

an individual who is a citizen residing in the County of Travis, State of Texas and the United States of America. Jordan Walton died intestate while a resident of the County of Travis, State of Texas. Anissa Stovall filed her application for appointment as Temporary Administrator on December 16, 2022. Plaintiff Stovall brings this action in her capacity as Administrator of the Estate of Jordan Walton, as mother and as heir at law.

3. Plaintiff, Terrell Walton, is the surviving father of Jordan Walton, deceased, and is an individual who is a citizen residing in the County of Travis, State of Texas and the United States of America. Plaintiff Walton brings this action in his individual capacity as father and as heir at law.

4. At all times referred to herein, Defendant Ryan Nichols was a police officer employed by the city of Austin. Defendant Nichols can be served wherever he may be found.

5. At all times referred to herein, Defendant Jeffrey Hutchinson was a police officer employed by the City of Austin. Defendant Hutchinson can be served wherever he may be found.

6. At all times referred to herein, defendants John Doe 1, John Doe 2, John Doe 3 and John Doe 4 were police officers employed by the City of Austin, whose names and identities remain unknown at this time.

7. Defendants John Doe 3 and John Doe 4 were at all times referred to herein ranking officers and as such they were commanding officers of defendants Hutchinson, Nichols, Doe 1 and Doe 2. They were responsible for training, supervision, and conduct of defendants Hutchinson, Nichols, Doe 1, Doe 2.

8. Defendant Brian Manley was at all times referred to herein, chief of police for the City of Austin, and as such he was commanding officer of defendants Hutchinson, Nichols, Doe

1, Doe 2, Doe 3 and Doe 4. He was responsible for training, supervision, and conduct of defendants Hutchinson, Nichols, Doe 1, Doe 2, Doe 3 and Doe 4. Defendant Manley is further responsible for enforcing the regulations of the City of Austin and for ensuring that City of Austin police officers obey the laws of the State of Texas and the United States of America. Defendant Manley is a final policy maker for the Austin Police Department. Defendant Manley can be served wherever he may be found.

9. Defendant City of Austin is a municipal corporation, organized and existing under the laws of the State of Texas and located in the County of Travis. Defendant City of Austin can be served at City Manager, The City of Austin, City Hall, 301 W. Second Street, 3rd Floor, Austin, TX 78702.

10. Plaintiffs sue defendants Manley, Hutchinson, Nichols, Doe 1, Doe 2, Doe 3 and Doe 4 in their individual capacities.

11. At all times referred to herein, defendants Manley, Hutchinson, Nichols, Doe 1, Doe 2, Doe 3 and Doe 4 acted under color of the laws, statutes, ordinances, regulations, policies, customs, and usages of the State of Texas and the City of Austin.

C. Facts

The allegations or other factual contentions have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

12. On days prior to the killing of Jordan Walton, he experienced severe mental health symptoms, including paranoia. His parents assisted him in obtaining proper medical care. Jordan Walton was very close to his mother and father. They spent birthdays and holidays together and took family vacations twice a year. Two days before his death, he received new medications that had an unexpected effect on him.

13. On or about February 10, 2021, Jordan Walton again developed paranoia and a terrifying fear that someone was after him. Mr. Walton stopped at a gas station with a friend and then left quickly without the friend. The friend followed behind on foot. Mr. Walton sped up a hill and crashed through a residential fence. He got out of the crashed vehicle and ran into another home where a mother and son were present. Soon after, the friend arrived on scene and gave the police information regarding Mr. Walton's mental health. At some point defendants Hutchinson, Nichols, Doe 1, Doe 2, Doe 3, Doe 4 and Chief Bryan Manley responded at the scene of this incident and were made of aware of the mental health concerns regarding Jordan Walton.

14. When Austin Police officers initially arrived on scene, they knocked and announced at the door where the mother and child were being held. Getting no answer, the officers made multiple strikes to the door and kicked in the door. Upon the officers' entrance shots were fired. An officer suffered a minor injury and the officers retreated.

15. At some point early in the incident, Mr. Walton called 911 to speak to Austin police about a peaceful resolution. During the call Mr. Walton said, "I've been getting death threats." He repeated several times, "God deliver me from evil." On more than one occasion during the incident, Mr. Walton appeared at the front door of the home and spoke to officers. During this time, Plaintiff Walton was on scene attempting to help resolve the situation and to give officers information about the mental health of his son. Although required by Austin police policy, specially trained negotiation officers and mental health officers were not called to the scene.

16. After about an hour, an Austin police officer shot and killed Mr. Walton as he

stood in the doorway with his gun appearing to be pointed upward in a gesture of surrender. Ranking officers on scene approved and/or ordered the officer to kill Jordan Walton although they were aware of his mental health status and his attempts to negotiate a peaceful resolution with officers. An Austin police officer was heard to say Jordan Walton deserved no mercy because an officer had been injured. Jordan Walton was twenty-one years old when he died. During his life, he enjoyed good bodily health. He suffered physical pain and mental anguish from the time of the injury inflicted by Austin police until his death.

17. Plaintiff Stovall suffered mental anguish after the loss of her son. She experienced depression, anxiety and PTSD. Several months after Jordan Walton's death, Plaintiff Stovall was hospitalized as a result of the symptoms she experienced. Her grief has manifested physically and mentally.

18. Plaintiff Walton suffered mental anguish after the loss of his son. He experienced extreme anxiety, grief and additional trauma from being present at the scene during the incident.

D. Count 1

For this cause of action against defendants Manley, Hutchinson, Nichols, Doe 1, Doe 2, Doe 3 and Doe 4, in Count 1, plaintiffs state the following. The allegations in this count are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

19. By this reference, plaintiffs incorporate each and every allegation and averment set forth in paragraphs 2 through 18 of this complaint as though fully set forth herein.

20. As a direct and proximate result of the above-referenced unlawful acts of defendants Manley, Hutchinson, Nichols, Doe 1, Doe 2, Doe 3 and Doe 4 committed under

color of law and under their authority as City of Austin police officers, Jordan Walton was deprived of his life and his right to be secure in his person against unreasonable seizure of his person in violation of the Fourth and Fourteenth Amendments of the Constitution of the United States.

21. The actions of defendants Manley, Hutchinson, Nichols, Doe 1, Doe 2, Doe 3 and Doe 4 were objectively unreasonable and constituted the use of excessive force in that there was no immediate significant threat of great harm.

22. At all times relevant to this complaint, defendants Hutchinson, Nichols, Doe 1, Doe 2, Doe 3 and Doe 4 were acting under the direction and control of Chief Bryan Manley and were acting pursuant to the official policy, practice or custom of the City of Austin. Defendant Manley approved the actions of the Austin Police officer who took the life of Jordan Walton.

23. The actions of defendants Manley, Hutchinson, Nichols, Doe 1, Doe 2, Doe 3 and Doe 4 were intentional, wanton, malicious and oppressive entitling plaintiffs to an award of punitive damages.

E. Count 2

For this cause of action against defendants Manley and the City of Austin in Count 2 , plaintiffs state the following. The allegations in this count are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

24. By this reference, plaintiffs incorporate each and every allegation and averment set forth in paragraphs 2 through 18 of this complaint as though fully set forth herein.

25. Defendant Manley as the final policy maker for the Austin Police Department was responsible for the training and supervision of all police officers of Defendant City of Austin in the proper protocol for use of force, forcefully entering a home, managing a possible hostage

situation and for interactions with individuals experiencing a mental health crisis. On the day that Jordan Walton died, Defendant Manley, Defendant Doe 3 and Defendant Doe 4 were at the scene during the hostage situation while defendants failed to contact Critical Incident Negotiation Team, Crisis Intervention Team or other mental health professional as directed in Austin Police Department General Orders. The manner in which the City of Austin training procedures were inadequate regarding these policies as well as the use of force policy will be determined after further opportunity for investigation. Defendant Manley and other defendants were aware of a pattern of violations demonstrates their deliberate indifference. The facts supporting this allegation of deliberate indifference will be established after an opportunity for further investigation or discovery. The inadequate training directly caused plaintiffs' damages in that the lack of training caused the death of their son.

26. The city council of Austin is vested by state law with the authority to make policy for the city on the use of force in making arrests. The City of Austin has a policy that was the moving force behind the violation of Jordan Walton's constitutional rights. The policy does not require officers to exhaust all alternatives before using deadly force. This policy allows the use of deadly force when the threat of serious bodily injury or death is not immediate. City of Austin failed to promulgate use of lethal force policies that protect the Constitutional rights of citizens. City of Austin police officers also have a practice or custom, of which Defendant Manley was aware, of using excessive force as a form of retaliation when an officer has been injured during an incident. The policy and practice set forth above failed to protect the life of Jordan Walton by allowing Austin police officers to use lethal force under circumstances where it is not reasonable to do so.

27. The conduct of defendants Manley and City of Austin described above deprived

decendent of his right to be secure in his person against unreasonable searches and seizure as guaranteed to the decedent under the Fourth Amendment to the United Sates Constitution and the decedent's right to be free from deprivation of life, liberty or property without due process of law and to be accorded the equal protection of the laws as guaranteed to decedent under the Fourteenth Amendment to the United States Constitution.

F. Damages

28. Plaintiffs assert the facts outlined in paragraphs 2-18 above.

29. As a direct and proximate result of the unlawful conduct of the defendants as described above, plaintiffs suffered burial expenses, cost of therapy and counseling; severe mental anguish in the past and future, loss of society and companionship, services, and affection of their son.

G. Attorney Fees

30. Plaintiffs are entitled to an award of attorney fees if they are the prevailing party in this suit. Plaintiffs seek attorney's fee, expert fees, litigation expenses and costs.

H. Jury Demand

31. In compliance with Rule 38, Federal Rules Civil Procedure, plaintiffs hereby notify all parties of their demand for a jury.

I. Prayer

32. For these reasons, plaintiffs ask for judgment against the defendants for the following:

- a. Damages in the form of punitive and compensatory damages;
- b. Costs of suit, expert fees, pre and post judgment interest;
- c. Reasonable attorney's fee; and
- d. All other relief the court deems appropriate.

Respectfully submitted,

/s/ Donna Keith
Donna Hall Keith
State Bar No. 00789335
605 W. Oltorf Street
Austin, TX 78704
donna@dhkattorney.com
Tel: 512-379-8321
Fax: 512-681-7094
ATTORNEY IN CHARGE FOR
Anissa Stovall & Terrell Walton

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

ANISSA STOVALL, INDIVIDUALLY	§	
AND AS ADMINISTRATOR OF THE	§	
ESTATE OF JORDAN WALTON,	§	
DECEASED, AND TERRELL	§	CIVIL ACTION NO. 1:23-cv-00105-LY
WALTON, INDIVIDUALLY	§	
<i>Plaintiffs,</i>	§	
v.	§	
CITY OF AUSTIN; FORMER AUSTIN	§	
POLICE CHIEF BRIAN MANLEY;	§	
AUSTIN POLICE OFFICER RYAN	§	
NICHOLS; AUSTIN POLICE	§	
OFFICER JEFFREY HUTCHINSON;	§	
APD OFFICER JOHN DOE 1; APD	§	
OFFICER JOHN DOE 2; APD	§	
OFFICER JOHN DOE 3; APD	§	
OFFICER JOHN DOE 4	§	
<i>Defendants.</i>	§	

DEFENDANT CITY OF AUSTIN’S MOTION TO DISMISS

TO THE HONORABLE LEE YEAKEL, UNITED STATES DISTRICT JUDGE:

Defendant City of Austin files this Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure as follows:

I. NATURE OF THE LAWSUIT

Plaintiffs bring this civil rights action as a result of injuries and damages they allege they sustained as the result of the death of Jordan Walton, during an officer-involved shooting in Austin, Texas on February 10, 2021. Plaintiffs filed this lawsuit against the City as well as former Austin Police Chief Brian Manley, Austin Police Officers Ryan Nichols and Jeffrey Hutchinson alleging various constitutional violations under 42 U.S.C. §1983. (Doc. 1)

For the reasons set forth below, the Court should dismiss all of Plaintiffs’ claims against the City since Plaintiffs’ allegations fail to state a claim upon which relief can be granted. *See* Fed. R.

Civ. P. 12(b)(6).

II. MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)

In reviewing a motion to dismiss, the “court accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.” *In re Katrina Canal Breaches Litigation*, 495 F.3d 191, 205 (5th Cir. 2007) (internal quotes and citations omitted). To overcome a motion to dismiss, a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted); *see also Culberson v. Lykos*, 790 F.3d 608, 616 (5th Cir. 2015). A plaintiff’s lawsuit will not survive a motion to dismiss if the facts pleaded do not raise the right to relief “above the speculative level,” even if the facts are viewed in the light most favorable to the plaintiff. *Twombly*, 550 U.S. at 555. “[C]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss.” *Taylor v. Books A Million*, 296 F.3d 376, 378 (5th Cir. 2002) quoting *Fernandez–Montes v. Allied Pilots Ass’n*, 987 F.2d 278, 284 (5th Cir. 1993).

III. PLAINTIFF’S SECTION 1983 CLAIMS AGAINST THE CITY SHOULD BE DISMISSED.

A. Insufficient Facts to Establish a Policy or Practice

Contrary to federal pleading requirements, Plaintiffs failed to plead an express policy of the Austin Police Department that led to any of the alleged constitutional violations. It is well-settled that to bring a Section 1983 suit against a city, a plaintiff must allege the implementation or execution of a policy or custom that was officially adopted by the city. Specifically, “[a] plaintiff must identify: ‘(1) an official policy (or custom), of which (2) a policymaker can be

charged with actual or constructive knowledge, and (3) a constitutional violation whose ‘moving force’ is that policy or custom.” *Valle v. City of Houston*, 613 F.3d 536, 541-42 (5th Cir. 2010) quoting *Pineda v. City of Houston*, 291 F.3d 325, 328 (5th Cir. 2002). Liability can attach only through “acts directly attributed to it through some official action or imprimatur.” *Peterson v. City of Fort Worth*, 588 F.3d 838, 847 (5th Cir. 2009) (quoting *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001)) (internal quotations removed). *Respondeat superior* liability is insufficient to establish constitutional liability against a city. *See Monell v. Dep’t of Social Service of City of New York*, 436 U.S. 658 (1978).

Moreover, the Fifth Circuit has recently confirmed that to survive a motion to dismiss, a plaintiff’s *Monell* pleadings “must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ratliff v. Aransas County*, 948 F.3d 281, 285 (5th Cir. 2020), quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). To proceed beyond the pleading stage, “a complaint’s description of a policy or custom and its relationship to the underlying constitutional violation ... cannot be conclusory; it must contain specific facts.” *Pena v. Rio Grande City*, 879 F.3d 613, 622 (5th Cir. 2018) In *Ratliff*, the Fifth Circuit affirmed the dismissal of the plaintiff’s *Monell* claim when the complaint failed to establish an official custom or policy of excessive force because the only facts the plaintiff alleged with any specificity related to the incident which was the subject of the lawsuit. *Id.* “[T]o plead a practice so persistent and widespread as to practically have the force of law, [the plaintiff] must do more than describe the incident that gave rise to his injury.” *Id.*, quoting *Pena*, 879 F.3d at 622 (5th Cir. 2018).

Here, Plaintiffs do not cite an actual policy of the City of Austin or its police department which they allege caused the constitutional violation. Plaintiffs refer to no policy number or policy title of any of the Austin Police Department’s numerous policies. Instead, Plaintiffs allege that

“[t]he City of Austin has a policy that was the moving force behind the violation of Jordan Walton’s constitutional rights. The policy does not require officers to exhaust all alternatives before using deadly force. This policy allows the use of deadly force when the threat of serious bodily injury or death is not immediate.” (Doc. 1, ¶ 26)

Plaintiffs’ Complaint does not contain sufficient factual allegations to support this allegation. Plaintiffs allege no specific facts to support their allegation that such a policy exists or that it was the moving force of this incident. The only facts Plaintiffs allege with any specificity are the facts describing the incident which is the subject of this lawsuit. The Complaint contains no facts to support the allegation that this alleged policy actually exists. Plaintiffs seemingly acknowledge their lack of factual allegations to support their *Monell* claim by stating that “[t]he allegations in this count are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.” (Doc. 1, p. 6) However, this catch-all acknowledgment provides no cover for the failure to allege specific facts to support the *Monell* claim.

Likewise, Plaintiff’s Complaint provides no facts to support an allegation that the City has a custom or practice of allowing deadly force when the threat of serious bodily injury or death is not immediate. A plaintiff may show a “persistent, widespread practice of City officials or employees, which, although not authorized by officially adopted and promulgated policy, is so common and well-settled as to constitute a custom that fairly represents municipal policy.” *Piotrowski*, 237 F.3d at 579 (quoting *Webster v. City of Houston*, 735 F.2d 838, (5th Cir. 1984) (*en banc*)). However, “[a]ctions of officers or employees of a municipality do not render the municipality liable under section 1983 unless they execute official policy as above defined.” *Id.*

Plaintiff’s Complaint does not contain sufficient factual allegations to sustain such a

claim. “A pattern requires similarity and specificity; ‘[p]rior indications cannot simply be for any and all ‘bad’ or unwise acts, but rather must point to the specific violation in question.” *Peterson v. City of Fort Worth*, 588 F.3d 838, 851-52 (5th Cir. 2009) quoting *Estate of Davis ex rel. McCully v. City of North Richland Hills*, 406 F.3d 375, 383 (5th Cir. 2005). A pattern sufficient to support a *Monell* claim cannot be established by previous bad acts of the municipality unless those bad acts are specific and similar to the violation in question. *Id.*

Here, Plaintiffs make no allegations that any alleged pattern or practice of APD consisted of prior bad acts which were specific and similar to the officers’ use of deadly force in this incident. Plaintiffs’ Complaint fails to allege non-conclusory facts sufficient to establish an actual policy or custom of the Austin Police Department. As a result, this claim fails as a matter of law.

B. Insufficient Facts to Establish Moving Force Causation

Plaintiff’s Complaint alleges unconstitutional conduct by the officer defendants, and the Complaint is filled with general conclusions that the officers acted pursuant to policies, practices, and customs of the City. The Complaint contains a number of specific factual allegations regarding the incident itself and the actions of the officers along with detailed facts about Walton’s death. The Complaint, however, does not contain any specific facts to support the Plaintiffs’ claim that APD’s policies or practices were the moving force of the alleged constitutional violation committed by the officers in this incident.

In order to hold a municipality liable under Section 1983 for the misconduct of one of its employees, a plaintiff must initially allege that an official policy or custom “was a cause in fact of the deprivation of rights inflicted. *Spiller v. City of Texas City, Police Dept.*, 130 F.3d 162, 167 (5th Cir. 1997), quoting *Leffall v. Dallas Indep. Sch. Dist.*, 28 F.3d 521, 525 (5th Cir. 1994). The description of a policy or custom and its relationship to the underlying constitutional violation,

moreover, cannot be conclusory, it must contain specific facts. *Spiller*, 130 F.3d at 167.

In *Spiller*, the Fifth Circuit affirmed the trial court's dismissal under Fed. R. Civ. P. 12 (b)(6) of a plaintiff's §1983 claim against a municipality for the alleged wrongful arrest of the plaintiff for disorderly conduct. *Spiller*, 130 F.3d at 167. The plaintiff contended that the police department had policies of operating "in a manner of total disregard for the rights of African American citizens" and "engag[ing] in conduct toward African American citizens without regard to probable cause to arrest." *Id.* The Fifth Circuit found that the plaintiff's complaint failed to allege specific non-conclusory facts to demonstrate how these alleged policies were causally connected to the officer's alleged misconduct. *Id.*

The Plaintiffs in this case likewise fail to allege specific facts that demonstrate that the officers' alleged constitutional violation was caused by the City's alleged policy of allowing the use of deadly force when the threat of serious bodily injury or death is not immediate. Plaintiffs' conclusory allegations of moving force causation are clearly insufficient to support a *Monell* claim. As a result, Plaintiffs' claim against the City fails as a matter of law.

C. Inadequate Training and Supervision Policies

Plaintiffs also allege that the City's lack of adequate training of its officers caused the death of Jordan Walton. (Doc. 1, ¶ 25) "A municipality's culpability for a deprivation of right is at its most tenuous where the claim turns upon a failure to train." *Connick v. Thompson*, 563 U.S. 51, 61 (2011). Failure-to-train claims require sufficient factual allegations to allow the court to draw the reasonable inference that: (1) the municipality's training procedures were inadequate; (2) the municipality was deliberately indifferent in adopting its training policy; and (3) the inadequate training policy directly caused the constitutional violation. *See Sanders-Burns v. City of Plano*, 594 F.3d 366, 381 (5th Cir. 2010). Further, a failure to train claim cannot be based upon a single

incident. Rather, a plaintiff must demonstrate “at least a pattern of similar incidents in which the citizens were injured . . . to establish the official policy requisite to municipal liability under section 1983.” *Snyder v. Trepagier*, 142 F.3d 791, 798 (5th Cir. 1998) quoting *Rodriguez v. Avita*, 871 F.2d 552, 554-55 (5th Cir. 1989).

For liability to attach based upon an inadequate training claim, the plaintiff “must allege with specificity how a particular training program is defective.” *Roberts v. City of Shreveport*, 397 F.3d 287, 293 (5th Cir. 2005); *Zarnow v. City of Wichita Falls, Tex.*, 614 F.3d 161, 170 (5th Cir. 2010). With either a failure to train or failure to supervise claim, the plaintiff must show: “(1) the supervisor either failed to supervise or train the subordinate official; (2) a causal link exists between the failure to train or supervise and the violation of the plaintiff’s rights; and (3) the failure to train or supervise amounts to deliberate indifference.” *Goodman v. Harris County*, 571 F.3d 388, 395 (5th Cir. 2009).

Here, Plaintiffs have not included any specific, non-conclusory facts which support a claim for either failure to train or supervise. The Complaint fails to identify an actual, specific training policy, fails to describe any training procedures, and fails to provide *any* factual support to show a plausible conclusion that the City was indifferent to unconstitutional police action. Instead, Plaintiffs acknowledge this shortcoming by stating that “[t]he manner in which the City of Austin training procedures were inadequate regarding these policies as well as the use of force policy will be determined after further opportunity for investigation.” (Doc. 1, ¶ 25) Plaintiffs’ Complaint contains no factual allegations regarding the City’s existing training policies or the training or supervision provided to the involved officers.

Similarly, the Complaint contains no facts regarding deliberate indifference in adopting its

policies, and no facts that show that any such training or supervision directly caused the alleged constitutional violation. Plaintiffs generically state that Defendants “were aware of a pattern of violations [which] demonstrates their deliberate indifference.” (Doc. 1, ¶ 25) Yet, Plaintiffs allege no specific facts regarding a pattern of similar incidents. Again, the Complaint merely states: “[t]he facts supporting this allegation of deliberate indifference will be established after an opportunity for further investigation or discovery.” (Doc. 1, ¶ 25) This does not satisfy the Plaintiffs’ burden to plead specific non-conclusory facts to support a claim for failure to train or supervise. Therefore, these claims should be dismissed.

PRAYER

Defendant City of Austin respectfully requests that the Court grant its Motion to Dismiss and dismiss all claims against the City of Austin with prejudice and with all costs assessed to the Plaintiffs.

RESPECTFULLY SUBMITTED,

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

/s/ H. Gray Laird III
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) 974-1342
Facsimile (512) 974-1311

ATTORNEYS FOR DEFENDANT CITY OF AUSTIN

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 20th day of March, 2023.

Via CM/ECF:

Donna Hall Keith
State Bar No. 00789335
605 W Oltorf Street
Austin, Texas 78704
Telephone: (512) 379-8321
Facsimile: (512) 681-7094

ATTORNEYS FOR PLAINTIFF

/s/ H. Gray Laird III
H. GRAY LAIRD III

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

**ANISSA STOVALL, INDIVIDUALLY AND §
AS ADMINISTRATOR OF THE ESTATE OF §
JORDAN WALTON, DECEASED, AND §
TERRELL WALTON, INDIVIDUALLY §
Plaintiffs, §**

v. §

**CITY OF AUSTIN; FORMER AUSTIN §
POLICE CHIEF BRIAN MANLEY; §
AUSTIN POLICE OFFICER RYAN §
NICHOLS; AUSTIN POLICE §
OFFICER JEFFREY HUTCHINSON; §
APD OFFICER JOHN DOE 1; APD OFFICER §
JOHN DOE 2; APD OFFICER JOHN DOE 3; §
APD OFFICER JOHN DOE 4 §
Defendants. §**

No. 1:23-CV-00105-LY

PLAINTIFFS' FIRST AMENDED COMPLAINT

A. Complaint

1. This action for wrongful death, survival and excessive force is brought pursuant to 42 U.S.C. Sections 1983 and 1988; the Fourth and Fourteenth Amendments to the United States Constitution; and Tex. Civ. Prac. & Rem. Code Chapter 71. The court has jurisdiction of this action under 42 U.S.C. Section 1983, 28 U.S.C. Section 1343 and 28 U.S.C. Section 1331. Plaintiffs also invoke the pendent jurisdiction of this court under 28 U.S.C. Section 1367. The events giving rise to the claims occurred in Travis County, Texas, in this district. Accordingly, this Court is the proper venue pursuant to 28 U.S.C. Section 1391(b)(2).

B. Parties

2. Plaintiff, Anissa Stovall, is the surviving mother of Jordan Walton, deceased, and is

an individual who is a citizen residing in the County of Travis, State of Texas and the United States of America. Jordan Walton died intestate while a resident of the County of Travis, State of Texas. Anissa Stovall filed her application for appointment as Temporary Administrator on December 16, 2022. Plaintiff Stovall brings this action in her capacity as Administrator of the Estate of Jordan Walton, as mother and as heir at law.

3. Plaintiff, Terrell Walton, is the surviving father of Jordan Walton, deceased, and is an individual who is a citizen residing in the County of Travis, State of Texas and the United States of America. Plaintiff Walton brings this action in his individual capacity as father and as heir at law.

4. At all times referred to herein, Defendant Ryan Nichols was a police officer employed by the city of Austin. Defendant Nichols can be served wherever he may be found.

5. At all times referred to herein, Defendant Jeffrey Hutchinson was a police officer employed by the City of Austin. Defendant Hutchinson can be served wherever he may be found.

6. At all times referred to herein, defendants John Doe 1, John Doe 2, John Doe 3 and John Doe 4 were police officers employed by the City of Austin, whose names and identities remain unknown at this time.

7. Defendants John Doe 3 and John Doe 4 were at all times referred to herein ranking officers and as such they were commanding officers of defendants Hutchinson, Nichols, Doe 1 and Doe 2. They were responsible for training, supervision, and conduct of defendants Hutchinson, Nichols, Doe 1, Doe 2.

8. Defendant Brian Manley was at all times referred to herein, chief of police for the City of Austin, and as such he was commanding officer of defendants Hutchinson, Nichols, Doe

1, Doe 2, Doe 3 and Doe 4. He was responsible for training, supervision, and conduct of defendants Hutchinson, Nichols, Doe 1, Doe 2, Doe 3 and Doe 4. Defendant Manley is further responsible for enforcing the regulations of the City of Austin and for ensuring that City of Austin police officers obey the laws of the State of Texas and the United States of America. Defendant Manley is a final policy maker for the Austin Police Department. Defendant Manley can be served wherever he may be found.

9. Defendant City of Austin is a municipal corporation, organized and existing under the laws of the State of Texas and located in the County of Travis. Defendant City of Austin can be served at City Manager, The City of Austin, City Hall, 301 W. Second Street, 3rd Floor, Austin, TX 78702.

10. Plaintiffs sue defendants Manley, Hutchinson, Nichols, Doe 1, Doe 2, Doe 3 and Doe 4 in their individual capacities.

11. At all times referred to herein, defendants Manley, Hutchinson, Nichols, Doe 1, Doe 2, Doe 3 and Doe 4 acted under color of the laws, statutes, ordinances, regulations, policies, customs, and usages of the State of Texas and the City of Austin.

C. Facts

12. Jordan Walton, a twenty-one year old black man, was shot and killed by Austin Police Department officers on February 10, 2021. On the days prior to the killing of Jordan Walton, he experienced severe mental health symptoms, including paranoia. His parents assisted him in obtaining proper medical care. Jordan Walton was very close to his mother and father. They spent birthdays and holidays together and took family vacations twice a year. Two days before his death, he received new medications that had an unexpected effect on him.

13. On February 10, 2021, Jordan Walton again developed paranoia and a terrifying

fear that someone was after him. Mr. Walton stopped at a gas station with a friend and then left quickly without the friend. The friend followed behind on foot and was at the scene of Mr. Walton's death throughout the incident. Mr. Walton sped up a hill and crashed through a residential fence. He got out of the crashed vehicle and ran into another home where a mother and son were present. Soon after, the friend arrived on scene and gave the police information regarding Mr. Walton's mental health. He also gave the officers the phone number to the phone that Mr. Walton had in his possession. This friend was sitting in a police patrol car where he could hear and see police interactions for the duration of the incident. Austin police did not solicit his assistance in any way. At some point defendants Hutchinson, Nichols, Doe 1, Doe 2, Doe 3, Doe 4 and Chief Bryan Manley responded at the scene of this incident and were made aware of the mental health concerns regarding Jordan Walton.

14. The woman in the home that Mr. Walton entered called 911 at 5:21 p.m. to report that she was being held by Mr. Walton. When Austin police officers initially arrived on scene at 5:23, the officers could hear a woman crying and a man speaking through the door. Austin Police Department General Order 200.2.1 requires officers on scene to continue gathering information assessing the risks and benefits. Austin Police Department General Order 412.3.1 directs the ranking officer on the scene of an actual or potential hostage/barricade situation to consider avoiding confrontation in favor of controlling and containing the situation until the arrival of trained personnel and/or trained hostage negotiation personnel. Prior to making a proper threat assessment, Defendant Hutchison and Defendant APD Officer John Doe 1 made multiple strikes to the door and kicked in the door precipitating a confrontation and jeopardizing the safety of all involved. Upon the officers' entrance, Defendant Hutchison fired his weapon. One of the officers suffered a minor injury and the officers retreated.

15. At some point early in the incident, Mr. Walton called 911 to speak to Austin police about a peaceful resolution. During the call Mr. Walton said, “I don’t want to hurt this kid... I’ve been getting death threats.” He repeated several times, “God deliver me from evil.” On more than one occasion during the incident, Mr. Walton appeared at the front door of the home and spoke to officers. During this time, Plaintiff Walton was on scene wanting to help resolve the situation and attempting to give officers information about the mental health of his son. Austin police ignored him. Plaintiff Stovall was on the phone with an officer who was at the scene also providing information about her son. Austin police did not solicit her assistance in any manner. The City of Austin Office of Police Oversight has recommended a policy addition to Austin Police General Order 200.2 allowing supportive family members of the individuals involved to be used as a resource for the officers.

16. Austin Police General Order 412.1 defines the Critical Incident Negotiation Team’s (CINT) sole purpose as facilitating the resolution of hostage and/or barricaded subject incidents. Austin Police General Order 412.2 requires CINT and SWAT to respond to hostage/barricaded subject incidents. Austin Police General Order 412.4 requires the supervisor on scene to notify tactical and hostage negotiation personnel. Austin Police General Order 445.1 defines the Crisis Intervention Team (CIT) as a unit created for the sole purpose of addressing and responding to any calls for police assistance related to the mental health community. Austin Police General Order 445.2 requires that a CIT officer be dispatched to any emergency incident involving a person in mental health crisis. Although required by Austin police policy, Doe 1, Doe 2, Doe 3, Doe 4, Manley, Hutchinson, did not call specially trained CINT negotiation officers and CIT mental health officers to the scene.

17. Austin Police General Order 200.2 De-escalation says that officers shall not

engage in unnecessary conduct that could be expected to escalate a situation, including but not limited to 1) becoming unnecessarily combative or aggressive, 2) using insults, slurs or rude gestures, 3) unduly compromising one's own safety or the safety of others by making inappropriate or misguided tactical decisions and 4) unnecessarily rushing the pace of an encounter. Defendants Hutchinson, Nichols, Manley, Doe 1, Doe 2, Doe 3 and Doe 4 violated three of these four rules. Hutchinson and Doe 1 failed to conduct a proper risk assessment. Hutchinson and Doe 1 became unnecessarily aggressive by kicking in the door and Hutchinson firing his weapon after being on scene for mere minutes thereby rushing the pace of the encounter and in doing so unduly compromising their own safety and the safety of the individuals in the house.

18. Austin Police General Order 412.4 outlines the supervisor responsibilities during a hostage situation, including assuming the role of Incident Commander. After about an hour, an Austin police officer, Defendant Nichols shot and killed Mr. Walton as he stood in the doorway with his gun appearing to be pointed upward in a gesture of surrender. The child stood next to Mr. Walton. Chief Manley was on scene and had the authority to override any order. Chief Manley or Doe 3 or Doe 4 ranking officers on scene ordered, approved or failed to override the decision to kill Jordan Walton although they were aware of his mental health status and his attempts to negotiate a peaceful resolution with officers. The friend on the scene heard one Austin police officer say that Jordan Walton deserved no mercy because an officer had been injured (by a piece of glass when shots were fired). Jordan Walton was twenty-one years old when he died. During his life, he enjoyed good bodily health. He suffered physical pain and mental anguish from the time of the injury inflicted by Austin police until his death.

19. The Austin Police Department General Order 200.4 regarding deadly force and

Austin Police Department General Order 202.1.1 regarding discharge of a firearm authorize officers to use deadly force when and to the extent the officer reasonably believes the deadly force is immediately necessary to protect against an imminent threat of death or serious bodily injury. The City of Austin Office of Police Oversight has criticized this policy because it does not require officers to exhaust all alternatives before using deadly force. The Office of Police Oversight recommended changes to the policy which would eliminate the unnecessary use of deadly force, including making it clear that officers shall not take unreasonable or unnecessary actions that escalate any situation into one that would require a deadly force response.

20. The City of Austin has a policy that does not protect the Constitutional rights of persons suffering from symptoms of mental illness. In a report issued by the City of Austin Office of the City Auditor entitled APD Response to Mental Health Related Incidents (September 2018), the City Auditor found that Austin had the highest per capita rate of people killed by police responding to mental health calls. The same report from the Auditor indicates that although the following practices are used by other major cities, in Austin CIT trained officers do not receive regular refresher training on topics related to crisis intervention, de-escalation and mental health; dispatchers don't identify the nearest CIT officer and dispatch the officer to the crisis event; CIT incidents are not reviewed and evaluated for process improvements; police are not paired with mental health professionals. The result of this policy is seen in Jordan Walton's death where Manley, Hutchinson, Nichols, Doe 1, Doe 2, Doe 3 and Doe 4 ignored Mr. Walton's mental illness and failed to follow procedure outlined in Austin Police General Order 200.2.1 and Austin Police General Order 445.2.

21. The City of Austin has a widespread pervasive policy of permitting lethal force when a threat is not immediate. On April 14, 2017, Lawrence Parrish, a black man, was killed

by Austin police while simply standing at his door with a gun, never firing or pointing the gun or acting with aggression toward police. On May 7, 2017, Landon Nobles, a black man, was killed by Austin police after having fired shots earlier in the day while on 6th Street. He was shot in the back but was not displaying a weapon or actively posing a threat. On August 16, 2018, Aquantis Griffin, a black man, was killed by Austin police when police fired over 40 shots striking Mr. Griffin 30 times. Although holding a gun, Mr. Griffin was not given an opportunity to comply with officer commands before officers shot him. Mr. Griffin did not point the gun in the direction of police or threaten them. On July 31, 2019, Dr. Mauris DeSilva, a man of color, while experiencing a mental health crisis initially held a knife to his own throat but when complying with officer commands, he lowered the knife and turned to face the officers, the officers shot and killed him. On April 24, 2020, Mike Ramos, a black man, was shot and killed by Austin police while driving away from police. Mr. Ramos was unarmed and not a threat as he drove away from the scene. On January 15, 2023, Anthony Marquis Franklin, a black man, was shot and killed by Austin police while laying on the ground in the fetal position. Mr. Franklin had fired shots earlier that day but was not actively a threat while lying defenseless on the ground. Like Mr. Jordan, these individuals were not posing an immediate threat to officers or other individuals when they were killed by Austin police.

22. Austin police also have a widespread and pervasive policy that results in severe use of force against people of color which is unjustified and disproportionate to other communities. In 2019, the Austin City Council approved the findings from the Center for Policing Equity including the following:

a. Austin police were more likely to use more severe force in Black and Latino neighborhoods.

b. Black people were arrested at twice the rate of whites when officers could use discretion when deciding to make an arrest.

c. For offenses eligible for citation, Black people comprised 32% of those arrested even though Black people only make up about 8% of the city's population.

23. In January 2020, a joint report by the Austin Office of Police Oversight, the Office of Innovation and the Equity Office also acknowledged widespread racial policing practices. The report indicates that in 2018 Black people made up 15% of vehicle stops and 25% of arrests but only 8% of the population.

24. On June 11, 2020, the Austin City Council approved a resolution acknowledging that Austin police policy and culture have a disproportionate impact of police violence on Black people in Austin. This policy and culture lead to the shooting of Jordan Walton while he attempted to surrender.

25. In 2020, a report by the City's Organizational Development and Training Manager for the Austin Police Department found that the Austin Police Academy, which trains cadets who will serve as police officers for the City of Austin, promotes a culture of violence. The Austin Chief Equity Officer echoed this sentiment when reporting findings that the Academy provides training based on violent and traumatizing experiences that produce officers trained primarily to use physical aggression.

26. In January 2021, a report sanctioned by the City of Austin found that training videos used by the Austin Police Academy for addressing crisis intervention, de-escalation and use of force, among other topics, displayed communities of color, especially Black men, as

disproportionate recipients of violent and deadly force by police. The videos were also found to encourage an adversarial relationship between the police and the public. The videos encouraged rapid and deadly escalation with people of color and compassion and understanding for white men. As an example of the disparate treatment resulting from the training, on September 2, 2020, Austin police were involved in a 31-hour standoff where a white male, who had been shooting at a neighbor was barricaded in his home. The man was known to suffer from symptoms of mental illness. During this 31-hour standoff, CIT, a hostage negotiator, SWAT, and mental health experts were called to the scene. Family members were allowed to persuade the suspect to exit his home. The suspect was taken into custody without injury. This incident stands in stark contrast to the incident plaintiffs now complain of where their son was killed in less than an hour and no attempts to bring in CIT or other mental health professionals or a trained hostage negotiator was made by Manley, Hutchinson, Nichols, Doe 1, Doe 2, Doe 3 or Doe 4.

27. Plaintiff Stovall suffered mental anguish after the loss of her son. She experienced depression, anxiety and PTSD. Several months after Jordan Walton's death, Plaintiff Stovall was hospitalized as a result of the symptoms she experienced. Her grief has manifested physically and emotionally resulting in mental health concerns.

28. Plaintiff Walton suffered mental anguish after the loss of his son. He experienced extreme anxiety, grief and additional trauma from being present at the scene during the incident.

D. Excessive Force

For this cause of action against defendants Manley, Hutchinson, Nichols, Doe 1, Doe 2, Doe 3 and Doe 4 plaintiffs state the following.

29. By this reference, plaintiffs incorporate each and every allegation and averment set forth herein as though fully set forth in this cause of action.

30. As a direct and proximate result of the above-referenced unlawful acts of defendants Manley, Hutchinson, Nichols, Doe 1, Doe 2, Doe 3 and Doe 4 committed under color of law and under their authority as City of Austin police officers, Jordan Walton was deprived of his life and his right to be secure in his person against unreasonable seizure of his person in violation of the Fourth and Fourteenth Amendments of the Constitution of the United States.

31. The actions of defendants Manley, Hutchinson, Nichols, Doe 1, Doe 2, Doe 3 and Doe 4 were objectively unreasonable and constituted the use of excessive force in that there was no immediate significant threat of great harm when Jordan Walton was attempting to surrender. Doe 1 and Hutchinson stormed into the home with reckless abandon having not properly assessed the situation and escalated the situation into one of gunfire. Nichols shot and killed Jordan Walton while Mr. Walton attempted to surrender. Manley, Doe 3 and Doe 4 condoned the conduct and failed to contact negotiators and mental health officials which could have spared Mr. Walton's life.

32. At all times relevant to this complaint, defendants Hutchinson, Nichols, Doe 1, Doe 2, Doe 3 and Doe 4 were acting under the direction and control of Chief Bryan Manley and were acting pursuant to the official policy, practice or custom of the City of Austin. Defendant Manley approved or acquiesced to the actions of the Austin Police officer who took the life of Jordan Walton. Before the killing of Mr. Walton, Doe 1, Doe 2, Doe 3 or Doe 4 was heard by the friend on scene saying that Mr. Walton deserved no mercy because a police officer had been injured.

33. The actions of defendants Manley, Hutchinson, Nichols, Doe 1, Doe 2, Doe 3 and Doe 4 were intentional, wanton, malicious and oppressive entitling plaintiffs to an award of punitive damages.

E. Policy and Custom

For this cause of action against defendants Manley and the City of Austin plaintiffs state the following.

34. By this reference, plaintiffs incorporate each and every allegation and averment set forth herein as though fully set forth in this cause of action.

35. Defendant Manley as the final policy maker for the Austin Police Department was responsible for the training and supervision of all police officers of Defendant City of Austin in the proper protocol for use of force, forcefully entering a home, managing a hostage situation and for interactions with individuals experiencing a mental health crisis. On the day that Jordan Walton died, Defendant Manley, Defendant Doe 3 and Defendant Doe 4 were at the scene during the hostage situation while defendants failed to contact Critical Incident Negotiation Team, Crisis Intervention Team or other mental health professional as directed in Austin Police Department General Orders. The manner in which the City of Austin training procedures were inadequate include the following: providing training that demonstrated excessive violence against Black people; providing training that demonstrated unjustified and disproportionate use of force against Black people; providing inadequate training regarding proper threat assessments; providing inadequate training regarding proper forced entry into a home; providing inadequate training regarding the use of deadly force; providing inadequate training for de-escalation; inadequate training for managing a hostage situation; inadequate training for managing a suspect with symptoms of mental illness.

36. Defendant Manley and other defendants had to be aware of the widespread pattern of violations which demonstrates their deliberate indifference. The inadequate training directly caused plaintiffs' damages in that the lack of training caused the death of their son.

37. The city council of Austin is vested by state law with the authority to make policy for the city on the use of force. The Austin Police General Orders as indicated above were the moving force behind the violation of Jordan Walton's constitutional rights. The policy does not require officers to exhaust all alternatives before using deadly force. The absence of a policy requiring officers to exhaust all alternatives before the use of deadly force in turn fuels the custom allowing the use of deadly force when the threat of serious bodily injury or death is not immediate. Defendant City of Austin failed to promulgate use of lethal force policies that protect the Constitutional rights of citizens. City of Austin police officers also have a practice or custom, which Defendant Manley permitted as final policy maker, of using excessive force as a form of retaliation when an officer has been injured during an incident. The policy and practice set forth above failed to protect the life of Jordan Walton by allowing Austin police officers to use lethal force under circumstances where it is not reasonable to do so.

F. Training

For this cause of action against defendants Manley and the City of Austin plaintiffs state the following. By this reference, plaintiffs incorporate each and every allegation and averment set forth herein as though fully set forth in this cause of action.

38. The City of Austin has a widespread and pervasive policy of racially motivated policing and training that deprived Jordan Walton of his right to secure in his person against unreasonable seizure and resulted in his death. The racially motivated policy not only caused

inadequate training but also caused the death of Jordan Walton by allowing Nichols, Manley, Hutchinson, Doe 1, Doe 2, Doe 3 and Doe 4 to use excessive force against Jordan Walton.

39. At the time of Jordan Walton's death and prior to his death, Austin police officers received racially biased training which negatively colored all aspects of training including proper threat assessments. Such racially biased training also undermined defendant officers' understanding of when to properly use force, deadly force and de-escalation measures when confronting armed Black individuals.

40. The conduct of defendants Manley and City of Austin described above deprived Jordan Walton of his right to be secure in his person against unreasonable searches and seizure as guaranteed to Jordan Walton under the Fourth Amendment to the United States Constitution and the decedent's right to be free from deprivation of life, liberty or property without due process of law and to be accorded the equal protection of the laws as guaranteed to decedent under the Fourteenth Amendment to the United States Constitution.

G. Wrongful Death and Survival

41. By this reference, plaintiffs incorporate each and every allegation and averment set forth herein as though fully set forth in this cause of action. Defendants' wrongful conduct proximately caused the death of Jordan Walton. Mr. Walton would have been entitled to bring this action against defendants had he lived. He would be entitled to and defendants are liable for Mr. Walton's pain and suffering and the violation of this civil rights. Those claims survive in favor of Mr. Walton's heirs. Defendants' conduct also caused plaintiffs to lose the companionship, love, support and services that Jordan Walton would have provided as their son had he lived. Plaintiffs have suffered emotional pain and emotional distress and a direct result

of defendants' wrongful killing of Mr. Walton.

H. Damages

42. By this reference, plaintiffs incorporate each and every allegation and averment set forth herein as though fully set forth here.

43. As a direct and proximate result of the unlawful conduct of the defendants as described above, plaintiffs suffered burial expenses, cost of therapy and counseling; severe mental anguish in the past and future, loss of society and companionship, services, and affection of their son.

I. Exemplary Damages

44. The officer defendants' extreme outrageous and unjustifiable conduct justifies an award of punitive and exemplary damages. The officer defendants acted with malice and acted intentionally recklessly and with callous indifference to the unlawful deprivation of Jordan Walton's constitutionally protected rights.

45. The extreme, outrageous and unjustifiable conduct of the City of Austin justifies an award of punitive and exemplary damages. The City of Austin implemented policies, practices and procedures with malice and intent, acting recklessly and with callous indifference to the unlawful deprivation of Jordan Walton's constitutionally protected rights.

J. Attorney Fees

46. Plaintiffs are entitled to an award of attorney fees if they are the prevailing party in this suit. Plaintiffs seek attorney's fees, expert fees, litigation expenses and costs.

K. Jury Demand

47. In compliance with Rule 38, Federal Rules Civil Procedure, plaintiffs hereby notify all parties of their demand for a jury.

L. Prayer

48. For these reasons, plaintiffs ask for judgment against the defendants for the following:

- a. Damages in the form of punitive and compensatory damages;
- b. Costs of suit, expert fees, pre and post judgment interest;
- c. Reasonable attorney's fee; and
- d. All other relief the court deems appropriate.

Respectfully submitted,

/s/ Donna Keith
Donna Hall Keith
State Bar No. 00789335
605 W. Oltorf Street
Austin, TX 78704
donna@dhkattorney.com
Tel: 512-379-8321
Fax: 512-681-7094
ATTORNEY IN CHARGE FOR
Anissa Stovall & Terrell Walton

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record in compliance with the Federal Rules of Civil Procedure on April 10, 2023.

Via CM/ECF

H. Gray Laird III
Attorney for the City of Austin
State Bar No. 24087054
City of Austin Law Dpt.
P.O. Box 1546
Austin, TX 78767

/s/ Donna Keith
Donna Hall Keith

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

FILED

APR 12 2023

CLERK, U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY  DEPUTY

ANISSA STOVALL, INDIVIDUALLY §
AND AS ADMINISTRATOR OF THE §
ESTATE OF JORDAN WALTON; AND §
TERRELL WALTON, INDIVIDUALLY, §
PLAINTIFFS, §

V. §

CAUSE NO. 1:23-CV-00105-LY

CITY OF AUSTIN; FORMER AUSTIN §
POLICE CHIEF BRIAN MANLEY; §
APD OFFICER RYAN NICHOLS; APD §
OFFICER JEFFREY HUTCHINSON; APD §
OFFICER JOHN DOE 1; APD OFFICER §
JOHN DOE 2; APD OFFICER JOHN DOE §
3; AND APD OFFICER JOHN DOE 4, §
DEFENDANTS. §

ORDER

Before the court is Defendant City of Austin’s Motion to Dismiss, filed March 20, 2023 (Doc. #6). Plaintiffs’ First Amended Complaint was filed on April 10, 2023 (Doc. #7). In light of the filing of Plaintiffs’ amended complaint,

IT IS ORDERED that Defendant City of Austin’s Motion to Dismiss, filed March 20, 2023 (Doc. #6), is **DISMISSED WITHOUT PREJUDICE**.

SIGNED this 12th day of April, 2023.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE

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

ANISSA STOVALL, INDIVIDUALLY	§	
AND AS ADMINISTRATOR OF THE	§	
ESTATE OF JORDAN WALTON,	§	
DECEASED, AND TERRELL	§	CIVIL ACTION NO. 1:23-cv-00105-LY
WALTON, INDIVIDUALLY	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	
	§	
CITY OF AUSTIN; FORMER AUSTIN	§	
POLICE CHIEF BRIAN MANLEY;	§	
AUSTIN POLICE OFFICER RYAN	§	
NICHOLS; AUSTIN POLICE	§	
OFFICER JEFFREY HUTCHINSON;	§	
APD OFFICER JOHN DOE 1; APD	§	
OFFICER JOHN DOE 2; APD	§	
OFFICER JOHN DOE 3; APD	§	
OFFICER JOHN DOE 4	§	
<i>Defendants.</i>	§	

**DEFENDANT CITY OF AUSTIN’S ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFFS’ FIRST AMENDED COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant City of Austin files this Answer and Affirmative Defenses to Plaintiffs’ First Amended Complaint (Doc. No. 7). Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendant respectfully shows the Court the following:

ORIGINAL ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant responds to each of the specific averments in Plaintiffs’ First Amended Complaint as set forth below. To the extent that Defendant does not address a specific averment made by Plaintiff, Defendant expressly denies that averment.¹

¹ Paragraph numbers in Defendant’s Answer correspond to the paragraphs in Plaintiffs’ First Amended Complaint.

1. On information and belief, Defendant admits the allegations contained in Paragraph 1.
2. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 2 and therefore denies same.
3. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 3 and therefore denies same.
4. Defendant admits the allegations contained in Paragraph 4.
5. Defendant admits the allegations contained in Paragraph 5.
6. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6 and therefore denies same.
7. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 7 and therefore denies same.
8. Defendant admits the allegations contained in the first sentence of Paragraph 8. Defendant denies the remaining allegations as phrased in Paragraph 8.
9. Defendant admits the allegations contained in Paragraph 9.
10. Defendant denies the allegations contained in Paragraph 10.
11. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 11 and therefore denies same.
12. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 12 and therefore denies same.
13. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 13 and therefore denies same.
14. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 14 and therefore denies same.
15. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations

- contained in Paragraph 15 and therefore denies same.
16. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 16 and therefore denies the same.
 17. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 17 and therefore denies the same.
 18. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 18 and therefore denies the same.
 19. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 19 and therefore denies same.
- 20-46. Defendant denies the allegations contained in Paragraphs 20-46.
47. Paragraph 47 merely contains Plaintiff's demand for jury trial and thus no response is required of this Defendant.
 48. Defendant denies the allegations contained in Paragraph 48 and denies that Plaintiffs are entitled to any relief whatsoever of and from this Defendant.

AFFIRMATIVE DEFENSES

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. Defendant reserves the right to assert additional affirmative defenses throughout the development of the case.

DEFENDANT’S PRAYER

Defendant City of Austin prays that all relief requested by Plaintiffs be denied, that the Court dismiss this case with prejudice, and that the Court award Defendant costs and attorney’s fees, and any additional relief to which it is entitled under law or equity.

RESPECTFULLY SUBMITTED,

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

/s/ H. Gray Laird III
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) 974-1342
Facsimile (512) 974-1311

**ATTORNEYS FOR DEFENDANT CITY OF
AUSTIN**

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 19th day of April, 2023.

Via CM/ECF:

Donna Hall Keith

State Bar No. 00789335

605 W Oltorf Street

Austin, Texas 78704

donna@dhkattorney.com

Telephone: (512) 379-8321

Facsimile: (512) 681-7094

ATTORNEYS FOR PLAINTIFFS

/s/ H. Gray Laird III
H. GRAY LAIRD III

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

ANISSA STOVALL, INDIVIDUALLY	§	
AND AS ADMINISTRATOR OF THE	§	
ESTATE OF JORDAN WALTON,	§	
DECEASED, AND TERRELL	§	CIVIL ACTION NO. 1:23-cv-00105-LY
WALTON, INDIVIDUALLY	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	
	§	
CITY OF AUSTIN; FORMER AUSTIN	§	
POLICE CHIEF BRIAN MANLEY;	§	
AUSTIN POLICE OFFICER RYAN	§	
NICHOLS; AUSTIN POLICE	§	
OFFICER JEFFREY HUTCHINSON;	§	
APD OFFICER JOHN DOE 1; APD	§	
OFFICER JOHN DOE 2; APD	§	
OFFICER JOHN DOE 3; APD	§	
OFFICER JOHN DOE 4	§	
<i>Defendants.</i>	§	

DEFENDANTS BRIAN MANLEY, RYAN NICHOLS AND JEFFREY HUTCHINSON'S
ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS'
FIRST AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants Brian Manley, Ryan Nichols and Jeffrey Hutchinson file this Answer and Affirmative Defenses to Plaintiffs' First Amended Complaint (Doc. No. 7). 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), Defendants respond to each of the specific averments in Plaintiffs' First Amended Complaint as set forth below. To the extent that

Defendants do not address a specific averment made by Plaintiff, Defendants expressly deny that averment.¹

1. On information and belief, Defendants admit the allegations contained in Paragraph 1.
2. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 2 and therefore deny same.
3. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 3 and therefore deny same.
4. Defendants admit the allegations contained in Paragraph 4.
5. Defendants admit the allegations contained in Paragraph 5.
6. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6 and therefore deny same.
7. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 7 and therefore deny same.
8. Defendants admit the allegations contained in the first sentence of Paragraph 8. Defendants deny the remaining allegations as phrased in Paragraph 8.
9. Defendants admit the allegations contained in Paragraph 9.
10. Defendants deny the allegations contained in Paragraph 10.
11. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 11 and therefore deny same.
- 12-19. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraphs 12-19 and therefore deny same.
- 20-46. Defendants deny the allegations contained in Paragraphs 20-46.
47. Paragraph 47 merely contains Plaintiff's demand for jury trial and thus no response is required of these Defendants.

¹ Paragraph numbers in Defendants' Answer correspond to the paragraphs in Plaintiffs' First Amended Complaint.

48. Defendants deny the allegations contained in Paragraph 48 and deny that Plaintiffs are entitled to any relief whatsoever of and from these Defendants.

AFFIRMATIVE DEFENSES

1. Defendants assert the affirmative defense of qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.
2. Defendants assert the affirmative defense of contributory negligence. Plaintiffs' claims are barred in whole or in part by Jordan Walton's contributory negligence. Walton, by his actions, failed to exercise ordinary care for his safety. His actions contributed at least fifty-one percent to his alleged injuries and the damages asserted in this case.
3. Defendants affirmatively plead that the Plaintiffs' claims are barred in whole or in part since Jordan Walton's intentional acts were the proximate cause, or a proximate contributing cause, of his alleged injuries and damages asserted in this case.
4. Defendants assert the affirmative defense that Plaintiffs failed to mitigate damages, if any, and asserts this failure to mitigate as both an affirmative defense and as a reduction in the damage amount, if any, due Plaintiffs.
5. Defendants deny any deprivation under color of statute, ordinance, custom, or abuses of any rights, privileges or immunities secured to the decedent by the United States Constitution, state law, or 42 U.S.C. § 1983, *et seq.*
6. Defendants plead that, in the unlikely event they are 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, including Jordan Walton.
7. Defendants assert the limitations and protections of Chapter 101 of the Texas Civil Practice and Remedies Code.

8. Defendants assert the limitations and protections of Chapter 41 of the Texas Civil Practice and Remedies Code, and the Due Process Clause of the United States Constitution.
9. Defendants reserve the right to assert additional affirmative defenses throughout the development of the case.

DEFENDANTS' PRAYER

Defendants Brian Manley, Ryan Nichols and Jeffrey Hutchinson pray that all relief requested by Plaintiffs 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 it is entitled under law or equity.

RESPECTFULLY SUBMITTED,

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

/s/ H. Gray Laird III
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) 974-1342
Facsimile (512) 974-1311

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 31st day of May, 2023.

Via CM/ECF:

Donna Hall Keith

State Bar No. 00789335

605 W Oltorf Street

Austin, Texas 78704

donna@dhkattorney.com

Telephone: (512) 379-8321

Facsimile: (512) 681-7094

ATTORNEYS FOR PLAINTIFFS

/s/ H. Gray Laird III
H. GRAY LAIRD III