

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TODD THOMAS,

Plaintiff,

V.

THE CITY OF AUSTIN and MICHAEL
VITALE,

Defendants.

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CAUSE OF ACTION:

1:25-cv-53

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Todd Thomas brings this 42 U.S.C. § 1983 case against the City of Austin and Austin Police Department Officer Michael Vitale for the excessive force inflicted on him with a highly dangerous “less lethal” kinetic weapon.

I. PARTIES

1. Plaintiff Todd Thomas is a resident of Travis County, Texas.
2. Defendant Michael Vitale is a police officer with the Austin Police Department and is sued in his individual capacity for compensatory and punitive damages. At all relevant times, Michael Vitale was acting under color of law as an Austin Police Department officer. He can be served with process at 715 E. 8th Street, Austin, Texas, 78701 or wherever he may be found. *Service is hereby requested.*
3. Defendant City of Austin is a municipality that operates the Austin Police Department (APD) and may be served through its City Clerk at 301 W. 2nd Street, Austin, TX 78701. *Service is hereby requested.*
4. The City's relevant policymaker for law enforcement on January 12, 2023 was

then-APD Chief Joseph Chacon who served in this position from April 2021 through August 2023. At all relevant times before April 2021, the City's relevant policymaker for law enforcement was APD Chief Brian Manley. At all relevant times after August 2023, the City's relevant policymaker for law enforcement was APD Chief Robin Henderson.

II. JURISDICTION AND VENUE

5. This Court has federal question jurisdiction over this 42 U.S.C. § 1983 action pursuant to 28 U.S.C. §§ 1331 and 1343.

6. This Court has general personal jurisdiction over Defendants as they reside and/or work in Travis County, Texas.

7. This Court has specific *in personam* jurisdiction over Defendants because this case arises out of conduct by Defendants that injured Mr. Thomas that occurred in Travis County, Texas, which is within the Western District of Texas.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) as all relevant events occurred in this division and the Defendant City of Austin operates in this state and division.

III. FACTS

A. Austin Police Department Officer Michael Vitale used wholly unnecessary and excessive force when he shot Plaintiff three times with a high-energy kinetic weapon.

9. Todd Thomas is a Black Austin citizen who lacked a permanent home on January 12, 2023.

10. On that date, Mr. Thomas was living in a makeshift shelter near 4905 Maufrais Lane in Austin, Texas, next to a set of dumpsters.

11. That evening, Austin Police Department officers were called out to where Mr. Thomas was living in response to a complaint from a nearby homeowner who did not like that Mr. Thomas was living nearby.

12. Along with several other APD officers, Officer Michael Vitale arrived on scene to find Mr. Thomas in his makeshift shelter.

13. Mr. Thomas was unarmed and had not done anything threatening.

14. APD officers called for Mr. Thomas to come out of his shelter.

15. Mr. Thomas began to comply and come out.

16. Though Mr. Thomas was clearly in the process of complying and exiting his shelter, APD officers fired pepper balls at him and his shelter for no reason.

17. The “pepper” in the balls dispersed on impact with the shelter, leaving a coating and a cloud of powder designed to irritate the eyes and nose on Mr. Thomas’s shelter and in the air immediately around him.

18. APD officers fired almost fifty pepper rounds at Mr. Thomas and his shelter.

19. The irritant from the pepper balls caused Mr. Thomas’s eyes to water and nose to run.

20. Mr. Thomas had done nothing to justify APD officers shooting pepper balls at him. He had done nothing threatening or dangerous.

21. Mr. Thomas was immediately confused and overwhelmed by APD’s lights in his eyes and the pepper irritating his eyes and skin.

22. Still, Mr. Thomas kept his hands visible and up while complying with APD’s orders to keep his hands up and walk toward them.

23. Mr. Thomas was unarmed. He did not pose a threat to anyone, nor was he a danger to anyone.

24. The APD officers—including Officer Vitale—saw at all times that Mr. Thomas’s hands were up and empty and that his waistband was not concealing any objects.

25. Mr. Thomas also did not reach for his waistband at any time or make any furtive movements suggesting he was reaching for anything.

26. Yet, without reason or justification, APD Officer Vitale suddenly shot at Mr. Thomas three times with a beanbag kinetic projectile fired from his 12-gauge shotgun from only about ten feet away.

27. Mr. Thomas had done nothing threatening before Office Vitale shot him—he had not reached for anything, was unarmed, and had kept his hands visible.

28. Officer Vitale gave no warning to Mr. Thomas before he fired the kinetic weapon at Mr. Thomas, nor did he or any other APD Officer give a command to Mr. Thomas that he did not obey.

29. Instead, Officer Vitale only said “impacting,” which warned his fellow officers that he was about to shoot, but gave no warning to Mr. Thomas who did not know what “impact” meant and had never been shot with a high-energy kinetic weapon.

30. Officer Vitale’s shooting was unreasonable, dangerous, and completely unjustified, as Mr. Thomas posed no threat or danger to anyone.

31. Officer Vitale’s first and third highly dangerous “beanbag” kinetic projectile rounds struck Mr. Thomas in the leg from about ten feet away.

32. Mr. Thomas immediately started to collapse in agony from being hit with the kinetic projectiles.

33. Rather than help him as he collapsed in agonizing pain from being shot with kinetic projectiles from less than ten feet away, three other APD officers rushed to tackle Mr. Thomas and arrest him.

34. When APD officers later searched Mr. Thomas and his belongings, they found no weapons.

35. All charges filed against Mr. Thomas from January 12, 2023 were swiftly dropped.

36. As a direct and proximate consequence of APD and Officer Vitale's conduct, Mr. Thomas suffered serious injuries.

37. On information and belief, Officer Vitale has never been disciplined for his unjustified shooting of Todd Thomas.

38. Sadly, this incident is part of APD's long pattern of firing kinetic projectile weapons unsafely and dangerously at innocent victims.

B. When Vitale shot Plaintiff, APD had long-standing policies and practices of officers' shooting unarmed and non-threatening people with high-energy kinetic weapons and of refusing to discipline these officers for using excessive force.

39. Long before Officer Vitale shot Mr. Thomas, APD and its Police Chief policymakers knew that kinetic projectile weapons like the beanbag weapon used against Mr. Thomas are dangerous and are likely to cause serious harm to innocent individuals, yet failed to change their policies, practices, or training, or to discontinue their use until many more people had been seriously injured after being shot unjustifiably with these dangerous weapons.

40. In January 2020, APD officers shot an individual having a mental health crisis with a kinetic projectile weapon that caused a penetrating and serious injury to the subject's shoulder.

41. In fact, the injuries to the subject's shoulder were so shocking and severe, APD contacted the weapon's manufacturer, who affirmed that the injury was the type expected from the kinetic weapon.

42. Then-APD Chief Brian Manley was made aware of the injury as well as the manufacturer's response, as was Joseph Chacon, then one of Brian Manley's assistant chiefs and his successor.

43. APD policies, practices, and training programs at the time authorized or encouraged the use of the highly dangerous kinetic projectile weapons on subjects whom officers perceived to be simply not immediately complying with or not complying rapidly enough with officers' commands, even if the subjects were not doing anything threatening or dangerous and were unarmed.

44. Despite being directly informed that these weapons were designed to cause and did cause severe and often penetrating injuries, APD leadership, including then-Chief Brian Manley, did nothing to limit APD's use of these weapons or otherwise change APD's policies, practices, and training programs regarding these highly dangerous weapons.

45. Specifically, Chief Manley made no changes to APD's policies, practices, and training programs that authorized and encouraged the use of kinetic projectile weapons against nonthreatening, unarmed subjects.

46. In the three years between January 2020 and Officer Vitale's shooting of Mr. Thomas, APD Officers shot numerous other individuals with kinetic projectile weapons who, like Mr. Thomas, posed no threat or danger to anyone.

47. Individuals who posed no danger to anyone whom APD Officers shot with kinetic projectiles include then-minor child Levi Brad Ayala, Nicole Underwood, Joe Herrera, Anthony Evans, Justin Howell, Meredith Drake, and minor child L.N.R., to name just a few.

48. As a direct and proximate result of APD's policies, practices, customs, and training programs that also caused Officer Vitale to shoot Mr. Thomas when he posed no danger to anyone,

numerous other people suffered severe and devastating injuries from APD officers' excessive force and dangerous misuse of highly dangerous kinetic projectile weapons.

49. On May 30, 2020, then-16-year-old Levi Brad Ayala had his hands visible, empty, and by his sides and was doing nothing wrong when APD Officer Nicholas Gebhart shot him in the head with a kinetic projectile without warning, causing severe injuries including a skull fracture and traumatic brain injury.

50. Then-APD Chief Brian Manley was personally informed about the shocking and entirely unjustified shooting of Ayala by text message from then-City Council member Greg Casar that same day. Then assistant chief and future-chief Joseph Chacon either received or was also aware of the text message and its contents.

51. In a subsequent deposition, Chief Manley acknowledged that he had Officer Gebhart's shooting of Ayala investigated and agreed that shooting someone with a kinetic projectile weapon in the head constituted deadly force.

52. On information and belief, Chief Manley recognized that there was no justification whatsoever to shoot Ayala, much less any justification for use of deadly force, yet Chief Manley chose not to discipline Officer Gebhart.

53. After he became police chief, Joseph Chacon also acknowledged in deposition that there was no justification for Officer Gebhart's use of excessive and deadly force against Ayala, yet he too chose not to discipline Officer Gebhart.

54. Instead, on information and belief, both of APD's policymakers in the years immediately following the shooting—Chiefs Brian Manley and Joseph Chacon—reviewed Officer Gebhart's use of excessive and deadly force against Ayala, including the fact there was no basis for the shooting, yet ratified and approved of his use of excessive and deadly force.

55. Accordingly, APD policymakers intentionally and deliberately never disciplined Officer Gebhart for using excessive and deadly force without any justification whatsoever on the non-threatening Ayala.

56. The City of Austin ultimately paid Ayala a highly publicized settlement of \$2,950,000 in March 2022.

57. Also on May 30, 2020, APD Officer John Siegel shot Nicole Underwood without warning in the chest, an area known to be highly dangerous, from less than 15 feet away when she was doing absolutely nothing wrong and when her hands were visible and empty. Officer Siegel's projectile penetrated Underwood's chest, requiring emergency surgery.

58. When later asked in a deposition why he shot Underwood, Officer Siegel pled the Fifth and refused to answer.

59. Then-Chief Brian Manley was also directly informed of the serious, penetrating injury to Underwood by text message by Greg Casar. Then assistant chief and future-chief Joseph Chacon either received or was also aware of the text message and its contents.

60. On information and belief, Chiefs Manley and Chacon reviewed Officer Siegel's shooting of Underwood, recognized there was no justification for shooting her, yet ratified and approved of Siegel's shooting and his (lack of) basis for shooting her.

61. The City paid Underwood a settlement of \$675,000.

62. Yet APD policymakers intentionally and deliberately never disciplined Officer Gebhart for his use of excessive force in shooting Nicole Underwood.

63. That same day, APD Officer Kyu An shot Bomani Ray Barton when Barton had his hands empty and visible and was slowly backing away from Officer An. Officer An's

projectiles struck Barton in his hip, elbow, and face. Barton had done nothing wrong when Officer An shot him.

64. Officer An's projectile injured Barton's face and shattered his jaw, requiring seven surgeries to repair. Even after seven surgeries, doctors were unable to completely repair the damage caused by Officer An's use of excessive and deadly force.

65. When asked in a subsequent deposition about shooting Barton, Officer An pled the Fifth and refused to answer.

66. On information and belief, Chiefs Manley and Chacon reviewed Officer An's shooting of Barton; recognized there was no justification for any of Officer An's shots, much less the shot to Barton's face; yet ratified and approved of An's excessive and deadly conduct, including the fact that there was no basis to shoot Barton.

67. The City paid Barton a \$1,200,000 settlement.

68. Yet APD policymakers intentionally and deliberately never disciplined Officer An for his use of excessive and deadly force when he shot Barton.

69. Later on May 30, 2020, APD Officer James Morgan used unreasonable and excessive force against Joe Herrera by shooting Herrera without warning in the leg with a kinetic projectile weapon while Herrera held his empty hands out by his sides.

70. Officer Morgan's unreasonable and excessive shooting of Herrera caused severe and lasting injuries, including permanent disfigurement of Herrera's leg, complex regional pain syndrome, and exacerbation of Herrera's post-traumatic stress disorder from his military service in Iraq.

71. In October 2022, the City paid a highly publicized settlement to Herrera of \$1,750,000 for his injuries.

72. Despite the facts that Morgan seriously injured Herrera, APD knew for years that there was no justifiable basis for shooting Herrera, and the City paid him \$1.75 million for his injuries, APD never bothered to conduct an Internal Affairs investigation into Officer Morgan's shooting of Herrera.

73. Accordingly, APD policymakers intentionally and deliberately never disciplined Officer Morgan for his excessive shooting of Herrera.

74. That same day, another APD officer shot Tracey Cates, an unarmed grandmother who had done nothing remotely threatening or dangerous.

75. The officer's projectile caused Cates a significant and painful injury to the back of her arm, with deep purple bruising from her shoulder to elbow.

76. In May 2022, the City paid a highly publicized settlement to Cates of \$100,000 to settle her claims for her injuries.

77. Despite Cates's injuries and the City's settlement of her claims, APD Internal Affairs never even bothered to investigate the shooting of Cates, meaning APD's policymakers never disciplined any officer for using excessive force for shooting Cates.

78. That day yet another APD officer shot medic Steven Arawn as he tried to render aid to another peaceful protestor who had been shot. At the time, Arawn was wearing a visible red cross to indicate he was a medic and was doing absolutely nothing wrong or threatening.

79. The officer's kinetic projectile struck Arawn in the wrist, causing permanent nerve damage.

80. The APD officer who shot Arawn was Bryan Pietrowski, Darrell Cantu-Harkless, William Norrell, Christopher King, Joshua Jackson, John Siegel, Brian Huckaby, Joseph Peche,

Christopher Van Buren, Dustin Turner, Ryan Dandignac, Bryan McCulloch, Brandon Swindell, Nicholas LaBarbera, Nicholas Gebhart, Christopher Leleux, Mark Dale, or Justin Berry.

81. The City settled Arawn's claims for \$450,000.

82. Despite Arawn's serious injuries and the City's settlement, APD Internal Affairs also never investigated the unjustified and excessive shooting of Arawn. Accordingly, no APD officer was ever disciplined for this excessive shooting.

83. Also on May 30, 2020, another APD officer shot Cesar Fuentez while he was doing absolutely nothing wrong.

84. On information and belief, the APD officer who shot Fuentz was Limary Barajas, Jeffrey Teng, Calvin Fusilier, Kyu An, Timothy Cobaugh, Michael Harris, Brandon Swindell, Rudy Cadena, Joshua Jackson, Eric Pastor, Benjamin Hart, Ryan Dandignac, Casey Kasan, Nicholas LaBarbera, or Christopher Leleaux.

85. When the APD officer shot Fuentez, he was videoing the protests and APD officers' uses of excessive force. Fuentez was running away from officers who were shooting into the crowd when he was struck with a kinetic projectile.

86. The kinetic projectile tore a nearly two-inch hole in his arm that necessitated emergency treatment and surgery.

87. In November 2022, the City settled Fuentez's claims for \$162,500. The settlement, occurring at the same time as the settlements for Ellis and another victim named Meredith Williams, received extensive media attention.

88. Despite Fuentez's injuries and the City paying a settlement to him, APD Internal Affairs never investigated any officer for shooting Fuentez. Accordingly, APD policymakers never disciplined any officer for this excessive shooting.

89. On May 31, 2020, APD Officer Kyle Felton used unreasonable and excessive force and shot Anthony Evans in the head without warning with a high-energy kinetic projectile weapon, shattering his jaw and causing a brain injury, as Evans walked peacefully.

90. In subsequent depositions, both Chiefs Manley and Chacon agreed they reviewed video of Officer Felton's shooting of Evans, acknowledged shooting a kinetic projectile weapon at Evans's head constituted deadly force, and agreed that they did not observe any conduct from Evans that indicated he was a threat to anyone.

91. Yet, on information and belief, Chiefs Manley and Chacon approved of Officer Felton's conduct in shooting Evans, including the (lack of) basis for the shooting, and ratified and approved of Felton's deadly and excessive force.

92. A grand jury indicted Officer Felton for aggravated assault with a deadly weapon by a public servant for shooting Evans and the City ultimately paid a settlement to Mr. Evans of \$2,000,000.

93. Yet APD policymakers intentionally and deliberately never disciplined Felton for his use of excessive and deadly force against Evans.

94. That same day, APD Officer Chance Bretches fired his kinetic weapon at Arianna Chavez and struck her with a projectile in the back of the head.

95. Chavez posed no threat to anyone at any time prior to being shot, was unarmed, and had done nothing that could even be interpreted as threatening.

96. Officer Bretches's kinetic projectile caused Chavez to suffer a serious head wound and concussion.

97. In February 2022, the City settled Chavez's claims for \$150,000 in a settlement that widely garnered media attention.

98. On information and belief, Chiefs Manley and Chacon reviewed Officer Bretches's shooting of Chavez, including his (lack of) basis for shooting her. Despite there being absolutely no reason to shoot Chavez and agreeing that shooting someone in the head with a kinetic projectile constitutes deadly force, each approved and ratified Bretches's conduct and the (lack of) basis for his use of excessive and deadly force by shooting Chavez in the head.

99. Another of the many individuals APD officers shot in the head with kinetic weapons in May 2020 was Justin Howell, a twenty-year-old college student who also had done nothing that could possibly justify being shot.

100. On May 31, 2020, APD Officer Jeffrey Teng used excessive and deadly force against Howell when he shot Howell for no reason and without warning with a kinetic weapon, causing a serious head injury.

101. When later given the opportunity to explain why he shot Howell, Teng pled his Fifth Amendment right not to incriminate himself.

102. Though both Chiefs Manley and Chacon agreed in subsequent depositions that deadly force was not justified against Howell and that shooting someone in the head with a kinetic projectile constitutes deadly force, both Chiefs ratified and approved of Teng's deadly and excessive force, including his (lack of) basis for shooting Howell in the head.

103. A grand jury indicted Officer Teng for his unjustified and depraved shooting of Howell and the City paid Howell a settlement of \$8,000,000 for his injuries received from Officer Teng.

104. Yet APD policymakers intentionally and deliberately never disciplined Officer Teng for his excessive and deadly force against Howell.

105. After being shot in the head, Howell lay on the ground unconscious and bleeding. No police officer came to help him. Instead, other peaceful protesters rushed to help Howell.

106. Incredibly, rather than assist the peaceful protesters get Howell obviously necessary emergency medical care, an APD Officer shot one of them with a kinetic projectile weapon.

107. Specifically, APD Officer Chance Bretches shot Meredith Drake, a medic who was walking with her empty hands visible in the air and trying to get Howell help. Drake posed no danger whatsoever to anyone when Officer Bretches shot her without warning with a kinetic projectile weapon, causing her to permanently lose part of her finger.

108. Bretches's unjustified and excessive shooting of Drake came just hours after his unjustified and excessive shooting of Arianna Chavez.

109. When later asked directly if he intentionally shot Drake and Chavez while they posed no danger to anyone, Officer Bretches invoked his Fifth Amendment right not to incriminate himself as to both shootings and refused to answer.

110. A grand jury indicted Officer Bretches for aggravated assault with a deadly weapon by a public servant for shooting Drake. The City paid Drake a highly publicized settlement of \$850,000 for her injuries in May 2022.

111. On information and belief, Chiefs Manley and Chacon reviewed Officer Bretches's shooting of Drake, including his (lack of) basis for shooting her. Despite there being no reason to shoot Drake and despite this being at least his second excessive shooting on the same day, each approved and ratified Officer Bretches's conduct and the (lack of) bases for his use of excessive force against Drake.

112. Accordingly, APD policymakers intentionally and deliberately never disciplined Officer Bretches for the unjustified and excessive shooting of Drake.

113. That same day, APD officers pepper sprayed a crowd of peaceful protestors indiscriminately and fired high-energy kinetic weapons into the crowd.

114. Alyssa Sanders was in the crowd and attempted to escape to safety away from the officers' pepper spraying and firing into the crowd.

115. APD Officer Eric Heim fired a high-energy kinetic weapon at Sanders and struck her in the head though she was not doing anything wrong, threatening, or dangerous before he fired at her.

116. Officer Heim's projectile fractured Sanders' skull and caused a traumatic brain injury.

117. The City paid Sanders \$1,950,000 to settle her claims.

118. On information and belief, Chiefs Manley and Chacon reviewed Officer Heim's shooting of Sanders, including his (lack of) basis for shooting her. Despite there being no reason to shoot Sanders and despite acknowledging that shooting someone in the head with a kinetic weapon constitutes deadly force, each approved and ratified Heim's excessive and deadly use of force against Sanders and the (lack of) bases for his conduct.

119. Accordingly, APD's policymakers chose not to discipline Heim for his excessive shooting of Sanders.

120. Also on May 31, 2020, APD officers Justin Berry, Todd Gilbertson, Christopher Irwin, Jeremy Fisher, Joshua Jackson, Jamie Carillo, Stanley Vick, and Alexander Lomovstev fired their high-energy kinetic weapons at Christen Warkoczewski, though she too had not done anything remotely threatening or dangerous before being shot.

121. One of the kinetic projectiles fired by these officers struck her in the face, embedding itself in her jaw. Wackoczewski required emergency surgery to remove the round.

122. In May 2022, the City paid Warkoczewski \$850,000 to settle her claims in a highly publicized settlement.

123. On information and belief, Chiefs Manley and Chacon reviewed the shooting of Warkoczewski by these APD officers, including their (lack of) bases for shooting her or shooting at her.

124. Despite there being absolutely no reason to shoot Warkoczewski and agreeing that shooting someone in the head constituted deadly force, each approved and ratified the eight officers' conduct and the (lack of) bases for their excessive and deadly uses of force in shooting Warkoczewski in the head.

125. At nearly the same time the eight officers were shooting at Warkoczewski, APD Officer Roland Rast shot Samuel Kirsch in the face. At the time Officer Rast shot Kirsch, Kirsch was obeying APD's direction to clear the area and had his hands visible and empty.

126. As a result of being struck in the head with Rast's kinetic projectile, Kirsch required multiple surgeries and partially lost vision in his left eye.

127. On information and belief, Chiefs Manley and Chacon reviewed Officer Rast's shooting of Kirsch, including his (lack of) basis for shooting Kirsch.

128. Despite there being absolutely no reason to shoot Kirsch and agreeing that shooting a kinetic weapon at someone's head constitutes deadly force, each approved and ratified Officer Rast's excessive and deadly use of force and his (lack of) basis for shooting Kirsch in the head.

129. That same day, APD Officers Michael Crossen and Todd Gilbertson fired their high-energy kinetic weapons at Taylor Ellis as he walked away from police with his empty hands in the air. The officers' projectiles struck Ellis on his hip and shoulder.

130. Ellis had not done anything threatening or dangerous before Officers Gilbertson and Crossen fired their kinetic weapons at him.

131. In November 2022, in a highly publicized settlement, the City settled Ellis's claims for \$162,5000.

132. On information and belief, Chiefs Manley and Chacon reviewed the shooting of Ellis by Officers Crossen and Gilbertson, including their (lack of) basis for shooting him. Despite there being absolutely no reason to shoot Ellis, each approved and ratified of Officers Crossen's and Gilbertson's uses of excessive force and their (lack of) bases for shooting Ellis.

133. Accordingly, APD's policymakers intentionally chose not to discipline Officers Crossen or Gilbertson for using excessive force when they shot Ellis.

134. According to Dell Seton Medical Center's physicians, the trauma center treated nineteen individuals who suffered significant injuries from APD officers' use of kinetic projectile weapons in May 2020, including seven victims who required surgical interventions and four victims who retained so-called "less lethal" rounds in their bodies or heads.

135. Victims of APD Officers' unjustified and excessive uses of kinetic projectile weapons in May 2020 suffered intercranial hemorrhages, depressed and non-depressed skull fractures, a depressed frontal bone fracture, fractured jaws, brain damage, and post-traumatic stress disorder, among other serious injuries.

136. In fact, Dell Seton doctors were so alarmed by the severity of injuries caused by APD officers' uses of excessive force with kinetic projectile weapons, they published an article in the New England Journal of Medicine in August 2020 documenting these injuries and the dangers of kinetic projectile weapons.

137. Then-Chief Chacon personally read this article around the time of its publication, yet still did not meaningfully change APD's policies, practices, or training programs concerning the use of kinetic projectile weapons.

138. Specifically, Chief Chacon did not change the APD policies, practices, or training programs that authorized or encouraged the use of kinetic projectile weapons against nonthreatening, unarmed subjects.

139. As a result, more than a year later, on June 23, 2021, APD Officer Nikolas Warren shot a fifteen-year-old girl, L.N.R., who posed no danger to anyone and was simply walking with her hands loose, visible, and empty by her sides. He was ordered to do so by APD Officer Daniel Levine.

140. Like Mr. Thomas, L.N.R. received no warning Officer Warren was going to shoot her as Officers Levine and Warren both only stated she would be "impacted." L.N.R. had no idea what this statement meant and so was not "warned" by it.

141. Officer Warren's shocking and unjustified shooting caused a severe injury to L.N.R.'s leg that left her permanently disfigured.

142. When asked directly to explain his reasons for shooting an unarmed fifteen-year-old girl, Officer Warren invoked his Fifth Amendment right not to incriminate himself.

143. Then-Chief Chacon reviewed Officer Warren's shooting of L.N.R., including his basis for shooting the unarmed, empty-handed girl, and approved and ratified both the shooting and Warren's reasons for shooting her.

144. Likewise, then-Chief Chacon reviewed Officer Levine's order to Warren to shoot L.N.R., including his basis for ordering Warren to shoot an unarmed, empty-handed girl, and approved and ratified Levine's order and his reasons for it.

145. Accordingly, APD's policymaker intentionally and deliberately did not discipline Officers Warren or Levine for the excessive force against L.N.R.

146. The City ultimately paid L.N.R.'s family \$200,000 to settle the claims for her injuries.

147. After the shooting of L.N.R., the Travis County District Attorney José Garza opened an investigation into Warren's shooting of her. After or as part of that investigation, D.A. Garza met with APD Chief Chacon and others in the leadership team and expressed concern about APD officers' unjustified and excessive uses of high-energy kinetic weapons.

148. Despite these ongoing conversations and concerns raised by D.A. Garza, between June 2021 and January 2023, APD Chief Joseph Chacon made no changes to the APD policies, practices, and training programs that authorized and encouraged officers to use highly dangerous kinetic weapons against nonthreatening subjects, despite the fact these policies, practices, and training programs had led to another child being shot and seriously injured with kinetic weapons.

149. All told, to date, the Defendant City of Austin has paid more than \$20,000,000 to victims of its officers' excessive uses of these highly dangerous kinetic projectile weapons in just the last four years.

150. APD police chiefs and other leadership were aware of the dangers of the use of kinetic projectile weapons long before January 2023 but continued to allow their use for years longer than they had any excuse.

151. Six months after APD officers shot Mr. Thomas, on July 28, 2023, D.A. Garza sent Chief Chacon a letter summarizing the last meeting between the two of them and others in APD leadership.

152. The letter acknowledged that the shooting of L.N.R. “highlights a continuing pattern” regarding the misuse of high-energy kinetic weapons.

153. D.A. Garza went on to note,

[b]ased on the officers’ conduct...it is likely that a grand jury would have found probable cause existed to charge Warren and Levine with one or more of the following criminal offenses including but not limited to Deadly Conduct, Assault, Aggravated Assault with a Deadly Weapon, and Official Oppression. Evidence reviewed by TCDAO, including body cam footage and written reports, suggests that a grand jury could have reasonably concluded that officers may have opted to shoot L.N.R. with a shotgun containing a modified munition because the minor was slow to comply with directions to put down her cell phone and not because they were justified to do so under the law.

154. Not until August 2023 did Austin Police Department leadership, including APD Chief Chacon, finally suspend the use of the “less lethal shotguns” used by APD officers to shoot Plaintiff Thomas, Levi Brad Ayala, Nicole Underwood, Joe Herrera, Justin Howell, Anthony Evans, Meredith Drake, L.N.R., and many other non-threatening and innocent victims who had done nothing wrong.

155. Though APD leadership made public statements that it had “suspended” the use of the highly dangerous and oft-misused kinetic projectile weapons, on information and belief, APD continues to train its officers how to fire them.

156. Each of the incidents described and referenced above were the direct and proximate result of the same APD policies, practices, customs, and training programs that also caused Officer Vitale to shoot Mr. Thomas when he posed no danger to anyone.

157. On information and belief, despite numerous highly publicized incidents of misuse, lawsuits, indictments, and \$20,000,000 in settlements paid to victims shot by APD officers armed with kinetic projectile weapons so far, APD has never suspended or terminated any officer who

intentionally shot someone with a less-lethal weapon, even when its policymakers acknowledged the victims had done nothing that merited being shot with kinetic projectiles.

158. On information and belief, in the more than five years APD used these weapons on victims like Mr. Thomas who had done nothing threatening or dangerous, on only one occasion did APD ever even confirm an officer violated its less-lethal weapon policy by shooting an innocent victim. That officer was not suspended or terminated; instead, he was given only a short re-training.

159. APD's policymaker was also well aware of the department's systemic failure to discipline for excessive force from the Kroll Associates' January 21, 2022 report on APD's use of force.

160. Kroll Associates was retained by the City of Austin itself and analyzed APD's own internal records and body-worn camera footage to find an average of more than thirteen uses of excessive force per month.

161. In contrast, APD disciplined fewer than one officer per month arising from use of force incidents during the period from 2009 through 2021.

162. Thus, Kroll Associates' report alerted the police chief that over 90% of APD officers who engage in excessive force, which is evident from body-worn camera footage, are never disciplined.

163. The City has conceded through its retained witness in other litigation that such a rate of non-discipline "would be seriously compromising the integrity of the department."

164. Kroll's report also highlighted specific incidents of concern in the main body of the report which further highlighted and made predictable for the chief of police that people like Mr. Thomas would be unconstitutionally injured if no changes were made.

165. The Kroll Report specifically criticized APD for body slamming a 34-year-old person, suspected to be unhoused, for whom they were supposed to be conducting a welfare check. The officers falsely accused him of lunging at them and then one officer body slammed him into the ground. The two officers involved were not disciplined.

166. The Kroll Report also criticized APD's use of force against an unhoused 21-year-old man. In that incident, officers attacked him because they did not believe him when he truthfully told them his name. Those officers further falsely accused the person of striking him but the video proved this to be false. Those officers were also not disciplined.

167. Despite Kroll's report, APD's policymaker did nothing to change APD practice or disciplinary procedures.

168. On information and belief, and as a direct and proximate result of the police chief's continuing to approve the same practice of non-discipline, APD continued to fail to discipline a supermajority of incidents of excessive force through the time of Mr. Thomas' injury, including a majority of incidents of excessive force involving high-energy kinetic weapons.

169. On information and belief, Officer Vitale knew in January 2023 that none of his fellow officers had been disciplined for intentionally shooting someone with a less-lethal weapon, even when the victims of the excessive uses of force had done nothing threatening or dangerous.

IV. CAUSES OF ACTION

A. Excessive Force and Conscience Shocking Force as to Defendant Vitale.

170. Plaintiff incorporates all of the previous allegations as if alleged herein.

171. Defendant APD Officer Michael Vitale, while acting under color of law, used excessive force on Mr. Thomas when Mr. Thomas posed no danger to anyone.

172. Defendant Vitale's use of force was wholly excessive to any conceivable need, objectively unreasonable in light of clearly established law, and directly caused Mr. Thomas to suffer serious injuries. Therefore, Defendant Vitale violated Mr. Thomas' clearly established Fourth Amendment right to be free from excessive force and unreasonable seizure.

173. APD Officer Vitale's use of force caused Mr. Thomas significant injuries, was grossly disproportionate to the need for force under the circumstances, and was inspired by malice or excess of zeal such that it amounted to abuse of official power that shocks the conscience. Without any legitimate reason, APD Officer Vitale shot at Mr. Thomas three times with a highly dangerous weapon, causing serious injuries.

174. Therefore, APD Officer Vitale also violated Mr. Thomas's clearly established Fourteenth Amendment substantive due process right to be free from excessive force that clearly shocks the conscience.

175. As a direct and proximate result of Officer Vitale's excessive uses of force with a kinetic projectile weapon, Mr. Thomas suffered significant injuries.

176. Mr. Thomas brings this claim pursuant to 42 U.S.C. § 1983.

B. Punitive / Exemplary Damages as to Defendant Vitale

177. Plaintiff incorporates all of the foregoing as if alleged herein.

178. Officer Vitale's conduct was egregious, reckless, and endangered Mr. Thomas and the community. Mr. Thomas, therefore, in hopes of deterring future acts of violence and retaliation like the one he suffered, seeks punitive or exemplary damages as to Officer Vitale.

179. Mr. Thomas brings this claim pursuant to 42 U.S.C. § 1983.

C. Fourth and Fourteenth Amendment 42 U.S.C. § 1983 *Monell* Claim Against the City of Austin Only

180. Plaintiff incorporates all of the foregoing as if alleged herein.

181. Defendant City of Austin, had the following policies, practices, or customs in place when Officer Vitale used brutally excessive force on Mr. Thomas and injured him:

- a. Intentionally and deliberately failing or refusing to discipline officers who shot nonthreatening subjects with kinetic projectile weapons;
- b. Refusing to correct a longstanding practice of not disciplining the vast majority of officers who engage in excessive force despite unambiguous video evidence of misconduct;
- c. Approving and ratifying officers' shooting nonthreatening subjects with kinetic projectile weapons;
- d. Using kinetic weapons on subjects without giving any kind of effective warning and chance to comply;
- e. Using, authorizing, and tolerating a widespread custom of shooting kinetic projectiles at people who posed no danger to anyone;
- f. Training officers to shoot nondangerous people with kinetic projectiles; and
- g. Failing to train or providing no training to officers that they cannot use kinetic projectile weapons against non-dangerous, non-threatening subjects.

182. Each of the policies, practices, customs, or training programs delineated above was actually known, constructively known, and/or ratified by the City of Austin and its policymakers, and was promulgated with deliberate indifference to Mr. Thomas's Fourth and/or Fourteenth Amendment rights under the United States Constitution. Moreover, the known and obvious consequence of these policies, practices, customs, or training programs was that Austin Police Department officers would be placed in recurring situations in which the constitutional violations described within this complaint would result. Accordingly, these policies also made it highly predictable that the particular violations alleged here, all of which were under color of law, would result.

183. Moreover, former Chiefs Brian Manley, Joseph Chacon, and Robin Henderson were also directly aware of multiple similar incidents in which unconscionable, excessive, and

unreasonable force was used by officers firing kinetic projectile weapons at people, but they did not remedy the misconduct in light of this pattern of abuse. In fact, former Chiefs Manley, Chacon, and Henderson were aware of numerous examples of officers' misusing less lethal shotguns and committing excessive force yet they intentionally and deliberately failed or refused to discipline or even counsel them. Rather, they acquiesced in the unlawful conduct by permitting the abusive conduct to continue. Thus, the City is also directly liable for its policymakers' failure to train, supervise, and correct misconduct, which proximately caused Officer Vitale to injure Mr. Thomas and violate his rights.

184. Consequently, the policies delineated above were a moving force of Mr. Thomas' constitutional deprivations and injuries, and directly and proximately caused his damages.

185. Accordingly, Plaintiff brings this claim against the City pursuant 42 U.S.C. § 1983.

V. DAMAGES

186. Plaintiff seeks the following damages:

- a. Past and future medical expenses;
- b. Past and future economic damages;
- c. Past and future physical pain and mental anguish;
- d. Past and future impairment;
- e. Past and future disfigurement;
- f. Exemplary damages against Defendants Vitale only;
- g. Attorneys' fees; and
- h. Pre-and post-judgment interest at the highest rates allowed under the law.

V. JURY DEMAND

187. Plaintiff respectfully requests a trial by jury and has tendered the requisite fee.

VI. ATTORNEYS' FEES

188. Plaintiff seeks all reasonable and necessary attorneys' fees incurred in prosecuting this action and defending his rights, pursuant to 42 U.S.C. § 1988.

VII. PRAYER FOR RELIEF

189. To right this grave injustice, Plaintiff requests the Court:

- a. Award compensatory damages against all Defendants, jointly and severally;
- b. Award punitive damages against Defendant Vitale only;
- c. Award Plaintiff costs and fees, including but not limited to expert fees and attorneys' fees, pursuant to 42 U.S.C. § 1988;
- d. Award pre-judgment and post-judgment interest at the highest rate allowable under the law; and,
- e. Award and grant such other just relief as the Court deems proper.

Dated: January 10, 2025.

Respectfully submitted,

EDWARDS LAW
603 West 17th Street
Austin, Texas 78701
Tel. 512-623-7727
Fax. 512-623-7729

By /s/ Jeff Edwards
JEFF EDWARDS
State Bar No. 24014406
jeff@edwards-law.com
MIKE SINGLEY
State Bar No. 00794642
mike@edwards-law.com
LISA SNEAD
State Bar No. 24062204
lisa@edwards-law.com
DAVID JAMES
State Bar No. 24092572
david@edwards-law.com
PAUL SAMUEL
State Bar No. 24124463
paul@edwards-law.com

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

TODD THOMAS
Plaintiff

v.

**THE CITY OF AUSTIN AND
MICHAEL VITALE**
Defendants

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**CAUSE OF ACTION No.
1:25-CV-00053-RP**

**DEFENDANTS' ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S ORIGINAL COMPLAINT**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendants, City of Austin (“the City”) and Officer Michael Vitale (sometimes referred to hereafter as Vitale or Defendant Officer), by and through counsel, file this Answer and Affirmative Defenses to Plaintiff’s Original Complaint [Doc. No. 1]. Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendants respectfully show the Court the following:

ORIGINAL ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), the Defendants respond to each of the specific averments in Plaintiff’s Original Complaint [Doc No. 1] as set forth below. To the extent that the Defendants do not address a specific averment made by Plaintiff, the Defendants expressly deny that averment.¹ Defendants deny the allegations contained in the first unnumbered paragraph.

I. PARTIES

1. Upon information and belief, Defendants admit the allegations contained in Paragraph 1.

¹ Paragraph numbers in Defendants Answer correspond to the paragraphs in Plaintiff’s Original Complaint.

2. Defendants admit that Defendant Michael Vitale is a police officer with the Austin Police Department, and has been sued in his individual capacity for compensatory and punitive damages. The remaining allegations as stated call for conclusions of law or fact which do not require a response.
3. Admitted.
4. Defendants admit that at various times Joseph Chacon, Brian Manley, and Robin Henderson served as APD Chief. The remaining allegations as stated call for conclusions of law or fact which do not require a response.

II. JURISDICTION AND VENUE

5. Admitted.
6. Admitted.
7. Defendants admit that this court has general personal jurisdiction. The remaining allegations of this paragraph are vague and non-specific, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and do not require a response as stated. To the extent any response is required, Defendants deny any allegations asserting fault or liability.
8. Admitted.

III. FACTS

A. Austin Police Department Officer Michael Vitale used wholly unnecessary and excessive force when he shot Plaintiff three times with a high-energy kinetic weapon.

The allegations asserted above in Paragraph A. are denied.

9. Defendants are without without information sufficient to form a belief as to the truth of the allegations asserted in this paragraph and therefore deny same.

10. Defendants are without without information sufficient to form a belief as to the truth of the allegations asserted in this paragraph and therefore deny same.

11. It is admitted that Austin Police Department officers were called out. Defendants are without without information sufficient to form a belief as to the truth of the remaining allegations asserted in this paragraph and therefore deny same.

12. The allegations of this paragraph are vague and non-specific, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

13. The allegations of this paragraph are vague and non-specific, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

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16. Denied.

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20. Denied.

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30. Denied.

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36. Denied.

37. The allegations of this paragraph are vague, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

38. Denied.

B. When Vitale shot Plaintiff, APO had long-standing policies and practices of officers' shooting unarmed and non-threatening people with high-energy kinetic weapons and of refusing to discipline these officers for using excessive force.

The allegations asserted above in Paragraph B. are denied.

39. Denied.

40. The allegations of this paragraph are vague, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

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IV. CAUSES OF ACTION

A. Excessive Force and Conscience Shocking Force as to Defendant Vitale.

The allegations asserted above in Paragraph A. are denied.

170. Denied as stated. The allegations of this paragraph are vague, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

171. Denied.

172. Denied.

173. Denied.

174. Denied.

175. Denied.

176. Denied as stated. The allegations of this paragraph are vague, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

B. Punitive / Exemplary Damages as to Defendant Vitale

The allegations asserted above in Paragraph B. are denied.

177. Denied as stated. The allegations of this paragraph are vague, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

178. Denied.

179. The allegations of this paragraph are vague, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

C. Fourth and Fourteenth Amendment 42 U.S.C. § 1983 Mo11e1/ Claim Against the City of Austin Only

The allegations asserted above in Paragraph C. are denied.

180. Denied as stated. The allegations of this paragraph are vague, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

181. Denied. The allegations of this paragraph, including subparts a.,b.,c.,d.,e.,f.,g., are denied. They are vague, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

182. Denied.

183. Denied.

184. Denied.

185. Denied as stated. The allegations of this paragraph are vague, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and do not require a response as stated. To the extent any response is required, the Defendants deny any allegations asserting fault or liability.

V. Damages

186. Denied, including subparts a.,b.,c.,d.,e.,f.,g.,h.

V. Jury Demand

187. This paragraph merely contains Plaintiff's jury demand and therefore no response is required of this Defendant.

VI. ATTORNEYS' FEES

188. Denied.

VII. PRAYER FOR RELIEF

189. Denied, including subparts a.,b.,c.,d.,e.

AFFIRMATIVE DEFENSES & IMMUNITIES

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.
2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.
3. Defendants reserve the right to assert additional affirmative defenses throughout the development of the case.

4. Defendant Officer denies any deprivation under color of statute, ordinance, custom, or abuses of any rights, privileges, or immunities secured to the Plaintiff by the United States Constitution, state law, or 42 U.S.C. § 1983, et seq.
5. Defendant hereby invokes the doctrine of Qualified Immunity and Official Immunity. Defendant discharged his obligations and public duties in good faith, and would show that his actions were objectively reasonable in light of the law and the information possessed at that time.
6. The incident in question and the alleged resulting harm to Plaintiff, if any, were caused or contributed to by Plaintiff's own conduct. Pleading further and in the alternative, Plaintiff's injuries and damages were caused in whole or in part by the conduct of other persons or entities who are not currently parties to this lawsuit. Pleading further, alternatively, and by way of affirmative defense, to the extent applicable and subject to being withdrawn, Defendants would show that at the time and on the occasion in question, Plaintiff failed to use any degree of care or caution that a person of ordinary prudence would have used under the same or similar circumstances, and that such failure was a producing cause or the sole proximate cause of the incident and alleged damages that arise therefrom.
7. Defendants invoke the comparative responsibility provisions of the Texas Civil Practice & Remedies Code.
8. Defendants further plead that, in the unlikely event found to be liable, such liability be reduced by the percentage of the causation found to have resulted from the acts or omissions of other persons.

9. Defendants plead legal justification for each and every action taken and that the actions taken were objectively reasonable and complied with law.
10. Defendants assert the limitations and protections of Chapters 41 & 101 of the Texas Civil Practice & Remedies Code, and the due process clause of the United States Constitution.
11. Defendants reserve the right to assert additional affirmative defenses throughout the development of this case.
12. To the extent Defendants did not address a specific averment made by Plaintiff in his Complaint, Defendants expressly deny all such averments.
13. Defendants assert the affirmative defense that Plaintiff failed to mitigate damages, if any, and assert this failure to mitigate as both an affirmative defense and as a reduction in the alleged damage amount, if any, due Plaintiff.
14. Defendants assert the affirmative defense of statute of limitations as to all claims outside the applicable limitations period(s), both statutory and administrative, if any.
15. Defendants reserve the right to assert additional affirmative defenses as may be applicable throughout the development of the case, including immunity, estoppel, illegality, laches, waiver, or any other matter which may constitute an avoidance or affirmative defense.
16. Defendants assert that punitive damages are not available and would be contrary to the protections of the United States Constitution by allowing a jury or fact finder standardless discretion.
17. As a political subdivision, Defendant City of Austin denies that it can be liable for exemplary/punitive damages under 42 U.S.C. § 1983.

DEFENDANTS' PRAYER

Defendants pray that all relief requested by Plaintiff be denied, that the Court dismiss this case with prejudice, and that the Court award Defendants costs and attorney's fees, and any additional relief to which they are entitled under law or equity.

RESPECTFULLY SUBMITTED,

DEBORAH THOMAS, INTERIM CITY ATTORNEY
SARA SCHAEFER, ACTING CHIEF, LITIGATION

/s/ Monte L. Barton Jr.
MONTE L. BARTON JR.
Assistant City Attorney
State Bar No. 24115616
monte.barton@austintexas.gov

H. GRAY LAIRD III
Assistant City Attorney
State Bar No. 24087054
gray.laird@austintexas.gov

City of Austin Law Department
P. O. Box 1546
Austin, Texas 78767-1546
Telephone (512) 974-2409
Facsimile (512) 974-1311

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that on the 19th day of February, 2025, I served a copy of *Defendants' Answer and Affirmative Defenses to Plaintiff's Original Complaint* on all parties, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

Jeff Edwards
State Bar No. 24014406
jeff@edwards-law.com
Mike Singley
State Bar No. 00794642
mike@edwards-law.com
David James
State Bar No. 24092572
david@edwards-law.com
Lisa Snead
State Bar No. 24062204
lisa@edwards-law.com
Paul Samuel
State Bar No. 24124463
paul@edwards-law.com
Edwards Law
603 W. 17th Street
Austin, Texas 78701
Telephone: (512) 623-7727
Facsimile: (512) 623-7729

ATTORNEYS FOR PLAINTIFF

/s/ Monte L. Barton Jr.
MONTE L. BARTON JR.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TODD THOMAS,

Plaintiff,

V.

THE CITY OF AUSTIN and MICHAEL
VITALE,

Defendants.

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CAUSE OF ACTION:

1:25-cv-53-RP

JOINT FEDERAL RULE OF CIVIL PROCEDURE 26 REPORT

1. What are the causes of action, defenses, and counterclaims in this case? What are the elements of the cause(s) of action, defenses, and counterclaims pled?

Plaintiff brings this 42 U.S.C. § 1983 case for alleged excessive force against Defendant Michael Vitale and *Monell* claims against the City of Austin.

Defendants deny the allegations, and individual defendants assert defenses including qualified immunity.

2. Are there any outstanding jurisdictional issues?

No.

3. Are there any unserved parties? If more than 90 days have passed since the filing of the Complaint or petition, should these unserved parties be dismissed?

No.

4. Are there any agreements or stipulations that can be made about any facts in this case or any element in the cause(s) of action?

Parties agree that Defendant Michael Vitale was acting under color of law.

5. Are there any legal issues in this case that can be narrowed by agreement or by motion?

Not at this time. Parties will attempt to narrow any issues by agreement as they arise.

6. Are there any issues about preservation of discoverable information?

Not at this time. Plaintiff assumes the City is endeavoring to preserve all evidence.

7. Are there any issues about disclosure or discovery of electronically stored information? In what forms should electronically-stored information be produced and will production include metadata?

There are no issues at this time. Some body-worn camera footage is relevant in this case and possessed by the City of Austin. Plaintiff contends unspecified cell phone data, forensic data, text messages, and electronic mail are also relevant. Counsel will confer and strive to reach a reasonable agreement regarding disclosure of all information that is relevant to a claim or defense and proportional to the needs of the litigation. Electronic data related to this incident should include all available metadata or be provided in native format. Production relating to other similar incidents should include typical metadata for the pertinent type of electronic information or be provided in native format.

8. What are the subjects on which discovery may be needed?

Discovery will be needed relating to the Defendants' use of force on Plaintiff as well as for other similar incidents and policy decisions relating to Plaintiff's *Monell* claims against that are relevant to a claim or defense and proportional to the needs of the case.

9. Have initial disclosures been made? If not, should any changes be made in the timing, form, or requirement for initial disclosures?

Initial disclosures have not been made. The parties will exchange initial disclosures by May 9, 2025.

10. What, if any, discovery has been completed? What discovery remains to be done and when should it be completed? Have the parties considered conducting discovery in phases or agreeing to limit discovery?

No discovery has been completed at this time.

The Parties anticipate that written discovery will be necessary to the parties will be necessary. Plaintiff further anticipates that the deposition of a representative of the City of Austin and the Defendant officer will be necessary. Plaintiff will provide his deposition at the convenience of the parties if requested.

11. What, if any, discovery disputes exist?

The parties to this report anticipate significant discovery will be needed to investigate Plaintiff's claims, and the breadth of that discovery may engender disputes, but none exist at this time.

12. Have the parties discussed the desirability of filing a proposed order pursuant to Federal Rule of Evidence 502?

The parties to this report will continue to confer about the need for an order pursuant to Federal Rule of Evidence 502.

13. Have the parties discussed early mediation?

The parties to this report believe that early mediation will not be fruitful. The parties will revisit mediation following additional discovery.

14. Have the parties considered seeking entry of a confidentiality and protective order and are there any other scheduling or discovery items requiring the court's attention?

The parties to this report intend to propose a confidentiality and protective order substantially in comportment with the form on this Court's website.

Dated: April 11, 2025.

Respectfully submitted,

EDWARDS LAW
603 W. 17th Street
Austin, TX 78701
Tel. 512-623-7727
Fax. 512-623-7729

By /s/ Jeff Edwards
JEFF EDWARDS
State Bar No. 24014406
jeff@edwards-law.com
MIKE SINGLEY
State Bar No. 00794642
mike@edwards-law.com
LISA SNEAD
State Bar No. 24062204
lisa@edwards-law.com
DAVID JAMES
State Bar No. 24092572
david@edwards-law.com
PAUL SAMUEL
State Bar No. 24124463
paul@edwards-law.com

ATTORNEYS FOR PLAINTIFF

City of Austin Law Department
P. O. Box 1546
Austin, Texas 78767-1546
Telephone (512) 974-2409
Facsimile (512) 974-1311

By: /s/ Monte Barton
Monte L. Barton, Jr.
Assistant City Attorney
State Bar No. 24115616
H. Gray Laird III
Assistant City Attorney
State Bar NO. 24087054
ATTORNEYS FOR DEFENDANTS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TODD THOMAS,

Plaintiff,

v.

THE CITY OF AUSTIN and MICHAEL
VITALE,

Defendants.

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CAUSE OF ACTION:

1:25-cv-53-RP

PROPOSED SCHEDULING ORDER

Pursuant to Federal Rule of Civil Procedure 16, the following Scheduling Order is issued by the Court:

1. A report on alternative dispute resolution in compliance with Local Rule CV-88 shall be filed on or before April 30, 2025.
2. The parties asserting claims for relief shall submit a written offer of settlement to opposing parties on or before June 2, 2025, and each opposing party shall respond, in writing, on or before June 16, 2025. All offers of settlement are to be private, not filed. The parties are ordered to retain the written offers of settlement and responses so the Court may use them in assessing attorney's fees and costs at the conclusion of the trial.
3. Each party shall complete and file the attached "Notice Concerning Reference to United States Magistrate Judge" on or before May 30, 2025.
4. The parties shall file all motions to amend or supplement pleadings or to join additional parties on or before June 20, 2025.
5. All parties asserting claims for relief shall file their designation of testifying experts and serve on all parties, but not file, the materials required by Federal Rule of Civil Procedure 26(a)(2)(B) on or before October 17, 2025. Parties resisting claims for relief shall file their designation of testifying experts and serve on all parties, but not file, the

materials required by Federal Rule of Civil Procedure 26(a)(2)(B) on or before November 17, 2025. All parties shall file all designations of rebuttal experts and serve on all parties the material required by Federal Rule of Civil Procedure 26(a)(2)(B) for such rebuttal experts, to the extent not already served, 15 days from the receipt of the report of the opposing expert.

6. An objection to the reliability of an expert's proposed testimony under Federal Rule of Evidence 702 shall be made by motion, specifically stating the basis for the objection and identifying the objectionable testimony, within **20 days** from the receipt of the written report of the expert's proposed testimony, or within **20 days** from the completion of the expert's deposition, if a deposition is taken, whichever is later.
7. The parties shall complete all discovery on or before February 2, 2026.
8. All dispositive motions shall be filed on or before March 6, 2026 and shall be limited to 20 pages. Responses shall be filed and served on all other parties not later than 14 days after the service of the motion and shall be limited to 20 pages. Any replies shall be filed and served on all other parties not later than 7 days after the service of the response and shall be limited to 10 pages, but the Court need not wait for the reply before ruling on the motion.
9. The Court will set this case for final pretrial conference at a later time. The final pretrial conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties. The parties should consult Local Rule CV-16(e) regarding matters to be filed in advance of the final pretrial conference.

The parties shall not complete the following paragraph. It will be completed by the Court at the initial pretrial conference to be scheduled by the Court.

10. This case is set for _____ trial commencing at 9:00 a.m. on _____, 20____.

By filing an agreed motion, the parties may request that this Court extend any deadline set in this Order, with the exception of the dispositive motions deadline and the trial date. The Court may impose sanctions under Federal Rule of Civil Procedure 16(f) if the parties do not make timely submissions under this Order.

SIGNED on _____, 20_____.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

Respectfully submitted,

EDWARDS LAW
603 W. 17th Street
Austin, TX 78701
Tel. 512-623-7727
Fax. 512-623-7729

By /s/ Jeff Edwards
JEFF EDWARDS
State Bar No. 24014406
jeff@edwards-law.com
MIKE SINGLEY
State Bar No. 00794642
mike@edwards-law.com
LISA SNEAD
State Bar No. 24062204
lisa@edwards-law.com
DAVID JAMES
State Bar No. 24092572
david@edwards-law.com
PAUL SAMUEL
State Bar No. 24124463
paul@edwards-law.com

ATTORNEYS FOR PLAINTIFF

City of Austin Law Department
P. O. Box 1546
Austin, Texas 78767-1546
Telephone (512) 974-2409
Facsimile (512) 974-1311

By: /s/ Monte Barton
Monte L. Barton, Jr.
Assistant City Attorney
State Bar No. 24115616
H. Gray Laird III
Assistant City Attorney
State Bar NO. 24087054

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

By my signature above, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards
JEFF EDWARDS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Todd Thomas	§	
	§	
vs.	§	NO: AU:25-CV-00053-RP
	§	
The City of Austin, Michael Vitale	§	

ORDER SETTING INITIAL PRETRIAL CONFERENCE

The Court hereby sets and directs the parties, or counsel acting on their behalf, to appear by phone for a telephone conference on Monday, May 19, 2025 at 03:30 PM . The parties are directed to use the below dial-in information:

****Please call in 5 minutes prior to start of hearing.****

Toll free number: (855) 244-8681
Meeting Number: 2311 915 5981

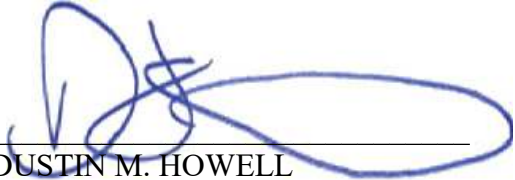
The parties should be prepared to discuss potential trial settings as the Court intends to set a trial date in this action at the initial pretrial conference.

The use of speaker phones is prohibited during a telephonic appearance. Additionally, multiple hearings in other cases may start at the same time; attorneys should call in with their phones on “mute” and wait for the Courtroom Deputy to call this case before they speak.

The Court holds telephonic hearings for the convenience of counsel, especially those from out of town. Due to the significant number of lawyers who fail to appear by telephone as ordered, THE COURT MAY SANCTION NON-APPEARING ATTORNEYS WITH COSTS INCURRED BY APPEARING ATTORNEYS. A second non-appearance (whether in the same or different cases) will result in non-complaint attorneys being required to appear in person for all subsequent initial pretrial conferences.

If there are questions regarding the telephonic appearance, the parties should contact Victoria Rivera, Courtroom Deputy, at Victoria_Rivera@txwd.uscourts.gov.

IT IS SO ORDERED this **30th day of April, 2025**.

A handwritten signature in blue ink, appearing to read 'Dustin M. Howell', is written over a horizontal line.

DUSTIN M. HOWELL
UNITED STATES MAGISTRATE JUDGE

From: TXW_USDC_Notice@txwd.uscourts.gov
To: cmecf_notices@txwd.uscourts.gov
Subject: Activity in Case 1:25-cv-00053-RP Thomas v. The City of Austin et al Pretrial Conference - Initial
Date: Tuesday, May 20, 2025 3:08:52 PM

External Email - Exercise Caution

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U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 5/20/2025 at 3:07 PM CDT and filed on 5/19/2025

Case Name: Thomas v. The City of Austin et al

Case Number: [1:25-cv-00053-RP](#)

Filer:

Document Number: [9](#)

Docket Text:

Minute Entry for proceedings held before Judge Dustin M. Howell: Initial Pretrial Conference held on 5/19/2025 (Minute entry documents are not available electronically.). (Court Reporter WebEx.)(cnr)

1:25-cv-00053-RP Notice has been electronically mailed to:

David Anthony James david@edwards-law.com, greg@edwards-law.com, willy@edwards-law.com

Henry Gray Laird , III gray.laird@austintexas.gov, ashley.herrera@austintexas.gov, priscilla.chavez@austintexas.gov

Jeffrey S. Edwards jeff@edwards-law.com, ben@edwards-law.com, breann@edwards-law.com, carson@edwards-law.com, clemens@edwards-law.com, david@edwards-law.com, jeffedwardslaw@gmail.com, lisa@edwards-law.com, marlee@edwards-law.com, matthew@edwards-law.com, paul@edwards-law.com, stephen@edwards-law.com

Lisa A. Snead lisa@edwards-law.com, ben@edwards-law.com, carson@edwards-law.com,

clemens@edwards-law.com, matthew@edwards-law.com, stephen@edwards-law.com

Michael Singley mike@edwards-law.com, greg@edwards-law.com, willy@edwards-law.com

Monte L. Barton , Jr monte.barton@austintexas.gov, ashley.herrera@austintexas.gov, carol.smith@austintexas.gov, laura.johnson@austintexas.gov

Paul G Samuel paul@edwards-law.com, clemens@edwards-law.com, matthew@edwards-law.com, stephen@edwards-law.com

1:25-cv-00053-RP Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1080075687 [Date=5/20/2025] [FileNumber=32275375-0] [16a16a7191acece5c8be956c4e99dd975a285402865766951cc158d7026a47a7242faf25baf269f75ffbc279b2d62f6ed1eaa71072e785d3f04e2789c5582dce]]

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For any additional questions or concerns, contact CSIRT at "cybersecurity@austintexas.gov".

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TODD THOMAS,

Plaintiff,

v.

THE CITY OF AUSTIN and MICHAEL
VITALE,

Defendants.

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CAUSE OF ACTION:

1:25-cv-53-RP

PROPOSED SCHEDULING ORDER

Pursuant to Federal Rule of Civil Procedure 16, the following Scheduling Order is issued by the Court:

1. A report on alternative dispute resolution in compliance with Local Rule CV-88 shall be filed on or before April 30, 2025.
2. The parties asserting claims for relief shall submit a written offer of settlement to opposing parties on or before June 2, 2025, and each opposing party shall respond, in writing, on or before June 16, 2025. All offers of settlement are to be private, not filed. The parties are ordered to retain the written offers of settlement and responses so the Court may use them in assessing attorney's fees and costs at the conclusion of the trial.
3. Each party shall complete and file the attached "Notice Concerning Reference to United States Magistrate Judge" on or before May 30, 2025.
4. The parties shall file all motions to amend or supplement pleadings or to join additional parties on or before June 20, 2025.
5. All parties asserting claims for relief shall file their designation of testifying experts and serve on all parties, but not file, the materials required by Federal Rule of Civil Procedure 26(a)(2)(B) on or before October 17, 2025. Parties resisting claims for relief shall file their designation of testifying experts and serve on all parties, but not file, the

materials required by Federal Rule of Civil Procedure 26(a)(2)(B) on or before November 17, 2025. All parties shall file all designations of rebuttal experts and serve on all parties the material required by Federal Rule of Civil Procedure 26(a)(2)(B) for such rebuttal experts, to the extent not already served, 15 days from the receipt of the report of the opposing expert.

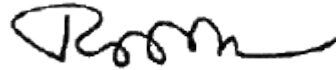
6. An objection to the reliability of an expert's proposed testimony under Federal Rule of Evidence 702 shall be made by motion, specifically stating the basis for the objection and identifying the objectionable testimony, within **20 days** from the receipt of the written report of the expert's proposed testimony, or within **20 days** from the completion of the expert's deposition, if a deposition is taken, whichever is later.
7. The parties shall complete all discovery on or before February 2, 2026.
8. All dispositive motions shall be filed on or before March 6, 2026 and shall be limited to 20 pages. Responses shall be filed and served on all other parties not later than 14 days after the service of the motion and shall be limited to 20 pages. Any replies shall be filed and served on all other parties not later than 7 days after the service of the response and shall be limited to 10 pages, but the Court need not wait for the reply before ruling on the motion.
9. The Court will set this case for final pretrial conference at a later time. The final pretrial conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties. The parties should consult Local Rule CV-16(e) regarding matters to be filed in advance of the final pretrial conference.

The parties shall not complete the following paragraph. It will be completed by the Court at the initial pretrial conference to be scheduled by the Court.

10. This case is set for JURY trial commencing at 9:30 a.m. on
SEPTEMBER 21,, 2026.

By filing an agreed motion, the parties may request that this Court extend any deadline set in this Order, with the exception of the dispositive motions deadline and the trial date. The Court may impose sanctions under Federal Rule of Civil Procedure 16(f) if the parties do not make timely submissions under this Order.

SIGNED on May 19, 2025.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

TODD THOMAS,
Plaintiff,

V.

**THE CITY OF AUSTIN and MICHAEL
VITALE,
Defendants.**

CIVIL ACTION NO. 1:25-cv-53-RP

**NOTICE CONCERNING REFERENCE TO
UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. § 626(c), Federal Rule of Civil Procedure 73, and the Local Rules of the United States District Court for the Western District of Texas, Defendant City of Austin and Defendant Michael Vitale, through undersigned counsel:

_____ consents to having a United States Magistrate Judge preside over the trial in this case.

X declines to consent to trial before a United States Magistrate Judge.

DATED: May 30, 2025

RESPECTFULLY SUBMITTED.

DEBORAH THOMAS, CITY ATTORNEY
SARA SCHAEFER, ACTING LITIGATION DIVISION CHIEF

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.
State Bar No. 24115616
monte.barton@austintexas.gov
City of Austin
P. O. Box 1546
Austin, Texas 78767-1546
Telephone (512) 974-2409
Facsimile (512) 974-1311

**ATTORNEYS FOR DEFENDANT
CITY OF AUSTIN AND MICHAEL VITALE**

CERTIFICATE OF SERVICE

I certify that the foregoing was served on all counsel of record via the Court's CM/ECF system on May 30, 2025.

Via CM/ECF:

Jeff Edwards

State Bar No. 24014406

jeff@edwards-law.com

Mike Singley

State Bar No. 00794642

mike@edwards-law.com

David James

State Bar No. 24092572

david@edwards-law.com

Lisa Snead

State Bar No. 24062204

lisa@edwards-law.com

Paul Samuel

State Bar No. 24124463

paul@edwards-law.com

Edwards Law

603 W. 17th Street

Austin, Texas 78701

Telephone: (512) 623-7727

Facsimile: (512) 623-7729

ATTORNEY FOR PLAINTIFF

/s/ Monte L. Barton, Jr.

MONTE L. BARTON, JR.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TODD THOMAS,

Plaintiff,

v.

THE CITY OF AUSTIN and MICHAEL
VITALE,

Defendants.

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CAUSE OF ACTION:

1:25-cv-53-RP

**PLAINTIFF’S UNOPPOSED MOTION FOR LEAVE TO EXTEND TIME TO AMEND
OR SUPPLEMENT PLEADINGS**

Plaintiff Todd Thomas respectfully requests an extension of time to amend or supplement his pleadings from June 20, 2025 to July 18, 2025. Defendants do not oppose the motion.

I. FACTS AND PROCEDURAL BACKGROUND

Plaintiff Todd Thomas filed this lawsuit against the City of Austin and Austin Police Department officer Michael Vitale, alleging that Defendant Vitale used excessive force when he shot Plaintiff with a less lethal beanbag shotgun, and that this excessive force was caused by longstanding deficient policies, supervision, and training by Defendant City of Austin. Doc. 1.

This Court entered the parties’ agreed scheduling order on May 19, 2025. Doc 10. In the current schedule, Plaintiff’s deadline to supplement or amend his pleadings is June 20, 2025. *Id.* at 1. Dispositive motions are due March 6, 2026. Doc. 10, p. 2.

II. ARGUMENT

Plaintiff requests an extension of the deadline to amend or supplement his pleadings from June 20, 2025 to July 18, 2025.

“When an act may or must be done within a specified time, the court may, for good cause,

extend the time ... if a request is made, before the original time or its extension expires.” FED. R. CIV. P. 6(b)(1)(A). There is good cause for three reasons.

First, Plaintiff needs the additional time to amend his pleadings as the documents provided by Defendants in discovery have raised complex factual and legal issues that will require additional time to analyze. As such, Plaintiff’s counsel will require additional time to review the provided discovery and determine if or how Plaintiff’s pleadings should be amended.

Second, Plaintiff’s counsel is also occupied by previously scheduled deadlines and obligations in unrelated cases which limit Plaintiff’s counsel’s flexibility to focus on reviewing the provided discovery and determining the best legal strategy moving forward. Plaintiff’s counsel has been occupied with ongoing matters including a deposition on June 5 in the matter of *Medel v. Prado*, No. 1:24-cv-00990 before the Western District Court of Texas; deposition on June 10 in the matter of *Gonzales v. Stephen*, No. D-1-GN-23-008043 before the 353rd Judicial District Court of Travis County, Texas; depositions on June 12 in the matter of *Alvarez v. Fitts*, No. D-1-GN-24-003440 before the 98th Judicial District Court of Travis County, Texas; depositions on June 16 and June 17 in the matter of *Tijerina v. Rodriguez*, No. 1:24-cv-01183 before the Western District Court of Texas, a deposition on June 18 in the matter of *Gomez v. Smith*, No. D-1-GN-005067 before the 250th Judicial District Court of Travis County, Texas, a mediation on June 17 in the matter of *Pixley v. AutoZone et al.*, Cause No. D-1-GN-23-001786 before the 201st Judicial District Court of Travis County, Texas, among other deadlines. In the coming weeks, Plaintiff’s counsel will be occupied with a motion for summary judgment response due on June 25 and a deposition set for July 10, 2025 in *Medel v. Prado*, No. 1:24-cv-00990 before the Western District Court of Texas; a hearing on June 25 in the matter of *A.W.E. v. D.M.F.N.*, No. 05-25-00076-CV before the Texas Court of Appeals of Dallas; a hearing on June 26 and a deposition on July 16 in

the matter of *Benthall v. Flitcroft*, No. 24-0894 before the 274th Judicial District of Hays County; a summary judgment response which will be due on June 30, which is expected to be extended to late July, as well as depositions scheduled for June 30 and July 23 in the matter of *Wright v. v. Garcia*, No. 1:23-cv-864 in the Western District of Texas; a deposition on July 22 in the matter of *Scott v. Sun Behavioral Houston*, No. 202430896 before the 333rd Judicial District of Harris County, Texas; depositions scheduled for August 11 and 13 in the matter of *Gonzales v. Stephen*, No. D-1-GN-23-008043 before the 353rd Judicial District Court of Travis County, Texas; and an August 17 deadline to submit any petition for certiorari in the matter of *Estevis v. Cantu*, No. 24-40277 in the Fifth Circuit Court of Appeals. Plaintiff's counsel requires the additional time to ensure that appropriate time and care is expended in determining if and how Plaintiff's pleadings should be supplemented or amended in this case.

Finally, as this extension is sought early in the case, nearly nine months before the dispositive motion deadline, there will be no unfair prejudice from the delay. This extension is sought for the reasons stated, and not for the purpose of delay.

Defendants are not opposed.

III. CONCLUSION

For the foregoing reasons, the Court should grant Plaintiff four additional weeks to amend or supplement his pleadings, extending the deadline up to and including July 18, 2025.

Dated: June 19, 2025.

Respectfully submitted,

EDWARDS LAW
603 West 17th Street
Austin, Texas 78701
Tel. 512-623-7727
Fax. 512-623-7729

By /s/ Jeff Edwards
JEFF EDWARDS
State Bar No. 24014406
jeff@edwards-law.com
MIKE SINGLEY
State Bar No. 00794642
mike@edwards-law.com
LISA SNEAD
State Bar No. 24062204
lisa@edwards-law.com
DAVID JAMES
State Bar No. 24092572
david@edwards-law.com
PAUL SAMUEL
State Bar No. 24124463
paul@edwards-law.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record via the Court's electronic case filing system.

/s/ Jeff Edwards
Jeff Edwards

CERTIFICATE OF CONFERENCE

By my signature below, I certify that I conferred with counsel for Defendants via electronic mail and they indicated the City is not opposed to the relief requested in this motion.

/s/ Paul Samuel
Paul Samuel

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TODD THOMAS,

Plaintiff,

v.

THE CITY OF AUSTIN and MICHAEL
VITALE,

Defendants.

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CAUSE OF ACTION:

1:25-cv-53-RP

PLAINTIFF'S ADVISORY TO THE CLERK OF COURT

Plaintiff in the above-captioned case elects as follows:

- ☐ I consent to proceed before a United States Magistrate Judge in accordance with provisions of Title 28 U.S.C. Section 636. Plaintiffs in the above-captioned case waive the right to proceed before a United States District Judge and consents to have a United States Magistrate Judge conduct any and all further proceedings in this case, including rendering a decision, and to order the entry of final judgment. Any appeals shall be taken to the United States Court of Appeals for the Fifth Circuit in accordance with Title 28 U.S.C. Section 636(c)(3).
- ☒ I do **not** consent to proceed before a United State Magistrate Judge. Plaintiff in the above-captioned case elects **not** to have this case decided by a United States Magistrate Judge and prefers that this case proceed before the United States District Judge.

Todd Thomas
Plaintiff's Name

Respectfully submitted,

EDWARDS LAW
603 West 17th Street
Austin, Texas 78701
Tel. 512-623-7727
Fax. 512-623-7729

By /s/ Jeff Edwards
JEFF EDWARDS
State Bar No. 24014406
jeff@edwards-law.com
MIKE SINGLEY
State Bar No. 00794642
mike@edwards-law.com
LISA SNEAD
State Bar No. 24062204
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DAVID JAMES
State Bar No. 24092572
david@edwards-law.com
PAUL SAMUEL
State Bar No. 24124463
paul@edwards-law.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Western District of Texas.

By /s/ Jeff Edwards
JEFF EDWARDS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TODD THOMAS,

Plaintiff,

v.

THE CITY OF AUSTIN and MICHAEL
VITALE,

Defendants.

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CAUSE OF ACTION:

1:25-cv-53-RP

JOINT MOTION TO EXTEND EXPERT DISCLOSURE DEADLINES

The parties respectfully move to extend the expert disclosure deadlines. The parties ask to extend Plaintiff's deadline to file and serve expert designations to December 5, 2025 and Defendants' deadline to January 5, 2026.

I. PROCEDURAL HISTORY

Plaintiff Todd Thomas filed this lawsuit against the City of Austin and Austin Police Department officer Michael Vitale, alleging that Defendant Vitale used excessive force when he shot Plaintiff with a less lethal beanbag shotgun, and that this excessive force was caused by longstanding deficient policies, supervision, and training by Defendant City of Austin. Doc. 1. Defendants deny Plaintiff's allegations. Doc. 5.

This Court entered the parties' agreed scheduling order on May 19, 2025. Doc 10. In the current schedule, Plaintiff's deadline to file and serve expert designations is October 17, 2025 and Defendants' deadline is November 17, 2025. Doc. 10, pp. 1-2. The current discovery deadline is February 2, 2026 and the dispositive motion deadline is March 6, 2025. *Id.* at 2. This case is set for trial on September 21, 2026. *Id.* at 3.

II. LEGAL STANDARD

“When an act may or must be done within a specified time, the court may, for good cause, extend the time ... if a request is made, before the original time or its extension expires.” FED. R. CIV. P. 6(b)(1)(A).

III. ARGUMENT

The parties respectfully move to extend the scheduling order deadlines for four reasons.

First, additional time is needed to conduct discovery. Plaintiff requires additional time to analyze and identify additional documents necessary to support his individual and *Monell* claims in this case. Further, Plaintiff will provide discovery responses to Defendants and his deposition, which will provide additional detail as to Plaintiff’s damages. Thus, though the parties are engaged in scheduling additional discovery, significant facts remain to be developed that will not be developed before the parties’ existing expert deadlines. It will be costly and counter-productive to disclose experts before fact discovery can be substantially completed.

Second, the parties have had several conflicts in the September and October that have prevented necessary discovery from proceeding before the existing deadlines. Counsel for Defendant has been out of the office for two weeks in October and portions of September due to pre-planned travel. Further, the defendants state that the senior trial counsel for the law department, Gray Laird, recently changed employment and is no longer with the City. Mr. Laird left last month. Consequently, the undersigned legal counsel has now been assigned to the litigation responsibilities for several cases in addition to this one. The catch up process is very time consuming, requiring extensive review of litigation background, scheduling problems, review of documents, and testimony. Due to this combined extraordinary press of deadlines and obligations in this and other pending lawsuits, undersigned legal counsel for the defendants joins in this request

for additional time. Plaintiff's counsel has been preparing for a week-long jury trial starting November 17, 2025 in *Kibbe et al. v. Salters*, No. C-1-PB-24-000552, in the Probate Court No. 2 of Travis County, a wrongful death case, which has only recently reached settlement. Plaintiff's counsel is set for a trial starting on December 16, 2025 in *Ward et al. v. Young*, No. 1:16-cv-917-DAE, in the Western District of Texas, a class action against the Texas Health & Human Services Commission on behalf of criminal defendants found incompetent to stand trial and ordered into the state's mental health hospitals. In addition, Plaintiff's counsel has had depositions in *Kibbe v. Salters* on September 29 and 30 as well as October 1, 2, and 6, 2025, an expert deposition in *Ward et al. v. Young*, on October 9, 2025, a defendant deposition in *Diaz v. Keolis et al.*, D-1-GN-24-002292, in Travis County District Court on October 9, 2025, and an apex witness deposition on October 14, 2025 in *Tiede v. Collier*, No. 1:23-cv-01004-RP, in the Western District of Texas. Plaintiff's counsel likewise have three briefs due in November in two cases on appeal at the Fifth Circuit Court of Appeals: Appellee's initial brief in *Baker v. Coburn et. al*, Appeal No. 25-10545, is due November 5, 2025 and Appellant's two reply briefs in *Johnson v. Salter, et. al*, No. 25-50332, due November 28, 2025.

Third, the parties have engaged in settlement discussions that may be aided by delaying the need for additional expenditures on expert witnesses in this case.

Finally, as this extension is sought well before the end of discovery or the dispositive motion deadline in this case, there will be no unfair prejudice from the delay nor risk of delaying trial. This extension is sought for the reasons stated, and not for the purpose of delay.

IV. CONCLUSION

For the foregoing reasons, the parties request an extension to Plaintiff's deadline to file and serve expert designations to December 5, 2025 and Defendants' deadline to January 5, 2026.

Dated: October 14, 2025

Respectfully submitted,

EDWARDS LAW

603 W. 17th Street
Austin, TX 78701
Tel. 512-623-7727
Fax. 512-623-7729

By /s/ Jeff Edwards

JEFF EDWARDS

State Bar No. 24014406

jeff@edwards-law.com

MIKE SINGLEY

State Bar No. 00794642

mike@edwards-law.com

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State Bar No. 24062204

lisa@edwards-law.com

DAVID JAMES

State Bar No. 24092572

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PAUL SAMUEL

State Bar No. 24124463

paul@edwards-law.com

ATTORNEYS FOR PLAINTIFF

City of Austin Law Department

P. O. Box 1546

Austin, Texas 78767-1546

Telephone (512) 974-2409

Facsimile (512) 974-1311

By: /s/ Monte Barton

Monte L. Barton, Jr.

Assistant City Attorney

State Bar No. 24115616

H. Gray Laird III

Assistant City Attorney

State Bar NO. 24087054

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record via the Court's electronic case filing system.

/s/ Jeff Edwards
Jeff Edwards

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TODD THOMAS,

Plaintiff,

v.

THE CITY OF AUSTIN and MICHAEL
VITALE,

Defendants.

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CAUSE OF ACTION:

1:25-cv-53-RP

SECOND JOINT MOTION TO EXTEND DEADLINES

The parties respectfully move to extend the expert disclosure and discovery deadlines. The parties ask to extend Plaintiff's deadline to file and serve expert designations to January 5, 2026, Defendants' expert deadline to February 6, 2026, and the discovery deadline to February 20, 2026. Parties respectfully request this second extension to facilitate active settlement discussions.

I. PROCEDURAL HISTORY

Plaintiff Todd Thomas filed this lawsuit against the City of Austin and Austin Police Department officer Michael Vitale, alleging that Defendant Vitale used excessive force when he shot Plaintiff with a less lethal beanbag shotgun, and that this excessive force was caused by longstanding deficient policies, supervision, and training by Defendant City of Austin. Doc. 1. Defendants deny Plaintiff's allegations. Doc. 5.

This Court entered the parties' agreed scheduling order on May 19, 2025. Doc 10. On October 14, 2025, the parties jointly moved to extend the expert disclosure deadlines. Doc. 14. On October 15, 2025, the Court granted the Joint Motion and extended Plaintiff's deadline to December 5, 2025 and Defendants' to January 5, 2026. In the current schedule, the discovery

deadline is February 2, 2026 and the dispositive motion deadline is March 6, 2025. *Id.* at 2. This case is set for trial on September 21, 2026. *Id.* at 3.

II. LEGAL STANDARD

“When an act may or must be done within a specified time, the court may, for good cause, extend the time ... if a request is made, before the original time or its extension expires.” FED. R. CIV. P. 6(b)(1)(A).

III. ARGUMENT

The parties respectfully move to extend the scheduling order deadlines for three reasons.

First, the parties have continued to engage in settlement discussions that will be aided by delaying the need for significant expenditures on expert witnesses in this case. As the parties attempt to reach a compromise, the parties’ efforts will be made more difficult if required to expend significant funds on retained experts that would otherwise be put toward settlement. Moreover, counsel for Defendants has been constrained by the schedules of City of Austin employees necessary to engage in continued discussions.

Second, in the event settlement discussions are unsuccessful, the parties require additional time to conduct discovery. The parties continue to work cooperatively to exchange written discovery as Plaintiff and Defendants have provided written discovery responses. However, additional fact discovery is necessary prior to designation of experts, including Plaintiff’s deposition, additional production of body worn camera video, and the deposition of Defendant officers. It will be costly and counter-productive to disclose experts before fact discovery can be substantially completed.

Finally, as this extension is sought well before the dispositive motion deadline in this case, there will be no unfair prejudice from the delay nor risk of delaying trial. This extension is sought

for the reasons stated, and not for the purpose of delay.

IV. CONCLUSION

For the foregoing reasons, the parties request an extension to Plaintiff's deadline to file and serve expert designations to January 5, 2026, Defendants' expert deadline to February 6, 2026, and the discovery deadline to February 20, 2026.

Dated: December 4, 2025

Respectfully submitted,

EDWARDS LAW

603 W. 17th Street
Austin, TX 78701
Tel. 512-623-7727
Fax. 512-623-7729

By /s/ Jeff Edwards

JEFF EDWARDS

State Bar No. 24014406

jeff@edwards-law.com

MIKE SINGLEY

State Bar No. 00794642

mike@edwards-law.com

LISA SNEAD

State Bar No. 24062204

lisa@edwards-law.com

DAVID JAMES

State Bar No. 24092572

david@edwards-law.com

PAUL SAMUEL

State Bar No. 24124463

paul@edwards-law.com

ATTORNEYS FOR PLAINTIFF

City of Austin Law Department

P. O. Box 1546

Austin, Texas 78767-1546

Telephone (512) 974-2409

Facsimile (512) 974-1311

By: /s/ Monte Barton

Monte L. Barton, Jr.

Assistant City Attorney

State Bar No. 24115616

H. Gray Laird III

Assistant City Attorney

State Bar NO. 24087054

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record via the Court's electronic case filing system.

/s/ Jeff Edwards
Jeff Edwards

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TODD THOMAS,

Plaintiff,

v.

THE CITY OF AUSTIN and MICHAEL
VITALE,

Defendants.

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CAUSE OF ACTION:

1:25-cv-53-RP

JOINT MOTION TO EXTEND EXPERT AND DISCOVERY DEADLINES

The parties respectfully move to extend the expert disclosure and discovery deadlines. The parties ask to extend Plaintiff's deadline to file and serve expert designations to February 5, 2026, Defendants' expert deadline to March 5, 2026, and the discovery deadline to March 5, 2026. The parties respectfully request this extension to facilitate settlement discussions and ongoing discovery.

I. PROCEDURAL HISTORY

Plaintiff Todd Thomas filed this lawsuit against the City of Austin and Austin Police Department officer Michael Vitale, alleging that Defendant Vitale used excessive force when he shot Plaintiff with a less lethal beanbag shotgun, and that this excessive force was caused by longstanding deficient policies, supervision, and training by Defendant City of Austin. Doc. 1. Defendants deny Plaintiff's allegations. Doc. 5.

This Court entered the parties' agreed scheduling order on May 19, 2025. Doc 10. On October 14, 2025, the parties jointly moved to extend the expert disclosure deadlines. Doc. 14. On October 15, 2025, the Court granted the Joint Motion and extended Plaintiff's deadline to December 5, 2025 and Defendants' deadline to January 5, 2026. On December 4, 2025, the parties

jointly moved to extend Plaintiff's expert disclosure deadline to January 5, 2026 and Defendants' expert deadline to February 6, 2026, which the Court granted on December 5, 2025. Doc. 15. In the current schedule, the discovery deadline is February 2, 2026 and the dispositive motion deadline is March 6, 2025. Doc. 10, at p. 2. This case is set for trial on September 21, 2026. *Id.* at p. 3.

II. LEGAL STANDARD

"When an act may or must be done within a specified time, the court may, for good cause, extend the time ... if a request is made, before the original time or its extension expires." FED. R. CIV. P. 6(b)(1)(A).

III. ARGUMENT

The parties respectfully move to extend the scheduling order deadlines for three reasons.

First, the parties have continued to engage in settlement discussions that will be aided by delaying the need for significant expenditures on expert witnesses in this case. As the parties attempt to reach a compromise, the parties' efforts will be made more difficult if required to expend significant funds on retained experts that may otherwise be put toward settlement. Moreover, counsel for Defendants has been constrained by the schedules of City of Austin employees necessary to engage in continued discussions. The parties have made significant progress in settlement discussions and hope to reach resolution in the near future.

Second, in the event settlement discussions are unsuccessful, the parties require additional time to conduct discovery. The parties continue to work cooperatively to exchange written discovery as Plaintiff and Defendants have provided written discovery responses. However, additional fact discovery is necessary prior to designation of experts, including Plaintiff's deposition, additional production of body worn camera video, and the deposition of Defendant

officers. It will be costly and counter-productive to disclose experts before fact discovery can be substantially completed. In addition, Defendants have required additional time to respond to Plaintiff's written discovery requests to Defendant City of Austin. Plaintiff will require the City's discovery responses and the associated production in order to prepare complete expert disclosures.

Finally, as this extension is before the dispositive motion deadline and well before trial in this case, there will be no unfair prejudice from the delay nor risk of delaying trial. This extension is sought for the reasons stated, and not for the purpose of delay.

IV. CONCLUSION

For the foregoing reasons, the parties request an extension to Plaintiff's deadline to file and serve expert designations to February 5, 2026, Defendants' expert deadline to March 5, 2026, and the discovery deadline to March 5, 2026.

Dated: January 2, 2026

Respectfully submitted,

EDWARDS LAW

603 W. 17th Street
Austin, TX 78701
Tel. 512-623-7727
Fax. 512-623-7729

By /s/ Jeff Edwards

JEFF EDWARDS

State Bar No. 24014406

jeff@edwards-law.com

MIKE SINGLEY

State Bar No. 00794642

mike@edwards-law.com

LISA SNEAD

State Bar No. 24062204

lisa@edwards-law.com

DAVID JAMES

State Bar No. 24092572

david@edwards-law.com

PAUL SAMUEL

State Bar No. 24124463

paul@edwards-law.com

ATTORNEYS FOR PLAINTIFF

City of Austin Law Department

P. O. Box 1546

Austin, Texas 78767-1546

Telephone (512) 974-2409

Facsimile (512) 974-1311

By: /s/ Monte Barton

Monte L. Barton, Jr.

Assistant City Attorney

State Bar No. 24115616

H. Gray Laird III

Assistant City Attorney

State Bar NO. 24087054

ATTORNEYS FOR DEFENDANTS

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/s/ Jeff Edwards
Jeff Edwards

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TODD THOMAS,

Plaintiff,

v.

THE CITY OF AUSTIN and MICHAEL
VITALE,

Defendants.

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CAUSE OF ACTION:

1:25-cv-53-RP

JOINT MOTION TO STAY DEADLINES PENDING SETTLEMENT

As the parties have reached a settlement to resolve this case, the parties ask the Court to stay all deadlines pending final resolution of this case. Upon approval of all final paperwork, the parties will promptly move to dismiss and anticipate this should be accomplished within the next 30 days.

Dated: February 9, 2026

Respectfully submitted,

EDWARDS LAW

603 W. 17th Street
Austin, TX 78701
Tel. 512-623-7727
Fax. 512-623-7729

By /s/ Jeff Edwards

JEFF EDWARDS

State Bar No. 24014406

jeff@edwards-law.com

MIKE SINGLEY

State Bar No. 00794642

mike@edwards-law.com

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City of Austin Law Department

P. O. Box 1546

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Telephone (512) 974-2409

Facsimile (512) 974-1311

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Monte L. Barton, Jr.

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/s/ Jeff Edwards
Jeff Edwards

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TODD THOMAS,

Plaintiff,

v.

THE CITY OF AUSTIN and MICHAEL
VITALE,

Defendants.

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CAUSE OF ACTION:

1:25-cv-53-RP

JOINT MOTION TO EXTEND STAY PENDING SETTLEMENT

Pursuant to this Court’s February 10, 2026 order granting the parties’ Joint Motion to Stay, the parties ask the Court to extend the entered stay pending final resolution. The parties have agreed upon and exchanged all final paperwork but have not yet exchanged final payment. The parties anticipate that this will be promptly resolved and accomplished within the next 30 days. The parties ask this Court to extend the current stay an additional 30 days.

Dated: March 10, 2026

Respectfully submitted,

EDWARDS LAW

603 W. 17th Street
Austin, TX 78701
Tel. 512-623-7727
Fax. 512-623-7729

By /s/ Jeff Edwards

JEFF EDWARDS

State Bar No. 24014406

jeff@edwards-law.com

MIKE SINGLEY

State Bar No. 00794642

mike@edwards-law.com

LISA SNEAD

State Bar No. 24062204

lisa@edwards-law.com

DAVID JAMES

State Bar No. 24092572

david@edwards-law.com

PAUL SAMUEL

State Bar No. 24124463

paul@edwards-law.com

ATTORNEYS FOR PLAINTIFF

City of Austin Law Department

P. O. Box 1546

Austin, Texas 78767-1546

Telephone (512) 974-2409

Facsimile (512) 974-1311

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State Bar No. 24115616

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State Bar NO. 24087054

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Jeff Edwards

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TODD THOMAS,

Plaintiff,

v.

THE CITY OF AUSTIN and MICHAEL
VITALE,

Defendants.

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CAUSE OF ACTION:

1:25-cv-53-RP

JOINT MOTION TO DISMISS

This case has been resolved by settlement. Accordingly, the parties respectfully ask that the Court to dismiss all claims as to all parties in this case with prejudice.

Dated: April 13, 2026

Respectfully submitted,

EDWARDS LAW

603 W. 17th Street
Austin, TX 78701
Tel. 512-623-7727
Fax. 512-623-7729

By /s/ Jeff Edwards

JEFF EDWARDS

State Bar No. 24014406

jeff@edwards-law.com

MIKE SINGLEY

State Bar No. 00794642

mike@edwards-law.com

LISA SNEAD

State Bar No. 24062204

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City of Austin Law Department

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ATTORNEY FOR DEFENDANTS

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/s/ Jeff Edwards
Jeff Edwards

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TODD THOMAS,

Plaintiff,

v.

THE CITY OF AUSTIN and MICHAEL
VITALE,

Defendants.

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1:25-CV-53-RP

ORDER

On April 13, 2026, the parties dismissed all claims in this case with prejudice by joint stipulation of dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii). (Dkt. 19).

“Stipulated dismissals under Rule 41(a)(1)(A)(ii) . . . require no judicial action or approval and are effective automatically upon filing.” *Yesb Music v. Lakewood Church*, 727 F.3d 356, 362 (5th Cir. 2013).

As nothing remains to resolve, **IT IS ORDERED** that the case is **CLOSED**.

SIGNED on April 14, 2026.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE