

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

Maya Van Os,	§
Plaintiff	§
vs.	§
	§
Joshua Muchnikoff	§
and the City of Austin,	§
Defendants	§

**COMPLAINT**

COMES NOW Maya Van Os, Plaintiff herein, by and through counsel, and complains of Austin police officer Joshua Muchnikoff and the City of Austin for the excessive force inflicted against her during a large protest demonstration that occurred in Austin, Texas on May 30, 2020.

A. Introduction

1. This suit is brought to redress injuries resulting from the violent use of excessive force by an Austin police officer against the Plaintiff and by the City of Austin through its unconstitutional policies or customs in violation of the Fourth and Fourteenth Amendments of the United States Constitution and 28 U.S.C. §1983.

A. Parties

2. Plaintiff Maya Van Os currently resides in the city of Olympia, Washington. At the time of the actions and events giving rise to this lawsuit she resided in Austin, Travis County, Texas.

3. Defendant Joshua Muchnikoff is a police officer of the Austin, Texas police

department. He is being sued in his individual and official capacities herein for actual and punitive damages over his excessive and unconstitutional infliction of excessive force against Plaintiff on May 30, 2020 in Austin, Texas as she was demonstrating against police violence after the murder of George Floyd by a police officer in Minneapolis, Minnesota and the killing of Mike Ramos by a police officer in Austin, Texas. Defendant Muchnikoff may be served with process at his business address, the Austin Police Department, 715 East 8<sup>th</sup> Street, Austin, TX 78701.

4. Defendant City of Austin is being sued in its municipal capacity because of its unconstitutional policies or customs that Defendant Muchnikoff was implementing in the commission of his unconstitutional actions against Plaintiff. Defendant City of Austin may be served by serving the Austin City Clerk at Austin City Hall, 301 West 2<sup>nd</sup> Street, Austin, Texas 78701.

B. Jurisdiction and Venue

5. Subject matter jurisdiction over the Plaintiff's U.S. Constitutional claims brought under 42 U.S.C. §1983 lies in this Court under 28 U.S.C. §§1331 and 1343(a)(3).

6. Venue properly lies in this Court under 28 U.S.C. §1391(b)(1) because all Defendants reside in this judicial district and division and under 28 U.S.C. §1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district and division.

C. Pertinent facts

7. On May 30, 2020, Plaintiff decided to lend her voice to the nationwide protests

against police violence triggered by the murder of George Floyd by a police officer in Minneapolis, Minnesota, in conjunction with the killing of local resident Mike Ramos by an Austin police officer. Accordingly she participated in a large demonstration taking place in Austin, Texas over these matters of public concern.

8. At the time of the violations of the Constitution complained of herein, Plaintiff had been demonstrating on public property on the grass between the northbound frontage road of Interstate 35 and the highway, near the intersection of Interstate 35 and East 8<sup>th</sup> Street, close to the Austin Police Department.

9. Immediately prior to her victimization by the unconstitutional excessive force complained of herein, Plaintiff was standing in a rough line of demonstrators in the grass adjacent to the edge of the frontage road.

10. Police officers of the Austin Police Department were standing in a line roughly parallel to and facing the line of demonstrators. The two lines were separated by several feet of grass.

11. Plaintiff observed Austin police officers firing rifles that shot what she had good reason to believe were harmful rubber and/or "beanbag" projectiles at demonstrators. Video confirms that officers were shooting at demonstrators and others whom Plaintiff believed to be innocent bystanders on a hill behind the line of demonstrators where Plaintiff was situated.

12. Plaintiff vocally implored officers not to shoot, exclaiming phrases such as "Stop, stop" while other demonstrators cried phrases such as "don't shoot, don't shoot".

13. Plaintiff carried and waved a soft posterboard poster on which she had written

statistics about police violence.

14. Plaintiff is of slight body. At the time of the events that are the subject of this action, she was five feet three inches tall and weighed between 105 and 110 pounds. She was 23 years old.

15. Immediately prior to the actions of Defendant Muchnikoff complained of herein, an unidentified police officer told Plaintiff to step back. She did so with no resistance.

16. After Plaintiff stepped backward in obedience to the police order she assumed a position of standing still and watching events. Any officer who witnessed Plaintiff committing a criminal offense could have easily informed her that she was under arrest. Plaintiff observed a police officer speak with Defendant Muchnikoff and point at her. Plaintiff has been able to identify the officer who pointed at her as Sgt. Joshua Blake. Seeing Sgt. Blake point at her made Plaintiff afraid that she was in physical danger. Suddenly and abruptly Defendant Muchnikoff bolted from behind the line of officers and charged several feet across the grassy space between the officers and demonstrators directly and specifically at Plaintiff in a use of force clearly unnecessary and excessive for the circumstances. Defendant Muchnikoff in an extremely aggressive and excessively forceful unnecessary manner lunged into Plaintiff. At the time that Defendant Muchnikoff charged at Plaintiff, other officers did not similarly rush across the several feet of grassy space to grab similarly situated demonstrators near Plaintiff, indicating that Plaintiff apparently was singled out. Before Defendant Muchnikoff abruptly charged at and violently grabbed her, neither Defendant Muchnikoff nor any other officer advised Plaintiff that she was under arrest or ordered her to submit to

arrest or detainment or gave her any warning of the possibility of arrest. Video shows Defendant Muchnikoff's unprovoked charging at and forceful grabbing of Plaintiff. Plaintiff was shocked by the sudden and aggressive running assault on her person without warning or provocation; in her instantaneous shock she may have instinctively recoiled but did not actively resist arrest. Defendant Muchnikoff's use of force against Plaintiff after she had obeyed the order to step back and while she was standing still were entirely unnecessary and clearly excessive for the circumstances.

17. Despite the absence of any necessity to use force against her, Defendant Muchnikoff violently assaulted Plaintiff's body, starting with viciously yanking her arms towards him as he grabbed her. Included in his rough handling of her, Defendant Muchnikoff gripped Plaintiff's neck with his arm in a manner that suppressed her ability to breathe. Defendant Muchnikoff roughly carried her to a spot of ground at the rear of the police line with a use of unreasonable excessive force and without informing her she was under arrest or otherwise offering an opportunity to submit to arrest. Defendant Muchnikoff then brutally and injuriously tackled Plaintiff onto the ground, slamming his much larger body on top of hers. Throughout the traumatic attack Plaintiff felt as if she was being tossed around like a rag doll. Plaintiff was in fear for her life. Plaintiff had never before in her life personally experienced such a violent physical encounter, much less carried out by a man of Defendant Muchnikoff's stature.

18. Plaintiff did not actively resist arrest or attempt to flee from arrest.

19. Plaintiff did not pose an immediate threat to the safety of Defendant Muchnikoff or any other officer.

20. While getting handcuffed on the ground Plaintiff still did not pose a threat to the safety of Defendant Muchnikoff or any other officer. Nevertheless an unidentified officer sprayed mace or pepper spray onto the side of Plaintiff's face while she was being pinned to the ground.

21. When Defendant Muchnikoff and another officer were preparing to place the handcuffed Plaintiff into a police van, she told them that they were pulling her arms so high behind her back that it hurt badly. Defendant Muchnikoff responded by cruelly and unnecessarily pulling her arms higher behind her back, causing intense pain.

22. Plaintiff was taken to jail, where she was informed that she was being charged with the offense of obstructing highway passageway, a class B misdemeanor.

23. After approximately 10 hours in jail, Plaintiff was released around 1:00 a.m. and informed that the criminal charge was dropped.

24. Friends took Plaintiff to an emergency room on the following morning of May 31, 2020.

25. As a result of the complained of actions of the Defendants, Plaintiff suffered physical and mental injuries, from which the physical and mental trauma have persisted to the present. These include but are not limited to the following, which are intended to be representative rather than exhaustive. Contusions and/or possible hairline fractures lined Plaintiff's spine and ribs. Plaintiff suffered such pain in her back that she had difficulty standing up or sitting down without assistance for a number of days after the incident, and is still affected by this pain. A large scar developed on her right thigh from Defendant Muchnikoff violently slamming her to the ground. Plaintiff had a large bump

on her forehead immediately thereafter, which slowly receded over a matter of days. She suffered whiplash of her neck. Plaintiff had bruises and scrapes all over her arms and the rest of her body, including a bruise near her left eye. When Plaintiff washed her face her eyes burned painfully, indicating that a part of her face had received pepper spray or mace that had been reactivated by the water. Both of Plaintiff's knees were swollen, causing difficulty in walking. Plaintiff's right arm is still weak from the incident and sometimes shakes. An emergency room doctor told Plaintiff she may have suffered a concussion, which was soon after affirmed by her primary care physician and her psychotherapist; and later her neurologist reported this as well. Plaintiff suffered intense nightmares about the incident for months. On the first anniversary of the incident Plaintiff suffered a panic attack in which she felt she was reliving being tossed around like a rag doll and as a result she screamed in panic in her house. Plaintiff continues to suffer anxiety triggered by memory of the incident.

26. At the time of Defendant Muchnikoff's infliction of excessive force against Plaintiff, Defendant City of Austin had in place through the Austin Police Department policies or customs of using, authorizing, encouraging, and/or tolerating excessive force against non-violent demonstrators and protestors. Defendant Muchnikoff in his herein complained of usages of excessive force against Plaintiff was implementing or executing such policies or customs.

27. Each of the policies, practices, or customs delineated in paragraph 26 above was actually known, constructively known, and/or ratified by Defendant City of Austin and its Chief of Police at the time, Brian Manley (the policymaker), and was

promulgated with deliberate indifference to Plaintiff's Fourth and Fourteenth Amendment rights under the United States Constitution. Moreover, the known and obvious consequence of these policies, practices, or customs 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 foreseeable that the particular violations alleged here, all of which were under color of law, would result. Moreover, upon information and belief, Chief Manley (who is no longer the Austin police chief) was also aware of multiple similar incidents in which excessive force was used but he did not remedy the misconduct. Consequently, the policies delineated in paragraph 26 above were a moving force of Plaintiff's constitutional deprivations and injuries.

28. After Defendant Muchnikoff charged at Plaintiff a person who at the time was unknown to Plaintiff entered into the scene and apparently attempted to extricate Plaintiff from Defendant Muchnikoff's grasp. Plaintiff did not expect, request, or invite the attempted intervention. At that moment Plaintiff was under severe restraint and being tossed about at the hands of Defendant Muchnikoff. The would-be intervener was rebuffed by Defendant Muchnikoff and other officers. The would-be intervener did not impair nor amplify Defendant Muchnikoff's ability to exercise unnecessary and excessive force against Plaintiff. Defendant Muchnikoff had already committed and was continuing to commit his use of excessive force against Plaintiff before the other individual attempted to intervene.

D. Violation of the Fourth and Fourteenth Amendments

29. Defendant Muchnikoff violated Plaintiff's rights under the Fourth Amendment to the U.S. Constitution, as applied to the states under the Fourteenth Amendment, by injuring her through the use of excessive force that was objectively unreasonable.

30. Defendant City of Austin violated Plaintiff's rights under the Fourth and Fourteenth Amendments through the policies or customs described in paragraph 26 above, as actually or constructively ratified as described in paragraph 27 above.

31. Defendants acted under color of law.

32. Plaintiff brings suit against Defendants Muchnikoff and Defendant City of Austin under 42 U.S.C. §1983 for redress of injuries resulting from the violations of her Constitutional Fourth Amendment rights committed under the color of law.

33. As shown by the facts set forth above, the brutal and unnecessary force used against Plaintiff was clearly excessive and objectively unreasonable. The unreasonableness is shown by the factors of the relatively low severity of the alleged crime at issue, a misdemeanor charge that was dropped within less than a day; that the Plaintiff, of slight body and unarmed, posed no immediate threat to the safety of officers or others; and that Plaintiff was not actively resisting arrest or attempting to evade arrest by flight.

E. Damages

34. Defendant Muchnikoff's conduct toward Plaintiff was malicious, oppressive, and in reckless disregard or gross indifference for her civil rights.

35. Plaintiff seeks compensatory damages against both Defendants for her

injuries and losses, including but not limited to past and future medical expenses, past and present impairment, past disfigurement, past and future physical pain and suffering, and past and future mental anguish.

36. Plaintiff seeks punitive damages against Defendant Muchnikoff.

37. Plaintiff seeks pre-judgment interest and post-judgment interest at the maximum interest rates and in the maximum amounts allowed by law.

F. Jury Trial

38. Plaintiff hereby invokes her right to jury trial pursuant to the Seventh Amendment of the U.S. Constitution.

G. Attorney Fees

39. Pursuant to 42 U.S.C. §1988, Plaintiff is justly entitled to reasonable attorney fees as costs of court.

WHEREFORE, premises considered, Plaintiff prays that Defendant Muchnikoff be summoned to appear and answer herein, and that upon trial of the case Plaintiff be awarded actual and punitive damages, pre-judgment and post-judgment interest, costs of court including reasonable attorney fees, and all such further relief to which the Court may deem her justly entitled.

Respectfully submitted,

/s/ David Van Os

David Van Os  
Texas Bar No. 20450700  
Email [dvo@vanoslaw.com](mailto:dvo@vanoslaw.com)  
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DAVID VAN OS & ASSOCIATES, P.C.  
8620 North New Braunfels Ave. #101  
San Antonio, TX 78217

Counsel for Plaintiff

JS 44 (Rev. 10/20)

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

<p><b>I. (a) PLAINTIFFS</b></p> <p>Maya Van Os</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>Thurston (WA)</u>  <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys <i>(Firm Name, Address, and Telephone Number)</i></p> <p>David Van Os, David Van Os &amp; Associates, 8620 N. New Braunfels Ave. #101, San Antonio, TX 78217 2103327070</p>	<p><b>DEFENDANTS</b></p> <p>Joshua Muchnikoff and City of Austin</p> <p>County of Residence of First Listed Defendant _____  <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)* Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p><b>Other:</b></p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p><b>LABOR</b></p> <p><b>IMMIGRATION</b></p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

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

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District *(specify)*     6 Multidistrict Litigation - Transfer     8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*  
 42 USC 1983

Brief description of cause:  
 police misconduct-excessive force-4th Amennment

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    **DEMAND \$** unliquidated    CHECK YES only if demanded in complaint.    **JURY DEMAND:**     Yes     No

**VIII. RELATED CASE(S) IF ANY**    *(See instructions):*    see Attachment    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE: May 30, 2022    SIGNATURE OF ATTORNEY OF RECORD: *D Van Os*

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_    AMOUNT \_\_\_\_\_    APPLYING IFP \_\_\_\_\_    JUDGE \_\_\_\_\_    MAG. JUDGE \_\_\_\_\_

Maya Van Os vs. Joshua Muchnikoff and City of Austin  
ATTACHMENT TO CIVIL COVER SHEET – RELATED CASES

To the best of Plaintiff's information and belief the following are or may be related cases pending before Hon. U.S. District Judge Robert Pittman:

1:20-cv-01113-RP  
1:20-cv-01057-RP  
1:20-cv-01118-RP  
1:20-cv-01134-RP  
1:20-cv-01174-RP  
1:20-cv-00956-RP  
**1:20-cv-00901-RP**  
1:20-cv-01258-RP  
1:22-cv-00316-RP  
1:21-cv-00739-RP  
1:21-cv-00749-RP  
1:22-cv-00314-RP  
1:22-cv-00315-RP  
1:22-cv-00316-RP

To the best of Plaintiff's information and belief the following is or may be a related case pending before Hon. U.S. District Judge Lee Yeakel:

1:22-cv-00015-LY

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

MAYA VAN OS

Plaintiff

v.

JOSHUAH MUCHNIKOFF AND THE  
CITY OF AUSTIN

Defendants

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Case No. 1:22-cv-00522-RP

**DEFENDANT CITY OF AUSTIN’S ANSWER TO  
PLAINTIFF’S ORIGINAL COMPLAINT**

TO THE HONORABLE JUDGE PITMAN:

COMES NOW, Defendant the City of Austin (the “City”) and files its Answer to Plaintiff’s Original Complaint, and respectfully shows as follows:

1. Answer to Paragraph 1: The City admits that Plaintiff brings her case pursuant to the Fourth and Fourteenth Amendments and 28 U.S.C. §1983. The City denies the remainder of paragraph 1.
2. Answer to Paragraph 2: The City lacks sufficient information to admit or deny the allegations of paragraph 2.
3. Answer to Paragraph 3: The City admits that Joshua Muchnikoff is an officer with the Austin Police Department (“APD”), that he may be served as stated in Paragraph 3, and that Plaintiff is suing for events that occurred on May 30, 2020. Otherwise, the City denies the allegations of paragraph 3.
4. Answer to Paragraph 4: The City admits it may be served at the listed address and that Plaintiff is suing the City. Otherwise, the City denies the allegations of paragraph 4.

5. Answer to Paragraph 5: The City admits that Plaintiff alleges a claim under 42 U.S.C. § 1983, therefore Plaintiff has invoked this Court's subject matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1343(a)(3).

6. Answer to Paragraph 6: The City admits that venue is proper in the U.S. District Court for the Western District of Texas.

7. Answer to Paragraph 7: The City admits that on May 30, 2020, Plaintiff was at the scene of a protest in Austin. Otherwise, the City lacks sufficient information to admit or deny the remainder of the allegations of paragraph 7.

8. Answer to Paragraph 8: The City admits that Plaintiff was arrested near 800 N. IH 35 SB, which is close to the Austin Police Department headquarters. The City denies Plaintiff's constitutional rights were violated. The City lacks sufficient information to admit or deny the remainder of the allegations of paragraph 8.

9. Answer to Paragraph 9: The City lacks sufficient information to admit or deny the exact location of the events as alleged in paragraph 9. Otherwise, the City denies the allegations of Paragraph 9.

10. Answer to Paragraph 10: The City lacks sufficient information to admit or deny the exact location of APD officers or other persons as alleged in paragraph 10.

11. Answer to Paragraph 11: The City admits that police officers used beanbag shotguns and other interventions to respond to persons throwing objects at police officers and third parties. The City lacks sufficient information to admit or deny the remainder of the allegations of paragraph 11.

12. Answer to Paragraph 12: The City lacks sufficient information to admit or deny the allegations of paragraph 12.

13. Answer to Paragraph 13: The City admits that Plaintiff was carrying a poster. The City lacks sufficient information to admit or deny the remainder of the allegations of paragraph 13.

14. Answer to Paragraph 14: The City lacks sufficient information to admit or deny the allegations of paragraph 14.

15. Answer to Paragraph 15: The City lacks sufficient information to admit or deny the allegations of paragraph 15.

16. Answer to Paragraph 16: The City admits that sergeant Blake identified Plaintiff and that officer Muchnikoff approached and restrained Plaintiff. The City lacks sufficient information to admit or deny the allegations of paragraph 16 regarding Plaintiff's state of mind. Otherwise, the City denies the remainder of the allegations of paragraph 16.

17. Answer to Paragraph 17: The City admits that officer Muchnikoff restrained Plaintiff. The City lacks sufficient information to admit or deny the allegations of paragraph 17 regarding Plaintiff's state of mind. The City denies that officer Muchnikoff used excessive force, denies Plaintiff's characterization of officer Muchnikoff's actions, and otherwise denies the allegations of paragraph 17.

18. Answer to Paragraph 18: The City denies that Plaintiff did not resist arrest. The City admits that Plaintiff did not attempt to flee.

19. Answer to Paragraph 19: The City admits that Plaintiff did not pose an immediate threat to the safety of officer Muchnikoff. The City responds that Plaintiff interfered with officers intervening to prevent others from throwing objects at police officers and third parties and therefore denies that Plaintiff did not pose a threat to the safety of others.

20. Answer to Paragraph 20: The admits that while being handcuffed Plaintiff did not pose a threat to the safety of officer Muchnikoff or any other officer. Otherwise, the City lacks sufficient information to admit or deny the allegations of paragraph 20.

21. Answer to Paragraph 21: The City denies that Plaintiff was treated cruelly or was caused unnecessary pain. Otherwise, the City lacks sufficient information to admit or deny the remainder of the allegations of paragraph 21.

22. Answer to Paragraph 22: The City admits that Plaintiff was arrested for obstructing a highway, a class B misdemeanor, and that she was taken to jail. The City lacks sufficient information to admit or deny the remainder of the allegations of paragraph 22.

23. Answer to Paragraph 23: The City admits that Plaintiff was released from custody and that formal charges were not filed. Otherwise, the City lacks sufficient information to admit or deny the allegations of paragraph 23.

24. Answer to Paragraph 24: The City lacks sufficient information to admit or deny the allegations of paragraph 24.

25. Answer to Paragraph 25: The City denies Plaintiff's characterizations of the actions of APD officers as alleged in paragraph 25. Otherwise, the City lacks sufficient information to admit or deny the remainder of the allegations of paragraph 25.

26. Answer to Paragraph 26: The City denies the allegations in paragraph 26.

27. Answer to Paragraph 27: The City denies the allegations of paragraph 27.

28. Answer to Paragraph 28: The City admits that at least one individual attempted to interfere with Muchnikoff's restraint of the Plaintiff. The City denies the remainder of the allegations of paragraph 28.

29. Answer to Paragraph 29: The City denies the allegations of paragraph 29.

30. Answer to Paragraph 30: The City denies the allegations of paragraph 30.
31. Answer to Paragraph 31: The City admits the allegations of paragraph 31.
32. Answer to Paragraph 32: The City admits that Plaintiff brings suit under 42 U.S.C. §1983 and the U.S. Constitution. Otherwise, the City denies the remainder of the allegations of paragraph 32.
33. Answer to Paragraph 33: In response to paragraph 33, the City denies that Plaintiff did not resist arrest. The City admits that Plaintiff did not attempt to flee. The City admits that Plaintiff did not pose an immediate threat to the safety of officer Muchnikoff however Plaintiff interfered with officers intervening to prevent others from throwing objects at police officers and third parties and therefore denies that Plaintiff did not pose a threat to the safety of others. Otherwise, the City denies the allegations of paragraph 33.
34. Answer to Paragraph 34: The City denies the allegations in paragraph 34.
35. Answer to Paragraph 35: The City admits that Plaintiff seeks damages. Otherwise, the City denies the allegations of paragraph 35.
36. Answer to Paragraph 36: The City admits that Plaintiff seeks punitive damages against officer Muchnikoff. Otherwise, the City denies the allegations of paragraph 36.
37. Answer to Paragraph 37: The City admits Plaintiff seeks interest. Otherwise, the City denies the allegations of paragraph 37.
38. Answer to Paragraph 38: The City admits Plaintiff demands a jury.
39. Answer to Paragraph 39: The City admits Plaintiff seeks fees under 42 U.S.C. §1988. Otherwise, the City denies the allegations of paragraph 39.

**AFFIRMATIVE DEFENSES**

40. The City asserts the affirmative defense of qualified/official immunity for employee actions taken in the course and scope of employment with the City of Austin.
41. The City asserts the affirmative defense of governmental immunity for the City of Austin.
42. The City asserts that Plaintiff failed to mitigate damages, if any.
43. The City reserves the right to assert additional affirmative defenses as they become apparent.

**PRAYER**

WHEREFORE, Defendant the City of Austin prays that all relief requested by Plaintiff be denied and all claims against the City of Austin be dismissed, and for costs, attorney's fees, and any additional relief to which it is entitled at law or equity.

Respectfully submitted,

*/s/ Daniel R. Richards*

\_\_\_\_\_

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**ATTORNEYS FOR THE CITY OF AUSTIN**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 23, 2022, a true and correct copy of the foregoing document was served by CM/ECF to the following:

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*/s/ Daniel R. Richards*

\_\_\_\_\_ **DANIEL R. RICHARDS**

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

MAYA VAN OS,  
*Plaintiff,*

v.

JOSHUA MUCHNIKOFF and  
CITY OF AUSTIN,  
*Defendants.*

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Case No. 1:22-cv-00522-RP

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**DEFENDANT JOSHUA MUCHNIKOFF'S ORIGINAL ANSWER TO  
PLAINTIFF'S ORIGINAL COMPLAINT**

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TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Defendant, Joshua Muchnikoff, by and through his attorneys of record, and files this his Original Answer to Plaintiff's Original Complaint and in support thereof would respectfully show the Court as follows:

**I.**

**INTRODUCTION**

1. Between May 25 and July 31 of 2020, approximately 2,037 law enforcement officers were injured during protests related to the in-custody death of George Floyd in Minnesota.<sup>1</sup> During those protests, approximately 62% of major U.S. cities experienced looting.<sup>2</sup> 56% of major U.S. cities experienced arson incidents—a statistic which does not include the 97 police vehicles set on fire during that time period, which was an act of violence reported by over 26% of major city law

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<sup>1</sup> *Report on the 2020 Protests & Civil Unrest*, Major Cities Chiefs Association 9–12 (October 2020), <https://majorcitieschiefs.com/wp-content/uploads/2021/01/MCCA-Report-on-the-2020-Protest-and-Civil-Unrest.pdf>.

<sup>2</sup> *Id.*

enforcement agencies nationwide.<sup>3</sup> Approximately 72% of major city law enforcement agencies reported officer injuries.<sup>4</sup>

2. State and local governments in 21 different U.S. states were forced to call up the U.S. National Guard to defend persons and property from violent rioters.<sup>5</sup> Property Claims Services designated the riots as a “multi-state catastrophe event,” which is the first such designation for a civil disorder event since 1992.<sup>6</sup> Conservative insurance estimates of property damage caused during the riots exceeds \$1 billion dollars—the “costliest civil disorder in U.S. history.”<sup>7</sup>

3. The weapons used by the “protest” rioters nationwide varied. The most common weapons used “were improvised or weapons of opportunity such as rocks, bricks, pieces of landscape, and bottles (including frozen and glass bottles).”<sup>8</sup> Over three quarters of major city law enforcement agencies reported rioters using such weapons.<sup>9</sup> “Another common violent tactic used by protestors involved throwing ‘Molotov cocktails’ at officers,” which was reported by a staggering 46% of major city law enforcement agencies nationwide.<sup>10</sup> “Another common tactic was to use peaceful protesters as human shields while violent individuals attacked officers and attempted to incite violence by throwing objects from deep within crowds.”<sup>11</sup>

4. 63% of agencies reported incendiary fireworks thrown or launched at officers.<sup>12</sup> 51% of agencies reported officers being confronted by protestors wielding firearms—including “AR-15s,

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Facts + Statistics: Civil Disorders*, Insurance Information Institute, <https://www.iii.org/fact-statistic/facts-statistics-civil-disorders>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Report on the 2020 Protests & Civil Unrest* at 11.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 11 – 12.

shotguns, and handguns.”<sup>13</sup> Other weapons wielded by protestors commonly included bats, hammers, metal poles, and shields.<sup>14</sup> Five different agencies reported “police officers being shot or critically injured” during the riots, one agency reported rioters discharging their firearms from moving vehicles, and at least two agencies “reported protestors being shot and killed by other protestors.”<sup>15</sup>

5. It is undisputed that many protestors committed no violence whatsoever during the protests. It is equally undisputed that a significant number of protestors *did* commit violent acts during the protests. When a previously peaceful protest suddenly includes persons who are carrying deadly weapons, injuring police officers, throwing Molotov cocktails, looting buildings, and setting cars on fire, the protest is no longer a protest. It is a riot.

6. Austin was by no means immune to the violence. Rioters looted buildings and businesses; shattered windows—including buildings with important historical significance; set cars and other property on fire; broke open an ATM; and defaced the Capitol grounds and numerous other properties.<sup>16</sup> Rioters in Austin also launched or threw items that included—but were not limited to—“rocks, bricks, eggs, water bottles, and Molotov cocktails” at Austin Police Department officers.<sup>17</sup> Agitators spray painted messages around downtown Austin literally encouraging the killing of police officers.<sup>18</sup> Starting on May 30, the Austin Police Department was forced to issue

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See e.g. Ken Herman, *Herman: A sad Sunday morning on Sixth Street*, AUSTIN AMERICAN STATESMAN (May 31, 2020, 1:38 PM), <https://www.statesman.com/news/20200531/herman-sad-sunday-morning-on-sixth-street>.

<sup>17</sup> Heather Osborne, Ariana Garcia & Katie Hall, *Fires set as Austin protests against police violence spread, scatter*, AUSTIN AMERICAN STATESMAN (May 30, 2020, 11:07 AM), <https://www.statesman.com/news/20200530/fires-set-as-austin-protests-against-police-violence-spread-scatter>.

<sup>18</sup> See **Ex. 1** and **Ex. 2**, *photos of graffiti outside Austin Police Department headquarters*.

a “citywide request for assistance, which means all Austin officers [were] asked to report to duty.”<sup>19</sup> DPS sent “more than 1,500 officers to assist local police departments” statewide, and the governor ultimately “activated the Texas National Guard.”<sup>20</sup> By the time of the incident underlying this lawsuit, the Austin protests were no longer protests—they were riots. It is thus within the context of an ongoing riot that the force used by APD officers must be analyzed.

7. On May 30, APD Sergeant Muchnikoff was one of the APD officers on the Special Response Team tasked with policing the protests and riots to protect the citizens of Austin and the city itself on the day in question. He personally observed rioters throwing projectiles at APD officers that included but were not limited to rocks, paint, glass bottles and jars with unknown chemicals, fluid-filled water bottles, human waste, and large fireworks. Officers on the scene had reason to believe that the protests would turn violent or even deadly—including the knowledge that rioters had burned a police precinct to the ground in a related “protest” two days earlier.<sup>21</sup>

8. Plaintiff Maya Van Os was far from an innocent bystander. Van Os planted herself directly in front of APD officers tasked with protecting themselves and others from rioters throwing dangerous projectiles. Van Os then proceeded to use her sign to purposely block the officers’ view of nearby projectile-throwing rioters, and thus intentionally facilitated the continuance of attacks on police officers. Van Os even went so far as to strike at the aforementioned officers’ less lethal weapons with the sign she held in her hands.

9. APD officers on the scene were left with no choice. The decision was made to arrest Van Os to remove her from the protest and consequently neutralize her continuing interference and

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<sup>19</sup> Osborne, *supra* fn 17.

<sup>20</sup> *Id.*

<sup>21</sup> See e.g. Sarah Kerr, Mike Shum, Katie G. Nelson, Dmitry Khavin & Haley Willis, *Minneapolis Precinct Fire: How a Night of Chaos Unfolded*, N.Y. TIMES (May 29, 2020), <https://www.nytimes.com/video/us/100000007162707/minneapolis-police-protest-burn.html?searchResultPosition=1>.

shielding of violent rioters. Sergeant Muchnikoff entered the crowd and performed a textbook arrest within the context of the dangerous riot occurring around him. As he did so, one or more nearby rioters violently grabbed Sergeant Muchnikoff and Van Os, and attempted to drag them both back into the crowd of rioters. Nearby officers had to step in and physically intervene to stop them—serving to highlight the dangerous conditions and corresponding need to utilize quick and decisive arrest techniques.

10. Plaintiff Van Os’s conduct on May 30, 2020 crossed the line of peaceful protest—including acts that threatened the health and safety of both officers and other protestors. Plaintiff’s aiding and abetting of rioters throwing rocks and other projectiles far exceeded anything that would be protected by the First Amendment.

11. At all times, Sergeant Muchnikoff acted pursuant to his training and accepted police procedures. At no time did Sergeant Muchnikoff use more force than was reasonably necessary to effect the arrest of Plaintiff. Sergeant Muchnikoff’s conduct as a law enforcement officer was reasonable, especially when the requisite consideration is given to his surrounding circumstances that were “tense, uncertain, and rapidly evolving.”<sup>22</sup> He is entitled to the protections of Qualified Immunity as a result.

## II.

### ORIGINAL ANSWER

#### A. Introduction.

12. Defendant admits that Plaintiff is seeking relief under the First and Fourth Amendments of the Constitution contained within Paragraph 1 of Plaintiff’s Original Complaint. Otherwise, denied.

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<sup>22</sup> See *Graham v. Connor*, 490 U.S. 386, 397 (1989).

**B. Parties.**

13. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained within Paragraph 2 of Plaintiff's Original Complaint.

14. As to the allegations contained within Paragraph 3 of Plaintiff's Original Complaint, Defendant denies that an APD officer may be validly served at 715 E. 8<sup>th</sup> Street, Austin Texas 78701 through means other than personal service of process. Defendant otherwise admits the remaining allegations therein.

15. Defendant admits the City of Austin may be served at the listed address and that Plaintiff is suing the City. Otherwise, Defendant denies the allegations contained within Paragraph 4 of Plaintiff's Original Complaint.

**C. Jurisdiction and Venue.**

16. Defendant admits the allegations contained within Paragraphs 5 – 6 of Plaintiff's Original Complaint.

**D. Pertinent Facts, Causes of Action, and Damages.**

17. As to the allegations contained within Paragraph 7, Defendant admits that on May 30, 2020 Plaintiff was at the scene of a protest-turned-riot in Austin. Otherwise, Defendant lacks sufficient information to admit or deny the remainder of the allegations therein.

18. As to the allegations contained within Paragraph 8, Defendant admits that Plaintiff was arrested near 800 N. IH 35 SB, which is close to the Austin Police Department headquarters. Defendant denies Plaintiff's constitutional rights were violated. Defendant denies Plaintiff was standing on grass when she was aggressively blocking the view of APD officers. For her safety, Van Os was taken to a grassy area before she was handcuffed.

19. As to the allegations contained within Paragraph 9, Defendant denies that Plaintiff Van Os was victimized, that her constitutional rights were violated, and that any excessive force was used against her. Defendant admits that Van Os was standing near other rioters. Otherwise, denied.

20. As to the allegations contained within Paragraphs 10 – 12, Defendant admits that many officers were standing in a line facing a group of rioters, but denies that Plaintiff had several feet between her and the sign she was using to strike at an APD officer's less lethal shotgun. Defendant admits that certain APD officers had fired less lethal kinetic bean bag rounds at specific rioters who were throwing dangerous projectiles at officers and protestors. Defendant denies that APD officers intentionally discharged any such rounds at peaceful protestors. Defendant lacks sufficient knowledge to be able to know the truth of what Plaintiff herself observed or believed. Defendant admits that Plaintiff attempted to interfere with officers' use of less lethal rounds, but lacks sufficient knowledge to be able to know the truth of what Plaintiff or any other parties said verbatim.

21. As to the allegations contained within Paragraphs 13 – 15, Defendant admits that Plaintiff was holding a sign in the air blocking certain officers' view of rioters throwing projectiles, but lacks sufficient knowledge to be able to verify what was written on such sign, nor how large or old Plaintiff was at the time of the riots. Defendant denies that Plaintiff ever retreated from the officers she was confronting in any meaningful way.

22. As to the allegations contained within Paragraph 16, Defendant denies that in the dangerous backdrop of the riots any police officer would think it was safe or reasonable to inform Plaintiff she was under arrest before seizing her, as highlighted by the immediate aftermath of her struggling to get away, and other rioters trying to physically pull her and Sergeant Muchnikoff into the crowd. Defendant admits another officer spoke with Sergeant Muchnikoff and pointed at Plaintiff.

Defendant lacks sufficient knowledge to be able to know the truth of what Plaintiff herself observed or believed. Defendant admits he quickly approached Plaintiff but denies she was standing on grass at the time. Defendant denies that he used any force that was unnecessary, or that he was “extremely” aggressive or forceful. Defendant denies that other officers did not seize other rioters, as another officer next to Sergeant Muchnikoff intervened to confront and arrest the rioter who was attempting to drag Muchnikoff and Plaintiff back into the crowd. Otherwise, denied.

23. As to the allegations contained within Paragraphs 17 – 21, Defendant admits that he seized Plaintiff to effect an arrest, but denies Plaintiff’s characterization of his actions while doing the same. Defendant admits that he carried Plaintiff to a grassy area behind other police officers so that Plaintiff could be handcuffed on the ground. Defendant denies that he used excessive force or otherwise did anything unreasonable during the arrest of Van Os, and denies that Van Os’s actions in blocking officers’ views of projectile-throwing rioters did not pose a threat to others. Defendant lacks sufficient knowledge to be able to know the truth of what Plaintiff herself observed, believed, or felt, nor what Plaintiff had ever experienced or not experienced previously. Defendant denies that he ever intentionally caused Plaintiff unnecessary pain or otherwise treated her cruelly. Otherwise, denied.

24. As to the allegations contained within Paragraphs 22 – 25, Defendant denies that he violently slammed Plaintiff to the ground in any unreasonable or excessive manner. Defendant did not personally perceive that Plaintiff suffered any material injuries from the incident. Otherwise, Defendant lacks sufficient knowledge to be able to know the truth of the remaining allegations therein, and therefore denies the same.

25. Defendant denies the allegations contained within Paragraphs 26 – 27.

26. As to the allegations contained within Paragraphs 28 – 31, Defendant admits that another rioter attempted to drag her and Sergeant Muchnikoff back into the crowd while he was trying to effect the arrest of Plaintiff. Defendant further admits that he was acting under the color of law. Otherwise, denied.

27. As to the allegations contained within Paragraph 32, Defendant admits that Plaintiff brings suit under 42 U.S.C. §1983 and the U.S. Constitution. Otherwise, denied.

28. Defendant denies the allegations contained within Paragraphs 33 – 34.

29. As to the allegations contained within Paragraphs 35 – 39, no answer is necessary from this Defendant. To the extent any answer is deemed necessary, Defendant admits that Plaintiff seeks the relief requested therein. Otherwise, denied.

### III.

#### **AFFIRMATIVE DEFENSES & IMMUNITIES**

30. Defendant denies 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.*

31. 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, and that no clearly established law exists prohibiting him from arresting Plaintiff Van Os in the manner in which he did.

32. Further and in the alternative, the incident in question and the resulting harm to Plaintiff were caused or contributed to by another persons' own illegal and/or violent or reckless conduct, including but not limited to the conduct of Plaintiff herself, and other rioters. To the extent legally

applicable herein, Defendant invokes the comparative responsibility provisions of the Texas Civil Practice & Remedies Code.<sup>23</sup>

33. Defendant further pleads that, in the unlikely event he is 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.

34. Defendant pleads that he had legal justification for each and every action taken by him relating to this incident.

35. Defendant asserts 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.

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

37. To the extent Defendant did not address a specific averment made by Plaintiff in her Original Complaint, Defendant expressly denies all such averments.

#### IV.

#### **JURY DEMAND**

38. Pursuant to Federal Rule of Civil Procedure 48, Defendant hereby requests a jury trial.

#### V.

#### **PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Defendant Joshua Muchnikoff prays that upon a final hearing of this cause, the Court dismiss all of Plaintiff's claims with prejudice, that all costs of court be assessed against Plaintiff, that he be awarded attorney fees incurred in the defense of this suit, and for all further relief to which he may be justly entitled.

Respectfully submitted,

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<sup>23</sup> See TEX. CIV. PRAC & REM. CODE ANN. § 33.001.



# **Exhibit**

# **1**



# **Exhibit**

# **2**



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

MAYA VAN OS,  
*Plaintiff,*

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v.

Case No. 1:22-cv-00522-RP

JOSHUA MUCHNIKOFF and  
THE CITY OF AUSTIN,  
*Defendants.*

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**JOINT STIPULATION OF DISMISSAL WITH PREJUDICE  
AS TO DEFENDANT JOSHUA MUCHNIKOFF**

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TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW, Plaintiff MAYA VAN OS and Defendant JOSHUA MUCHNIKOFF, by and through their undersigned counsel of record, and pursuant to Federal Rule Civil Procedure 41(a)(1)(A)(ii), would respectfully Jointly Stipulate to Dismissal with Prejudice as follows:

**I. DISMISSAL WITH PREJUDICE**

1. Plaintiff has agreed not to pursue this lawsuit and wishes to voluntarily dismiss any and all claims asserted against Defendant Muchnikoff. By his signature beneath, counsel for Plaintiff accordingly represents to the Court that she waives any and all legal claims she may have against him. Additionally, by his signature beneath, counsel for Defendant Muchnikoff agrees to this Joint Stipulation with Prejudice.

2. Generally, stipulated dismissals by plaintiffs under Rule 41(a)(1)(A)(ii) require no judicial action or approval and can be effective once filed.<sup>1</sup> Stipulated dismissals can be made with

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<sup>1</sup> *Yesh Music v. Lakewood Church*, 727 F.3d 356, 362 (5th Cir. 2013) (articulating some exceptions to this general rule).

prejudice, so long as it is clearly articulated in the stipulation.<sup>2</sup> The parties intend for this stipulation of dismissal to be with prejudice. The parties agree that each party shall bear their own attorney's fees and costs of court.

## II. PRAYER

3. WHEREFORE PREMISES CONSIDERED, Plaintiff Maya Van Os and Defendant Joshua Muchnikoff respectfully request that this Court take notice of this Joint Stipulation of Dismissal, and accordingly dismiss Defendant Muchnikoff from this suit with prejudice to refiling.

Respectfully submitted,

By: /s/ Matt Holder \_\_\_\_\_

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**ATTORNEY FOR PLAINTIFF  
MAYA VAN OS**

- AND -

**WRIGHT & GREENHILL, P.C.**  
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(512) 476-5382 – Fax

By: \_\_\_\_\_ /s/ Blair J. Leake

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**ATTORNEY FOR DEFENDANT  
JOSHUA MUCHNIKOFF**

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<sup>2</sup> FED R. CIV. P. 41(a)(1)(B) provides that a stipulation of dismissal is without prejudice unless the dismissal states otherwise.

**CERTIFICATE OF SERVICE**

I hereby certify that on December 18, 2023, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service/E-Mail and/or U.S. First Class Mail, in accordance with the Federal Rules of Civil Procedure, as follows:

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816 Congress Avenue, Suite 1200

Austin, Texas 78701

/s/ Matt Holder

Matt Holder

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

MAYA VAN OS,

Plaintiff,

v.

JOSHUA MUCHNIKOFF and  
THE CITY OF AUSTIN,

Defendants.

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1:22-CV-522-RP

**ORDER**

On March 4, 2021, Plaintiff Maya Van Os (“Plaintiff”) and Defendant Joshua Muchnikoff (“Muchnikoff”) dismissed with prejudice all claims asserted by Plaintiff against Muchnikoff in this case by joint stipulation of dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii). (Dkt. 53). “Stipulated dismissals under Rule 41(a)(1)(A)(ii) . . . require no judicial action or approval and are effective automatically upon filing.” *Yesh Music v. Lakewood Church*, 727 F.3d 356, 362 (5th Cir. 2013).

**IT IS ORDERED** that Joshua Muchnikoff is **TERMINATED** as a party in this case.

**SIGNED** on December 19, 2023.



\_\_\_\_\_  
ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE

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

**MAYA VAN OS**

*Plaintiff*

v.

**JOSHUA MUCHNIKOFF AND  
CITY OF AUSTIN**

*Defendants*

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CIVIL ACTION No. 1:22-CV-00522-RP

**JOINT STIPULATION OF DISMISSAL WITH PREJUDICE**

Now come, through undersigned counsel, Plaintiff, Maya Van Os and Defendant, The City of Austin (hereinafter referred to as “Parties”), and pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), file this Joint Stipulation of Dismissal with Prejudice as follows:

The parties have resolved all matters in dispute by agreement. The parties agree that this suit is dismissed with prejudice to the refiling of the claims made herein. The parties agree that each party shall bear their own attorney’s fees and costs of court.

Respectfully submitted,

By: /s/ Matt Holder

Matt Holder

Texas State Bar No. 24026937

[Matt@vanoslaw.com](mailto:Matt@vanoslaw.com)

**DAVID VAN OS & ASSOCIATES, P.C.**

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**ATTORNEY FOR PLAINTIFF**

**MAYA VAN OS**

By: /s/ Daniel R. Richards

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**RICHARDS RODRIGUEZ & SKEITH, LLP**

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Austin, Texas 78701

Telephone: (512) 476-0005

Facsimile: (512) 476-1513

**ATTORNEYS FOR THE CITY OF AUSTIN**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 20, 2023, a true and correct copy of the foregoing document was served via email to the following:

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/s/ Daniel R. Richards

**DANIEL R. RICHARDS**

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

MAYA VAN OS,

Plaintiff,

v.

CITY OF AUSTIN,

Defendant.

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1:22-CV-522-RP

**ORDER**

On December 20, 2023, 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. 26).

“Stipulated dismissals under Rule 41(a)(1)(A)(ii) . . . require no judicial action or approval and are effective automatically upon filing.” *Yesh 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**.

The parties shall each bear their own attorney’s fees and costs of court.

**SIGNED** on December 21, 2023.



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ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE