisdiction* (hereinafter the "Motion"). After considering the pleadings, the applicable law, the arguments of counsel and plaintiff, and the evidence on file, the Court is of the opinion that the Motion should be GRANTED IN PART and DENIED IN PART.

Since the Austin Police Department (APD) is not a legal entity subject to suit, the Court hereby GRANTS APD's motion to dismiss. Plaintiff's claims against APD are DISMISSED WITH PREJUDICE, with costs to be assessed against the party incurring the same. If necessary, plaintiff may amend his petition to name the City of Austin as a defendant.¹

Defendants Johnson and Murphy have pled the affirmative defense of official immunity. Official immunity must be proved by the party asserting it and is more properly the subject of a motion for summary judgment. As such, the Court DENIES Johnson and Murphy's motion to dismiss at this time. This denial is WITHOUT PREJUDICE to Johnson and Murphy reasserting their jurisdictional arguments at a future summary

¹ Plaintiff named "Austin Texas" as a defendant. An answer purporting to be on behalf of Johnson, Murphy and APD and entitled "Defendant City of Austin's Original Answer" was filed on August 19, 2016. This answer contained a request for disclosure by "Defendant, City of Austin."

judgment hearing.

Signed this 24~~th~~ day of January, 2017.


The Honorable Scott H. Jenkins

CAUSE NO. D-1-GN-16-002854

CHRISTIAN-ANDRE CLARK, Plaintiff,	§	IN THE DISTRICT COURT
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
STEVEN JOHNSON, MATTHEW MURPHY ET AL., Defendants.	§	
	§	
	§	201 st JUDICIAL DISTRICT

DEFENDANTS STEVEN JOHNSON’S AND MATTHEW MURPHY’S TRADITIONAL MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants Steven Johnson and Matthew Murphy¹ (“City Defendants”)², file this Traditional Motion for Summary Judgment and would show as follows:

I.

FACTUAL BACKGROUND

On Tuesday, September 29, 2015 around 10:30PM, Austin Police Department Officers Steven Johnson and Matthew Murphy (the “Officers”) responded to a disturbance call located at 11305 Friendship Drive. See Exhibit R, pg. 8, attached. Upon arrival, Officer Johnson could hear a male yelling from inside the house. *Id.* Officer Johnson knocked on the door and announced that he was with the Austin Police Department. *Id.* Christian-Andre Clark

¹ The Austin Police Department was dismissed as a Defendant in the Court’s Order issued on January 24, 2017. In that Order, Judge Jenkins, in denying the PTJ as to Defendants Johnson and Murphy, stated that their official immunity arguments would be more properly pled in a Motion for Summary Judgment.

² Note: Plaintiff’s claims were also dismissed as to Judge Mike Denton, Pretrial Officer III Kimberly Legge, and Assistant County Attorney Dimple Malhotra in a separate Order issued the same day. Also note that the City of Austin has not been named nor served with process in this matter.

(“Plaintiff”) came to the door and stepped outside to talk with Officer Murphy. *Id.* Officer Johnson then walked inside and made contact with E.D. (“Complainant”). *Id.* Complainant stated that she and Plaintiff got into an argument and he punched her in the face with a closed right handed fist. *Id.* At that point, the Plaintiff was detained until the Officers could further their investigation. *Id.*

After further discussion with the Complainant the Officers had probable cause to believe that Plaintiff had committed a family violence assault against the Complainant. *Id.*, at pg. 9. Plaintiff never denied punching Complainant; instead, he told Officers if they wanted to know what happened, to speak with the Complainant. *Id.*, pg. 8. Complainant then filled out an Assault Victim Statement which was submitted at Plaintiff’s arrest. *Id.*, pg. 8. It was also believed that 3 minor children were present for the assault. *Id.*, pg. 9. Plaintiff was then searched incidental to the arrest and transported to the Travis County Jail where he was booked in for assault with injury - family violence Class A Misdemeanor. *Id.*, pg. 8-9.

Plaintiff now sues Defendants for allegedly arresting him without “process” and without probable cause.

II.

ARGUMENTS AND AUTHORITIES

A. Standard of Review

The purpose of summary judgment is to permit the trial court to dispose promptly of cases that involve unmeritorious claims or untenable defenses. *City of Houston v. Clear Creek Basin Authority*, 589 S.W.2d 671, 678 n.5 (Tex. 1979); *Austin v. Inet Technologies, Inc.*, 118 S.W.3d 491 (Tex. App.--Dallas 2003, no pet.). To prevail on a summary judgment motion under Rule 166a, a movant must establish that there is no genuine issue concerning any material fact as

a matter of law. Tex. Rule Civ. Proc., Rule 166(a); *Cathey v. Booth*, 900 S.W.2d 339, 341 (Tex.1995) (per curiam). A defendant who conclusively negates at least one of the essential elements of each of the plaintiff's causes of action or who conclusively establishes all of the elements of an affirmative defense is entitled to summary judgment. *Wornick Co. v. Casas*, 856 S.W.2d 732, 733 (Tex.1993); *Montgomery v. Kennedy*, 699 S.W.2d 309, 310-11 (Tex.1984).

B. Official Immunity – Police Officers Steven Johnson and Matthew Murphy

Official immunity “is an affirmative defense that protects a governmental employee from personal liability and, in doing so, preserves a governmental employer's sovereign immunity from suit for vicarious liability.” *Texas Dep't of Pub. Safety v. Bonilla*, 481 S.W.3d 640, 642 (Tex. 2015). Specifically, “[a] governmental employee is entitled to official immunity: (1) for the performance of discretionary duties; (2) within the scope of the employee's authority; (3) provided the employee acts in good faith. *Univ. of Houston v. Clark*, 38 S.W.3d 578, 580 (Tex. 2000).

Functions that are ministerial in nature are not protected by official immunity. *Kersey v. Wilson*, 69 S.W.3d 794, 798 (Tex. App.- Fort Worth, 2002). The distinction between ministerial and discretionary acts is that, “where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment, the act is ministerial.” *Id.* However, “where the act to be done involves the exercise of discretion of judgment in determining whether the duty exists, it is not to be deemed ministerial.” *Id.* Courts have determined that “[a]n officer's decision regarding ‘if, how, and when to arrest a person’ is discretionary.” *Id.* at 799.

Additionally, Texas Penal Code Chapter 22 defines what constitutes the offense of assault and makes such an offense punishable as a Class A misdemeanor. Furthermore, a peace

officer is permitted to arrest a person without a warrant provided they have probable cause to believe that an assault has occurred. Tex. Code of Crim. Pro. Art. 14.03. To make the determination that probable cause exists that a person has committed an offense, such as assault, requires personal deliberation and judgment. *Kersey*, at 799. The subsequent arrest is thus considered a discretionary act. *Id.* Additionally, courts have recognized official immunity in cases “involving allegations of intentional torts such as assault arising from police activity.” *Id.* And the Texas Tort Claims Act does not waive immunity for intentional torts. See TCPRC § 101.057.

Here, the Officers have official immunity for their actions in regards to the arrest of Plaintiff. Moreover, the Plaintiff has failed to articulate any waiver of official immunity. The Officers determined, based upon their investigation, that probable cause existed to believe that Plaintiff had committed the offense of a Class A misdemeanor assault against Complainant. The act of arresting Plaintiff was a discretionary decision based on that judgment. And under the Texas Code of Criminal Procedure the arrest was within the scope of their authority as Police Officers for the City of Austin Police Department. Moreover, the Officers acted in good faith belief that the Plaintiff committed a criminal act based upon the credible allegations of the Complainant. Additionally, their acts were not ministerial because the law did not require the Officers to determine that an assault had occurred, nor did the law require them to arrest the Plaintiff (Note: the Code of Criminal Procedure states that an officer *may* arrest a suspect), instead they used their discretion and judgment in determining that they had a duty to arrest Plaintiff. In fact, the officers were required to make at least two discretionary decisions in effecting the arrest of Plaintiff according to the Code of Criminal Procedure: 1) that probable cause existed to believe that the assault had occurred; and 2) that probable cause existed to

believe there was a danger of further bodily injury to the victim. See Tex. Code of Crim. Pro. Art. 14.03.

Finally, any alleged intentional tort against Plaintiff is also barred by immunity. Again, the courts have recognized that official immunity exists for intentional torts, and any assault that allegedly occurred during the Officers' arrest occurred under the exact same circumstance that already cloaks their actions in official immunity. And the Texas Tort Claims Act explicitly provides that immunity is not waived under the Act for intentional torts.

In conclusion, the court should find that there is no issue of fact with regards to the Plaintiff's allegations against Officers Steven Johnson and Matthew Murphy. And based on the undisputed facts, their actions are protected by official immunity. Therefore, the court should dismiss all causes of action against the Officers in their entirety with prejudice to the re-filing of same.

III.

PRAYER

THEREFORE, Defendants pray that their Traditional Motion for Summary Judgment be set, and after a hearing, if necessary, that their Motion be granted, that the Plaintiff's causes of action be dismissed in their entirety with prejudice to the re-filing of same, that Plaintiff take nothing by this suit, all costs of court be assessed against each party, and that they be granted any additional relief to which they are entitled to under law or equity.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF, LITIGATION
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ATTORNEYS FOR CITY DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties, or their attorneys of record, in compliance with the Texas Rules of Civil Procedure, on this 3rd day of February, 2017, as follows:

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ATTORNEYS FOR TRAVIS COUNTY DEFENDANTS

/s/ Brandon W. Carr
BRANDON W. CARR

Exhibit R



**AUSTIN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY
(ASSAULT W/INJURY-FAM/DATE VIOL)
GO# 2015-2721930**

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General Offense Information

Operational Status	CLEARED BY ARREST (IBRS)
Reported On	SEP-29-2015 (TUE.) 2301
Occurred On	SEP-29-2015 (TUE.) 2225
Approved On	OCT-16-2015 (FRI.)
Approved By	AP6294 - CAMPOS, HECTOR
Report Submitted By	AP7804 - JOHNSON, STEPHEN
Org Unit	EDWARD 800 REG II PATROL
Accompanied By	AP7617 - MURPHY, MATTHEW
Address	[REDACTED]
Municipality	[REDACTED]
County	TRAVIS COUNTY
District ED Beat 1 Grid	224
Premise Code	899
Bias	NONE (NO BIAS)
Gang Involvement	GANG INVOLVEMENT
Family Violence	YES

Offenses (Completed/Attempted)

Offense #	1 0900-1 ASSAULT W/INJURY-FAM/DATE VIOL - COMPLETED
Location	RESIDENCE / HOME
Suspected Of Using	N/A
Weapon Type	PERSONAL WEAPONS (HANDS FIST / FEET)



Related Event(s)

- 1. GO 2016-921448
- 2. CP 2015-2721930
- 3. AB 2015-37586

Related Person(s)

1. VICTIM # 1 - DAVIS, EBONY

CASE SPECIFIC INFORMATION

Sex FEMALE
 Race BLACK
 Date Of Birth [REDACTED]
 Address [REDACTED]
 Municipality [REDACTED]
 State [REDACTED]
 ZIP Code [REDACTED]
 HOME [REDACTED]

PERSON PARTICULARS

Ethnicity NOT-HISPANIC OR LATINO

MASTER NAME INDEX REFERENCE

Name DAVIS , EBONY MONIQUE
 Sex FEMALE
 Race BLACK
 Date Of Birth [REDACTED]
 Ethnicity NOT-HISPANIC OR LATINO
 Address [REDACTED] [REDACTED]
 Municipality [REDACTED]
 State [REDACTED]
 ZIP Code [REDACTED]

PHONE NUMBERS

CELL PHONE [REDACTED]
 HOME [REDACTED]
 BUSINESS [REDACTED]
 Email [REDACTED]



AUSTIN POLICE DEPARTMENT

GO# 2015-2721930
CLEARED BY ARREST
(IBRS)

GENERAL OFFENSE HARDCOPY
(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

LINKAGE FACTORS

Resident Status RESIDENT OF AUSTIN
Age Range 30-49 YEARS
Type Of Injury APPARENT MINOR INJURY
Access To Firearm NO
Victim Of 0900- 1 ASSAULT W/INJURY-FAM/DATE VIOL - COMPLETED

RELATIONSHIP(S) BETWEEN VICTIM TO OFFENDER(S)

Relationship VICTIM WAS BOYFRIEND/GIRLFRIEND
Offender's Name CLARK, CHRISTIAN A
Offender's Role ARRESTED #1

2. ARRESTED # 1 - CLARK, CHRISTIAN ANDRE

CASE SPECIFIC INFORMATION

Sex MALE
Race BLACK
Date Of Birth [REDACTED]
Address [REDACTED]
Municipality [REDACTED]
State [REDACTED]
ZIP Code [REDACTED]

PERSON PARTICULARS

Ethnicity NOT-HISPANIC OR LATINO

MASTER NAME INDEX REFERENCE

Name CLARK , CHRISTIAN ANDRE
Sex MALE
Race BLACK
Date Of Birth [REDACTED]
Ethnicity NOT-HISPANIC OR LATINO
Address [REDACTED]
Municipality [REDACTED]
State [REDACTED]
ZIP Code [REDACTED]

PHONE NUMBERS

HOME [REDACTED]



AUSTIN POLICE DEPARTMENT

GO# 2015-2721930
CLEARED BY ARREST
(IBRS)

GENERAL OFFENSE HARDCOPY
(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

CELL PHONE [REDACTED]

Email [REDACTED]

CHARGE SUMMARY

CHARGE # 1

Offense Date SEP-29-2015 (TUE.)

Offense ASSLT CAUSES BODILY INJURY FV 22.01(A)(1) PC - COMPLETED

Charge Statute A 13990031

Domestic Violence YES

LINKAGE FACTORS

Resident Status RESIDENT OF AUSTIN

Age Range 30-49 YEARS

Access To Firearm NO

Armed With NONE

Offense 0900- 1 ASSAULT W/INJURY-FAM/DATE VIOL - COMPLETED

Arrest Date SEP-29-2015 (TUE.)

Arrest Type ON VIEW ARREST (LOCAL
ARREST NO WARRANT)

3. JUV-OBSERV/ # 1 - CLARK, CAJALYN

CASE SPECIFIC INFORMATION

Sex MALE

Race BLACK

Date Of Birth [REDACTED]

Address [REDACTED]

Municipality [REDACTED]

State [REDACTED]

ZIP Code [REDACTED]

PERSON PARTICULARS

Ethnicity NOT-HISPANIC OR LATINO

MASTER NAME INDEX REFERENCE

Name [REDACTED]

Sex FEMALE

Race BLACK

Date Of Birth [REDACTED]



AUSTIN POLICE DEPARTMENT

GO# 2015-2721930
CLEARED BY ARREST
(IBRS)

GENERAL OFFENSE HARDCOPY
(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

Ethnicity NOT-HISPANIC OR LATINO

Address [REDACTED]

Municipality [REDACTED]

State [REDACTED]

ZIP Code [REDACTED]

LINKAGE FACTORS

Resident Status RESIDENT OF AUSTIN

Age Range 2-3 YEARS

Access To Firearm NO

4. JUV-OBSERV/ # 2 - CLARK, CHRISTINA

CASE SPECIFIC INFORMATION

Sex FEMALE

Race BLACK

Date Of Birth [REDACTED]

Address [REDACTED]

Municipality [REDACTED]

State [REDACTED]

ZIP Code [REDACTED]

PERSON PARTICULARS

Ethnicity NOT-HISPANIC OR LATINO

MASTER NAME INDEX REFERENCE

Name CLARK , CHRISTINA

Sex FEMALE

Race BLACK

Date Of Birth [REDACTED]

Ethnicity NOT-HISPANIC OR LATINO

Address [REDACTED]

Municipality [REDACTED]

State [REDACTED]

ZIP Code [REDACTED]

PHONE NUMBERS

CELL PHONE [REDACTED]



LINKAGE FACTORS

Resident Status RESIDENT OF AUSTIN
Age Range 14-15 YEARS
Access To Firearm NO

5. JUV-OBSERV/ # 3 - DOTSON, JORDAN

CASE SPECIFIC INFORMATION

Sex MALE
Race BLACK
Date Of Birth [REDACTED]
Address [REDACTED]
Municipality [REDACTED]
State [REDACTED]
ZIP Code [REDACTED]

PERSON PARTICULARS

Ethnicity NOT-HISPANIC OR LATINO

MASTER NAME INDEX REFERENCE

Name DOTTSON , JORDAN U
Sex MALE
Race BLACK
Date Of Birth [REDACTED]
Ethnicity NOT-HISPANIC OR LATINO
Address [REDACTED] [REDACTED]
Municipality [REDACTED]
State [REDACTED]
ZIP Code [REDACTED]

PHONE NUMBERS

HOME [REDACTED]

LINKAGE FACTORS

Resident Status RESIDENT OF AUSTIN
Age Range 14-15 YEARS
Access To Firearm NO



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY
(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

GO# 2015-2721930
CLEARED BY ARREST
(IBRS)

Related Text Page(s)

Document PRESS RELEASE

Author AP7804 - JOHNSON, STEPHEN

Related Date/Time SEP-29-2015 (TUE.) 2305

Responded to a call for service and a report was written.



AUSTIN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY
(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

GO# 2015-2721930
CLEARED BY ARREST
(IBRS)

Related Text Page(s)

Document INITIAL REPORT

Author AP7804 - JOHNSON, STEPHEN

Related Date/Time SEP-29-2015 (TUE.) 2306

On Tuesday 9/29/15 at 2225, I, Ofc Johnson #7804 and Ofc Murphy #7617 responded as a 2-man unit to a disturbance hot shot located at [REDACTED]

call text = DIST AT ABV

Upon arrival, I could hear a male yelling from inside the house. I knocked on the door and announced Austin Police. The man came to the door and stepped outside with my partner. The man was identified as:

Christian Clark BM [REDACTED]

I then walked inside and made contact with the complainant and she was identified as:

Ebony Davis BF [REDACTED]

Ebony stated that her and Christian got into an argument and he punched her in the face with a closed right handed fist. At this point, I told Ofc Murphy to detain Christian until we could further our investigation.

Ebony stated that the argument occurred because her son had spilled some paint on the garage floor and she did not know how to clean it up. Ebony stated that she asked Christian how to clean it and he just got mad at her because she hadnt cleaned it yet. Ebony stated that Christian then swung at her and hit her in the left side of her face around her ear. There was redness on her face that was consistent with being punched. Ebony stated that it hurt when she was punched and that it still has a burning feeling. Ebony refused EMS and stated that she did not need to have Crisis there to talk to.

I then spoke with Christian and he refused to talk to officers about what happened. He stated that if we want to know anything, then just speak to Ebony.

Christian was then searched incidental to arrest.

Ebony completed an AVS and that was submitted at arrest review. I took photos of Ebony and the injury and that was submitted at the north sub.



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY
(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

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Ebony stated that she did not want an EPO.

Christian and Ebony have 3 children that were all present. They were identified as:

Cajalyn Clark BM [REDACTED]

Christina Clark BF [REDACTED]

Jordan Dotson BM [REDACTED]

Christian was then transported to the Travis County Jail where he was booked in for assault with injury FV Class A Misdemeanor.

CPS was called-

CPS #66599632

Winnie #1015

NOI

S. Johnson #7804



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY
(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

GO# 2015-2721930
CLEARED BY ARREST
(IBRS)

Related Text Page(s)

Document SUPPLEMENTS

Author AP7681 - SMILEY, MARY

Subject AVS ATTACHED

Related Date/Time SEP-30-2015 (WED.) 0946



AUSTIN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY
 (9000-1 ASSAULT W/INJURY-FAM/DATE VIOL)

GO# 2015-2721930
 CLEARED BY ARREST
 (IBRS)

NARRATIVE TEXT RELATED ATTACHMENT(S)

1. ATTCHMENTS
 Description AVS

AUSTIN POLICE DEPARTMENT - ASSAULT VICTIM STATEMENT

CASE # 15 - 2721930 DATE OF ASSAULT 9/29/2015 TODAY'S DATE 9/29/2015

VICTIM INFORMATION
 TO BE COMPLETED BY POLICE OFFICER

Victim's Name (last, first, middle) Davis, Ebony Monique DOB [REDACTED] R/S B I E
 Home Address [REDACTED] State TX SSN# [REDACTED]
 Home#() [REDACTED] Work# [REDACTED] Cell# [REDACTED] Place of Employment TX Dept Insurance
 Email Address [REDACTED] Cell Provider [REDACTED] Pregnant? Yes No #Weeks [REDACTED]
 Suspect's Name CHRISTIAN CLARK

Does the suspect live at this address? Yes No If no... list address

Emergency Contact(s)

(Person who can contact you at all times)

Contact 1 Tiffany Harris Name Address () Home # () Work # [REDACTED] Cell # [REDACTED]

Contact 2

Victim/Suspect Relationship

Dating/Engaged 10 yrs. 0 months Marriage - Legal 0 yrs. 0 months Member of Same Household Former Member of Same Household
 Biological Parents of Same Child - # Children 1 Blood Relation Relationship Ended (date)

Action(s) of Suspect

Striking (Open Hand Closed Hand) Pushing Throwing Grabbing Pulling Biting
 Strangling/Suffocating (Complete Strangulation Supplement) Other (explain)

How long has it been since the assault? Hour(s) 20 Minute(s) 0 Day(s) 0

Complaint of physical pain during or after the assault? Yes No Explain BURNING TO NECK

Did Suspect prevent you from making an emergency telephone call for assistance? Yes No How/Explain

Did Suspect use or threaten to use a weapon against you? Yes No What type of weapon?

Weapon(s) owned by Suspect? Yes No Does Suspect have Concealed Handgun License? Yes No
 List weapon(s)

Did Suspect threaten you if you called the Police for this assault? Yes No Describe threat(s)

Has Suspect hurt you before? Yes No Date? Where? Frequency?

Was a report made? Yes No To whom?

Has Suspect ever threatened you if you called the Police? Yes No Describe threat(s)

Has Suspect ever harmed or threatened to harm the children? Yes No How?

Has Suspect ever harmed or threatened to harm the household pets? Yes No How?

Was a report made? Yes No To whom/Which agency?

Was Suspect using drugs at the time of this assault? Yes No What?

Does Suspect use the following? Alcohol Prescription Medication - What?
 Illegal Drug(s) - What? Other - Describe

Do you want an Emergency Protective Order? Yes No

Do you have a Protective Order? Yes No # Expiration Date

VICTIM DESCRIPTION TO BE COMPLETED BY POLICE OFFICER			
DEMEANOR	PHYSICAL CONDITION	APPEARANCE	SPEECH
<input type="checkbox"/> afraid	<input type="checkbox"/> abrasion(s)	<input type="checkbox"/> bloody clothes	<input type="checkbox"/> angry
<input type="checkbox"/> hysterical	<input type="checkbox"/> laceration(s)	<input type="checkbox"/> smeared makeup	<input type="checkbox"/> out of breath
<input type="checkbox"/> angry	<input type="checkbox"/> bruise(s) new	<input checked="" type="checkbox"/> soiled/sweat stained	<input type="checkbox"/> excited/fast
<input type="checkbox"/> indifferent	<input type="checkbox"/> bruise(s) old	<input type="checkbox"/> shaking	<input type="checkbox"/> crying/sobbing
<input type="checkbox"/> apologetic	<input type="checkbox"/> bleeding	<input type="checkbox"/> redness	<input type="checkbox"/> yelling
<input type="checkbox"/> intoxicated	<input type="checkbox"/> physical pain	<input type="checkbox"/> swelling	<input type="checkbox"/> belligerent
<input type="checkbox"/> belligerent	<input type="checkbox"/> fracture(s)	<input checked="" type="checkbox"/> other <u>bruise on neck</u>	<input type="checkbox"/> other
<input checked="" type="checkbox"/> palm	<input type="checkbox"/> sweating		
<input type="checkbox"/> nervous			
<input type="checkbox"/> fearful			
<input type="checkbox"/> distraught			
<input type="checkbox"/> other			
Explain other			



AUSTIN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY
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WHAT SUSPECT USED TO HURT /THREATEN VICTIM		CRIME SCENE OBSERVATIONS	
<input checked="" type="checkbox"/> Hand <input type="checkbox"/> Head <input type="checkbox"/> Foot <input type="checkbox"/> Knife <input type="checkbox"/> Gun <input type="checkbox"/> Other _____		<input type="checkbox"/> Signs of Disturbance <input type="checkbox"/> Clump(s) of Hair <input type="checkbox"/> Broken Furniture <input type="checkbox"/> Blood at Scene <input type="checkbox"/> Broken Phone <input type="checkbox"/> Hole(s) in Wall <input type="checkbox"/> Broken Glass <input type="checkbox"/> Children Crying <input type="checkbox"/> Weapon(s) <input type="checkbox"/> Phone Cord Yanked <input type="checkbox"/> Other _____	
Weapon Seized? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Photos Taken? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No # Taken <u>3</u> By # <u>7904</u> <input checked="" type="checkbox"/> Victim <input type="checkbox"/> Suspect <input type="checkbox"/> Injury <input checked="" type="checkbox"/> Location of Pain <input type="checkbox"/> Weapon(s) <input type="checkbox"/> Crime Scene		
Evidence Collected? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Turned into PCO			

♦ **Medical Treatment**

Basic First Aid/Not Transported Treated By _____ EMT Name/# _____

Transported Where _____ Address _____ City _____ State _____

Will Seek Own Physician Physician's Name _____ Address _____ City _____

Will Get Treatment at Clinic Clinic's Name _____ Address _____ City _____

Refused
 None

SUSPECT INFORMATION
 TO BE COMPLETED BY POLICE OFFICER

Suspect's Name (last, first, middle) Clark, Christian Andre DOB [REDACTED] R/S BIM

Home Address [REDACTED] State TX SSN# _____

Home#() _____ Work#() _____ Cell#() _____ Place of Employment Electrician

Email Address _____ Cell Provider _____ Pregnant? Yes No #Weeks _____

Suspect Arrested Not at Scene Photo Available Yes No Scars/Tattoos No Yes If yes...describe tattoo on right thigh, left forearm, left neck

SUSPECT DESCRIPTION
 TO BE COMPLETED BY POLICE OFFICER

DEMEANOR	PHYSICAL CONDITION	APPEARANCE	SPEECH
<input type="checkbox"/> afraid <input type="checkbox"/> hysterical <input type="checkbox"/> angry <input checked="" type="checkbox"/> indifferent <input type="checkbox"/> apologetic <input type="checkbox"/> intoxicated <input type="checkbox"/> belligerent <input type="checkbox"/> irrational <input type="checkbox"/> calm <input type="checkbox"/> nervous <input type="checkbox"/> crying <input type="checkbox"/> fearful <input type="checkbox"/> distraught <input type="checkbox"/> other _____	<input type="checkbox"/> abrasion(s) <input type="checkbox"/> laceration(s) <input type="checkbox"/> bruise(s) new <input type="checkbox"/> loose hair <input type="checkbox"/> bruise(s) old <input type="checkbox"/> shaking <input type="checkbox"/> bleeding <input type="checkbox"/> redness <input type="checkbox"/> physical pain <input type="checkbox"/> swelling <input type="checkbox"/> fracture(s) <input type="checkbox"/> other _____ <input type="checkbox"/> sweating	<input type="checkbox"/> bloody clothes <input type="checkbox"/> smeared makeup <input type="checkbox"/> soiled/sweat stained <input type="checkbox"/> tangled/messy hair <input type="checkbox"/> torn/pulled clothing <input checked="" type="checkbox"/> other _____	<input type="checkbox"/> angry <input type="checkbox"/> out of breath <input type="checkbox"/> excited/fast <input type="checkbox"/> crying/sobbing <input type="checkbox"/> yelling <input type="checkbox"/> belligerent <input type="checkbox"/> other _____

Explain other _____

BODY INJURY DIAGRAM
 TO BE COMPLETED BY POLICE OFFICER

Mark all injuries on both the Victim and the Suspect

<p>HT <u>5'5</u> WT <u>170</u> SEX <u>F</u></p> <p align="center">VICTIM</p> <p align="center">FRONT BACK</p>	<p>HT <u>5'11</u> WT <u>160</u> SEX <u>M</u></p> <p align="center">SUSPECT</p> <p align="center">FRONT BACK</p>
---	---

Describe injuries and how each was inflicted in the narrative of the offense report.



AUSTIN POLICE DEPARTMENT

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GENERAL OFFENSE HARDCOPY (0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

♦ **Witness Information (May Use Witness Statement Form)**

1. Name _____ DOB _____ R/S ____ / ____ Home#(____) _____
 Work#(____) _____ Cell#(____) _____ Email Address _____

2. Name _____ DOB _____ R/S ____ / ____ Home#(____) _____
 Work#(____) _____ Cell#(____) _____ Email Address _____

♦ **Children Information (MUST list all children and document in narrative of offense report)**

1. Present? Yes No Witness to assault? Yes No CPS Called? Yes No CPS# 66599632
 Name of school child is attending _____
 (If more than one child, then you MUST list all other information in your supplement report)

♦ **Military Information**

Victim in Military? Yes No Branch _____ Stationed _____
 Suspect in Military? Yes No Branch US Army Stationed _____
 Victim in Reserves? Yes No Texas National Guard Yes No
 Suspect in Reserves? Yes No Texas National Guard Yes No

♦ **Re-location/Contact Information**

Are you planning to relocate? Yes No Address? _____
 Phone#(____) _____ Cell#(____) _____ Other#(____) _____

LETHALITY ASSESMENT
TO BE COMPLETED BY A POLICE OFFICER

"Yes" to ANY question 1-5, Activate or notify Victim Services

1. Has s/he ever threatened you with a weapon? Yes No NA
 2. Has s/he used a weapon against you? Yes No NA
 3. Has s/he ever threatened to kill you? Yes No NA
 4. Has s/he ever threatened to kill your children? Yes No NA
 5. Do you think s/he might try to kill you? Yes No NA

"Yes" to at least 4 questions 6-18, Activate or notify Victim Services

6. Does s/he have a gun? Yes No NA
 7. Does s/he have easy access to a gun? Yes No NA
 8. Has s/he ever tried to strangle you? Yes No NA
 9. Is s/he violently or constantly jealous of you? Yes No NA
 10. Does s/he control most of your daily activities? Yes No NA
 11. Has s/he ever forced you to have sex when you did not wish to do so? Yes No NA
 12. Have you ever left her/him or separated after living together? Yes No NA
 13. Is s/he unemployed? Yes No NA
 14. Has s/he ever tried to kill herself/himself? Yes No NA
 15. Do you have a child that does not belong to the Suspect? Yes No NA
 16. Does s/he follow you? Yes No NA
 17. Does s/he spy on you? Yes No NA
 18. Does s/he leave threatening messages? Yes No NA
 ♦ Describe the threat(s) and/or message(s) left _____

An Officer may request Victim Services (by phone or on-scene) as a result of Victim's response to the question below or whenever an officer feels it would be beneficial.

19. Is there anything else that worries you about your safety? Yes No NA
 If yes, explain _____

♦ Victim Services responded due to High lethality determined by questions above Officer concerns for victim
 ♦ Victim Services did not respond due to Officer's decision Victim's request Victim Services' current call load
 ♦ Victim provided with Domestic Violence Information Pamphlet Yes No Case Number Yes No

TO COMPLETE AVS, GO TO PAGE 4.
3



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

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VICTIM STATEMENT / DECLARACION DE LA VICTIMA TO BE FILLED OUT BY VICTIM

I can read, write and understand the English Language. This statement is true and correct to the best of my knowledge. I make this statement freely and voluntarily. Should I provide false information on this form, I understand that I could be prosecuted for the crime of "False Report to a Police Officer" under section 37.08 of the Texas Penal Code. Signature [Signature] Date 9/29/15

Puedo leer, escribir y entender el idioma español. Esta declaración es verdadera y correcta en cuanto a lo que yo sepa. Hago esta declaración libre y voluntariamente. Si he dado información falsa en este formulario, entiendo que puedo ser enjuiciado/a por el crimen de "Declaración Falsa dada a un oficial de "Policía" bajo la sección 37.08 del Código Penal del Estado de Texas.

Firma _____ Fecha _____

Where are you right now? 11305 Friendship Dr Where did assault occur? 11305 Friendship Dr
¿Dónde se encuentra usted en este momento? _____ ¿Dónde ocurrió el asalto? _____

Who assaulted you? (name/relationship) Christian Clark
¿Quién asalto? (nombre/parentesco) _____

What led up to the assault? I don't know
¿Qué ocurrió antes del asalto para que el asalto ocurriera? _____

How did Suspect assault you? (ex. hit w/ fist to head) Hit to the neck area
¿Cómo le asaltó el/la sospechoso/a a usted (por ejemplo, le pegó con el puño en la cabeza) _____

What injuries do you have as a result of the assault? Bruse on the neck
¿Qué lesiones tiene como resultado del asalto? _____

How did you get each injury? when he hit me on the neck
¿Cómo obtuvo cada herida? _____

Did you feel physical pain either at the time of the assault or after? Burning
¿Sintió usted dolor durante el asalto o después? _____

Was there damage to property (walls, phones, furniture, etc.)? NO
¿Hubo daños a la propiedad (en las paredes, teléfonos, muebles, o en otros lugares)? _____

Other Information _____
Otra información _____

Print Name - Nombre impreso Ethony Davis

Signature [Signature] Date 9/29/15 Time 11:00 am/pm
Su firma _____ Fecha _____ Hora _____ am/pm

Officer Signature [Signature] # 7617 Date 9/29/15 Time 11:05 am/pm
Firma del oficial _____ # _____ Fecha _____ Hora _____ am/pm
STH/APD2013



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY
(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

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Follow Up Report # 1

Follow Up Report # 1

ASSIGNMENT INFORMATION

Assigned To AP6910 - ORTEGA-HART,
ROXANA

Rank CIVILIAN

Capacity VICTIM ASSISTANT

Org Unit VICTIM SERVICES (FAMILY
VIOLENCE)

Assigned On SEP-30-2015 (WED.) 0932

By AP4288 - TOMANETZ, JEANNIE

Report Due On OCT-30-2015 (FRI.)

SUBMISSION INFORMATION

Submitted On OCT-01-2015 (THU.) 1321

Approved On OCT-19-2015 (MON.)

By AP1561 - LUJAN, LUPITA

FOLLOW UP CONCLUSION

Follow Up YES
Concluded



Related Text Page(s)

Narrative Text # 1

Document VICTIM SERVICES

Author AP6910 - ORTEGA-HART, ROXANA

Subject CONTACT

Related Date/Time OCT-01-2015 (THU.) 1306

On this date I contacted Ebony Davis at her listed number. I explained my role and limits of confidentiality. Davis states that yesterday she was contacted and asked if she wanted an EPO. She state that at the time she was overwhelmed and said no but now wishes she had said yes. I provided information on 2 year protective orders. I also provided information on her rights, the criminal justice process, and resources.

I safety planned with her and provided much supportive counseling. She stated that this was the first time he had been physically violent with her but has been verbally and emotionally abusive during their relationship. She states that she will dissolve the relationship because she can not trust that he will not assault her again. I validated and normalized her feels. We discussed dynamics of DV and normal reactions by victims. I advised that I would mail a follow up letter with more information on DV and a CVC application. I remain available to assist.

NOI



AUSTIN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY
 (0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

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 (IBRS)

Follow Up Report # 2

Follow Up Report # 2

ASSIGNMENT INFORMATION

Assigned To AP2736 - BENNINGFIELD, CHRISTOPHR ALLEN	Rank DETECTIVE
Capacity LEAD INVESTIGATOR	Org Unit DOMESTIC VIOLENCE VIOL CRIMES
Assigned On SEP-30-2015 (WED.) 1105	By AP3757 - GROSS, JEFFREY R
Report Due On OCT-30-2015 (FRI.)	

SUBMISSION INFORMATION

Submitted On OCT-01-2015 (THU.) 1027	
Checked By AP1737 - DELOSSANTOS, ERIC TOBIAS	
Approved On NOV-12-2015 (THU.)	By AP1737 - DELOSSANTOS, ERIC TOBIAS

FOLLOW UP CONCLUSION

Follow Up YES
Concluded



Related Text Page(s)

Narrative Text # 1

Document INVESTIGATOR'S REPORT

Author AP2736 - BENNINGFIELD, CHRISTOPHR ALLEN

Related Date/Time OCT-01-2015 (THU.) 1026

***10/01/15

This arrest case was assigned for electronic prosecution packet preparation. The following will be accomplished when available:

Retention code changed
DMAV coded
Wav file requested
AVS
DCS checked for photos

Case cleared by arrest.



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY
(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

GO# 2015-2721930
CLEARED BY ARREST
(IBRS)

Clearance Information

Agency AUSTIN POLICE DEPARTMENT (AP)
Cleared Status CLEARED BY ARREST - NOT APPLICABLE
Cleared On OCT-01-2015 (THU.)
Cleared By Officer 1 AP2736 - BENNINGFIELD, CHRISTOPHR ALLEN
Org Unit FAMVI - DOMESTIC VIOLENCE VIOL CRIMES
Complainant/Victim NO
Notified



AUSTIN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY
 (0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

GO# 2015-2721930
 CLEARED BY ARREST
 (IBRS)

Related Arrest Report AB# 2015-37586

Arrestee	CLARK, CHRISTIAN ANDRE
Date Of Birth	██████████
Related CD#	604103

Arrest Information

Status	OTHER
Type Of Arrest	ON VIEW ARREST (LOCAL ARREST NO WARRANT)
Arrest Date	SEP-29-2015 (TUE.) 2235
Rush File Required	NO
Booked Into Cell	NO
Arrest Agency	AUSTIN POLICE DEPARTMENT
Arresting Officer(s)	AP7804 - JOHNSON, STEPHEN
Summary Of Facts	ARRESTED
ARREST LOCATION	
Address	11305 FRIENDSHIP DR
Municipality	AUSTIN
County	TRAVIS COUNTY
District	ED Zone 1 Grid 224
SODA Zone	NO
Drug Free Zone	NO

ADDITIONAL ARREST INFORMATION

Case Screened	NO
Notify Victim On Release	NO
Juvenile	NO
Armed With	NONE
Diversion Recommended	NO
Interpreter Needed	NO
Rights Given	NO
Mental Exam Required	NO
Statement Taken	NO
Fingerprinted	YES
CD Updated	YES
Family Notified	NO
Lawyer Called	NO
Meal Given	NO
Detained	NO
Photo Taken	YES
Coffee Given	NO



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY
(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

GO# 2015-2721930
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(IBRS)

RELATED WARRANTS

Warrant Number C1CR16500571

On APR-15-2016 (FRI.)

Reason For Warrant ASSLT W/INJ -FV W/EPO-200 YD
SAO, NO CONTACT, GPS IN JAIL
W/CURFEW



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY
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Related Attachment - AUDIO RECORDING

Description 911
Reference Number

The attached file cannot be included in this hardcopy.



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY
(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

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*** END OF HARDCOPY ***

STATE OF TEXAS §
Travis COUNTY §

BUSINESS RECORDS AFFIDAVIT

BEFORE ME, the undersigned authority, Angie Jones personally appeared, who being by me duly sworn, deposed as follows:

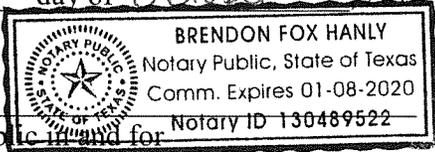
My name is Angie Jones. I am over the age of 18 years, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated, which are true:

I am the custodian of records, employee or owner of Austin Police Department and I am familiar with the manner in which its records are created and maintained by virtue of my duties and responsibilities. Attached hereto are 25 pages of records from Austin Police Department, which were kept in the course of regular business activity. The attached records are the original or exact duplicates of the original records.

It is the regular course of business of Austin Police Department to make the records and to make this type of record at or near the time of each act, event, condition, opinion, or diagnosis set forth in the records. Further, it was the regular practice of Austin Police Department to make the records and regular practice for this type of record to be made by, or made from information transmitted by persons with knowledge of the matters set forth in them.

Angie Jones #4803
Affiant

SWORN TO AND SUBSCRIBED before me on the 27th day of October, 2016

Notary Public for  for
State of Texas

My commission expires: 01.08.2020

APR - 3 2017

At 12:29 p.m.
Velva L. Price, District Clerk

CAUSE NO: D-1-GN-16-002854

CHRISTIAN-ANDRE CLARK,
Plaintiff,

§
§
§
§
§
§
§

IN THE DISTRICT COURT

v.

TRAVIS COUNTY, TEXAS

STEVEN JOHNSON, MATTHEW
MURPHY ET AL.,
Defendants.

201st JUDICIAL DISTRICT

ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

CAME ON TO BE HEARD Defendants Steven Johnson and Matthew Murphy's Motion for Summary Judgment. The Court is of the opinion that the Motion should be GRANTED, in part, and DENIED, in part.

IT IS ORDERED, ADJUDGED AND DECREED that Defendants Steven Johnson and Matthew Murphy's Motion for Summary Judgment is GRANTED as to all claims where the Plaintiff has not alleged an intentional tort, and the Defendants' Motion is DENIED for all claims where the Plaintiff has alleged an intentional tort. All of Plaintiff's claims not alleging intentional torts are hereby DISMISSED WITH PREJUDICE.

SIGNED this 3rd day of April, 2017.



TIM SULAK
PRESIDING JUDGE

CAUSE NO. D-1-GN-16-002854

CHRISTIAN-ANDRE CLARK, Plaintiff,	§	IN THE DISTRICT COURT
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
STEVEN JOHNSON, MATTHEW MURPHY ET AL., Defendants.	§	
	§	
	§	201 ST JUDICIAL DISTRICT

**DEFENDANTS STEVEN JOHNSON AND MATTHEW MURPHY’S SPECIAL
EXCEPTIONS AND MOTION TO COMPEL**

TO THE HONORABLE JUDGE OF SAID COURT:

Austin Police Department Officer Defendants Steven Johnson and Matthew Murphy (“APD Defendants”), file these Special Exceptions to Plaintiff’s Original Petition and Motion to Compel, and would show as follows:

I.

SPECIAL EXCEPTIONS

1. The APD Defendants make special exception to the Plaintiff’s Original Petition and asks this Honorable Court to order Plaintiff to re-plead and cure his pleading defects so that the City may have fair notice of all claims. The APD Defendants requests that Plaintiff re-plead within thirty (30) days or that his pleadings be stricken.

2. The APD Defendants make special exception to the entirety of the Plaintiff’s Original Petition, especially Section D (“Jurisdiction”), because the APD Defendants have official immunity from suit and liability without an adequate assertion of a waiver of immunity. Specifically, “[a] governmental employee is entitled to official immunity: (1) for the performance of discretionary duties; (2) within the scope of the employee's authority; (3)

provided the employee acts in good faith. *Univ. of Houston v. Clark*, 38 S.W.3d 578, 580 (Tex. 2000). The Plaintiff has failed to provide adequate notice of which immunity he claims is waived, and therefore he has failed to meet state jurisdictional notice requirements under the Texas Rules of Civil Procedure and the Texas Civil Practice and Remedies Code. The Plaintiff has the burden of pleading and proving jurisdiction especially when the APD Defendants have asserted the defense of immunity, therefore the APD Defendants respectfully request that the Plaintiff be ordered to re-plead Section D of the Plaintiff's Original Petition to assert some waiver of immunity.

3. The APD Defendants make special exception to the entirety of Plaintiff's Original Petition, because all claims except those involving intentional torts have been dismissed by the Order issued by Judge Sulak on April 3, 2017. Moreover, a large number of the Defendants in this lawsuit were dismissed by the Order issued by Judge Jenkins on January 24, 2017. Therefore, the APD Defendants respectfully request that Plaintiff be ordered to re-plead the entirety of his Original Petition to remove all claims not involving intentional torts and remove all claims involving the Defendants who have already been dismissed.

4. The APD Defendants make special exception to the entirety of Plaintiff's Original Petition, because all claims except those involving intentional torts have been dismissed by the Order issued by Judge Sulak on April 3, 2017. However, Plaintiff's Original Petition is unclear as to which Defendants he alleges committed which intentional torts against him. Defendants are entitled to "a short statement of the cause of action sufficient to give fair notice of the claim involved." TRCP 47. Specifically, paragraph 8 of Plaintiff's Original Petition does not address the allegations against any particular Defendant. And each of his causes of action are similarly vague and fail to allege which Defendants he claims committed each offense. Therefore, the

APD Defendants respectfully request that Plaintiff be required to re-plead the entirety of his Original Petition to specifically allege which intentional torts he claims were committed by which Defendants, including APD Defendants.

II.

MOTION TO COMPEL

5. The Texas Rules of Civil Procedure permit a Court to issue an order compelling discovery. See Tex. R. Civ. P. 215.1. If a party from whom discovery is sought fails “to answer a question propounded or submitted upon oral examination or upon written questions” then “the discovering party may move for an order compelling ... an answer or answers [to the discovery requests] ... without the necessity of first having obtained a court order compelling such discovery.” Tex. R. Civ. P. 215.1(b)(2)(B) and (b)(3)(D).

6. The purpose of discovery is to seek the truth, so disputes may be decided by what facts are revealed, not by what facts are concealed. *Axelson, Inc. v. McIlhany*, 798 S.W.2 550, 555 (Tex. 1990). Discovery may be obtained about any matter relevant to the subject matter of the case, “whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.” Tex. R. Civ. P. 192.3(a). Moreover, Rule 194 of the Texas Rules of Civil Procedure allow a party to obtain disclosure from another party in regards to the information and material listed in TRCP 194.2 by serving the other party Requests for Disclosure.

7. Plaintiff served Requests for Disclosure on APD Defendants as a part of his Original Petition when APD Defendants were served with citation on August 1, 2016. APD Defendants responded to Plaintiff’s Requests for Disclosure in accordance with the rules on September 19, 2016. See **Exhibit 1** attached.

8. APD Defendants served Requests for Disclosure to Plaintiff along with their Answer on August 19, 2016 in accordance with the rules. Plaintiff's response to APD Defendants' Requests for Disclosure would have been due on September 18, 2016, over six months ago. However, Plaintiff has yet to respond to APD Defendants' Requests for Disclosure. APD Defendants made an additional request that Plaintiff respond to their Requests for Disclosure, see Exhibit 2 attached, informing Plaintiff of their intent to include a Motion to Compel with their Special Exceptions filing, but as of the date of this filing, Plaintiff has still yet to file a response to APD Defendants' Requests for Disclosure.

9. In order to defend causation and Plaintiff's claims of damages, it is imperative that APD Defendants receive responses to their Requests for Disclosure. And the rules state that "[t]he responding party must serve a written response on the requesting party within 30 days after service of the request." TRCP 194.3. Therefore, because Plaintiff has far exceeded the allotted time period to respond under the rules, APD Defendants hereby request that the court issue an order compelling Plaintiff to respond to their Requests for Disclosure.

III.

PRAYER

THEREFORE, APD Defendants pray that their Special Exceptions and Motion to Compel be set for hearing, and after a hearing, if necessary, that their Special Exceptions and Motion to Compel be granted. APD Defendants further pray that, if, their Special Exceptions are granted, the Plaintiff's causes of action be dismissed or struck in their entirety with prejudice to the re-filing of same if Plaintiff fails to amend his pleadings in accordance with any order of the court. Furthermore, APD Defendants pray that Plaintiff be compelled to respond to APD Defendants' Requests for Disclosure, that Plaintiff take nothing by this suit, all costs of court be

assessed against Plaintiff, and that the APD Defendants be granted any additional relief to which they are entitled to under law or equity.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF, LITIGATION DIVISION

/s/ Brandon W. Carr
BRANDON W. CARR
Assistant City Attorney
State Bar No. 24074004
City of Austin-Law Department
P. O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-2181
Facsimile: (512) 974-1311
brandon.carr@austintexas.gov

ATTORNEYS FOR APD DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties, or their attorneys of record, in compliance with the Texas Rules of Civil Procedure, on this 7th day of April, 2017, as follows:

Via CM RRR 91 7199 9991 7036 8304 9853, first class mail, and email to:

Christian-Andre Clark
7007 Greenock Street
Austin, Texas 78749
Christianclark31@gmail.com
PRO SE

Via e-Filing to:

Andrew M. Williams
SBN 24068345
andrew.williams@traviscountytexas.gov
Patrick M. Kelly
SBN 11228000
pat.kelly@traviscountytexas.gov
P.O. Box 1748
Austin, Texas 78767
(512) 854-9513
(512) 854-4808 (Fax)
ATTORNEYS FOR TRAVIS COUNTY DEFENDANTS

/s/ Brandon W. Carr

BRANDON W. CARR

Exhibit 1

**DEFENDANTS STEVEN JOHNSON AND MATTHEW MURPHY'S
SPECIAL EXCEPTIONS AND MOTION TO COMPEL**

CAUSE NO: D-1-GN-16-002854

CHRISTIAN-ANDRE CLARK, Plaintiff,	§	IN THE DISTRICT COURT
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
STEVEN JOHNSON, MATTHEW MURPHY ET AL., Defendants.	§	
	§	
	§	201 st JUDICIAL DISTRICT

DEFENDANTS STEVEN JOHNSON, MATTHEW MURPHY, AND AUSTIN POLICE DEPARTMENT'S RESPONSE TO PLAINTIFF'S REQUESTS FOR DISCLOSURE

TO: Plaintiff, Christian-Andre Clark, *Pro Se*, 7007 Greenock Street, Austin, Texas 78749.

Pursuant to the Texas Rules of Civil Procedure, Defendants Steven Johnson, Matthew Murphy and the Austin Police Department (collectively "City Defendants") provide the following Responses to Plaintiff's Requests for Disclosure.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF, LITIGATION

/s/ Brandon W. Carr
BRANDON W. CARR
Assistant City Attorney
State Bar No. 24074004
City of Austin - Law Department
P. O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-2181
Facsimile: (512) 974-1311
Brandon.Carr@austintexas.gov

ATTORNEYS FOR CITY DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties, or their attorneys of record, in compliance with the Texas Rules of Civil Procedure, on this 19th day of September, 2016, as follows:

Via CM RRR 91 7199 9991 7036 2336 3698, first class mail, and email to:

Christian-Andre Clark
7007 Greenock Street
Austin, Texas 78749
Christianclark31@gmail.com
PRO SE

Via e-Service to:

Andrew M. Williams
SBN 24068345
andrew.williams@traviscountytexas.gov
Patrick M. Kelly
SBN 11228000
pat.kelly@traviscountytexas.gov
P.O. Box 1748
Austin, Texas 78767
(512) 854-9513
(512) 854-4808 (Fax)

ATTORNEYS FOR TRAVIS COUNTY DEFENDANTS

/s/ Brandon W. Carr
BRANDON W. CARR

RESPONSE TO REQUESTS FOR DISCLOSURE

REQUEST 194.2(a):

The correct names of the parties to the lawsuit.

RESPONSE: To the best of the City Defendants' knowledge, the parties are correctly named.

REQUEST 194.2(b):

The name, address, and telephone number of any potential parties.

RESPONSE: The City Defendants are aware of no potential parties at this time.

REQUEST 194.2(c):

The legal theories and, in general, factual bases of responding party's claims and defenses.

RESPONSE: Without waiving any defense asserted in City Defendants' Original Answer, Affirmative Defenses, Special Exceptions, or Motion to Dismiss for Lack of Jurisdiction, the City Defendants deny all of Plaintiff's allegations both generally and specifically. The City Defendants deny that Plaintiff was injured as a result of any of City Defendants' actions and assert that the Plaintiff must prove each and every element of his allegations by a preponderance of the credible evidence.

Furthermore, the City Defendants assert that their actions are protected by official immunity and governmental immunity, therefore this suit is barred as a matter of law, and the court does not have jurisdiction to hear the merits of this case. City Defendants also assert that Plaintiff's claims are barred under TCPRC § 101.057 to the extent Plaintiff alleges any intentional tort(s) committed by the City Defendants. Moreover, Defendant Austin Police Department is not a jural entity capable of being sued, and therefore the court does not have jurisdiction with regards to the claims against the Austin Police Department.

The City Defendants further assert that Plaintiff's damages, if any, were solely caused or proximately caused by Plaintiff's own acts or omissions. The City Defendants further assert that the Plaintiff has failed to mitigate damages, if any, and assert this failure to mitigate as both an affirmative defense and a reduction in the damage amount, if any. The City Defendants also assert that Plaintiff has failed to comply with the procedural rules that guide the filing of this lawsuit, including, but not limited to, failing to comply with Rule 47 of the Texas Rules of Civil Procedure.

REQUEST 194.2(d):

The amount and any method of calculating economic damages.

RESPONSE: The City Defendants make no claim for economic damages at this time.

REQUEST 194.2(e):

The name, address, and telephone number of person's having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.

RESPONSE: See Exhibit A, attached.

REQUEST 194.2(f):

For any testifying expert:

- (1) The expert's name, address, and telephone number;
- (2) The subject matter on which the expert will testify;
- (3) The general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
- (4) If the expert is retained by, employed by, or otherwise subject to the control of the responding party:
 - (A) All documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
 - (B) The expert's current resume and bibliography.

RESPONSE: The City Defendants have not designated an expert at this time.

REQUEST 194.2(g):

Any indemnity and insuring agreements described in Rule 192.3(f).

RESPONSE: This information is not discoverable pursuant to Texas Civil Practice and Remedies Code Section § 101.104.

REQUEST 194.2(h):

Any settlement agreements described in Rule 192.3(g).

RESPONSE: None.

REQUEST 194.2(i):

Any witness statements described in Rule 192.3(h).

RESPONSE: None at this time.

REQUEST 194.2(j):

In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills.

RESPONSE: The City Defendants make no claim(s) for physical or mental injury or damages.

REQUEST 194.2(k):

In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party.

RESPONSE: None.

REQUEST 194.2(1):

The name, address, and telephone number of any person who may be designated as a responsible third party.

RESPONSE: None.

EXHIBIT A

Parties:

Christian-Andre Clark
7007 Greenock Street
Austin, Texas 78749
Christianclark31@gmail.com
Mr. Clark is the Plaintiff in this lawsuit.

Steven Johnson
Matthew Murphy
Austin Police Department
c/o Brandon W. Carr
City of Austin – Law Department
P.O. Box 1546
Austin, Texas 78767
Telephone: (512) 974-2181
Facsimile: (512) 974-1311
Brandon.Carr@austintexas.gov
Steven Johnson, Matthew Murphy and Austin Police Department are Defendants in this lawsuit.

Ebony Davis
Victim/Complainant
Ms. Davis has knowledge of the events leading to the arrest of the Plaintiff. Her contact information is either known by Plaintiff or is equally obtainable by Plaintiff.

Victim's/Complainant's children
The police report states that the children were present during the time of the incident which forms the basis of this lawsuit. They may be contacted through Victim/Complainant.

Detective Christopher Benningfield
Austin Police Department
c/o Brandon W. Carr
City of Austin – Law Department
P.O. Box 1546
Austin, Texas 78767
Telephone: (512) 974-2181
Facsimile: (512) 974-1311
Brandon.Carr@austintexas.gov
Lead Investigator for the incident which forms the basis of this lawsuit.

Roxana Ortega-Hart
Victim Witness Counselor
Victim Services-Austin Police Department
c/o Brandon W. Carr
City of Austin – Law Department
P.O. Box 1546
Austin, Texas 78767
Telephone: (512) 974-2181
Facsimile: (512) 974-1311
Brandon.Carr@austintexas.gov

Victim witness counselor who provided victim services assistance to the Victim/Complainant.

The City further identifies all persons identified by Plaintiff as having knowledge of relevant facts. Their contact information would either be better provided by their counsel or representatives or this information is equally available to Plaintiff.

Exhibit 2

**DEFENDANTS STEVEN JOHNSON AND MATTHEW MURPHY'S
SPECIAL EXCEPTIONS AND MOTION TO COMPEL**

Carr, Brandon

From: Carr, Brandon
Sent: Monday, April 03, 2017 5:25 PM
To: 'ChristianClark31@gmail.com'
Cc: 'Pat Kelly'; Nicholson, Briana
Subject: Requests for Disclosure
Attachments: 2016_08_19 D COA's Org. Answer,and RFD.pdf; 2016 09 19 City Ds' Response to P's RFD.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Mr. Clark,

The APD Defendants, Officers Johnson and Murphy, requested that you file a response to their Requests to Disclosure back in August 2016. See Section IV of Defendants' Original Answer, attached. The Officers timely responded to your Requests (also attached) and now they respectfully request that you do the same and respond to their Requests for Disclosure by the end of the day Wednesday. Otherwise, they will be filing a Motion to Compel you to respond along with their Special Exceptions, and a hearing will be requested.

Please let me know as soon as possible if you will not be able to meet that deadline.

Thanks,
Brandon W. Carr
Assistant City Attorney
City of Austin Law Department
512.974.2181
512-974.1311 (fax)
brandon.carr@austintexas.gov

Velva L. Price
District Clerk
Travis County
D-1-GN-16-002854
Carrisa Escalante

CAUSE NO: D-1-GN-16-002854

CHRISTIAN-ANDRE CLARK,
Plaintiff,

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

v.

TRAVIS COUNTY, TEXAS

STEVEN JOHNSON, MATTHEW
MURPHY ET AL.,
Defendants.

201st JUDICIAL DISTRICT

**DEFENDANT CITY OF AUSTIN'S ORIGINAL ANSWER, AFFIRMATIVE DEFENSES,
SPECIAL EXCEPTIONS, AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants Steven Johnson, Matthew Murphy and the Austin Police Department¹ (collectively City Defendants), file the Original Answer, Affirmative Defenses, Special Exceptions, and Request for Disclosures as follows:

I. General Denial

1. Pursuant to Texas Rule of Civil Procedure 92, City Defendants, deny generally the allegations in Plaintiff's Original Petition (and any amendments or supplements thereto), and request that Plaintiff prove his claims and allegations as required by law.

II. Affirmative Defenses

City Defendants assert the following affirmative and other defenses:

2. **Official Immunity:** Defendants Steven Johnson and Matthew Murphy as employees of the Austin Police Department—a Department within the City of Austin, which is a home-rule municipality and political subdivision of the State of Texas² enjoy governmental

¹ The Austin Police Department is not a separate legal entity subject to suit. *See Darby v. Pasadena Police Dep't*, 939 F.2d 311, 313-14 (5th Cir. 1991).

immunity both from suit and from liability, unless the Texas Legislature has provided a limited waiver of governmental immunity under the Texas Tort Claims Act. Defendants Johnson and hereby affirmatively plead and assert their defense of official immunity and their claim to and defenses under the Texas Tort Claims Act. Tex. Civ. Prac. & Rem. Code Ann. § 101.001 et seq.

3. City Defendants specifically assert that at all times relevant to this incident, they were acting in the course and scope of their employment with the City of Austin, and with a good faith belief that their actions were proper under the Constitution and the laws of the State of Texas.

4. City Defendants assert that they had legal authority, privilege and justification to arrest Plaintiff based upon a valid warrant issued by a court of competent jurisdiction.

5. **Notice:** Plaintiff has failed to provide the required notice under the Texas Tort Claims Act and the City Charter. Failure to provide timely notice of claim bars Plaintiff's cause of action.

6. **Intentional Torts:** Plaintiff's claims are barred under TCPRC § 101.057 to the extent the allegations suggest an intentional tort.

7. The City Defendants further assert that the Plaintiff's damages, if any, were solely caused or proximately caused by Plaintiff's own acts or omissions.

8. The City Defendants further assert that the Plaintiff has failed to mitigate damages, if any, and assert this failure to mitigate as both an affirmative defense and a reduction in the damage amount, if any.

9. In addition to the foregoing defenses, the City Defendants hereby reserve the right to add inferential rebuttals, amend or withdraw defenses, supplement allegations pertaining to

² City of Austin has not been named nor served with process under this case.

defenses already asserted upon completion of discovery and/or through leave of the Court.

III. Special Exceptions

10. The City Defendants specially except to Plaintiff's Original Petition in its entirety for the following reasons and respectfully requests this Honorable Court to order Plaintiff to replead and cure his pleading defects so that the City has fair notice of all claims. The City Defendants request that Plaintiff replead within thirty (30) days or that his pleadings be stricken.

11. The City Defendants specially except to Plaintiff's Original Petition for Plaintiff's failure to comply with Rule 47 of the Texas Rules of Civil Procedure, amended as of March 1, 2013. Accordingly, the City request that discovery is stayed until Plaintiff has amended his pleadings as required by the Texas Rules of Civil Procedure.

12. The City Defendants specially except to Plaintiff's Original Petition in its entirety for the reason that Plaintiff failed to plead all elements of a waiver of sovereign under the Texas Tort Claims Act.

IV. Request for Disclosure

13. Pursuant to Texas Rule of Civil Procedure 194, Defendant, City of Austin, requests that Plaintiff disclose, within 30 days of the service of this request, the information or material described in Rule 194.2.

V. Prayer

Defendants pray that Plaintiff take nothing by his suit. Defendants further request any and all other relief that it shows it is justly entitled.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF, LITIGATION DIVISION

/s/ Meghan L. Riley
MEGHAN L. RILEY
Assistant City Attorney
State Bar No. 24049373
City of Austin-Law Department
P. O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-2458
Facsimile: (512) 974-1311
meghan.riley@austintexas.gov

ATTORNEYS FOR CITY DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties, or their attorneys of record, in compliance with the Texas Rules of Civil Procedure, on this the 19th day of August, 2016, as follows:

Via CM RRR 91 7199 9991 7036 2378 1096, first class mail and email to:

Christian-Andre Clark
7007 Greenock Street
Austin, Texas 78749
Christianclark31@gmail.com

PRO SE

Via e-File to:

David A. Escamilla
Andrew M. Williams
Patrick M. Kelly
P.O. Box 1748
Austin, Texas 78767

ATTORNEYS FOR TRAVIS COUNTY DEFENDANTS

/s/ Meghan L. Riley
MEGHAN L. RILEY
Assistant City Attorney

CAUSE NO: D-1-GN-16-002854

CHRISTIAN-ANDRE CLARK, Plaintiff,	§	IN THE DISTRICT COURT
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
STEVEN JOHNSON, MATTHEW MURPHY ET AL., Defendants.	§	201 st JUDICIAL DISTRICT

DEFENDANTS STEVEN JOHNSON, MATTHEW MURPHY, AND AUSTIN POLICE DEPARTMENT'S RESPONSE TO PLAINTIFF'S REQUESTS FOR DISCLOSURE

TO: Plaintiff, Christian-Andre Clark, *Pro Se*, 7007 Greenock Street, Austin, Texas 78749.

Pursuant to the Texas Rules of Civil Procedure, Defendants Steven Johnson, Matthew Murphy and the Austin Police Department (collectively "City Defendants") provide the following Responses to Plaintiff's Requests for Disclosure.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF, LITIGATION

/s/ Brandon W. Carr
BRANDON W. CARR
Assistant City Attorney
State Bar No. 24074004
City of Austin - Law Department
P. O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-2181
Facsimile: (512) 974-1311
Brandon.Carr@austintexas.gov

ATTORNEYS FOR CITY DEFENDANTS

CERTIFICATE OF SERVICE

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Via CM RRR 91 7199 9991 7036 2336 3698, first class mail, and email to:

Christian-Andre Clark
7007 Greenock Street
Austin, Texas 78749
Christianclark31@gmail.com

PRO SE

Via e-Service to:

Andrew M. Williams
SBN 24068345
andrew.williams@traviscountytexas.gov

Patrick M. Kelly
SBN 11228000
pat.kelly@traviscountytexas.gov

P.O. Box 1748
Austin, Texas 78767
(512) 854-9513
(512) 854-4808 (Fax)

ATTORNEYS FOR TRAVIS COUNTY DEFENDANTS

/s/ Brandon W. Carr
BRANDON W. CARR

RESPONSE TO REQUESTS FOR DISCLOSURE

REQUEST 194.2(a):

The correct names of the parties to the lawsuit.

RESPONSE: To the best of the City Defendants' knowledge, the parties are correctly named.

REQUEST 194.2(b):

The name, address, and telephone number of any potential parties.

RESPONSE: The City Defendants are aware of no potential parties at this time.

REQUEST 194.2(c):

The legal theories and, in general, factual bases of responding party's claims and defenses.

RESPONSE: Without waiving any defense asserted in City Defendants' Original Answer, Affirmative Defenses, Special Exceptions, or Motion to Dismiss for Lack of Jurisdiction, the City Defendants deny all of Plaintiff's allegations both generally and specifically. The City Defendants deny that Plaintiff was injured as a result of any of City Defendants' actions and assert that the Plaintiff must prove each and every element of his allegations by a preponderance of the credible evidence.

Furthermore, the City Defendants assert that their actions are protected by official immunity and governmental immunity, therefore this suit is barred as a matter of law, and the court does not have jurisdiction to hear the merits of this case. City Defendants also assert that Plaintiff's claims are barred under TCPRC § 101.057 to the extent Plaintiff alleges any intentional tort(s) committed by the City Defendants. Moreover, Defendant Austin Police Department is not a jural entity capable of being sued, and therefore the court does not have jurisdiction with regards to the claims against the Austin Police Department.

The City Defendants further assert that Plaintiff's damages, if any, were solely caused or proximately caused by Plaintiff's own acts or omissions. The City Defendants further assert that the Plaintiff has failed to mitigate damages, if any, and assert this failure to mitigate as both an affirmative defense and a reduction in the damage amount, if any. The City Defendants also assert that Plaintiff has failed to comply with the procedural rules that guide the filing of this lawsuit, including, but not limited to, failing to comply with Rule 47 of the Texas Rules of Civil Procedure.

REQUEST 194.2(d):

The amount and any method of calculating economic damages.

RESPONSE: The City Defendants make no claim for economic damages at this time.

REQUEST 194.2(e):

The name, address, and telephone number of person's having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.

RESPONSE: See Exhibit A, attached.

REQUEST 194.2(f):

For any testifying expert:

- (1) The expert's name, address, and telephone number;
- (2) The subject matter on which the expert will testify;
- (3) The general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
- (4) If the expert is retained by, employed by, or otherwise subject to the control of the responding party:
 - (A) All documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
 - (B) The expert's current resume and bibliography.

RESPONSE: The City Defendants have not designated an expert at this time.

REQUEST 194.2(g):

Any indemnity and insuring agreements described in Rule 192.3(f).

RESPONSE: This information is not discoverable pursuant to Texas Civil Practice and Remedies Code Section § 101.104.

REQUEST 194.2(h):

Any settlement agreements described in Rule 192.3(g).

RESPONSE: None.

REQUEST 194.2(i):

Any witness statements described in Rule 192.3(h).

RESPONSE: None at this time.

REQUEST 194.2(j):

In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills.

RESPONSE: The City Defendants make no claim(s) for physical or mental injury or damages.

REQUEST 194.2(k):

In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party.

RESPONSE: None.

REQUEST 194.2(i):

The name, address, and telephone number of any person who may be designated as a responsible third party.

RESPONSE: None.

EXHIBIT A

Parties:

Christian-Andre Clark
7007 Greenock Street
Austin, Texas 78749
Christianclark31@gmail.com
Mr. Clark is the Plaintiff in this lawsuit.

Steven Johnson
Matthew Murphy
Austin Police Department
c/o Brandon W. Carr
City of Austin – Law Department
P.O. Box 1546
Austin, Texas 78767
Telephone: (512) 974-2181
Facsimile: (512) 974-1311
Brandon.Carr@austintexas.gov
Steven Johnson, Matthew Murphy and Austin Police Department are Defendants in this lawsuit.

Ebony Davis
Victim/Complainant
Ms. Davis has knowledge of the events leading to the arrest of the Plaintiff. Her contact information is either known by Plaintiff or is equally obtainable by Plaintiff.

Victim's/Complainant's children
The police report states that the children were present during the time of the incident which forms the basis of this lawsuit. They may be contacted through Victim/Complainant.

Detective Christopher Benningfield
Austin Police Department
c/o Brandon W. Carr
City of Austin – Law Department
P.O. Box 1546
Austin, Texas 78767
Telephone: (512) 974-2181
Facsimile: (512) 974-1311
Brandon.Carr@austintexas.gov
Lead Investigator for the incident which forms the basis of this lawsuit.

Roxana Ortega-Hart
Victim Witness Counselor
Victim Services-Austin Police Department
c/o Brandon W. Carr
City of Austin – Law Department
P.O. Box 1546
Austin, Texas 78767
Telephone: (512) 974-2181
Facsimile: (512) 974-1311
Brandon.Carr@austintexas.gov

Victim witness counselor who provided victim services assistance to the Victim/Complainant.

The City further identifies all persons identified by Plaintiff as having knowledge of relevant facts. Their contact information would either be better provided by their counsel or representatives or this information is equally available to Plaintiff.

MAY 08 2017 NNR

At 3:24 P.M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-16-002854

CHRISTIAN-ANDRE CLARK, Plaintiff,	§	IN THE DISTRICT COURT
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
STEVEN JOHNSON, MATTHEW MURPHY ET AL., Defendants.	§	201 ST JUDICIAL DISTRICT

**ORDER GRANTING DEFENDANTS STEVEN JOHNSON AND MATTHEW
MURPHY'S SPECIAL EXCEPTIONS AND MOTION TO COMPEL**

On May 4, 2017 the Court considered the *Defendants Steven Johnson and Matthew Murphy's Special Exceptions and Motion to Compel* (hereinafter collectively the "Motion"). After considering the pleadings, the applicable law, and the arguments of counsel and Plaintiff, the Court is of the opinion that the Motion is meritorious.

THEREFORE, the Motion is GRANTED. Accordingly, the Court hereby Orders Plaintiff to re-plead his Petition to address Defendants' Special Exceptions and to answer Defendants' Requests for Disclosures (Motion to Compel) by 5PM on June 2, 2017.

SIGNED this 8 day of May, 2017.


HON. JUDGE GISELA D. TRIANA

AGREED AS TO FORM:

/s/ Brandon W. Carr

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ATTORNEYS FOR TRAVIS COUNTY DEFENDANTS

CHRISTIAN-ANDRE CLARK,
Plaintiff,

§ IN THE DISTRICT COURT

§

§

v.

§ TRAVIS COUNTY, TEXAS

§

STEVEN JOHNSON, MATTHEW
MURPHY ET AL.,
Defendants.

§

§

§ 201st JUDICIAL DISTRICT

AMENDED CLAIM
self-operative

Comes now Christian-Andre Clark, one of the people of the Republic of Texas, unincorporated lawyer, files his suit, and declares, states and alleges as follows:

Party

- a. Christian-Andre Clark; care of: 7007 Greenock street Austin, Texas county of Travis
- b. Steven Johnson; care of: 2006 East 4th Street Austin, Texas county of Travis
- c. Mathew Murphy; care of: 2006 East 4th Street Austin, Texas county of Travis
- d. Mike Denton; care of: 509 West 11th Street Austin, Texas county of Travis
- e. Jesse Ibarra; care of: 509 West 11th Street Austin, Texas county of Travis
- f. Travis County Sheriff’s Department; care of: Texas Secretary of State, P.O. Box 12079 Austin, Texas county of Travis [78711-2079]

Preliminary Statement

1. This case arises from the interference of Christian-Andre Clark’s (hereafter; Plaintiff) protected rights enumerated in THE TEXAS CONSTITUTION BILL OF RIGHTS. Plaintiff charges each Defendant with: Trespass, by way of unlawful form of governance (Section 2), unlawful seizure (Section 9), deprivation of life and liberty (Section 19), and nonexistent compensation (Section 17).

2. Plaintiff alleges trespass to his unincorporated rites, life, liberty, land and chattel appraised value of 352,909,958 gold dollar coins or \$666.234.503.400.78. (hereafter; property) by way of color of law, violence, threat of arms, conversion, and false imprisonment.
3. Possession rights of said property seized lie with the Plaintiff.
4. As relief for Defendant's actions, Plaintiff seeks general damages, as well as injunctive relief as permitted by law.

Jurisdiction and Venue

5. Jurisdiction is conferred upon this court of record by right and this state's general jurisdiction statute cf. THE TEXAS CONSTITUTION BILL OF RIGHTS Article One Section Twenty-Nine, to which the focus of this dispute are protected rights in this state.
6. Venue is proper in this court because the events giving rise to the claims occurred in this realm and county.

Ultimate Facts

7. Defendants Stephen Johnson (hereafter; DA) and Mathew Murphy (hereafter; DB) acting under the color of law, intentionally, knowingly, and recklessly, unlawfully seized Plaintiffs property against his wishes or any other valid privilege from his home with violence and threat of arms, on September 29, 2015 at the county of Travis and state of Texas.
8. Defendants DA and DB acting under the color of law intentionally, knowingly, and recklessly transported Plaintiffs property against his wishes or any other valid privilege on September 29, 2015 at the county of Travis and state of Texas.
9. Defendant DA and DB acting under the color of law intentionally, knowingly, and recklessly transferred Plaintiffs property against his wishes to the care and custody of Defendant Travis County Sheriff / John Doe's (hereafter; DC-1) on September 29, 2015 at the county of Travis and state of Texas.
10. Defendant Mike Denton (hereafter; DD) intentionally, knowingly, and recklessly commanded Defendant Jesses Ibarra (hereafter; DE) to unlawfully seize Plaintiffs property with violence and thereat of arms on June 29, 2016 at the county of Travis and state of Texas.

11. Defendant DD acting under the color of law, intentionally, knowingly, and recklessly ordered the unlawful seizure of Plaintiffs property on July 15, 2016 at the county of Travis and state of Texas.

12. Defendant DC-1 acting under the color of law intentionally, knowingly, and recklessly trespassed with violence and threat of arms upon the property of the Plaintiff on September 29, 2015 thought October 1, 2014; June 28, 2016 thought July 1, 2016; July 15, 2016 thought August 16, 2016 at the county of Travis and state of Texas.

13. Defendant DC-1 acting under the color of law intentionally, knowingly, and recklessly converted the property of the Plaintiff with violence and threat of arms on September 29, 2015, June 28, 2016, and July 15, 2016 at the county of Travis and state of Texas.

14. Plaintiffs lawful right to govern his own affairs were intentionally, knowingly, and recklessly infringed upon by each Defendant causing injuries. (cf. THE TEXAS CONSTITUTION Article 1. BILL OF RIGHTS Section 2. and Section 6.)

15. Plaintiffs lawful right to be secure in his person, papers and possessions, were intentionally knowingly, and recklessly infringed upon by each Defendant causing general injuries. (cf. THE TEXAS CONSTITUTION Article 1. BILL OF RIGHTS Section 9.)

16. Plaintiffs lawful right to life, liberty and the due course of law were intentionally, knowingly, and recklessly infringed upon by each Defendant causing general injuries. (cf. THE TEXAS CONSTITUTION Article 1. BILL OF RIGHTS Section 19.)

17. Plaintiffs lawful right to be compensated for the taking of his property has not been received thereby causing general injuries. (cf. THE TEXAS CONSTITUTION Article 1. BILL OF RIGHTS Section 17.)

COUNT 1 - TRESPASS TO PERSONAL PROPERTY

Trespass From The Beginning (ab initio)

18. Plaintiff re-alleges and incorporates by reference paragraphs 7 through 17 as if fully set forth herein.

19. Plaintiff is the sole owner of the moveable property described in paragraph 1 thought 3.

20. Plaintiff enjoys the legal right to be secure in his property to which Defendants DA and DB acting under the color of law, interfered with causing harm on September 29, 2015 through present day.

21. Defendants DA and DB acting under the color of law, intentionally and recklessly exceed their duty of care to the Plaintiff.

22. Defendants DA and DB acting under the color of law, intentionally seized Plaintiff's property without his consent or any other valid privilege.

WHEREFORE, Plaintiff demands judgment against Defendants Stephen Johnson (DA) and Mathew Murphy (DB) and to award remedies available pursuant to the common law of the state of Texas.

COUNT 2 - TRESPASS TO PERSONAL PROPERTY

False Imprisonment I

23. Plaintiff re-alleges and incorporates by reference paragraphs 7 through 17 as if fully set forth herein.

24. Plaintiff is the sole owner of the moveable property described in paragraph 1 through 3.

25. Plaintiff enjoys the legal right to be secure in his property to which Defendants DA and DB acting under the color of law, interfered with causing harm on September 29, 2015 at 11305 Friendship Drive Austin, county of Travis.

26. Defendants DA and DB acting under the color of law, intentionally seized Plaintiff's property from his home, with violence and threat of arms, without his consent or any other valid privilege.

WHEREFORE, Plaintiff demands judgment against Defendants Stephen Johnson (DA) and Mathew Murphy (DB) and to award remedies available pursuant to the common law of the state of Texas.

COUNT 3 - TRESPASS TO PERSONAL PROPERTY

Assault and Battery I

27. Plaintiff re-alleges and incorporates by reference paragraphs 7 through 17 as if fully set forth herein.

28. Plaintiff is the sole owner of the moveable property described in paragraph 1 through 3.

29. Plaintiff enjoys the legal right to be secure in his property to which Defendants DA and DB interfered with causing harm on September 29, 2015 at 11305 Friendship Drive Austin, county of Travis.

30. Defendants DA and DB acting under the color of law, caused the Plaintiff to fear for his property which caused emotional distress.

31. Defendants DA and DB acting under the color of law, intentionally with violence and without consent offensively touched Plaintiff's property without his consent or any other valid privilege.

32. Defendants DA and DB acting under the color of law, intentionally placed metal restraints on Plaintiff's property which caused severe pain and anguish.

WHEREFORE, Plaintiff demands judgment against Defendants Stephen Johnson (DA) and Mathew Murphy (DB) and to award remedies available pursuant to the common law of the state of Texas.

COUNT 4 - TRESPASS TO PERSONAL PROPERTY

Conversion

33. Plaintiff re-alleges and incorporates by reference paragraphs 7 through 17 as if fully set forth herein.

34. Plaintiff is the sole owner of the moveable property described in paragraph 1 through 3.

35. Plaintiff enjoys the legal right to be secure in his property to which Defendants DA, DB, and DC-1 acting under the color of law, interfered with causing harm on September 29, 2015 at 500 West 10th Street, Austin, county of Travis.

36. Defendants DA and DB acting under the color of law, intentionally and knowingly transferred Plaintiff's property to Defendant DC-1 without his consent and without right.

37. Plaintiff orally demanded the release of said property.

WHEREFORE, Plaintiff demands judgment against Defendants Stephen Johnson (DA), Mathew Murphy (DB), Travis County Sheriff / John Doe's (DC-1) and to award remedies available pursuant to the common law of the state of Texas.

COUNT 5 - TRESPASS TO PERSONAL PROPERTY

Assault and Battery II

38. Plaintiff re-alleges and incorporates by reference paragraphs 7 through 17 as if fully set forth herein.

39. Plaintiff is the sole owner of the moveable property described in paragraph 1 through 3.

40. Plaintiff enjoys the legal right to be secure in his property to which Defendant DC-1 acting under the color of law, interfered with causing harm on September 29, 2015 through October 1, 2015 at 500 West 10th Street, Austin, county of Travis and 3614 Bill Price Road, Del Valle, county of Travis.

41. Defendant DC-1 acting under the color of law, intentionally, recklessly, knowingly, and without consent offensively touched Plaintiff's property with violence and threat of arms.

42. Defendant DC-1 acting under the color of law, intentionally placed metal restraints on Plaintiff's property which caused severe pain and anguish.

43. Defendant DC-1 acting under the color of law, intentionally, recklessly, knowingly, and without consent placed Plaintiff in a rubber room without clothes thereby inflicting further severe emotional distress.

WHEREFORE, Plaintiff demands judgment against Defendant Travis County Sheriff / John Doe's (DC-1) and to award remedies available pursuant to the common law of the state of Texas.

COUNT 6 - TRESPASS TO PERSONAL PROPERTY

False Imprisonment II

23. Plaintiff re-alleges and incorporates by reference paragraphs 7 through 17 as if fully set forth herein.

24. Plaintiff is the sole owner of the moveable property described in paragraph 1 through 3.

25. Plaintiff enjoys the legal right to be secure in his property to which Defendant DC-1 acting under the color of law, interfered with causing harm on September 29, 2015 through October 1, 2015 at 500 West 10th Street, Austin, county of Travis and at 3614 Bill Price Road, Del Valle, county of Travis.

26. Defendants DC-1 acting under the color of law, intentionally seized Plaintiff's property from 500 West 10th Street, Austin, county of Travis, with violence and threat of arms, without his consent or any other valid privilege and transported Plaintiff to 3614 Bill Price Road, Del Valle, county of Travis.

WHEREFORE, Plaintiff demands judgment against Defendant Travis County Sheriff / John Doe's (DC-1) and to award remedies available pursuant to the common law of the state of Texas.

COUNT 7 - TRESPASS TO PERSONAL PROPERTY

Assault and Battery III

38. Plaintiff re-alleges and incorporates by reference paragraphs 7 through 17 as if fully set forth herein.

39. Plaintiff is the sole owner of the moveable property described in paragraph 1 through 3.

40. Plaintiff enjoys the legal right to be secure in his property to which Defendants DD and DE interfered with causing harm on June 29, 2016 through July 1, 2016 at 509 West 11th, 3rd floor Austin, county of Travis, 500 West 10th Street, Austin, county of Travis and 3614 Bill Price Road, Del Valle, county of Travis.

41. Defendants DD acting under the color of law, intentionally, recklessly, knowingly, and without consent or any other valid privilege, instructed DE to seize Plaintiff's property with violence and threat of arms.

42. Defendant DE acting under the color of law, knowingly placed metal restraints on Plaintiff's property which caused severe pain and anguish.

43. Defendant DE acting under the color of law, intentionally, recklessly, knowingly, and without consent transferred Plaintiff's property to DC-1.

WHEREFORE, Plaintiff demands judgment against Defendants Mike Denton (DD), Jesses Ibarra (DE) and Travis County Sheriff / John Doe's (DC-1) and to award remedies available pursuant to the common law of the state of Texas.

COUNT 8 - TRESPASS TO PERSONAL PROPERTY

False Imprisonment III

44. Plaintiff re-alleges and incorporates by reference paragraphs 7 through 17 as if fully set forth herein.

45. Plaintiff is the sole owner of the moveable property described in paragraph 1 through 3.

46. Plaintiff enjoys the legal right to be secure in his property to which Defendants DD, DE, and DC-1 acting under the color of law, interfered with causing harm on June 29, 2016 through July 1, 2016 at 509 West 11th, 3rd floor Austin, county of Travis, 500 West 10th Street, Austin, county of Travis and 3614 Bill Price Road, Del Valle, county of Travis.

47. Defendant DD acting under the color of law, intentionally, recklessly, knowingly, and without consent instructed DE to seize Plaintiff's property with violence and threat of arms.

48. Defendant DE acting under the color of law, knowingly placed metal restraints on Plaintiff's property which caused severe pain and anguish.

49. Defendant DE acting under the color of law, intentionally, recklessly, knowingly, and without consent transferred Plaintiff's property to DC-1.

WHEREFORE, Plaintiff demands judgment against Defendants Mike Denton (DD), Jesses Ibarra (DE), and Travis County Sheriff / John Doe's (DC-1) and to award remedies available pursuant to the common law of the state of Texas.

COUNT 9 - TRESPASS TO PERSONAL PROPERTY

False Imprisonment IV

50. Plaintiff re-alleges and incorporates by reference paragraphs 7 through 17 as if fully set forth herein.

51. Plaintiff is the sole owner of the moveable property described in paragraph 1 through 3.

52. Plaintiff enjoys the legal right to be secure in his property to which Defendants DD and DC-1 interfered with causing harm on July 15, 2016 through August 16, 2016 at 509 West 11th, 1st floor Austin, county of Travis, 500 West 10th Street, Austin, county of Travis and at 3614 Bill Price Road, Del Valle, county of Travis.

53. Defendants DD acting under the color of law, intentionally, recklessly, knowingly, and without due course of law ordered DC-1 to seize Plaintiff's property with violence and threat of arms.

54. Defendant DC-1 acting under the color of law, knowingly placed metal restraints on Plaintiff's property which caused severe pain and anguish.

55. Defendant DC-1 acting under the color of law, intentionally, recklessly, knowingly, and without consent transported Plaintiff's property to 500 West 10th Street, Austin, county of Travis and 3614 Bill Price Road, Del Valle, county of Travis.

WHEREFORE, Plaintiff demands judgment against Defendants Mike Denton (DD), and Travis County Sheriff / John Doe's (DC-1) and to award remedies available pursuant to the common law of the state of Texas.

For these causes of action therefore Plaintiff brings his suit.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury on any cause of action and any claim with respect to which there is a right to a jury trial.

RELIEF REQUESTED

Wherefore, Plaintiff prays judgment against Defendants, and each of them, as follows:

On all counts:

56. For general damages in the sum of 21,000 gold dollar coins or \$38,000,000.00;

57. For medical and related expenses according to proof;
58. For loss of earnings according to proof;
59. For interest as allowed by law;
60. For costs of suit incurred and attorney's fees; and
61. A permanent injunction directing and ordering the Defendants not to encumber or delay Plaintiff's property without his express consent or other valid authorization.
62. An award of such further and additional legal and equitable relief as the Court deems just and proper.
63. If any claim, statement, fact, or portion in this action is held inapplicable or not valid, such decision does not affect the validity of any other portion of the record.

I declare and affirm that the foregoing facts are true and correct to the best of my knowledge, so help me God.

Dated: May 15, 2017
Travis County, The Republic of Texas

Respectfully Submitted by,
Intrepid Lawyer,
Counsel for the Plaintiff

Christian-Andre Clark

Notary Public

State of Texas

County of Travis

On this the ____ day of _____, 2017, before me,
_____, the undersigned officer, personally appeared

_____, known to me (or satisfactorily proven) to be
the person whose name is/are subscribed to the within instrument and acknowledged that
he/she/they executed the same for the purposes therein contained. In witness whereof I hereunto
set my hand and official seal.

Notary Public

Printed Name: _____

My Commission Expires:

CAUSE NO. D-1-GN-16-002854

CHRISTIAN-ANDRE CLARK, Plaintiff,	§	IN THE DISTRICT COURT
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
STEVEN JOHNSON, MATTHEW MURPHY ET AL., Defendants.	§	
	§	
	§	201 ST JUDICIAL DISTRICT

**DEFENDANTS STEVEN JOHNSON’S AND MATTHEW MURPHY’S FIRST
AMENDED MOTION TO DISMISS FOR LACK OF JURISDICTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants Steven Johnson and Matthew Murphy¹ (“City Defendants”)², file this *First Amended Motion to Dismiss for Lack of Jurisdiction* in response to Plaintiff’s Amended Claim, because Plaintiff has exclusively brought this cause of action under the Texas Constitution and the Texas Constitution does not provide him a private cause of action for the allegations he has asserted against the City Defendants, i.e. he does not have standing to seek damages. The City Defendants would respectfully show the Court as follows:

I.

FACTUAL BACKGROUND

On Tuesday, September 29, 2015 around 10:30PM, Austin Police Department Officers Steven Johnson and Matthew Murphy (the “Officers”) responded to a disturbance call located at

¹ The Austin Police Department was dismissed as a Defendant in the Court’s Order issued on January 24, 2017. In that Order, Judge Jenkins, in denying the PTJ as to Defendants Johnson and Murphy, stated that their official immunity arguments would be more properly pled in a Motion for Summary Judgment.

² Note: Plaintiff’s claims were also dismissed as to Judge Mike Denton, Pretrial Officer III Kimberly Legge, and Assistant County Attorney Dimple Malhotra in a separate Order issued the same day. Also note that the City of Austin has not been named nor served with process in this matter.

11305 Friendship Drive. See Exhibit R, pg. 8, attached. Upon their arrival, Officer Johnson could hear a male yelling from inside the house. *Id.* Officer Johnson knocked on the door and announced that he was with the Austin Police Department. *Id.* Christian-Andre Clark (“Plaintiff”) came to the door and stepped outside to talk with Officer Murphy. *Id.* Officer Johnson then walked inside and made contact with E.D. (“Complainant”). *Id.* Complainant stated that she and Plaintiff got into an argument and he punched her in the face with a closed right handed fist. *Id.* At that point, the Plaintiff was detained until the Officers could further their investigation. *Id.*

After further discussion with the Complainant the Officers had probable cause to believe that Plaintiff had committed a family violence assault against the Complainant. *Id.*, at pg. 9. Plaintiff never denied punching Complainant; instead, he told Officers if they wanted to know what happened, they should speak with the Complainant. *Id.*, pg. 8. Complainant then filled out an Assault Victim Statement which was submitted at Plaintiff’s arrest. *Id.*, pg. 8. It was also believed that 3 minor children were present for the assault. *Id.*, pg. 9. Plaintiff was then searched incidental to the arrest and transported to the Travis County Jail where he was booked in for assault with injury - family violence Class A Misdemeanor. *Id.*, pg. 8-9.

The City Defendants obtained a dismissal of all of Plaintiff’s causes of actions, except for those involving intentional torts in the court’s order filed April 3, 2017. Thereafter, the City (and Travis County) filed Special Exceptions, requesting, among other things, that Plaintiff re-plead in order to clarify which intentional torts he claims were committed against him, by which Defendant, and under which specific waiver of governmental immunity. On June 2, 2017, Plaintiff filed an Amended Claim. In his Amended Claim, Plaintiff now alleges his causes of action exclusively under the Texas Constitution. His claims against the City Defendants are

found in paragraphs 14-17, and Counts 1-4. Counts 5-9 of his Amended Claim are not applicable to the City Defendants.

II.

MOTION TO DISMISS FOR LACK OF JURISDICTION

A. Standard of Review

A motion to dismiss for lack of jurisdiction (also known as a plea to the jurisdiction) challenges the trial court's authority to determine the subject matter of the action. *Tex. Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999). Whether the trial court has jurisdiction is a question of law. *Texas Nat. Res. Conserv. Com'n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002). The plaintiff has the burden of alleging facts that affirmatively establish the trial court's jurisdiction. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 466 (Tex. 1993). The plaintiff must plead each element of each claim to establish jurisdiction. *Mission Consol. Independent School Dist. v. Garcia*, 372 S.W.3d 629, 637 (2012).

“When a private cause of action is alleged to derive from a constitutional or statutory provision, [the court's] duty is to ascertain the drafters' intent.” *Brown v. De La Cruz*, 156 S.W.3d 560, 563 (Tex. 2004). The Texas Constitution creates a private cause of action for damages “only if the language of the specific provisions involved clearly implied one.” *Id.* One example would be a takings claim. *Id.* However, “[g]enerally, there is no private cause of action against a governmental entity or its officials for money damages relating to alleged violations of Texas constitutional rights.” *Donohue v. Dominguez*, 486 S.W.3d 50, 56 (Tex. App.—San Antonio 2016, pet. denied). “[O]nly if the language of the specific provisions involved clearly impl[y] a private action for damages does the Texas Constitution create one.” *Id.* And “although Texas has a strong bill of rights [t]here is no state ‘constitutional tort.’” *City of*

Beaumont v. Bouillion, 896 S.W.2d 143, 149 (Tex. 1995) (citing *Bagg v. Univ. of Texas Medical Branch*, 726 S.W.2d 582 (Tex.App.—Houston [14th Dist.] 1987, writ ref'd n.r.e.). There is no authority “that would indicate that at the time the Constitution was written, it was intended to provide an implied private right of action for damages for the violation of constitutional rights.” *Id.*, at 148. Furthermore, “[h]istorically[,] Texas common law has not provided a cause of action for damages for the violation of constitutional rights.” *Id.*, at 150.

Arguments and Authorities

A. Plaintiff does not have a private cause of action under Article 1, Sections 2 and 6 of the Texas Constitution.

Texas Constitution Art. 1, Sec. 2, entitled, “Inherent political power; republican form of government,” states:

All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

There is no cause of action enumerated under Article 1, Section 2, let alone a private cause of action. Nothing in Section 2, provides him the standing to bring suit or a remedy for such a violation. Therefore, Plaintiff has not articulated that this court has jurisdiction over his Section 2 claims. Moreover, Plaintiff has not articulated any particular violation of the people’s right to “the preservation of a republican form of government” or the people’s political power to “alter, reform or abolish their government,” i.e. an applicable injury. Therefore, because he has no private cause of action to sue under Section 2 and he has no applicable injury, the court must dismiss Plaintiff’s causes of action under Section 2, with prejudice to the refile of same.

And Texas Constitution Art. 1, Sec. 6, entitled, “Freedom of worship,” states:

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Plaintiff has not alleged any viable freedom of worship claims because he has not alleged that the City Defendants compelled him to “attend, erect, or support any place of worship,” nor has he alleged that he was asked or forced to “maintain any ministry against his consent.” Furthermore, he has not alleged that he was engaged in any sort of worship or religious expression at the time he was arrested by City Defendants. Therefore, on the face of his Amended Claim, he has failed to establish this court’s jurisdiction over his Section 6 claim. The court must dismiss Plaintiff’s causes of action under Section 6, with prejudice to the refiling of same.

B. Plaintiff does not have a private cause of action under Article 1, Section 29 of the Texas Constitution.

In his Amended Claim, the Plaintiff asserts that “Jurisdiction is conferred upon this court of record by right and this state's general jurisdiction statute cf. THE TEXAS CONSTITUTION BILL OF RIGHTS Article One Section Twenty-Nine, to which the focus of this dispute are protected rights in this state.” See Plaintiff’s Amended Claim, ¶¶ 5. Article 1, Section 29 of the Texas Constitution, entitled “Provisions of Bill of Rights excepted from powers of government; to forever remain inviolate,” reads “To guard against transgressions of the high powers herein delegated, we declare that everything in this “Bill of Rights” is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.” Tex. Const. art. I, § 29.

In *City of Beaumont*, the Texas Supreme Court examined Section 29 and found that the purpose of Section 29 was to automatically void any law that was passed contrary to that provision. See *City of Beaumont v. Bouillion*, 896 S.W.2d 143, 149 (Tex. 1995). However, the Court noted that “[t]here is a difference between voiding a law and seeking damages as a remedy for an act.” *Id.* The Court held that while suits for equitable remedies are permitted under the Constitution, Section 29 does not support a plaintiff’s “claim that a private right of action for damages is implied under the Texas Constitution.” *Id.*

Here, Plaintiff has exclusively asserted this Court’s jurisdiction under Article 1, Section 29 of the Texas Constitution. However, Section 29 does not support a private cause of action, without which Plaintiff cannot recover damages, therefore he has failed to establish the Court’s jurisdiction. Because this Court lacks jurisdiction to hear Plaintiff’s claims, and Plaintiff has already been given a chance to re-plead the jurisdictional elements of his claim, his causes of action against City Defendants must be dismissed in their entirety.

C. Plaintiff does not have a private cause of action under Article 1, Sections 9 and 19 the Texas Constitution.

In *Donohue*, the court examined whether violations of the constitutional provisions under Art. 1, Sec. 9 (search and seizure), Sec. 13 (cruel and unusual punishment), and Sec. 19 (life, liberty, due course of law) created a private cause of action. The court held, “[n]one of these provisions imply a private right of action for damages against the governmental unit that would exist apart from the Texas Tort Claims Act.” *Donohue v. Dominguez*, 486 S.W.3d 50, 56 (Tex. App.—San Antonio 2016, pet. denied). Article 1, Section 19 states “No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.” Tex. Const. art. I, § 19. And Article 1, Section 9 states:

The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

Here, in paragraphs 15-16 of his Amended Claim, Plaintiff alleges his causes of action under Art. 1, Sec. 9 and Sec. 19 of the Texas Constitution. However, as the courts have already determined, see *Donohue*, these provisions of the Texas Constitution do not contain a private cause of action, without which Plaintiff cannot recover damages, therefore he has failed to establish the Court's jurisdiction. Therefore, Plaintiff's claims against City Defendants in paragraphs 15-16 must be dismissed in their entirety.

D. Plaintiff does not have a private cause of action under Article 1, Section 17 the Texas Constitution.

Article 1, Section, 17, also known as the takings provision of the Texas Constitution states:

Sec. 17. (a) No person's property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person, and only if the taking, damage, or destruction is for:

(1) the ownership, use, and enjoyment of the property, notwithstanding an incidental use, by:

(A) the State, a political subdivision of the State, or the public at large; or

(B) an entity granted the power of eminent domain under law; or

(2) the elimination of urban blight on a particular parcel of property.

(b) In this section, "public use" does not include the taking of property under Subsection (a) of this section for transfer to a private entity for the primary purpose of economic development or enhancement of tax revenues.

(c) On or after January 1, 2010, the legislature may enact a general, local, or special law granting the power of eminent domain to an entity only on a two-thirds vote of all the members elected to each house.

(d) When a person's property is taken under Subsection (a) of this section, except for the use of the State, compensation as described by Subsection

(a) shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities shall be made; but all privileges and franchises granted by the Legislature, or created under its authority, shall be subject to the control thereof.

The Texas Supreme Court, in interpreting this provision, has stated that “[t]he text of section 17 waives immunity only when one seeks adequate compensation for property lost to the State.” *City of Beaumont v. Bouillion*, 896 S.W.2d 143, 149 (Tex. 1995). However, the Court was “not persuaded that a right to damages for injuries to constitutional interests can be implied solely from a limited explicit entitlement for compensation for the loss of property.” *Id.*

“Property that is taken is transferred from one owner to another.” *Steele v. City of Houston*, 603 S.W.2d 786, 789 (Tex. 1980). “To recover under the theory that property has been ‘taken’ under TEX.CONST. art. I, sec. 17, [plaintiff] must have established that: (1) the State intentionally performed certain acts; (2) which resulted in a ‘taking’ of her property; (3) for public use.” *City of Abilene v. Smithwick*, 721 S.W.2d 949, 951 (Tex. App.—Eastland 1986, writ ref’d n.r.e.). “A constitutional taking for public use occurs ‘only when there results to the public some definite right or use in the business or undertaking to which the property is devoted.’” *Berry v. City of Reno*, 107 S.W.3d 128, 133 (Tex. App.—Fort Worth 2003, no pet.) (citing *Borden v. Trespalacios Rice & Irr. Co.*, 98 Tex. 494, 509, 86 S.W. 11, 14 (1905), aff’d, 204 U.S. 667, 27 S. Ct. 785, 51 L. Ed. 671 (1907)). Whether a property was taken for public use is a question for the court to decide. *Id.* And “[g]enerally, the trend in Texas is toward defining public use in terms of the general benefit to the State.” *Id.*

Here, Plaintiff has failed to plead the third element of a takings claim; he has failed to allege that his property was taken for a public use. Without a public use there can be no valid takings claim. See *Berry v. City of Reno*, 107 S.W.3d 128, 133 (Tex. App.—Fort Worth 2003, no pet.). Moreover, Plaintiff is complaining of a “taking” of his property during a lawful search

incident to arrest. The Fourth Amendment to the United States Constitution permits police officers to search an arrestee incidental to a lawful arrest. See *State v. Granville*, 423 S.W.3d 399, 410 (Tex. Crim. App. 2014) (“The justification for permitting such a warrantless search is (1) the need for officers to seize weapons or other things which might be used to assault on officer or effect an escape, and (2) the need to prevent the loss or destruction of evidence.”) A search is considered incident to arrest if it is “‘substantially contemporaneous’ with the arrest and is confined to the area within the immediate control of the arrestee.” *Id.* Here, Plaintiff does not allege that the search was not contemporaneous with the arrest nor does he allege that the arrest was not confined to the area under his immediate control. He also does not allege what exactly was seized. While Plaintiff claims that some chattel of his was trespassed, and has an “appraised value of 352,909,958 gold dollar coins or \$666.234.503.400.78,” this amount is obviously fictitious. Otherwise Plaintiff would probably be the richest person who ever lived.³ It is readily apparent that this takings claim is jurisdictionally inadequate at best and at worst frivolous.

In sum, Plaintiff has not properly pled that his property was taken for the purposes of a constitutional takings cause of action because the claim is frivolous, he has failed to articulate the public purpose for the taking, which is a jurisdictional requirement, and he has failed to allege how the “taking” of his property was not conducted within the confines of a lawful search incident to his arrest. Therefore, Plaintiff’s claims under Section 17 must also be dismissed.

E. Plaintiff does not have a private cause of action under Counts 1-4 of his Amended Claim.

In Counts 1-4 of his Amended Claim, Plaintiff claims that the City Defendants committed a trespass to his personal property, including: trespass (ab initio), false imprisonment, assault and

³ \$666 billion is greater than the GDP of all but 6 of the U.S. states. See [https://en.wikipedia.org/wiki/List_of_U.S._states_by_Gross_State_Product_\(GSP\)#List](https://en.wikipedia.org/wiki/List_of_U.S._states_by_Gross_State_Product_(GSP)#List)

battery, and conversion. First, Plaintiff has failed to articulate how any of these causes of action may be brought as to personal property. Second, none of these causes of action actually exist under the Texas Constitution.

Additionally, these causes of action are intentional torts and the City Defendants' immunity is not waived for intentional torts. See Tex. Civ. Prac. & Rem. Code 101.057(2) ("This chapter does not apply to a claim ... (2) arising out of assault, battery, false imprisonment, or any other intentional tort, including a tort involving disciplinary action by school authorities."); see also *Goldman v. Williams*, 101 F. Supp. 3d 620, 654 (S.D. Tex. 2015) (Finding that "using restraints to tie down Plaintiff arises out of an intentional act for which Texas has not waived immunity.") Particularly, in paragraph 32 of his Amended Claim, Plaintiff readily admits, that the City Defendants "intentionally placed metal restrains on Plaintiffs property." This would be an intentional tort allegation for which the City Defendants retain immunity. See also *Warwick Towers Council of Co-Owners ex rel. St. Paul Fire & Marine Ins. Co. v. Park Warwick, L.P.*, 298 S.W.3d 436, 447 (Tex. App.—Houston [14th Dist.] 2009, no pet.) ("Trespass usually is regarded as an intentional tort in the sense that it involves an intent to commit an act that violates a property right, or would be practically certain to have that effect, although the actor may not know the act he intends to commit is such a violation.")

Therefore, the Plaintiff's causes of action must be dismissed in their entirety with prejudice to the refile of same because these causes of action do not apply to personal property, nor do they exist under the Texas Constitution, which he solely relies on to establish the Court's jurisdiction, and the City Defendants' immunity is not waived for any intentional torts under the Texas Tort Claims Act.

F. Official Immunity – Police Officers Steven Johnson and Matthew Murphy

Official immunity “is an affirmative defense that protects a governmental employee from personal liability and, in doing so, preserves a governmental employer's sovereign immunity from suit for vicarious liability.” *Texas Dep't of Pub. Safety v. Bonilla*, 481 S.W.3d 640, 642 (Tex. 2015). Specifically, “[a] governmental employee is entitled to official immunity: (1) for the performance of discretionary duties; (2) within the scope of the employee's authority; (3) provided the employee acts in good faith. *Univ. of Houston v. Clark*, 38 S.W.3d 578, 580 (Tex. 2000).

Functions that are ministerial in nature are not protected by official immunity. *Kersey v. Wilson*, 69 S.W.3d 794, 798 (Tex. App.- Fort Worth, 2002). The distinction between ministerial and discretionary acts is that, “where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment, the act is ministerial.” *Id.* However, “where the act to be done involves the exercise of discretion or judgment in determining whether the duty exists, it is not to be deemed ministerial.” *Id.* Courts have determined that “[a]n officer's decision regarding ‘if, how, and when to arrest a person’ is discretionary.” *Id.* at 799.

Additionally, Texas Penal Code Chapter 22 defines what constitutes the offense of assault and makes such an offense punishable as a Class A misdemeanor. Furthermore, a peace officer is permitted to arrest a person without a warrant provided they have probable cause to believe that an assault has occurred. Tex. Code of Crim. Pro. Art. 14.03. To make the determination that probable cause exists that a person has committed an offense, such as assault, requires personal deliberation and judgment. *Kersey*, at 799. The subsequent arrest is thus considered a discretionary act. *Id.* Additionally, courts have recognized official immunity in cases “involving allegations of intentional torts such as assault arising from police activity.” *Id.*

And the Texas Tort Claims Act does not waive immunity for intentional torts. See Tex. Civ. Prac. & Rem. Code § 101.057.

Here, the Officers have official immunity for their actions in regards to the arrest of Plaintiff. Moreover, the Plaintiff has failed to articulate any waiver of official immunity. The Officers determined, based upon their investigation, that probable cause existed to believe that Plaintiff had committed the offense of a Class A misdemeanor assault against Complainant. The act of arresting Plaintiff was a discretionary decision based on that judgment. And under the Texas Code of Criminal Procedure the arrest was within the scope of their authority as Police Officers for the City of Austin Police Department. Moreover, the Officers acted in good faith belief that the Plaintiff committed a criminal act based upon the credible allegations of the Complainant. Additionally, their acts were not ministerial because the law did not require the Officers to determine that an assault had occurred, nor did the law require them to arrest the Plaintiff (Note: the Code of Criminal Procedure states that an officer *may* arrest a suspect), instead they used their discretion and judgment in determining that they had a duty to arrest Plaintiff. In fact, the officers were required to make at least two discretionary decisions in effecting the arrest of Plaintiff according to the Code of Criminal Procedure: 1) that probable cause existed to believe that the assault had occurred; and 2) that probable cause existed to believe there was a danger of further bodily injury to the victim. See Tex. Code of Crim. Pro. Art. 14.03.

Finally, any alleged intentional tort against Plaintiff is also barred by immunity. Again, the courts have recognized that official immunity exists for intentional torts, and any assault that allegedly occurred during the Officers' arrest occurred under the exact same circumstance that

already cloaks their actions in official immunity. And the Texas Tort Claims Act explicitly provides that immunity is not waived under the Act for intentional torts.

In conclusion, the court should find that the City Defendants' actions are protected by official immunity. Therefore, the court should dismiss all causes of action against the City Defendants in their entirety with prejudice to the re-filing of same.

III.

PRAYER

THEREFORE, PREMISES CONSIDERED, the City Defendants pray that their *First Amended Motion to Dismiss for Lack of Jurisdiction* be set, and after a hearing, if necessary, that their Motion be granted, that the Plaintiff's causes of action be dismissed in their entirety with prejudice to the re-filing of same, that Plaintiff take nothing by this suit, all costs of court be assessed against each party incurring same, and that the City Defendants be granted any additional relief to which they are justly entitled to under law or equity.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF, LITIGATION
DIVISION

/s/ Brandon W. Carr
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Assistant City Attorney
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ATTORNEYS FOR CITY DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties, or their attorneys of record, in compliance with the Texas Rules of Civil Procedure, on this 5th day of June, 2017, as follows:

Via CM RRR 91 7199 9991 7036 8707 4233, First Class Mail, and Email to:

Christian-Andre Clark
7007 Greenock Street
Austin, Texas 78749
Christianclark31@gmail.com

PRO SE

Via e-Filing to:

Andrew M. Williams
SBN 24068345
andrew.williams@traviscountytexas.gov

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SBN 11228000
pat.kelly@traviscountytexas.gov

P.O. Box 1748
Austin, Texas 78767
(512) 854-9513
(512) 854-4808 (Fax)

ATTORNEYS FOR TRAVIS COUNTY DEFENDANTS

/s/ Brandon W. Carr
BRANDON W. CARR

Exhibit R



**AUSTIN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY
(ASSAULT W/INJURY-FAM/DATE VIOL)
GO# 2015-2721930**

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General Offense Information

Operational Status	CLEARED BY ARREST (IBRS)
Reported On	SEP-29-2015 (TUE.) 2301
Occurred On	SEP-29-2015 (TUE.) 2225
Approved On	OCT-16-2015 (FRI.)
Approved By	AP6294 - CAMPOS, HECTOR
Report Submitted By	AP7804 - JOHNSON, STEPHEN
Org Unit	EDWARD 800 REG II PATROL
Accompanied By	AP7617 - MURPHY, MATTHEW
Address	[REDACTED]
Municipality	[REDACTED]
County	TRAVIS COUNTY
	District ED Beat 1 Grid 224
Premise Code	899
Bias	NONE (NO BIAS)
Gang Involvement	GANG INVOLVEMENT
Family Violence	YES

Offenses (Completed/Attempted)

Offense #	1 0900-1 ASSAULT W/INJURY-FAM/DATE VIOL - COMPLETED
Location	RESIDENCE / HOME
Suspected Of Using	N/A
Weapon Type	PERSONAL WEAPONS (HANDS FIST / FEET)



Related Event(s)

- 1. GO 2016-921448
- 2. CP 2015-2721930
- 3. AB 2015-37586

Related Person(s)

1. VICTIM # 1 - DAVIS, EBONY

CASE SPECIFIC INFORMATION

Sex FEMALE
 Race BLACK
 Date Of Birth [REDACTED]
 Address [REDACTED]
 Municipality [REDACTED]
 State [REDACTED]
 ZIP Code [REDACTED]
 HOME [REDACTED]

PERSON PARTICULARS

Ethnicity NOT-HISPANIC OR LATINO

MASTER NAME INDEX REFERENCE

Name DAVIS , EBONY MONIQUE
 Sex FEMALE
 Race BLACK
 Date Of Birth [REDACTED]
 Ethnicity NOT-HISPANIC OR LATINO
 Address [REDACTED] [REDACTED]
 Municipality [REDACTED]
 State [REDACTED]
 ZIP Code [REDACTED]

PHONE NUMBERS

CELL PHONE [REDACTED]
 HOME [REDACTED]
 BUSINESS [REDACTED]
 Email [REDACTED]



LINKAGE FACTORS

Resident Status RESIDENT OF AUSTIN
Age Range 30-49 YEARS
Type Of Injury APPARENT MINOR INJURY
Access To Firearm NO
Victim Of 0900- 1 ASSAULT W/INJURY-FAM/DATE VIOL - COMPLETED

RELATIONSHIP(S) BETWEEN VICTIM TO OFFENDER(S)

Relationship VICTIM WAS BOYFRIEND/GIRLFRIEND
Offender's Name CLARK, CHRISTIAN A
Offender's Role ARRESTED #1

2. ARRESTED # 1 - CLARK, CHRISTIAN ANDRE

CASE SPECIFIC INFORMATION

Sex MALE
Race BLACK
Date Of Birth [REDACTED]
Address [REDACTED]
Municipality [REDACTED]
State [REDACTED]
ZIP Code [REDACTED]

PERSON PARTICULARS

Ethnicity NOT-HISPANIC OR LATINO

MASTER NAME INDEX REFERENCE

Name CLARK , CHRISTIAN ANDRE
Sex MALE
Race BLACK
Date Of Birth [REDACTED]
Ethnicity NOT-HISPANIC OR LATINO
Address [REDACTED]
Municipality [REDACTED]
State [REDACTED]
ZIP Code [REDACTED]

PHONE NUMBERS

HOME [REDACTED]



AUSTIN POLICE DEPARTMENT

GO# 2015-2721930
CLEARED BY ARREST
(IBRS)

GENERAL OFFENSE HARDCOPY
(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

CELL PHONE [REDACTED]

Email [REDACTED]

CHARGE SUMMARY

CHARGE # 1

Offense Date SEP-29-2015 (TUE.)

Offense ASSLT CAUSES BODILY INJURY FV 22.01(A)(1) PC - COMPLETED

Charge Statute A 13990031

Domestic Violence YES

LINKAGE FACTORS

Resident Status RESIDENT OF AUSTIN

Age Range 30-49 YEARS

Access To Firearm NO

Armed With NONE

Offense 0900- 1 ASSAULT W/INJURY-FAM/DATE VIOL - COMPLETED

Arrest Date SEP-29-2015 (TUE.)

Arrest Type ON VIEW ARREST (LOCAL
ARREST NO WARRANT)

3. JUV-OBSERV/ # 1 - CLARK, CAJALYN

CASE SPECIFIC INFORMATION

Sex MALE

Race BLACK

Date Of Birth [REDACTED]

Address [REDACTED]

Municipality [REDACTED]

State [REDACTED]

ZIP Code [REDACTED]

PERSON PARTICULARS

Ethnicity NOT-HISPANIC OR LATINO

MASTER NAME INDEX REFERENCE

Name [REDACTED]

Sex FEMALE

Race BLACK

Date Of Birth [REDACTED]



AUSTIN POLICE DEPARTMENT

GO# 2015-2721930
CLEARED BY ARREST
(IBRS)

GENERAL OFFENSE HARDCOPY
(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

Ethnicity NOT-HISPANIC OR LATINO

Address [REDACTED]

Municipality [REDACTED]

State [REDACTED]

ZIP Code [REDACTED]

LINKAGE FACTORS

Resident Status RESIDENT OF AUSTIN

Age Range 2-3 YEARS

Access To Firearm NO

4. JUV-OBSERV/ # 2 - CLARK, CHRISTINA

CASE SPECIFIC INFORMATION

Sex FEMALE

Race BLACK

Date Of Birth [REDACTED]

Address [REDACTED]

Municipality [REDACTED]

State [REDACTED]

ZIP Code [REDACTED]

PERSON PARTICULARS

Ethnicity NOT-HISPANIC OR LATINO

MASTER NAME INDEX REFERENCE

Name CLARK , CHRISTINA

Sex FEMALE

Race BLACK

Date Of Birth [REDACTED]

Ethnicity NOT-HISPANIC OR LATINO

Address [REDACTED]

Municipality [REDACTED]

State [REDACTED]

ZIP Code [REDACTED]

PHONE NUMBERS

CELL PHONE [REDACTED]



LINKAGE FACTORS

Resident Status RESIDENT OF AUSTIN
Age Range 14-15 YEARS
Access To Firearm NO

5. JUV-OBSERV/ # 3 - DOTSON, JORDAN

CASE SPECIFIC INFORMATION

Sex MALE
Race BLACK
Date Of Birth [REDACTED]
Address [REDACTED]
Municipality [REDACTED]
State [REDACTED]
ZIP Code [REDACTED]

PERSON PARTICULARS

Ethnicity NOT-HISPANIC OR LATINO

MASTER NAME INDEX REFERENCE

Name DOTTSON , JORDAN U
Sex MALE
Race BLACK
Date Of Birth [REDACTED]
Ethnicity NOT-HISPANIC OR LATINO
Address [REDACTED] [REDACTED]
Municipality [REDACTED]
State [REDACTED]
ZIP Code [REDACTED]

PHONE NUMBERS

HOME [REDACTED]

LINKAGE FACTORS

Resident Status RESIDENT OF AUSTIN
Age Range 14-15 YEARS
Access To Firearm NO



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY
(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

GO# 2015-2721930
CLEARED BY ARREST
(IBRS)

Related Text Page(s)

Document PRESS RELEASE

Author AP7804 - JOHNSON, STEPHEN

Related Date/Time SEP-29-2015 (TUE.) 2305

Responded to a call for service and a report was written.



AUSTIN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY
(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

GO# 2015-2721930
CLEARED BY ARREST
(IBRS)

Related Text Page(s)

Document INITIAL REPORT

Author AP7804 - JOHNSON, STEPHEN

Related Date/Time SEP-29-2015 (TUE.) 2306

On Tuesday 9/29/15 at 2225, I, Ofc Johnson #7804 and Ofc Murphy #7617 responded as a 2-man unit to a disturbance hot shot located at [REDACTED]

call text = DIST AT ABV

Upon arrival, I could hear a male yelling from inside the house. I knocked on the door and announced Austin Police. The man came to the door and stepped outside with my partner. The man was identified as:

Christian Clark BM [REDACTED]

I then walked inside and made contact with the complainant and she was identified as:

Ebony Davis BF [REDACTED]

Ebony stated that her and Christian got into an argument and he punched her in the face with a closed right handed fist. At this point, I told Ofc Murphy to detain Christian until we could further our investigation.

Ebony stated that the argument occurred because her son had spilled some paint on the garage floor and she did not know how to clean it up. Ebony stated that she asked Christian how to clean it and he just got mad at her because she hadnt cleaned it yet. Ebony stated that Christian then swung at her and hit her in the left side of her face around her ear. There was redness on her face that was consistent with being punched. Ebony stated that it hurt when she was punched and that it still has a burning feeling. Ebony refused EMS and stated that she did not need to have Crisis there to talk to.

I then spoke with Christian and he refused to talk to officers about what happened. He stated that if we want to know anything, then just speak to Ebony.

Christian was then searched incidental to arrest.

Ebony completed an AVS and that was submitted at arrest review. I took photos of Ebony and the injury and that was submitted at the north sub.



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY
(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

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Ebony stated that she did not want an EPO.

Christian and Ebony have 3 children that were all present. They were identified as:

Cajalyn Clark BM [REDACTED]

Christina Clark BF [REDACTED]

Jordan Dotson BM [REDACTED]

Christian was then transported to the Travis County Jail where he was booked in for assault with injury FV Class A Misdemeanor.

CPS was called-

CPS #66599632

Winnie #1015

NOI

S. Johnson #7804



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY
(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

GO# 2015-2721930
CLEARED BY ARREST
(IBRS)

Related Text Page(s)

Document SUPPLEMENTS

Author AP7681 - SMILEY, MARY

Subject AVS ATTACHED

Related Date/Time SEP-30-2015 (WED.) 0946



AUSTIN POLICE DEPARTMENT

GO# 2015-2721930
CLEARED BY ARREST
(IBRS)

GENERAL OFFENSE HARDCOPY (9000-1 ASSAULT W/INJURY-FAM/DATE VIOL)

NARRATIVE TEXT RELATED ATTACHMENT(S)

1. ATTCHMENTS Description AVS

AUSTIN POLICE DEPARTMENT - ASSAULT VICTIM STATEMENT

CASE # 15 - 2721930 DATE OF ASSAULT 9/29/2015 TODAY'S DATE 9/29/2015

VICTIM INFORMATION TO BE COMPLETED BY POLICE OFFICER

Victim's Name (last, first, middle) Davis, Ebony Monique DOB [REDACTED] R/S B I E
Home Address [REDACTED] State TX SSN# [REDACTED]
Home#() [REDACTED] Work# [REDACTED] Cell# [REDACTED] Place of Employment TX Dept Insurance
Email Address [REDACTED] Cell Provider [REDACTED] Pregnant? Yes No #Weeks [REDACTED]
Suspect's Name Christina Clark

Does the suspect live at this address? Yes No If no... list address

Emergency Contact(s)

(Person who can contact you at all times)

Contact 1 Tiffany Harris Name Address () Home # () Work # [REDACTED] Cell # [REDACTED]

Contact 2

Victim/Suspect Relationship

Dating/Engaged 10 yrs. 0 months Marriage - Legal 0 yrs. 0 months Member of Same Household Former Member of Same Household
 Biological Parents of Same Child - # Children 1 Blood Relation Relationship Ended (date)

Action(s) of Suspect

Striking (Open Hand Closed Hand) Pushing Throwing Grabbing Pulling Biting
 Strangling/Suffocating (Complete Strangulation Supplement) Other (explain)

How long has it been since the assault? Hour(s) 20 Minute(s) 0 Day(s) 0

Complaint of physical pain during or after the assault? Yes No Explain Burning to neck

Did Suspect prevent you from making an emergency telephone call for assistance? Yes No How/Explain

Did Suspect use or threaten to use a weapon against you? Yes No What type of weapon?

Weapon(s) owned by Suspect? Yes No Does Suspect have Concealed Handgun License? Yes No
List weapon(s)

Did Suspect threaten you if you called the Police for this assault? Yes No Describe threat(s)

Has Suspect hurt you before? Yes No Date? Where? Frequency?

Was a report made? Yes No To whom?

Has Suspect ever threatened you if you called the Police? Yes No Describe threat(s)

Has Suspect ever harmed or threatened to harm the children? Yes No How?

Has Suspect ever harmed or threatened to harm the household pets? Yes No How?

Was a report made? Yes No To whom/Which agency?

Was Suspect using drugs at the time of this assault? Yes No What?

Does Suspect use the following? Alcohol Prescription Medication - What?
 Illegal Drug(s) - What? Other - Describe

Do you want an Emergency Protective Order? Yes No

Do you have a Protective Order? Yes No # Expiration Date

VICTIM DESCRIPTION TO BE COMPLETED BY POLICE OFFICER			
DEMEANOR	PHYSICAL CONDITION	APPEARANCE	SPEECH
<input type="checkbox"/> afraid	<input type="checkbox"/> abrasion(s)	<input type="checkbox"/> bloody clothes	<input type="checkbox"/> angry
<input type="checkbox"/> hysterical	<input type="checkbox"/> laceration(s)	<input type="checkbox"/> smeared makeup	<input type="checkbox"/> out of breath
<input type="checkbox"/> angry	<input type="checkbox"/> bruise(s) new	<input checked="" type="checkbox"/> soiled/sweat stained	<input type="checkbox"/> excited/fast
<input type="checkbox"/> indifferent	<input type="checkbox"/> bruise(s) old	<input type="checkbox"/> shaking	<input type="checkbox"/> crying/sobbing
<input type="checkbox"/> apologetic	<input type="checkbox"/> bleeding	<input type="checkbox"/> redness	<input type="checkbox"/> yelling
<input type="checkbox"/> belligerent	<input type="checkbox"/> physical pain	<input type="checkbox"/> swelling	<input type="checkbox"/> belligerent
<input checked="" type="checkbox"/> calm	<input type="checkbox"/> fracture(s)	<input checked="" type="checkbox"/> other <u>bruise on neck</u>	<input type="checkbox"/> other
<input type="checkbox"/> nervous	<input type="checkbox"/> sweating		
<input type="checkbox"/> crying			
<input type="checkbox"/> fearful			
<input type="checkbox"/> distraught			
<input type="checkbox"/> other			
Explain other			



AUSTIN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY
 (9000-1 ASSAULT W/INJURY-FAM/DATE VIOL)

GO# 2015-2721930
 CLEARED BY ARREST
 (IBRS)

WHAT SUSPECT USED TO HURT /THREATEN VICTIM		CRIME SCENE OBSERVATIONS	
<input checked="" type="checkbox"/> Hand <input type="checkbox"/> Head <input type="checkbox"/> Foot <input type="checkbox"/> Knife <input type="checkbox"/> Gun <input type="checkbox"/> Other _____		<input type="checkbox"/> Signs of Disturbance <input type="checkbox"/> Clump(s) of Hair <input type="checkbox"/> Broken Furniture <input type="checkbox"/> Blood at Scene <input type="checkbox"/> Broken Phone <input type="checkbox"/> Hole(s) in Wall <input type="checkbox"/> Broken Glass <input type="checkbox"/> Children Crying <input type="checkbox"/> Weapon(s) <input type="checkbox"/> Phone Cord Yanked <input type="checkbox"/> Other _____	
Weapon Seized? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Photos Taken? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No # Taken <u>3</u> By # <u>7904</u> <input checked="" type="checkbox"/> Victim <input type="checkbox"/> Suspect <input type="checkbox"/> Injury <input checked="" type="checkbox"/> Location of Pain <input type="checkbox"/> Weapon(s) <input type="checkbox"/> Crime Scene		
Evidence Collected? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Turned into PCO			

♦ **Medical Treatment**

Basic First Aid/Not Transported Treated By _____ EMT Name/# _____

Transported Where _____ Address _____ City _____ State _____

Will Seek Own Physician Physician's Name _____ Address _____ City _____

Will Get Treatment at Clinic Clinic's Name _____ Address _____ City _____

Refused
 None

SUSPECT INFORMATION
 TO BE COMPLETED BY POLICE OFFICER

Suspect's Name (last first middle) Clark, Christian Andre DOB [REDACTED] R/S BIM

Home Address [REDACTED] State TX SSN# _____

Home#() _____ Work#() _____ Cell#() _____ Place of Employment Electrician

Email Address _____ Cell Provider _____ Pregnant? Yes No #Weeks _____

Suspect Arrested Not at Scene Photo Available Yes Taken No Scars/Tattoos No Yes If yes...describe tattoo on right thigh, left forearm, left neck

SUSPECT DESCRIPTION
 TO BE COMPLETED BY POLICE OFFICER

DEMEANOR	PHYSICAL CONDITION	APPEARANCE	SPEECH
<input type="checkbox"/> afraid <input type="checkbox"/> hysterical <input type="checkbox"/> angry <input checked="" type="checkbox"/> indifferent <input type="checkbox"/> apologetic <input type="checkbox"/> intoxicated <input type="checkbox"/> belligerent <input type="checkbox"/> irrational <input type="checkbox"/> calm <input type="checkbox"/> nervous <input type="checkbox"/> crying <input type="checkbox"/> fearful <input type="checkbox"/> distraught <input type="checkbox"/> other _____	<input type="checkbox"/> abrasion(s) <input type="checkbox"/> laceration(s) <input type="checkbox"/> bruise(s) new <input type="checkbox"/> loose hair <input type="checkbox"/> bruise(s) old <input type="checkbox"/> shaking <input type="checkbox"/> bleeding <input type="checkbox"/> redness <input type="checkbox"/> physical pain <input type="checkbox"/> swelling <input type="checkbox"/> fracture(s) <input type="checkbox"/> other _____ <input type="checkbox"/> sweating	<input type="checkbox"/> bloody clothes <input type="checkbox"/> smeared makeup <input type="checkbox"/> soiled/sweat stained <input type="checkbox"/> tangled/messy hair <input type="checkbox"/> torn/pulled clothing <input checked="" type="checkbox"/> other _____	<input type="checkbox"/> angry <input type="checkbox"/> out of breath <input type="checkbox"/> excited/fast <input type="checkbox"/> crying/sobbing <input type="checkbox"/> yelling <input type="checkbox"/> belligerent <input type="checkbox"/> other _____

Explain other _____

BODY INJURY DIAGRAM
 TO BE COMPLETED BY POLICE OFFICER

Mark all injuries on both the Victim and the Suspect

<p>HT <u>5'5</u> WT <u>170</u> SEX <u>F</u></p> <p align="center">VICTIM</p> <p align="center">FRONT BACK</p>	<p>HT <u>5'11</u> WT <u>160</u> SEX <u>M</u></p> <p align="center">SUSPECT</p> <p align="center">FRONT BACK</p>
---	---

Describe injuries and how each was inflicted in the narrative of the offense report.



AUSTIN POLICE DEPARTMENT

GO# 2015-2721930
CLEARED BY ARREST
(IBRS)

GENERAL OFFENSE HARDCOPY

(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

♦ **Witness Information (May Use Witness Statement Form)**

1. Name _____ DOB _____ R/S ____ / ____ Home#(____) _____
 Work#(____) _____ Cell#(____) _____ Email Address _____

2. Name _____ DOB _____ R/S ____ / ____ Home#(____) _____
 Work#(____) _____ Cell#(____) _____ Email Address _____

♦ **Children Information (MUST list all children and document in narrative of offense report)**

1. Present? Yes No Witness to assault? Yes No CPS Called? Yes No CPS# 66599632
 Name of school child is attending _____
 (If more than one child, then you MUST list all other information in your supplement report)

♦ **Military Information**

Victim in Military? Yes No Branch _____ Stationed _____
 Suspect in Military? Yes No Branch US Army Stationed _____
 Victim in Reserves? Yes No Texas National Guard Yes No
 Suspect in Reserves? Yes No Texas National Guard Yes No

♦ **Re-location/Contact Information**

Are you planning to relocate? Yes No Address? _____
 Phone#(____) _____ Cell#(____) _____ Other#(____) _____

LETHALITY ASSESMENT
TO BE COMPLETED BY A POLICE OFFICER

"Yes" to ANY question 1-5, Activate or notify Victim Services

1. Has s/he ever threatened you with a weapon? Yes No NA
 2. Has s/he used a weapon against you? Yes No NA
 3. Has s/he ever threatened to kill you? Yes No NA
 4. Has s/he ever threatened to kill your children? Yes No NA
 5. Do you think s/he might try to kill you? Yes No NA

"Yes" to at least 4 questions 6-18, Activate or notify Victim Services

6. Does s/he have a gun? Yes No NA
 7. Does s/he have easy access to a gun? Yes No NA
 8. Has s/he ever tried to strangle you? Yes No NA
 9. Is s/he violently or constantly jealous of you? Yes No NA
 10. Does s/he control most of your daily activities? Yes No NA
 11. Has s/he ever forced you to have sex when you did not wish to do so? Yes No NA
 12. Have you ever left her/him or separated after living together? Yes No NA
 13. Is s/he unemployed? Yes No NA
 14. Has s/he ever tried to kill herself/himself? Yes No NA
 15. Do you have a child that does not belong to the Suspect? Yes No NA
 16. Does s/he follow you? Yes No NA
 17. Does s/he spy on you? Yes No NA
 18. Does s/he leave threatening messages? Yes No NA
 ♦ Describe the threat(s) and/or message(s) left _____

An Officer may request Victim Services(by phone or on-scene) as a result of Victim's response to the question below or whenever an officer feels it would be beneficial.

19. Is there anything else that worries you about your safety? Yes No NA
 If yes, explain _____

♦ Victim Services responded due to High lethality determined by questions above Officer concerns for victim
 ♦ Victim Services did not respond due to Officer's decision Victim's request Victim Services' current call load
 ♦ Victim provided with Domestic Violence Information Pamphlet Yes No Case Number Yes No

TO COMPLETE AVS, GO TO PAGE 4.
3



AUSTIN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY
 (0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

GO# 2015-2721930
 CLEARED BY ARREST
 (IBRS)

VICTIM STATEMENT / DECLARACION DE LA VICTIMA
TO BE FILLED OUT BY VICTIM

I can read, write and understand the English Language. This statement is true and correct to the best of my knowledge. I make this statement freely and voluntarily. Should I provide false information on this form, I understand that I could be prosecuted for the crime of "False Report to a Police Officer" under section 37.08 of the Texas Penal Code. Signature [Signature] Date 9/29/15

Puedo leer, escribir y entender el idioma español. Esta declaración es verdadera y correcta en cuanto a lo que yo sepa. Hago esta declaración libre y voluntariamente. Si he dado información falsa en este formulario, entiendo que puedo ser enjuiciado/a por el crimen de "Declaración Falsa dada a un oficial de "Policía" bajo la sección 37.08 del Código Penal del Estado de Texas.

Firma _____ Fecha _____

♦ Where are you right now? 11305 Friendship Dr Where did assault occur? 11305 Friendship Dr
 ¿Dónde se encuentra usted en este momento? _____ ¿Dónde ocurrió el asalto? _____

♦ Who assaulted you? (name/relationship) Christian Clark
 ¿Quién asalto? (nombre/parentesco) _____

♦ What led up to the assault? I don't know
 ¿Qué ocurrió antes del asalto para que el asalto ocurriera? _____

♦ How did Suspect assault you? (ex. hit w/ fist to head) Hit to the neck area
 ¿Cómo le asaltó el/la sospechoso/a a usted (por ejemplo, le pegó con el puño en la cabeza) _____

♦ What injuries do you have as a result of the assault? Bruise on the neck
 ¿Qué lesiones tiene como resultado del asalto? _____

♦ How did you get each injury? when he hit me on the neck
 ¿Cómo obtuvo cada herida? _____

♦ Did you feel physical pain either at the time of the assault or after? Burning
 ¿Sintió usted dolor durante el asalto o después? _____

♦ Was there damage to property (walls, phones, furniture, etc.)? NO
 ¿Hubo daños a la propiedad (en las paredes, teléfonos, muebles, o en otros lugares)? _____

♦ Other Information _____
 Otra información _____

Print Name - Nombre impreso Ethony Davis

Signature [Signature] Date 9/29/15 Time 11:00 am/pm
 Su firma _____ Fecha _____ Hora _____ am/pm

Officer Signature [Signature] # 7617 Date 9/29/15 Time 11:05 am/pm
 Firma del oficial _____ # _____ Fecha _____ Hora _____ am/pm

STH/APD2013



AUSTIN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY
 (0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

GO# 2015-2721930
 CLEARED BY ARREST
 (IBRS)

Follow Up Report # 1

Follow Up Report # 1

ASSIGNMENT INFORMATION

Assigned To AP6910 - ORTEGA-HART, ROXANA	Rank CIVILIAN
Capacity VICTIM ASSISTANT	Org Unit VICTIM SERVICES (FAMILY VIOLENCE)
Assigned On SEP-30-2015 (WED.) 0932	By AP4288 - TOMANETZ, JEANNIE
Report Due On OCT-30-2015 (FRI.)	

SUBMISSION INFORMATION

Submitted On OCT-01-2015 (THU.) 1321	
Approved On OCT-19-2015 (MON.)	By AP1561 - LUJAN, LUPITA

FOLLOW UP CONCLUSION

Follow Up YES
Concluded



Related Text Page(s)

Narrative Text # 1

Document VICTIM SERVICES

Author AP6910 - ORTEGA-HART, ROXANA

Subject CONTACT

Related Date/Time OCT-01-2015 (THU.) 1306

On this date I contacted Ebony Davis at her listed number. I explained my role and limits of confidentiality. Davis states that yesterday she was contacted and asked if she wanted an EPO. She state that at the time she was overwhelmed and said no but now wishes she had said yes. I provided information on 2 year protective orders. I also provided information on her rights, the criminal justice process, and resources.

I safety planned with her and provided much supportive counseling. She stated that this was the first time he had been physically violent with her but has been verbally and emotionally abusive during their relationship. She states that she will dissolve the relationship because she can not trust that he will not assault her again. I validated and normalized her feels. We discussed dynamics of DV and normal reactions by victims. I advised that I would mail a follow up letter with more information on DV and a CVC application. I remain available to assist.

NOI



AUSTIN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY
 (0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

GO# 2015-2721930
 CLEARED BY ARREST
 (IBRS)

Follow Up Report # 2

Follow Up Report # 2

ASSIGNMENT INFORMATION

Assigned To AP2736 - BENNINGFIELD, CHRISTOPHR ALLEN	Rank DETECTIVE
Capacity LEAD INVESTIGATOR	Org Unit DOMESTIC VIOLENCE VIOL CRIMES
Assigned On SEP-30-2015 (WED.) 1105	By AP3757 - GROSS, JEFFREY R
Report Due On OCT-30-2015 (FRI.)	

SUBMISSION INFORMATION

Submitted On OCT-01-2015 (THU.) 1027	
Checked By AP1737 - DELOSSANTOS, ERIC TOBIAS	
Approved On NOV-12-2015 (THU.)	By AP1737 - DELOSSANTOS, ERIC TOBIAS

FOLLOW UP CONCLUSION

Follow Up YES
Concluded



Related Text Page(s)

Narrative Text # 1

Document INVESTIGATOR'S REPORT

Author AP2736 - BENNINGFIELD, CHRISTOPHR ALLEN

Related Date/Time OCT-01-2015 (THU.) 1026

***10/01/15

This arrest case was assigned for electronic prosecution packet preparation. The following will be accomplished when available:

Retention code changed
DMAV coded
Wav file requested
AVS
DCS checked for photos

Case cleared by arrest.



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY
(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

GO# 2015-2721930
CLEARED BY ARREST
(IBRS)

Clearance Information

Agency	AUSTIN POLICE DEPARTMENT (AP)
Cleared Status	CLEARED BY ARREST - NOT APPLICABLE
Cleared On	OCT-01-2015 (THU.)
Cleared By Officer 1	AP2736 - BENNINGFIELD, CHRISTOPHR ALLEN
Org Unit	FAMVI - DOMESTIC VIOLENCE VIOL CRIMES
Complainant/Victim Notified	NO



AUSTIN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY
 (0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

GO# 2015-2721930
 CLEARED BY ARREST
 (IBRS)

Related Arrest Report AB# 2015-37586

Arrestee CLARK, CHRISTIAN ANDRE
Date Of Birth [REDACTED]
Related CD# 604103

Arrest Information

Status OTHER
Type Of Arrest ON VIEW ARREST (LOCAL ARREST NO WARRANT)
Arrest Date SEP-29-2015 (TUE.) 2235
Rush File Required NO
Booked Into Cell NO
Arrest Agency AUSTIN POLICE DEPARTMENT
Arresting Officer(s) AP7804 - JOHNSON, STEPHEN
Summary Of Facts ARRESTED

ARREST LOCATION

Address 11305 FRIENDSHIP DR
Municipality AUSTIN
County TRAVIS COUNTY
District ED Zone 1 Grid 224
SODA Zone NO **Drug Free Zone** NO

ADDITIONAL ARREST INFORMATION

Case Screened NO
Notify Victim On Release NO
Juvenile NO
Armed With NONE
Diversion Recommended NO
Interpreter Needed NO
Rights Given NO
Mental Exam Required NO
Statement Taken NO
Fingerprinted YES **Photo Taken** YES
CD Updated YES
Family Notified NO
Lawyer Called NO
Meal Given NO **Coffee Given** NO
Detained NO



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY
(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

GO# 2015-2721930
CLEARED BY ARREST
(IBRS)

RELATED WARRANTS

Warrant Number C1CR16500571

On APR-15-2016 (FRI.)

Reason For Warrant ASSLT W/INJ -FV W/EPO-200 YD
SAO, NO CONTACT, GPS IN JAIL
W/CURFEW



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY
(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

GO# 2015-2721930
CLEARED BY ARREST
(IBRS)

Related Attachment - AUDIO RECORDING

Description 911
Reference Number

The attached file cannot be included in this hardcopy.



AUSTIN POLICE DEPARTMENT

GENERAL OFFENSE HARDCOPY

(0900-1 ASSAULT W/INJURY-FAM/DATE VIOL)

GO# 2015-2721930
CLEARED BY ARREST
(IBRS)

*** END OF HARDCOPY ***

STATE OF TEXAS §
Travis COUNTY §

BUSINESS RECORDS AFFIDAVIT

BEFORE ME, the undersigned authority, Angie Jones personally appeared, who being by me duly sworn, deposed as follows:

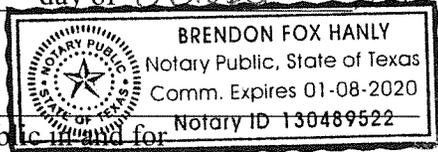
My name is Angie Jones. I am over the age of 18 years, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated, which are true:

I am the custodian of records, employee or owner of Austin Police Department and I am familiar with the manner in which its records are created and maintained by virtue of my duties and responsibilities. Attached hereto are 25 pages of records from Austin Police Department, which were kept in the course of regular business activity. The attached records are the original or exact duplicates of the original records.

It is the regular course of business of Austin Police Department to make the records and to make this type of record at or near the time of each act, event, condition, opinion, or diagnosis set forth in the records. Further, it was the regular practice of Austin Police Department to make the records and regular practice for this type of record to be made by, or made from information transmitted by persons with knowledge of the matters set forth in them.

Angie Jones #4803
Affiant

SWORN TO AND SUBSCRIBED before me on the 27th day of October, 2016



Notary Public for
State of Texas

My commission expires: 01.08.2020

COPY

Filed in The District Court
of Travis County, Texas

AUG 30 2017 NNR

At 3:34 M.
Velva L. Price, District Clerk

CAUSE NO: D-1-GN-16-002854

CHRISTIAN-ANDRE CLARK,
Plaintiff,

§
§
§
§
§
§
§

IN THE DISTRICT COURT

v.

TRAVIS COUNTY, TEXAS

STEVEN JOHNSON, MATTHEW
MURPHY ET AL.,
Defendants.

201st JUDICIAL DISTRICT

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS STEVEN
JOHNSON'S AND MATTHEW MURPHY'S FIRST AMENDED MOTION TO DISMISS
FOR LACK OF JURISDICTION**

On July 21, 2017 the Court considered the *Defendants Steven Johnson and Matthew Murphy's First Amended Motion to Dismiss for Lack of Jurisdiction* (hereinafter the "Motion") in the above-referenced cause. After considering the pleadings, the applicable law, the previous orders on file, the arguments of counsel and Plaintiff, and the evidence on file, the Court is of the opinion that the Motion should be granted in part and denied in part, as follows:

The Court GRANTS Defendants' Motion as to Plaintiff's constitutional tort claims, because the Court does not have jurisdiction as to the constitutional torts alleged.

The Court DENIES Defendants' Motion as to Defendants' official immunity claims, because these arguments should be addressed in a Motion for Summary Judgment.

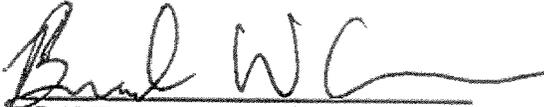
THEREFORE, the Court hereby ORDERS Plaintiff's constitutional tort claims dismissed WITH PREJUDICE, and denies all further relief WITHOUT PREJUDICE.

SIGNED this 30 day of August, 2017.



PRESIDING JUDGE

APPROVED AS TO FORM:



BRANDON W. CARR

Assistant City Attorney

State Bar No. 24074004

Brandon.Carr@austintexas.gov

City of Austin - Law Department

P. O. Box 1546

Austin, Texas 78767-1546

Telephone: (512) 974-2181

Facsimile: (512) 974-1311

ATTORNEY FOR CITY DEFENDANTS

Christian-Andre Clark

7007 Greenock Street

Austin, Texas 78749

Christianclark31@gmail.com

PRO SE

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Velva L. Price
District Clerk, Travis County
Travis County Courthouse Complex
P.O. Box 679003
Austin, Texas 78767



DATE: January 14, 2019

ANDREW MICHAEL WILLIAMS
P.O. BOX 1748
AUSTIN, TX 78767-1748

ORDER GRANTING CPO SR. JESSE IBARRA'S MOTION TO DISMISS FOR
LACK OF JURISDICTION

D-1-GN-16-002854

CHRISTIAN-ANDRE CLARK

VS.

STEVEN JOHNSON; MATHEW MURPHY; MATT DENT; PHIL CAMPBELL; DIMPLE
MALHOTRA; JESSE IBARRA; KIMBERLY REGGE; THE STATE OF TEXAS; TRAVIS
COUNTY; AUSTIN TEXAS; AUSTIN POLICE

You are hereby notified that the above order has been signed and
entered JANUARY 9, 2019 in the 201ST JUDICIAL DISTRICT COURT of
Travis County Texas in the above numbered and entitled cause.

Velva L. Price,
District Clerk

L60 - 000052132

D-1-GN-16-002854

BH