

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SARANEKA ALEXANDER,

Plaintiff

v.

CITY OF AUSTIN, KYU AN, AND
DANIEL MCCAMERON

Defendants.

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CAUSE OF ACTION:

1:22-cv-520

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff SARANEKA ALEXANDER brings this 42 U.S.C. § 1983 case against the City of Austin, Austin Police Department Officer Kyu An, and Austin Police Department Daniel McCameron for the brutal and excessive force inflicted on her as she was exercising her free speech and assembly rights and demonstrating against police violence.

I. PARTIES

1. Plaintiff Saraneka Alexander is a resident of Travis County, Texas.
2. Defendant City of Austin is a municipality that operates the Austin Police Department and may be served through its City Clerk at 301 W. 2nd Street, Austin, TX 78701. The City's policymaker for policing matters was former Police Chief Brian Manley at the time of the incident and is currently Chief Joseph Chacon.
3. Defendant Kyu An is an individual that was employed by the City of Austin Police Department at the time of the incident that make the basis of this lawsuit, and he is sued in his personal capacity for compensatory and punitive damages. Upon information and belief, Defendant An is still employed by the City of Austin. He can be served with process at 715 E. 8th

Street, Austin, Texas, 78701. At all relevant times, Defendant Kyu An was acting under color of law as an officer of the Austin Police Department.

4. Defendant Daniel McCameron is an individual that was employed by the City of Austin Police Department at the time of the incident that make the basis of this lawsuit, and he is sued in his personal capacity for compensatory and punitive damages. Upon information and belief, Defendant McCameron is still employed by the City of Austin. He can be served with process at 715 E. 8th Street, Austin, Texas, 78701. At all relevant times, Defendant McCameron was acting under color of law as an officer of the Austin Police Department.

II. JURISDICTION AND VENUE

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

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

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

8. Venue of this cause is proper in the Western District pursuant to 28 U.S.C. § 1391(b) because a substantial portion of the events or omissions giving rise to Plaintiff's claims occurred in Travis County, which is within the Western District of Texas.

III. FACTS

9. Following the police killings of George Floyd in Minneapolis and Mike Ramos in Austin, demonstrators organized protests against police brutality outside the headquarters of the Austin Police Department on May 30, 2020 and May 31, 2020.

10. Plaintiff Saraneka Alexander attended the demonstration to support the peaceful demonstrations against police violence and racial injustice.

11. During the protest on May 30, 2020, Alexander was one of many protesters demonstrating in front of APD headquarters on the southbound access road and 8th street underpass.

12. At approximately 6:00pm, Alexander was fervently protesting against police violence when APD officers began to fire less lethal rounds into the crowd without any apparent justification.

13. Both APD officers Kyu An and Daniel McCameron fired less lethal rounds at Alexander.

14. APD Officer McCameron fired a less lethal shotgun at Alexander once.

15. APD Officer An fired a less lethal shotgun at Alexander four times.

16. Video evidence shows that Alexander was doing nothing that would justify such immense use of force.

17. Alexander was struck once in the stomach, then, as she turned to walk away, was struck again in the back.

18. Other protesters immediately surrounded Alexander to come to her aid as she fell to the ground.

19. Despite seeing her fall to the ground and knowing they shot her, no APD officer came to help Alexander.

20. For hours after shooting Alexander, numerous officers standing on the APD headquarters' front steps continued to shoot less lethal shotguns often and without apparent justification into the crowd.

21. Numerous officers were standing alongside Officers An and McCameron, but not one interceded to stop them from continuing to fire their less lethal shotguns into the crowd without reason.

22. Upon information and belief, Officers An and McCameron, and APD leadership generally, were substantially motivated by their opposition to the demonstrators' message that police violence must end and that Black Lives Matter.

23. Officers An and McCameron's attacks on Alexander were shocking, unreasonable, and would chill a person of ordinary firmness from continuing to engage in protected speech and assembly.

24. Tragically, Alexander was just one of several people that Officer An shot on May 30 and May 31.

25. Earlier, at 5:10pm, APD officer Kyu An shot Bomani Barton who was backing away from police on I-35 and had done nothing wrong—in the head with a less lethal shotgun.

26. Bomani Barton had done absolutely nothing wrong.

27. APD Officer Kyu An used unreasonable force against Barton.

28. Officer An has since been criminally indicted by a Travis County Grand Jury for aggravated assault by a public servant for his assault on Barton.

29. Worse still, Alexander and Barton were just two of many people APD officers shot on May 30 and May 31.

30. In fact, on May 30, 2020, APD overreacted numerous times and used chilling, excessive force on multiple individuals. Among others, APD's victims included Nicole Underwood, Jason Gallagher, Joe Herrera, Levi Ayala, and Steven Arawn.

31. APD Officer John Siegel used unreasonable force against Underwood and has been indicted for aggravated assault by a public servant.

32. When asked to explain why he shot Underwood, APD Officer Siegel pled the Fifth.

33. APD Officer Nicholas Gebhart used unreasonable force against Ayala and has been indicted for aggravated assault by a public servant.

34. The City has agreed to pay Ayala a settlement of \$2,950,000.

35. APD Officers John Siegel, Salvador Gonzalez-Galvan, and Bryan McCulloch used unreasonable force against Gallagher.

36. APD Officer James Morgan used unreasonable force against Herrera.

37. Numerous other officers used unreasonable force on May 30, 2020.

38. Yet APD leadership did nothing to stop APD's continued violence.

39. On the evening of May 30, 2020, Austin Councilmember Greg Casar texted Chief of Police Brian Manley, City Manager Spencer Cronk, Mayor Steve Adler, and other senior officials about the horrific injuries caused by APD officers' use of less lethal shotguns.

40. In fact, Casar specifically told them about the injuries to Ayala and Underwood and begged them to stop APD officers from continuing to shoot innocent protesters.

41. City and APD leadership refused and APD officers continued to shoot less lethal shotguns with abandon on May 31, 2020.

42. One of the many individuals shot on May 31 was Anthony Evans. Evans was hit in the face. Evans was doing nothing wrong before being shot.

43. APD Officer Kyle Felton used unreasonable force against Evans.

44. The City has agreed to pay a settlement to Mr. Evans of \$2,000,000.

45. Another of the many individuals APD shot in the head was Justin Howell, a twenty-year-old Black college student who also had done nothing that could possibly justify him being shot.

46. APD Officer Jeffrey Teng used unreasonable force against Howell and the City has agreed to pay him a settlement of \$8,000,000.

47. Teng also has been indicted for aggravated assault by a public servant.

48. And when given the opportunity to explain why he shot Justin, he pled his Fifth Amendment right not to incriminate himself.

49. As Justin lay on the ground unconscious and bleeding, no police officer came to help him. Protesters rushed to help Howell, who lay bleeding from a serious head wound from being shot in the head with a projectile fired by an APD officer.

50. Incredibly, rather than assist those protesters get Justin emergency medical care, an APD officer shot at them.

51. In particular, APD officer Chance Bretches shot a medic with her hands in the air who was trying to get Justin help.

52. Meredith Drake was a street medic that was walking toward police with a red cross on her chest and her hands above her head when she was shot by APD.

53. Drake posed no danger whatsoever to anyone before Bretches shot her.

54. APD Officer Chance Bretches used unreasonable force against Drake.

55. And when asked directly if he intentionally shot Ms. Drake while she posed no danger to anyone, Officer Bretches invoked his Fifth Amendment right not to incriminate himself.

56. And Bretches pled the Fifth to questions concerning his assaults on another citizen in 2019 and whether he also assaulted Arianna Chavez.

57. Upon information and belief, to date, none of the officers who have intentionally shot kinetic projectiles at or near protesters have been disciplined.

58. Nor has the APD and its policymakers disciplined any of the officers who saw and did not stop officers from using unreasonable or conscience shocking force.

59. And APD's leaders, who could have and should have stopped their subordinate officers' dangerous conduct, have not been counseled or disciplined in any way for permitting this misconduct.

60. This lack of discipline as to senior leaders and Manley himself is all the more shocking as then Chief Manley acknowledged that Anthony Evans, Justin Howell, Levi Ayala, and numerous other individuals were victims of unjustifiable force by APD officers on May 30 and May 31, and that such force was not justified by any facts known to the department or any of the shooting officers.

61. Moreover, then APD Chief of Police, Brian Manley, adopted policies that encouraged, authorized, or tolerated this unreasonable, unnecessary, and brutally excessive force even though Chief Manley had long known of the dangers of firing projectiles into crowds and at defenseless persons, and was actually aware that bean bag rounds fired from shotguns had been unreasonably used multiple times on May 30, 2020 and multiple times again on May 31, 2020. Despite this, and Manley's awareness of the severe injuries caused by them, APD policies – and Manley – authorized their continued use.

62. Chief Manley knew, as any reasonable policymaker would also know, that as a direct consequence of such practices, people like Plaintiff would be injured and victimized, and their constitutional rights violated.

63. Moreover, APD had a long-standing policy of paramilitary training – teaching its officers to act as “warriors,” and see conflict with members of the public as inevitable as part of an “us vs. them” culture.

64. Officers were trained to be “indifferent to the community,” according to a report commissioned by the City.

65. APD’s training academy taught cadets – who later became APD officers – to act as if they were at war with the community they were supposed to be protecting. In one incident, an academy instructor told cadets that if “anyone here says they want to be a police officer to ‘help people,’ I will punch you in the face.”

66. Another instructor told cadets to “pick someone out of a crowd, and ask yourself, ‘how could I kill that person?’”

67. A report commissioned by the City found that officers were trained to see “the Austin community [as] the enemy.”

68. Unsurprisingly, the report further found that “the culture of a police training academy reflects the culture of a department and impacts the mindset and approach to policing.” The report concluded that the City must provide “training for handling protests with non-militaristic approaches.”

69. As a direct and proximate result, numerous other people suffered severe and devastating injuries as a result of APD’s practices and excessive force on May 30, 2020 and May 31, 2020.

70. According to Dell Medical Center’s physicians, at least nineteen people required serious medical care for injuries caused by APD’s use of less lethal shotguns on May 30, 2020 and May 31, 2020. Seven victims required surgical interventions and four victims retained portions of the “beanbag” shotgun rounds in their bodies/heads.

71. Victims suffered intercranial hemorrhages, depressed skull fractures, depressed frontal bone fracture, fractured jaws, and brain damage.

72. After ignoring the pattern of excessive force that preceded and followed the attack on Cesar for several more days, multiple members of the City Council called for Manley to be removed as APD's Chief of Police.

73. Following the calls to remove him, Chief Manley acknowledged the obvious, the policies at Austin Police Department concerning the use of bean bag shotguns were dangerously flawed and he agreed to change them – a change any reasonable policymaker should have known to have made prior to Plaintiff being shot.

74. No longer would officers be permitted to fire potentially deadly kinetic projectiles from shotguns at people in crowds.

75. Manley, however, did not ban the use of kinetic projectiles in all situations and did not reform the dangerous paramilitary culture of the police academy.

76. Nor did Manley take any steps to discipline, re-train, or terminate any of the officers known to have used excessive force in response to the peaceful May 30 and May 31, 2020 protests.

IV. CAUSES OF ACTION

A. FOURTH AND FOURTEENTH AMENDMENT EXCESSIVE FORCE – AS TO DEFENDANTS

KYU AN AND DANIEL MCCAMERON

77. Plaintiff hereby adopts, incorporates, restates, and re-alleges the preceding paragraphs as if alleged herein.

78. APD Officers Kyu An and Daniel McCameron, while acting under color of law, used excessive force on Saraneka Alexander.

79. APD Officers Kyu An and Daniel McCameron's use of force was wholly excessive to any conceivable need, objectively unreasonable in light of clearly established law, and directly caused

Plaintiff Alexander to suffer serious injuries. Therefore, APD Officers Kyu An and Daniel McCameron violated Alexander's clearly established Fourth Amendment right to be free from excessive force and unreasonable seizure.

80. As a direct and proximate result of APD Officers Kyu An and Daniel McCameron's actions, Alexander suffered and continues to suffer significant injuries.

B. § 1983 FIRST AMENDMENT RETALIATION – AS TO DEFENDANTS KYU AN AND DANIEL MCCAMERON

81. Plaintiff incorporates the preceding paragraphs as if alleged herein.

82. The First Amendment's protections for free speech and assembly prohibit agents of the government from subjecting an individual, like Alexander, to retaliation for engaging in protected speech rights.

83. Alexander exercised her free speech and assembly rights by attending the demonstration against police violence and brutality across the nation.

84. An and McCameron's actions were an effort to cease Alexander's freedoms of speech and assembly and to instill fear in her.

85. Plaintiff was protesting when she was shot with the projectiles by An and McCameron. An and McCameron did not provide Plaintiff a lawful order, never suspected Plaintiff of committing a crime, never attempted to arrest Plaintiff, and never attempted to render aid after the assault. Plaintiff was never charged with a crime related to the protest.

86. Upon information and belief, An and McCameron's use of force against Alexander was substantially motivated by his disagreement with the content of Alexander's speech. Upon information and belief, An and McCameron shot Alexander with the projectiles substantially because An and McCameron disagreed with Alexander's right to assemble and/or her protected speech.

87. In addition, Alexander was yet one more minority senselessly injured by APD's use of excessive force. Among others, these include Anthony Evans, Levi Ayala, Bomani Barton, and Justin Howell.

C. PUNITIVE/EXEMPLARY DAMAGES – AS TO DEFENDANTS KYU AN AND DANIEL MCCAMERON

88. Plaintiff incorporates the preceding paragraphs as if alleged herein.

89. Defendant's conduct was intentional, wanton, egregious, reckless, and endangered countless community members. Plaintiff seeks punitive damages as well to deter future uses of such excessive force.

D. QUALIFIED IMMUNITY UNDER § 1983

90. Plaintiff incorporates the preceding paragraphs as if alleged herein

91. During the protest on May 30, 2020, it is clear that Alexander had the clearly established right to be free from harm, including excessive force in the form of improper use of dangerous projectiles.

92. Officers An and McCameron were carrying out governmental functions in employing the excessive use of force against Plaintiff. Government actors can be entitled to qualified immunity to their individual liability, but this immunity is waived if the complainant shows that:

- a. the individual's acts deprived the party of constitutional rights under color of law;
- b. the deprived rights were clearly established and constitutional rights which existed at the time of the acts; and
- c. such acts were not objectively reasonable under the circumstances, that is, no reasonable official could have believed at the time that the conduct was lawful.

E. FIRST, FOURTH, AND FOURTEENTH AMENDMENT § 1983 MONELL CLAIM

93. Plaintiff incorporates the preceding paragraphs as if alleged herein.

94. APD Officers An and McCameron, while acting under color of law, used excessive and conscience shocking force on Saraneka Alexander when she posed no danger to anyone.

95. This use of force was wholly excessive to any conceivable need, objectively unreasonable in light of clearly established law, and directly caused Plaintiff Alexander to suffer serious injuries. Therefore, Alexander's clearly established right to be free from excessive and conscience shocking force was violated.

96. As a direct and proximate result, Alexander suffered and continues to suffer significant injuries.

97. Likewise, the First Amendment's protections for free speech and assembly prohibit agents of the government from subjecting an individual, like Alexander, to retaliation for engaging in protected speech.

98. Alexander exercised her free speech and assembly rights by attending the demonstration against police violence, and by demonstrating near officers.

99. Upon information and belief, APD Officers An and McCameron's use of force against Alexander was substantially motivated by their disagreement with the content of Alexander's speech. Upon information and belief, the officers shot Alexander with the beanbag shotgun substantially because the officers disagreed with Alexander's right to assemble and/or her protected speech.

100. Moreover, Defendant City of Austin, had the following policies, practices, or customs in place when APD Officers An and McCameron, acting under color of law, injured Plaintiff Alexander and violated her rights under the Constitution:

- a. Shooting kinetic projectiles into crowds where people could be injured;

- b. Shooting people who posed no danger to anyone with kinetic projectiles;
- c. Using, authorizing, and/or tolerating excessive force against non-violent protestors;
- d. Failing to adequately discipline officers;
- e. Failing to adequately supervise officers;
- f. Failing to adequately train officers concerning de-escalation of force, crowd control, use of force against non-violent protestors, and the use or misuse of kinetic projectiles
- g. Retaliating against protestors;
- h. Failing to train officers regarding demonstrators' free speech and assembly rights;
- i. Not intervening to stop constitutional violations, including but not limited to retaliation, conduct that shocks the conscience, and excessive force;
- j. Training officers to act as paramilitary "warriors," and creating an "us vs. them" culture where officers were "at war" with the community they were supposed to be serving, which encouraged officers to use excessive force; and
- k. Failing to train or instruct officers about specific incidents it considers unreasonable, excessive force, or in violation of the Constitution.

101. Each of the policies, practices, or customs delineated above was actually known, constructively known, and/or ratified by City of Austin and then Chief of Police, Brian Manley (APD's policymaker), and was promulgated with deliberate indifference to Alexander's First, 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 highly

predictable that the particular violations alleged here, all of which were under color of law, would result.

102. Moreover, then Chief Manley was also aware of multiple similar incidents chilling speech and in which unconscionable, excessive, or unreasonable force was used but he did not remedy the misconduct. Thus, the City is also directly liable for Chief Manley's failure to train, supervise, and correct misconduct, which proximately caused Plaintiff to suffer injuries and have her rights violated.

103. Consequently, the policies delineated above were a moving force of Plaintiff's constitutional deprivations and injuries, and proximately caused severe damages.

104. Plaintiff Alexander brings this claim pursuant to 42 U.S.C. § 1983.

V. DAMAGES

105. Plaintiff Alexander seeks the following damages:

- a. Past and future medical expenses;
- b. Past and future economic damages, including (but not limited to) loss of earning capacity;
- c. Past and future physical pain and mental anguish;
- d. Past and future impairment;
- e. Past and future disfigurement;
- f. Exemplary/Punitive damages as to Defendants An and McCameron; and
- g. Attorneys' fees pursuant to 42 U.S.C. § 1988.

VI. JURY DEMAND

106. Plaintiff respectfully demands trial by jury and has tendered the appropriate fee for the same.

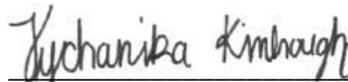
VII. PRAYER FOR RELIEF

107. To right this injustice, Plaintiff requests the Court:

- a. Award compensatory damages against the City of Austin, and compensatory and punitive damages against the individual Defendants, including APD Officers An and McCameron;;
- b. Award Plaintiff costs and fees, including but not limited to expert fees and attorneys' fees, pursuant to 42 U.S.C. § 1988;
- c. Award pre-judgment and post-judgment interest at the highest rate allowable under the law;
- d. Costs of court; and
- e. Award and grant such other just relief as the Court deems proper.

Dated: May 27, 2022

Respectfully submitted,
Kimbrough Legal, PLLC



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CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

ALEXANDER, SARANEKA

(b) County of Residence of First Listed Plaintiff Travis County (EXCEPT IN U.S. PLAINTIFF CASES)

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

Kimbrough Legal, PLLC, 4425 S MoPac Expy, Ste 105, Austin, TX 78735, 833-553-4251

DEFENDANTS

CITY OF AUSTIN; AN, KYU; AND MCCAMERON, DANIEL

County of Residence of First Listed Defendant Travis County (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 310 Airplane, 365 Personal Injury, etc.

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, 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 U.S.C. § 1983. Brief description of cause: Excessive Use of Force by APD During Police Brutality Protest

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Robert Pitman DOCKET NUMBER 1:2020cv01174

DATE 05/27/2022 SIGNATURE OF ATTORNEY OF RECORD

Signature of Tychanika Kimbrough

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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

SARANEKA ALEXANDER

Plaintiff

v.

CITY OF AUSTIN, KYU AN, AND
DANIEL MCCAMERON

Defendants

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Case No. 1:22-cv-00520-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 lacks sufficient information to admit or deny the allegations of paragraph 1.
2. Answer to Paragraph 2: The City admits it is a municipality that may be served at the listed address and that it operates the Austin Police Department ("APD"). The City admits that the former police chief was Brian Manley and that the current police chief is Joseph Chacon. Otherwise, the City denies the allegations of paragraph 2.
3. Answer to Paragraph 3: The City admits that Kyu An is an officer with APD, that officer An acted under color of law when he discharged a beanbag shotgun in response to Plaintiff throwing a projectile at APD officers, and that Plaintiff is suing for the stated damages. The City denies that any APD officer may be served at 715 E. 8th Street, Austin, Texas 78701. Otherwise, the City lacks sufficient information to admit or deny the allegations of paragraph 3.

4. Answer to Paragraph 4: The City admits that Daniel McCameron is an officer with APD, that officer McCameron acted under color of law when he discharged a beanbag shotgun in response to Plaintiff throwing a projectile at APD officers, and that Plaintiff is suing for the stated damages. The City denies that any APD officer may be served at 715 E. 8th Street, Austin, Texas 78701. Otherwise, the City lacks sufficient information to admit or deny 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.

6. Answer to Paragraph 6: The City admits that the Court has personal jurisdiction over Defendants.

7. Answer to Paragraph 7: The City admits that the Court has personal jurisdiction over Defendants. The City denies the remainder of the allegations in paragraph 7.

8. Answer to Paragraph 8: The City admits that venue is proper in the U.S. District Court for the Western District of Texas.

9. Answer to Paragraph 9: The City admits that protests occurred outside the headquarters of APD on May 30, 2020 and May 31, 2020. The City denies the remainder of the allegations in paragraph 9.

10. Answer to Paragraph 10: 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 allegations of paragraph 10.

11. Answer to Paragraph 11: The City admits that on May 30, 2020, Plaintiff was one of many people at the scene of a protest in front of APD headquarters. Otherwise, the City lacks sufficient information to admit or deny the allegations of paragraph 11.

12. Answer to Paragraph 12: The City admits that on May 30, 2020, Plaintiff was at the scene of a protest in Austin. The City admits that APD officers used beanbag shotgun rounds in response to violence and threats of violence by large crowds. Otherwise, the City denies the allegations of paragraph 12.

13. Answer to Paragraph 13: The City admits that Officers Kyu An and Daniel McCameron reported discharging beanbag shotgun rounds directed at Plaintiff in response to Plaintiff throwing a projectile at APD officers.

14. Answer to Paragraph 14: The City admits that Officer Daniel McCameron reported discharging one beanbag shotgun round directed at Plaintiff in response to Plaintiff throwing a projectile at APD officers.

15. Answer to Paragraph 15: The City admits that Officer Kyu An reported discharging four beanbag shotgun rounds directed at Plaintiff in response to Plaintiff throwing a projectile at APD officers.

16. Answer to Paragraph 16: The City denies the allegations of paragraph 16.

17. Answer to Paragraph 17: The City admits in response to the allegations of paragraph 17 that Plaintiff was struck by one or more projectiles fired by APD officers in response to Plaintiff throwing a projectile at APD officers. Otherwise, the City lacks sufficient information to admit or deny the allegations of paragraph 17.

18. Answer to Paragraph 18: The City lacks sufficient information to admit or deny the allegations of paragraph 18.

19. Answer to Paragraph 19: The City denies the allegations of paragraph 19.
20. Answer to Paragraph 20: The City admits that on May 30, 2020, APD officers used beanbag shotgun rounds in response to violence and threats of violence by large crowds. Otherwise, the City denies the allegations of paragraph 20.
21. Answer to Paragraph 21: The City admits that on May 30, 2020 other officers were positioned near Officers An and McCameron. The City admits that on May 30, 2020, APD officers used beanbag shotgun rounds in response to violence and threats of violence by large crowds. Otherwise, the City denies the allegations of paragraph 21.
22. Answer to Paragraph 22: The City denies the allegations of paragraph 22.
23. Answer to Paragraph 23: The City denies the allegations of paragraph 23.
24. Answer to Paragraph 24: Based on its investigation, the City admits that Bomani Barton appears to have been struck by a beanbag fired by Officer Kyu An on May 30, 2020. Otherwise, the City denies the allegations of paragraph 24.
25. Answer to Paragraph 25: Based on its investigation, the City admits that Bomani Barton appears to have been struck by a beanbag fired by Officer Kyu An on May 30, 2020. Otherwise, the City denies the allegations of paragraph 25.
26. Answer to Paragraph 26: The City denies the allegations of paragraph 26.
27. Answer to Paragraph 27: The City denies the allegations of paragraph 27.
28. Answer to Paragraph 28: The City admits that the Travis County District Attorney issued an indictment to Officer Kyu An regarding the alleged assault on Bomani Barton and that the indictment speaks for itself.

29. Answer to Paragraph 29: The City admits that on May 30, 2020 and May 31, 2020, APD officers used beanbag shotgun rounds in response to violence and threats of violence by large crowds. Otherwise, the City denies the allegations of paragraph 29.

30. Answer to Paragraph 30: The City admits that on May 30, 2020 and May 31, 2020, APD officers used beanbag shotgun rounds in response to violence and threats of violence by large crowds. The City admits that claims have been made by Nicole Underwood, Jason Gallagher, Jose Herrera, Levi Ayala, and Steven Arawn. Otherwise, the City denies the allegations of paragraph 30.

31. Answer to Paragraph 31: The City admits that the Travis County District Attorney has issued an indictment against Officer John Siegel and that the indictment speaks for itself. Otherwise, the City denies the allegations of paragraph 31.

32. Answer to Paragraph 32: The City admits that Officer Siegel invoked his 5th Amendment right against self-incrimination.

33. Answer to Paragraph 33: The City admits that the Travis County District Attorney has issued an indictment against Officer Nicholas Gebhart and that the indictment speaks for itself. Otherwise, the City denies the allegations of paragraph 33.

34. Answer to Paragraph 34: The City admits that it has settled claims made by Brad Ayala in consideration for the payment of \$2,950,000.

35. Answer to Paragraph 35: The City denies the allegations of paragraph 35.

36. Answer to Paragraph 36: The City denies the allegations of paragraph 36.

37. Answer to Paragraph 37: The City denies the allegations of paragraph 37.

38. Answer to Paragraph 38: The City denies the allegations of paragraph 38.

39. Answer to Paragraph 39: The City admits that councilmember Casar sent a text regarding the use of less lethal rounds, the content of which speaks for itself. Otherwise, the City denies the allegations of paragraph 39.

40. Answer to Paragraph 40: The City admits that councilmember Casar sent a text regarding the use of less lethal rounds, the content of which speaks for itself. Otherwise, the City denies the allegations of paragraph 40.

41. Answer to Paragraph 41: The City admits that on May 30, 2020 and May 31, 2020, APD officers used beanbag shotgun rounds in response to violence and threats of violence by large crowds. Otherwise, the City denies the allegations of paragraph 41.

42. Answer to Paragraph 42: The City admits Anthony Evans was struck by a beanbag round and that the City does not have any information indicating that Evans engaged in any threatening conduct on May 31, 2020.

43. Answer to Paragraph 43: The City denies the allegations of paragraph 43.

44. Answer to Paragraph 44: The City admits it has settled claims made by Anthony Evans in consideration for the payment of \$2,000,000.

45. Answer to Paragraph 45: The City admits Justin Howell was struck by a beanbag round and that the City does not have any information indicating that Howell engaged in any threatening conduct on May 31, 2020.

46. Answer to Paragraph 46: The City admits that it has settled claims made by Justin Howell in consideration for the payment of \$8,000,000. Otherwise, the City denies the allegations of paragraph 46.

47. Answer to Paragraph 47: The City admits that the Travis County District Attorney has issued an indictment against Officer Jeffrey Teng and that indictment speaks for itself. Otherwise, the City denies the allegations of paragraph 47.

48. Answer to Paragraph 48: The City admits that Officer Teng invoked his 5th Amendment right against self-incrimination.

49. Answer to Paragraph 49: The City admits that in the immediate aftermath of Howell being struck by a beanbag shotgun round, no APD officer assisted Howell prior to Howell being removed from the scene by other persons. Otherwise, the City lacks information sufficient to admit or deny the allegations of paragraph 48.

50. Answer to Paragraph 50: The City admits that Meredith Drake was struck by a beanbag shotgun round while she was attending to Justin Howell. Otherwise, the City denies the allegations of paragraph 50.

51. Answer to Paragraph 51: The City admits that Meredith Drake was struck by a beanbag shotgun round while she was attending to Justin Howell. Otherwise, the City denies the allegations of paragraph 51.

52. Answer to Paragraph 52: The City admits that Meredith Drake was struck by a beanbag shotgun round while she was attending to Justin Howell. Otherwise, the City denies the allegations of paragraph 52.

53. Answer to Paragraph 53: The City admits that it has no information indicating that Meredith Drake posed any danger to anyone at the time that she was struck by a beanbag round.

54. Answer to Paragraph 54: The City denies the allegations of paragraph 54.

55. Answer to Paragraph 55: The City admits that Officer Bretches invoked his 5th Amendment right against self-incrimination.

56. Answer to Paragraph 56: The City admits that Officer Bretches invoked his 5th Amendment right against self-incrimination.

57. Answer to Paragraph 57: Per Texas state law, the disciplinary process remains open regarding the allegations in paragraph 57. The disciplinary process is deferred until 30 days after the conclusion of the related criminal process. Otherwise, the City denies the allegations of paragraph 57.

58. Answer to Paragraph 58: The City admits that no officers have been disciplined for any alleged failure to prevent other officers from using beanbag rounds on May 30, 2020 or May 31, 2020 in response to violence or threats of violence by large crowds. Otherwise, the City denies the allegations of paragraph 58.

59. Answer to Paragraph 59: The City admits that no officers have been disciplined for any alleged failure to prevent other officers from using beanbag rounds on May 30, 2020 or May 31, 2020 in response to violence or threats of violence by large crowds. Otherwise, the City denies the allegations of paragraph 59.

60. Answer to Paragraph 60: The City denies the allegations of paragraph 60.

61. Answer to Paragraph 61: The City denies the allegations of paragraph 61.

62. Answer to Paragraph 62: The City denies the allegations of paragraph 62.

63. Answer to Paragraph 63: The City denies the allegations of paragraph 63.

64. Answer to Paragraph 64: Paragraph 64 does not identify the report that it claims to quote, therefore the City lacks information sufficient to admit or deny the allegations of paragraph 64. Otherwise, the City denies the allegations of paragraph 64.

65. Answer to Paragraph 65: Paragraph 65 does not identify the source of its purported quote, therefore the City lacks information sufficient to admit or deny the allegations of paragraph 65. Otherwise, the City denies the allegations of paragraph 65.

66. Answer to Paragraph 66: Paragraph 66 does not identify the source of its purported quote, therefore the City lacks information sufficient to admit or deny the allegations of paragraph 66. Otherwise, the City denies the allegations of paragraph 66.

67. Answer to Paragraph 67: Paragraph 67 does not identify the report that it claims to quote, therefore the City lacks information sufficient to admit or deny the allegations of paragraph 67. Otherwise, the City denies the allegations of paragraph 67.

68. Answer to Paragraph 68: Paragraph 68 does not identify the report that it claims to quote, therefore the City lacks information sufficient to admit or deny the allegations of paragraph 68. Otherwise, the City denies the allegations of paragraph 68.

69. Answer to Paragraph 69: The City denies the allegations of paragraph 69.

70. Answer to Paragraph 70: The City admits that there have been news and other reports referring to statements from medical personnel regarding persons injured on May 30, 2020 and May 31, 2020 and that such reports speak for themselves. Otherwise, the City lacks knowledge sufficient to admit or deny the allegations of paragraph 70.

71. Answer to Paragraph 71: The City admits that there have been news and other reports referring to statements from medical personnel regarding persons injured on May 30, 2020 and May 31, 2020 and that such reports speak for themselves. The City admits that it has received medical records and that such records speak for themselves. Otherwise, the City lacks knowledge sufficient to admit or deny the allegations of paragraph 71.

72. Answer to Paragraph 72: The City admits that there have been news reports attributing criticism of Chief Manley to several members of the City Council, which news reports speak for themselves. The City denies that Chief Manley ignored a pattern of excessive force. The City lacks sufficient information to understand what is meant by the “attack on Cesar” and therefore denies such allegations. Otherwise, the City denies the allegations of paragraph 72.

73. Answer to Paragraph 73: The City admits that Chief Manley implemented policy changes after May 31, 2020 and that those policy changes speak for themselves. Otherwise, the City denies the allegations of paragraph 73.

74. Answer to Paragraph 74: The City admits that Chief Manley implemented policy changes after May 31, 2020 and that those policy changes speak for themselves. Otherwise, the City denies the allegations of paragraph 74.

75. Answer to Paragraph 75: The City admits that Chief Manley implemented policy changes after May 31, 2020 and that those policy changes speak for themselves. Otherwise, the City denies the allegations of paragraph 75.

76. Answer to Paragraph 76: Per Texas state law, the disciplinary process remains open regarding the allegations in paragraph 76. The disciplinary process is deferred until 30 days after the conclusion of the related criminal process. Otherwise, the City denies the allegations of paragraph 76.

77. Answer to Paragraph 77: Paragraph 77 contains no allegation of fact and therefore requires no response. Otherwise, the City denies the allegations of paragraph 77.

78. Answer to Paragraph 78: The City admits that Officers An and McCameron were acting under color of law when they discharged beanbags in response to Plaintiff throwing a projective at APD officers. Otherwise, the City denies the allegations of paragraph 78.

79. Answer to Paragraph 79: The City denies the allegations of paragraph 79.

80. Answer to Paragraph 80: The City lacks sufficient information to admit or deny any injuries alleged by Plaintiff. Otherwise, the City denies the allegations of paragraph 80.

81. Answer to Paragraph 81: Paragraph 81 lacks any allegation of fact and therefore requires no response. Otherwise, the City denies the allegations of paragraph 81.

82. Answer to Paragraph 82: The City denies any alleged violation of Plaintiff's First Amendment Rights. Otherwise, paragraph 82 does not allege facts and therefore requires no response.

83. Answer to Paragraph 83: The City lacks information sufficient to admit or deny the allegations of paragraph 83.

84. Answer to Paragraph 84: The City denies the allegations of paragraph 84.

85. Answer to Paragraph 85: The City admits in response to the allegations of paragraph 85 that Plaintiff was struck by beanbag rounds fired by APD police officers in response to Plaintiff throwing a projectile at APD officers. Otherwise, the City denies the allegations of paragraph 85.

86. Answer to Paragraph 86: The City denies the allegations of paragraph 86.

87. Answer to Paragraph 87: The City denies the allegations of paragraph 87.

88. Answer to Paragraph 88: Paragraph 88 contains no allegation of fact and therefore requires no answer. Otherwise, the City denies the allegations of paragraph 88.

89. Answer to Paragraph 89: The City admits that Plaintiff seeks punitive damages. Otherwise, the City denies the allegations of paragraph 89.

90. Answer to Paragraph 90: Paragraph 90 contains no allegation of fact and therefore requires no answer. Otherwise, the City denies the allegations of paragraph 90.

91. Answer to Paragraph 91: The City denies any alleged violation of Plaintiff's rights or use of excessive force. Otherwise, paragraph 91 does not allege facts and therefore requires no response.

92. Answer to Paragraph 92: The City denies any alleged violation of Plaintiff's rights or use of excessive force. The City admits that Officers An and McCameron are protected by qualified immunity. Otherwise, paragraph 92 does not allege facts and therefore requires no response, including for a. – c. therein.

93. Answer to Paragraph 93: Paragraph 93 contains no allegation of fact and therefore requires no answer. Otherwise, the City denies the allegations of paragraph 93.

94. Answer to Paragraph 94: The City admits that officers An and McCameron were acting under color of law when they discharged beanbag rounds in response to Plaintiff throwing a projectile at APD officers. Otherwise, the City denies the allegations of paragraph 94.

95. Answer to Paragraph 95: The City denies the allegations of paragraph 95.

96. Answer to Paragraph 96: The City lacks sufficient information to admit or deny any injuries alleged by Plaintiff. Otherwise, the City denies the allegations of paragraph 96.

97. Answer to Paragraph 97: The City denies any alleged violation of Plaintiff's rights. Otherwise, paragraph 97 does not allege facts and therefore requires no response.

98. Answer to Paragraph 98: The City lacks information sufficient to admit or deny the allegations of paragraph 98.

99. Answer to Paragraph 99: The City denies the allegations of paragraph 99.

100. Answer to Paragraph 100: The City denies the allegations of paragraph 100, including a. – k. therein.

101. Answer to Paragraph 101: The City denies the allegations of paragraph 101.

102. Answer to Paragraph 102: The City denies the allegations of paragraph 102.

103. Answer to Paragraph 103: The City denies the allegations of paragraph 103.

104. Answer to Paragraph 104: The City admits that Plaintiff asserts a claim pursuant to 42 U.S.C. § 1983. The City denies liability for Plaintiff's claim.

105. Answer to Paragraph 105: The City admits that Plaintiff seeks damages and relief as set forth in paragraph 105. Otherwise, the City denies liability for the claims of paragraph 105, including a. – f. therein.

106. Answer to Paragraph 106: The City admits that Plaintiff demands a jury.

107. Answer to Paragraph 107: The City admits that Plaintiff seeks the requested relief. Otherwise, the City denies liability for the allegations of paragraph 107, including a – e. therein.

AFFIRMATIVE DEFENSES

108. 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.

109. The City asserts the affirmative defense of governmental immunity for the City of Austin.

110. The City asserts that Plaintiff failed to mitigate damages, if any.

111. 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 28, 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

SARANEKA ALEXANDER,
Plaintiff,

v.

CITY OF AUSTIN, KYU AN, and
DANIEL McCAMERON,
Defendants.

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Case No. 1:22-cv-00520-RP

**DEFENDANTS KYU AN AND DANIEL McCAMERON'S
ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL COMPLAINT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Defendants, Kyu An and Daniel McCameron, by and through their attorneys of record, and files this their 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.¹ During those protests, approximately 62% of major U.S. cities experienced looting.² 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

¹ *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>.

² *Id.*

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

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.⁵ Property Claims Services designated the riots as a “multi-state catastrophe event,” which is the first such designation for a civil disorder event since 1992.⁶ Conservative insurance estimates of property damage caused during the riots exceeds \$1 billion dollars—the “costliest civil disorder in U.S. history.”⁷

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).”⁸ Over three quarters of major city law enforcement agencies reported rioters using such weapons.⁹ “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.¹⁰ “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.”¹¹

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

³ *Id.*

⁴ *Id.*

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

⁶ *Id.*

⁷ *Id.*

⁸ *Report on the 2020 Protests & Civil Unrest* at 11.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 11 – 12.

shotguns, and handguns.”¹³ Other weapons wielded by protestors commonly included bats, hammers, metal poles, and shields.¹⁴ 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.”¹⁵

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.¹⁶ 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.¹⁷ Agitators spray painted messages around downtown Austin literally encouraging the killing of police officers.¹⁸ Starting on May 30, the Austin Police Department was forced to issue

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 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>.

¹⁷ 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>.

¹⁸ 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.”¹⁹ DPS sent “more than 1,500 officers to assist local police departments” statewide, and the governor ultimately “activated the Texas National Guard.”²⁰ 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. APD 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.²¹ During the protests-turned-riots at issue, APD Officers An and McCameron personally observed rioters throwing projectiles at APD officers that included but were not limited to large rocks, bricks, glass bottles, lumber pieces, bottle of bleach, bottles of paint, and what appeared to be a defective Molotov cocktail. Officer An himself suffered a serious burn to his neck as a result of one such rioter’s attack using an “artillery shell” style pyrotechnic explosive device—and was also struck by several other types of rioter-thrown projectiles that day.

8. Plaintiff Alexander’s conduct on May 30, 2020 crossed the line of peaceful protest—she committed violent acts that intentionally and directly threatened the health and safety of officers on the scene. Plaintiff’s violent acts far exceeded anything that would be protected by the First Amendment.

9. Over the course of the protest-turned-riot, Officers An and McCameron *never purposefully impacted any person* who was not either actively committing a violent act or was obviously preparing to imminently commit a violent act. Officers An and McCameron never purposefully

¹⁹ Osborne, *supra* fn 17.

²⁰ *Id.*

²¹ 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>.

discharged their weapon in a manner aimed at any rioter's head, neck, or face, and they have no reason to believe that they ever intentionally impacted any rioter's head, neck, or face, nor that they ever caused any protestor-turned rioter any unconstitutional injury whatsoever. At all times, Officers An and McCameron acted pursuant to their training and accepted police procedures. Officers An and McCameron's conduct as law enforcement officers was reasonable, especially when the requisite consideration is given to their surrounding riotous circumstances that were "tense, uncertain, and rapidly evolving."²² They are entitled to the protections of Qualified Immunity as a result.

II. ORIGINAL ANSWER

A. Parties.

10. Defendants lacks sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 1 of Plaintiff's Original Complaint.

11. As to the allegations contained within Paragraph 2 of Plaintiff's Original Complaint, Defendants admit that the City of Austin is a municipality that operates the Austin Police Department. Otherwise, Defendants lack sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 2.

12. Defendants admit the allegations contained within Paragraphs 3 – 4 of Plaintiff's Original Complaint.

B. Jurisdiction and Venue.

13. As to the allegations contained within Paragraphs 5 – 8 of Plaintiff's Original Complaint, Defendants deny that they ever intentionally interacted with or engaged in any conduct whatsoever

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

that caused any unconstitutional injury to Plaintiff. Otherwise, Defendants admit the remaining allegations regarding jurisdiction and venue.

C. Facts.

14. As to the allegations contained in Paragraphs 9 – 23 of Plaintiff’s Original Complaint, Defendants deny any knowledge of APD officers purposefully firing into a crowd as opposed to aiming at specific individual violent rioters—respectively—and for justifiable reasons. Defendants deny that any use of force against Plaintiff was unconstitutional—as opposed to a justified response to Plaintiff’s violent and unlawful actions. Defendants deny that they had any knowledge of a serious injury to any rioter at the time, and thus deny that they ever knowingly failed to render aid to anyone who suffered a serious injury.

15. Defendants deny that they ever attempted to use any force that was unjustified or unreasonable—as numerous rioters—including Plaintiff—were assaulting officers with rocks, bottles and other projectiles. Defendants deny that any APD officers overreacted or intentionally used chilling, excessive force against any *peaceful* demonstrators. Defendants deny that Plaintiff fell to the ground after being impacted—instead, she ran away at a jog. Defendants deny that any speech or message by the rioters affected their actions, nor that any action they took was designed to chill protected speech. Any force used by the APD officers was designed to stop the actions of violent rioters. Defendants lack sufficient knowledge to form a belief as to the truth of the remaining allegations in Paragraphs 9 – 23 of Plaintiff’s Original Complaint, and therefore deny the same.

16. As to the allegations contained within Paragraphs 24 – 76 of Plaintiff’s Original Complaint, the relevant indictment documents, deposition transcripts, text exchanges and settlement documents—regarding allegations made by other individuals as plaintiffs—speak for themselves,

and no answer is necessary from these Defendants regarding the same. Defendants admit that they have not been disciplined for anything related to their conduct during the protests or riots at issue. Defendants deny that any APD officers overreacted or intentionally used chilling, excessive force against any peaceful demonstrators. Defendants deny any personal knowledge of any APD officers using excessive force, failing to intervene, or failing to render aid. Defendants deny that any of their actions were unreasonable or inexplicable, or that they used unreasonable force against any person. Defendant An admits that he has been indicted by the Travis County District Attorney as part of the District Attorney's purely political ploy to prosecute law enforcement officers. Otherwise, Defendants lack sufficient knowledge to form a belief as to the truth of the remaining allegations therein, and therefore deny the same.

D. Causes of Action

17. As to the allegations contained in Paragraph 77, Defendants adopt and incorporate their responses to the previous Paragraphs of the Complaint.

18. As to the allegations contained in Paragraphs 78 – 80 of Plaintiff's Original Complaint, Defendants deny that they used excessive force against Plaintiff, or that they caused Plaintiff any constitutional injury. Otherwise, these paragraphs merely summarily claim that a constitutional violation occurred. Pursuant to Federal Rule of Civil Procedure 8(b) a defendant need not respond to plaintiff's mere legal conclusions. To the extent the remainder of these paragraphs require a response, denied.

19. As to the allegations contained in Paragraph 81, Defendants adopt and incorporate their responses to the previous Paragraphs of the Complaint.

20. As to the allegations contained in Paragraphs 82 – 87 of Plaintiff's Original Complaint, pursuant to Federal Rule of Civil Procedure 8(b) a defendant need not respond to plaintiff's mere

legal conclusions. Defendants admit that Plaintiff brings her claim pursuant to 42 U.S.C. § 1983. Defendants deny Plaintiff's conclusory statement regarding their state of mind. At no point during the violent riot did Defendants take any action that was motivated by a desire to chill speech or conduct protected by the First Amendment. Otherwise, denied.

21. As to the allegations contained in Paragraph 88, Defendants adopt and incorporate their responses to the previous Paragraphs of the Complaint.

22. As to the allegations contained within Paragraph 89 of Plaintiff's Original Complaint, Defendants admit that Plaintiff appears to be requesting punitive damages in her suit. Defendants deny that their conduct was wanton, or that any action they took was motivated by malice. Defendants deny Plaintiff is in anyway entitled to punitive damages.

23. As to the allegations contained in Paragraph 90, Defendants adopt and incorporate their responses to the previous Paragraphs of the Complaint.

24. As to the allegations contained within Paragraph 91 – 92 of Plaintiff's Original Complaint, pursuant to Federal Rule of Civil Procedure 8(b) a defendant need not respond to plaintiff's mere legal conclusions. Otherwise, denied.

25. As to the allegations contained in Paragraph 93, Defendants adopt and incorporate their responses to the previous Paragraphs of the Complaint.

26. As to the allegations contained in Paragraphs 94 – 99 of Plaintiff's Original Complaint, these claims assert a *Monell* claim against the City of Austin. Pursuant to Federal Rule of Civil Procedure 8 a defendant need not respond to plaintiff's mere legal conclusions, nor to allegations not asserted against them. To the extent an answer is required—these Defendants admit that Plaintiff brings her claim pursuant to 42 U.S.C. § 1983. Defendants admit they were acting under the color of law. Defendants deny that they used excessive force. Defendants deny Plaintiff's

conclusory statement regarding their state of mind. At no point during the violent riot did Defendants take an action that was motivated by a desire to chill speech or conduct protected by the First Amendment. Otherwise, denied.

27. Pursuant to Federal Rule of Procedure 8(b)(A) no answer is necessary from these Defendants as to Paragraphs 100 – 104 because these paragraphs support causes of action explicitly not asserted against them. To the extent any answer is deemed necessary, Defendants deny the allegations therein.

28. As to the allegations contained in Paragraphs 105 – 107, no answer is necessary from these Defendants. To the extent any answer is deemed necessary, Defendants admit that Plaintiff seeks the relief requested therein. Defendants deny Plaintiff is entitled to it.

III. AFFIRMATIVE DEFENSES & IMMUNITIES

29. 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.*

30. Defendants hereby invoke the doctrine of Qualified Immunity and Official Immunity. Defendants discharged their obligations and public duties in good faith and would show that their actions were objectively reasonable in light of the law and the information possessed at that time, and that no clearly established law exists prohibiting them from using force to defend themselves and/or other persons from an active or imminent assault with a potentially deadly weapon or projectile, whether during a riot or otherwise.

31. 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 himself, and/or other rioters. To the extent

legally applicable herein, Defendants invoke the comparative responsibility provisions of the Texas Civil Practice & Remedies Code.²³

32. Defendants further pleads 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.

33. Defendants plead that they had legal justification for each and every action taken by them relating to this incident.

34. Defendants assert the limitations and protections of Chapters 41 & 101 of the Texas Civil Practice & Remedies Code, and the due process clause of the United States Constitution.

35. Defendants reserve the right to assert additional affirmative defenses throughout the development of this case.

36. To the extent Defendants did not address a specific averment made by Plaintiff in her Original Complaint, Defendants expressly deny all such averments.

IV. JURY DEMAND

37. Pursuant to Federal Rule of Civil Procedure 48, Defendants hereby request a jury trial.

V. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendants Kyu An and Daniel McCameron pray 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 they be awarded attorney fees incurred in the defense of this suit, and for all further relief to which they may be justly entitled.

²³ See TEX. CIV. PRAC & REM. CODE ANN. § 33.001.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

KYU AN AND DANIEL McCAMERON

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of August, 2022, 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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 /s/ Stephen B. Barron

Stephen B. Barron

Exhibit

1



Exhibit

2



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SARANEKA ALEXANDER,

Plaintiff

v.

CITY OF AUSTIN, KYU AN, AND
DANIEL MCCAMERON

Defendants.

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CAUSE OF ACTION:

1:22-cv-520

PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff SARANEKA ALEXANDER brings this 42 U.S.C. § 1983 case against the City of Austin, Austin Police Department Officer Kyu An, and Austin Police Department Officer Daniel McCameron for the brutal and excessive force inflicted on her as she was exercising her free speech and assembly rights and demonstrating against police violence.

I. PARTIES

1. Plaintiff Saraneka Alexander is a resident of Travis County, Texas.
2. Defendant City of Austin is a municipality that operates the Austin Police Department. It has been served and has entered an appearance in this case. The City's policymaker for policing matters was former Police Chief Brian Manley at the time of the incident and is currently Chief Joseph Chacon.
3. Defendant Kyu An, is an individual that was employed by the City of Austin Police Department at the time of the incident that make the basis of this lawsuit, and he is sued in his personal capacity for compensatory and punitive damages. Upon information and belief, Defendant An is still employed by the City of Austin. At all relevant times, Defendant Kyu An

was acting under color of law as an officer of the Austin Police Department. Defendant An has been served and has entered an appearance in this case.

4. Defendant Daniel McCameron is an individual that was employed by the City of Austin Police Department at the time of the incident that make the basis of this lawsuit, and he is sued in his personal capacity for compensatory and punitive damages. Upon information and belief, Defendant McCameron is still employed by the City of Austin. At all relevant times, Defendant McCameron was acting under color of law as an officer of the Austin Police Department. Defendant McCameron has been served and has entered an appearance in this case.

II. JURISDICTION AND VENUE

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

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

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

8. Venue of this cause is proper in the Western District pursuant to 28 U.S.C. § 1391(b) because a substantial portion of the events or omissions giving rise to Plaintiff's claims occurred in Travis County, which is within the Western District of Texas.

III. FACTS

9. Following the police killings of George Floyd in Minneapolis and Mike Ramos in Austin, demonstrators organized protests against police brutality outside the headquarters of the Austin Police Department on May 29, 2020, May 30, 2020, and May 31, 2020.

10. On the evening of May 29, 2020, protests began in Austin, including in front of APD headquarters. From the outset, APD leadership directed its officers to use its less lethal weaponry as a means of controlling crowds.

11. Specifically, APD leadership directed APD officers to use kinetic projectile weapons to shoot at protesters on the evening of May 29.

12. APD officers fired many kinetic projectiles from shotguns at protesters late into the evening on May 29 and into the early hours of May 30, 2020.

13. APD leadership knew APD officers were shooting protesters when they posed no danger to anyone with less lethal weapons on May 29 and early May 30, but did nothing to stop APD officers from continuing to shoot highly dangerous kinetic projectile weapons at protesters into the weekend of May 30 and May 31, 2020.

14. Instead, on May 30, 2020, APD leadership notified all officers that during the protests officers should not fully document each individual use of force, sending a clear message that APD officers were expected to use force far more often than usual in response to the George Floyd protests.

15. Former Chief of Police Brian Manley later admitted that this policy change was a “bad decision.”

16. On May 30, 2020, Plaintiff Saraneka Alexander attended the demonstration to support the peaceful demonstrations against police violence and racial injustice.

17. During the protest on May 30, 2020, Alexander was one of many protesters demonstrating in front of APD headquarters on the southbound access road and 8th street underpass.

18. At approximately 6:50 pm, while Alexander was protesting against police violence, when APD officers began to fire less lethal rounds into the crowd without any apparent justification.

19. Alexander was struck several times by less lethal rounds fired by APD officers without any justification.

20. Both APD officers Kyu An and Daniel McCameron intentionally fired less lethal rounds at Alexander.

21. APD Officer McCameron fired a less lethal shotgun at Alexander once.

22. APD Officer An fired a less lethal shotgun at Alexander four times.

23. Video evidence shows that Alexander was doing nothing that would justify such immense use of force.

24. Alexander was struck in the stomach, then, as she turned to walk away, was struck in the back.

25. Other protesters immediately surrounded Alexander to come to her aid as she fell to the ground.

26. Despite seeing her fall to the ground and knowing they shot her, no APD officer came to help Alexander until medics begged for APD's help to get her medical attention.

27. For hours after shooting Alexander, numerous officers standing on the APD headquarters' front steps continued to shoot less lethal shotguns often and without apparent justification into the crowd.

28. Numerous officers were standing alongside Officers An and McCameron, but not one interceded to stop them from continuing to fire their less lethal shotguns into the crowd without reason.

29. Upon information and belief, Officers An and McCameron, and APD leadership generally, were substantially motivated by their opposition to the demonstrators' message that police violence must end and that Black Lives Matter.

30. Officers An and McCameron's attacks on Alexander were shocking, unreasonable, and would chill a person of ordinary firmness from continuing to engage in protected speech and assembly.

31. When asked if he intentionally shot Alexander when she did not pose a threat to anyone, Officer An refused to answer and invoked his Fifth Amendment right not to incriminate himself.

32. Alexander was just one of several people that Officer An shot on May 30 and May 31.

33. Earlier, around 5:10 pm, APD officer Kyu An shot Bomani Barton—who was backing away from police on I-35—in the head with a less lethal shotgun.

34. Bomani Barton had done nothing wrong.

35. Officer An used unreasonable force against Barton.

36. Upon information and belief, APD's former Chief of Police, Brian Manley, and current Chief of Police, Joseph Chacon, believe that shooting Bomani Barton under the circumstances facing Officer An was not justified or reasonable.

37. While Officer An has since been criminally indicted by a Travis County Grand Jury for aggravated assault by a public servant for shooting Barton, APD and the City have not disciplined An for his misconduct.

38. Worse still, Alexander and Barton were just two of many people APD officers shot on May 30 and May 31.

39. In fact, on May 30, 2020, APD overreacted numerous times and used chilling, excessive force on multiple individuals. Among many others, APD's victims included Nicole Underwood, Jason Gallagher, Joe Herrera, Levi Ayala, and Steven Arawn.

40. Before Alexander was shot, at approximately 4:30 pm, APD Officers John Siegel, Salvador Gonzalez-Galvan, and Bryan McCulloch used unreasonable force against Gallagher.

41. Gallagher was protesting the police, including their overuse of less lethal shotguns, when Siegel, Gonzalez-Galvan, and McCulloch used unreasonable force against him, namely pepper spraying and shoving him in the back when he posed no danger to anyone and was defenseless.

42. The City paid Gallagher a settlement of \$375,000 for the use of force.

43. Moments after he used force on Gallagher, APD Officer John Siegel then shot Underwood in the chest while she was doing nothing wrong. And immediately after shooting Underwood, Siegel shot the person next to her. That person was also doing nothing warranting such excessive and unreasonable force.

44. Officer Siegel used unreasonable and conscience shocking force against Underwood and the person standing next to her.

45. Officer Siegel has been indicted for aggravated assault by a public servant for shooting Underwood.

46. When asked to explain why he shot Underwood, APD Officer Siegel invoked his Fifth Amendment right not incriminate himself.

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

48. At approximately 5:22 pm, many APD officers fired at fleeing protesters, hitting Cesar Fuentes with a less lethal shotgun round.

49. Fuentes was doing nothing wrong; he was leaving the area as police had ordered.

50. The APD officers who fired on Fuentes used unreasonable force.

51. The City paid Fuentes a settlement of \$162,500 for the shooting.

52. At 5:25 pm, APD Officer Nicholas Gebhart shot Brad Ayala, a teenager, with a less lethal shotgun while Ayala was standing with his arms to his side on a hill near IH-35.

53. Ayala suffered a traumatic brain injury.

54. Officer Gebhart used unreasonable force against Ayala.

55. The City paid Ayala a settlement of \$2,950,000 for the shooting.

56. At 5:29 pm, APD Officer Joseph Cast shot Maredith Williams with a less lethal shotgun while she did nothing wrong.

57. Officer Cast used unreasonable and conscience-shocking force against Williams.

58. Officer Cast has been indicted for aggravated assault by a public servant for shooting Williams.

59. The City paid Williams a settlement of \$400,000 for the shooting.

60. Moments after Alexander was shot, APD Officer James Morgan shot Jose Herrera with a kinetic projectile while Herrera was doing absolutely nothing wrong.

61. Officer Morgan used unreasonable force against Herrera.

62. Officer Morgan was indicted for aggravated assault by a public servant for shooting Herrera.

63. The City paid Herrera a settlement of \$1,750,000 for the shooting.

64. At 7:00 pm, APD Officer Derrick Lehman shot Gemimah Volter-Jones with a less lethal shotgun.

65. Officer Lehman used unreasonable and conscience-shocking force against Volter-Jones.

66. Officer Lehman has been indicted for aggravated assault by a public servant for shooting Volter-Jones.

67. At approximately 9:15 pm, Modesto Rodriguez was peacefully protesting in front of APD headquarters when at least one APD officer shot him twice, once in the ankle and once in the chest.

68. Rodriguez suffered significant injuries and had to immediately be taken to the emergency room.

69. Rodriguez did nothing that would justify the use of force against him.

70. Also on May 30, 2020, according to the City of Austin, Adam Campbell was shot in the head and in the hand by APD officers using a less lethal kinetic projectile weapon.

71. Campbell did nothing to justify APD's use of force.

72. On the same day, Zachary Short was shot in the back with a less lethal weapon by APD officers.

73. According to the City of Austin, on May 30, 2020, Sage Avvocato was shot in the face with a less lethal shotgun round by an APD officer. She was doing nothing to justify such force.

74. The APD officer that shot Avvocato unreasonable and unjustified force.

75. In addition, the City of Austin has identified "Hank Doe" as another unknown protester that was shot in the head by an APD officer on May 30, 2020 using a kinetic projectile weapon.

76. On May 30, 2020, APD leadership, including, but not limited to Commanders Eveleth, Rogers, and Staniszewski, then-Assistant Chiefs Henderson, Dupre, Stephenson, Guajardo, Chacon, and Gay, and then-Chief of Police Manley knew that APD officers were firing kinetic projectiles (i.e., beanbag rounds and 40 mm rounds) at innocent individuals and into crowds of people and causing serious injuries, as they were receiving reports and updates from various officers, media outlets, social media, and were watching.

77. On the evening of May 30, 2020, Chief Manley, City Manager Spencer Cronk, Mayor Steve Adler, and other senior City leadership were explicitly told by then-Austin City Council Member, Greg Casar, about horrific injuries caused by APD officers on May 30, 2020.

78. Casar specifically noted and sent photos of the injuries to Nicole Underwood and Levi Ayala to APD and City leadership. Casar pleaded with APD and City leadership to put a stop to APD's violence against protesters.

79. Despite then-Councilman Casar's attempt on May 30, 2020 to get Manley and the City's leaders to stop the carnage, APD's leaders did not stop APD from using its so called less lethal weaponry against protesters or from firing kinetic projectiles into crowds or at protesters.

80. Thus, numerous other defenseless individuals were victimized and shot with these dangerous projectiles on May 31, 2020 while they were exercising their First Amendment rights.

81. One of the many individuals shot on May 31 was Anthony Evans. Evans was hit in the face.

82. Evans was doing nothing wrong before being shot.

83. APD Officer Kyle Felton used unreasonable force against Evans.

84. Officer Felton has been indicted for aggravated assault by a public servant for shooting Evans.

85. The City paid a settlement to Mr. Evans of \$2,000,000 for the shooting.

86. Another of the many individuals APD shot in the head was Justin Howell, a twenty-year-old Black college student who also had done nothing that could possibly justify him being shot.

87. APD Officer Jeffrey Teng used unreasonable force against Howell.

88. The City paid Howell a settlement of \$8,000,000 for the shooting.

89. Officer Teng also has been indicted for aggravated assault by a public servant for shooting Howell.

90. And when given the opportunity to explain why he shot Howell, Officer Teng asserted his Fifth Amendment right not to incriminate himself.

91. As Howell lay on the ground unconscious and bleeding, no police officer came to help him.

92. Protesters rushed to help Howell, who lay bleeding from a serious head wound from being shot in the head with a projectile fired by an APD officer.

93. Incredibly, rather than assist those protesters get Howell emergency medical care, APD officers shot into the crowd.

94. During this volley, APD officer Chance Bretches shot a medic, Meredith Drake, with her hands in the air who was trying to get Howell help.

95. Drake posed no danger whatsoever to anyone.

96. APD Officer Chance Bretches used unreasonable and conscience shocking force against Drake.

97. Officer Bretches has been indicted for aggravated assault by a public servant for shooting Drake.

98. The City paid Drake a settlement of \$850,000 for the shooting.

99. When asked directly if he intentionally shot Drake while she posed no danger to anyone, Officer Bretches invoked his Fifth Amendment right not to incriminate himself.

100. Officer Bretches also pled the Fifth to questions concerning his assaults on another citizen in 2019 and whether he also assaulted Arianna Chavez by shooting her in the head.

101. That same evening, APD officers shot Tyree Talley in the groin with a kinetic projectile weapon.

102. Tyree Talley did nothing to justify APD's use of force against him.

103. Nor were these the only potentially deadly assaults by officers. Earlier in the day, eight APD officers fired at Christen Warkoczewski as she was running away from officers.

104. Despite Warkoczewski posing no danger to anyone, an APD officer shot Warkoczewski in the face.

105. The officers' use of force against Warkoczewski was unreasonable.

106. As a consequence of the egregious and unreasonable use of force against Warkoczewski, those eight APD officers were indicted for aggravated assault by a public servant.

107. The City of Austin paid Warkoczewski \$850,000 for the shooting.

108. And that afternoon, APD Officer Eric Heim shot Alyssa Sanders in the head, causing her to suffer a fractured skull and traumatic brain injury.

109. Officer Heim's use of force against Alyssa Sanders was unreasonable and conscience shocking.

110. Officer Heim has been indicted for aggravated assault by a public servant for shooting Sanders.

111. APD Officer Rolan Rast shot Samuel Kirsch in the face with a less lethal shotgun.

112. Officer Rast's use of force against Kirsch was unreasonable and conscience shocking

113. Officer Rast has been indicted for aggravated assault by a public servant for shooting Kirsch.

114. APD Officers Todd Gilbertson and Michael Crossen shot Taylor Ellis with kinetic projectiles while Ellis was doing nothing wrong.

115. Officer Gilbertson and Officer Crossen's use of force against Ellis was unreasonable and conscience shocking.

116. Officer Gilbertson and Officer Crossen have been indicted for aggravated assault by a public servant for shooting Ellis.

117. None of the APD officers who have been indicted for shooting kinetic projectiles at or near protesters that weekend have been disciplined.

118. On information and belief, despite the fact that over 700 incidents involving APD officers' use of less lethal weapons during that weekend were identified by APD, none of the officers who intentionally fired into the crowds have been disciplined.

119. Nor has the APD and its policymakers disciplined any of the officers who saw and did not stop officers from using unreasonable or conscience shocking force.

120. And APD's leaders, who could have and should have stopped their subordinate officers' dangerous conduct, have not been counseled or disciplined in any way for permitting this misconduct.

121. This lack of discipline as to senior leaders and Manley himself is all the more shocking as then-Chief Manley acknowledged that Anthony Evans, Justin Howell, Levi Ayala, and numerous other individuals were victims of unjustifiable force by APD officers on May 30 and May 31, and that such force was not justified by any facts known to the department or any of the shooting officers.

122. Equally disturbing, despite watching videos of several APD officers shoot protesters who posed no danger to anyone, and despite knowing that more than twenty police officers have been indicted for assaulting protesters during the George Floyd protests, APD's current Chief, Joseph Chacon, ratified the wrongdoing of his officers by, among other things, telling the news media that he had seen no evidence of criminal conduct by APD officers.

123. To date, Chief Chacon has refused to make public the videos showing multiple examples of criminal conduct and abhorrent violence by APD officers.

124. City Manager Cronk, who also ignored then-Councilman Casar's pleas for help, further ratified APD's misconduct by telling the public that officers who had violated the law had not done so.

125. Moreover, Chief Manley adopted policies that encouraged, authorized, or tolerated this unreasonable, unnecessary, and brutally excessive force even though Chief Manley had long known of the dangers of firing projectiles into crowds and at defenseless persons, and was actually aware that APD officers had repeatedly and unreasonably fired at and injured numerous protesters on May 30, 2020 and multiple times again on May 31, 2020. Despite this, and Manley's awareness of the severe injuries caused by them, APD policies – and Manley – authorized their continued use.

126. Chief Manley knew, as any reasonable policymaker capable of rational thought would also know, including but not limited to Chief Chacon now, that as a direct consequence of such practices and their choice to escalate violence rather than deescalate it people like Plaintiff who did not pose a danger to the public or to the officers would be injured and victimized, and their constitutional rights violated.

127. In fact, then Councilman Casar told him as much in a text message.

128. Unfortunately, this is hardly surprising given that APD had a long-standing policy of paramilitary training—teaching its officers to act as “warriors,” and see conflict with members of the public as inevitable as part of an “us vs. them” culture.

129. Officers were trained to be “indifferent to the community,” according to a report commissioned by the City.

130. APD’s training academy taught cadets—who later became APD officers—to act as if they were at war with the community they were supposed to be protecting. In one incident, an academy instructor told cadets that if “anyone here says they want to be a police officer to ‘help people,’ I will punch you in the face.”

131. Another instructor told cadets to “pick someone out of a crowd, and ask yourself, ‘how could I kill that person?’”

132. A report commissioned by the City found that officers were trained to see “the Austin community [as] the enemy.”

133. Viewing the Austin community as the enemy violates basic precepts of sound and just law enforcement.

134. Unsurprisingly, the report further found that “the culture of a police training academy reflects the culture of a department and impacts the mindset and approach to policing.” The report concluded that the City must provide “training for handling protests with non-militaristic approaches.”

135. As a direct and proximate result, numerous other people suffered severe and devastating injuries as a result of APD’s practices and excessive force on May 30, 2020 and May 31, 2020.

136. According to Dell Medical Center’s physicians, at least nineteen people required serious medical care for injuries caused by APD’s use of less lethal shotguns on May 30, 2020 and May 31, 2020. Seven victims required surgical interventions and four victims retained portions of the “beanbag” shotgun rounds in their bodies/heads.

137. Victims suffered intercranial hemorrhages, depressed skull fractures, depressed frontal bone fracture, fractured jaws, and brain damage.

138. After ignoring the pattern of excessive and conscience shocking force that preceded and followed the attack on Cesar for several more days, multiple members of the City Council called for Manley to be removed as APD’s Chief of Police.

139. Following the calls to remove him, Chief Manley acknowledged the obvious, the policies and practices at Austin Police Department concerning the use of kinetic projectiles were dangerously flawed and he agreed to change them—a change any reasonable policymaker should have known to have made prior to Plaintiff being shot. But he and subsequent Chiefs still continue to authorize the use of these potentially deadly weapons on citizens, which has resulted in more unreasonable shootings and injuries to Austin citizens.

140. Sadly, this practice has continued under Chief Chacon.

141. Nor did Manley nor Chacon take any steps to discipline, re-train, or terminate any of the officers known to have used excessive force in response to the peaceful May 30 and May 31, 2020 protests.

IV. CAUSES OF ACTION

A. FOURTH AND FOURTEENTH AMENDMENT EXCESSIVE AND CONSCIENCE SHOCKING FORCE – AS TO DEFENDANTS KYU AN AND DANIEL MCCAMERON

142. Plaintiff incorporates the preceding paragraphs as if alleged herein.

143. APD Officers Kyu An and Daniel McCameron, while acting under color of law, intentionally used objectively unreasonable, excessive, and conscience shocking force on Saraneka Alexander.

144. When asked if he used more force than was reasonably necessary under the circumstances against Alexander, Defendant An pled the Fifth.

145. APD Officers Kyu An and Daniel McCameron’s use of force was wholly excessive to any conceivable need, objectively unreasonable in light of clearly established law, and directly caused Plaintiff Alexander to suffer serious injuries.

146. Therefore, APD Officers Kyu An and Daniel McCameron violated Alexander's clearly established Fourth Amendment right to be free from excessive force and unreasonable seizure.

147. Defendants An and McCameron's intentional use of force caused Plaintiff Alexander's injuries, was grossly disproportionate to the need for action under the circumstances, and was inspired by malice or excess of zeal such that it amounted to abuse of official power that shocks the conscience. Without provocation of any kind or any legitimate reason, APD Officers An and McCameron shot Plaintiff Alexander with a potentially lethal weapon, causing serious pain and injury, while Alexander was protesting against police violence.

148. Therefore, Defendants also violated Alexander's clearly established substantive due process rights to be free from excessive force in such a way that is unreasonable and clearly shocks the conscience.

149. As a direct and proximate result of APD Officers Kyu An and Daniel McCameron's actions, Alexander suffered and continues to suffer significant injuries.

B. § 1983 FIRST AMENDMENT RETALIATION – AS TO DEFENDANTS KYU AN AND DANIEL MCCAMERON

150. Plaintiff incorporates the preceding paragraphs as if alleged herein.

151. The First Amendment's protections for free speech and assembly prohibit agents of the government from subjecting an individual, like Alexander, to retaliation for engaging in protected speech rights.

152. Alexander exercised her free speech and assembly rights by attending the demonstration against police violence and brutality across the nation.

153. An and McCameron's actions were an effort to cease Alexander's freedoms of speech and assembly and to instill fear in her.

154. Plaintiff was protesting when she was shot with the projectiles by An and McCameron. An and McCameron did not provide Plaintiff a lawful order, never suspected Plaintiff of committing a crime, never attempted to arrest Plaintiff, and never attempted to render aid after the assault. Plaintiff was never charged with a crime related to the protest.

155. Upon information and belief, An and McCameron's use of force against Alexander was substantially motivated by his disagreement with the content of Alexander's speech. Upon information and belief, An and McCameron shot Alexander with the projectiles substantially because An and McCameron disagreed with Alexander's right to assemble and/or her protected speech.

156. In addition, Alexander was yet one more minority senselessly injured by APD's use of excessive force. Among others, these include Anthony Evans, Levi Ayala, Bomani Barton, and Justin Howell.

C. PUNITIVE/EXEMPLARY DAMAGES – AS TO DEFENDANTS KYU AN AND DANIEL MCCAMERON

157. Plaintiff incorporates the preceding paragraphs as if alleged herein.

158. Defendant's conduct was intentional, wanton, egregious, reckless, and endangered countless community members. Plaintiff seeks punitive damages as well to deter future uses of such excessive force.

D. § 1983 CLAIMS — AS TO DEFENDANT CITY OF AUSTIN ONLY

159. Plaintiff incorporates the preceding paragraphs as if alleged herein.

160. APD Officers An and McCameron, while acting under color of law, used excessive and conscience shocking force on Saraneka Alexander when she posed no danger to anyone.

161. This use of force was wholly excessive to any conceivable need, objectively unreasonable in light of clearly established law, and directly caused Plaintiff Alexander to suffer

serious injuries. Therefore, Alexander's clearly established right to be free from excessive and conscience shocking force was violated.

162. As a direct and proximate result, Alexander suffered and continues to suffer significant injuries.

163. Likewise, the First Amendment's protections for free speech and assembly prohibit agents of the government from subjecting an individual, like Alexander, to retaliation for engaging in protected speech.

164. Alexander exercised her free speech and assembly rights by attending the demonstration against police violence, and by demonstrating near officers.

165. Upon information and belief, APD Officers An and McCameron's use of force against Alexander was substantially motivated by their disagreement with the content of Alexander's speech. Upon information and belief, the officers shot Alexander with the less lethal weapon substantially because the officers disagreed with Alexander's right to assemble and/or her protected speech.

166. And McCameron and An, as well as numerous other APD officers acting under color of law who saw them and others shooting at protesters, failed to intercede to stop them from using unreasonable force on protesters as they were duty bound to do.

167. Moreover, Defendant City of Austin, had the following policies, practices, or customs in place when APD Officers An and McCameron, acting under color of law, injured Plaintiff Alexander and violated her rights under the Constitution:

- a. Shooting kinetic projectiles into crowds where people could be injured;
- b. Shooting people who posed no danger to anyone with kinetic projectiles;
- c. Shooting less lethal weapons from unsafe, elevated angles and/or distances;
- d. Using, authorizing, and/or tolerating excessive force against non-violent protesters;

- e. Failing to adequately discipline officers;
- f. Failing to adequately supervise officers;
- g. Failing to document uses of force on May 29, May 30, and May 31, 2020;
- h. Failing to adequately train officers concerning de-escalation of force, crowd control, use of force against non-violent protestors, and the use or misuse of kinetic projectiles
- i. Retaliating against protesters;
- j. Failing to train officers regarding demonstrators' free speech and assembly rights;
- k. Not intervening to stop constitutional violations, including but not limited to retaliation, conduct that shocks the conscience, and excessive force;
- l. Training officers to act as paramilitary "warriors," and creating an "us vs. them" culture where officers were "at war" with the community they were supposed to be serving, which encouraged officers to use excessive force; and
- m. Failing to train or instruct officers about specific incidents it considers unreasonable, excessive force, or in violation of the Constitution.

168. Each of the policies, practices, or customs delineated above was actually known, constructively known, and/or ratified by City of Austin and then Chief of Police, Brian Manley (APD's policymaker), and was promulgated with deliberate indifference to Alexander's First, 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 highly predictable that the particular violations alleged here, all of which were under color of law, would result.

169. Moreover, then Chief Manley was also aware of multiple similar incidents chilling speech and in which unconscionable, excessive, or unreasonable force was used but he did not remedy the misconduct. Thus, the City is also directly liable for Chief Manley's failure to train, supervise,

and correct misconduct, which proximately caused Plaintiff to suffer injuries and have her rights violated.

170. Consequently, the policies delineated above were a moving force of Plaintiff's constitutional deprivations and injuries, and proximately caused severe damages.

171. Plaintiff Alexander brings this claim pursuant to 42 U.S.C. § 1983.

V. DAMAGES

172. Plaintiff Alexander seeks the following damages:

- a. Past and future medical expenses;
- b. Past and future economic damages, including (but not limited to) loss of earning capacity;
- c. Past and future physical pain and mental anguish;
- d. Past and future impairment;
- e. Past and future disfigurement;
- f. Exemplary/Punitive damages as to Defendants An and McCameron; and
- g. Attorneys' fees pursuant to 42 U.S.C. § 1988.

VI. JURY DEMAND

173. Plaintiff respectfully demands trial by jury.

VII. PRAYER FOR RELIEF

174. To right this injustice, Plaintiff requests the Court:

- a. Award compensatory damages against the City of Austin, and compensatory and punitive damages against the individual Defendants, including APD Officers An and McCameron;
- b. Award Plaintiff costs and fees, including but not limited to expert fees and attorneys' fees, pursuant to 42 U.S.C. § 1988;
- c. Award pre-judgment and post-judgment interest at the highest rate allowable under the law;

- d. Costs of court; and
- e. Award and grant such other just relief as the Court deems proper.

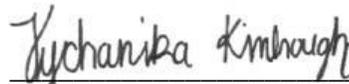
Dated: March 27, 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

/s/ Jeff Edwards
Jeff Edwards

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

SARANEKA ALEXANDER,
Plaintiff,

v.

CITY OF AUSTIN, KYU AN, and
DANIEL McCAMERON,
Defendants.

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Case No. 1:22-cv-00520-RP

**DEFENDANTS KYU AN AND DANIEL McCAMERON'S
ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Defendants, Kyu An and Daniel McCameron, by and through their attorneys of record, and files this their Original Answer to Plaintiff's First Amended 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.¹ During those protests, approximately 62% of major U.S. cities experienced looting.² 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

¹ *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>.

² *Id.*

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

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.⁵ Property Claims Services designated the riots as a “multi-state catastrophe event,” which is the first such designation for a civil disorder event since 1992.⁶ Conservative insurance estimates of property damage caused during the riots exceeds \$1 billion dollars—the “costliest civil disorder in U.S. history.”⁷

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).”⁸ Over three quarters of major city law enforcement agencies reported rioters using such weapons.⁹ “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.¹⁰ “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.”¹¹

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

³ *Id.*

⁴ *Id.*

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

⁶ *Id.*

⁷ *Id.*

⁸ *Report on the 2020 Protests & Civil Unrest* at 11.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 11 – 12.

shotguns, and handguns.”¹³ Other weapons wielded by protestors commonly included bats, hammers, metal poles, and shields.¹⁴ 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.”¹⁵

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.¹⁶ 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.¹⁷ Agitators spray painted messages around downtown Austin literally encouraging the killing of police officers.¹⁸ Starting on May 30, the Austin Police Department was forced to issue

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 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>.

¹⁷ 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>.

¹⁸ 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.”¹⁹ DPS sent “more than 1,500 officers to assist local police departments” statewide, and the governor ultimately “activated the Texas National Guard.”²⁰ 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. APD 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.²¹ During the protests-turned-riots at issue, APD Officers An and McCameron personally observed rioters throwing projectiles at APD officers that included but were not limited to large rocks, bricks, glass bottles, lumber pieces, bottle of bleach, bottles of paint, and what appeared to be a defective Molotov cocktail. Officer An himself suffered a serious burn to his neck as a result of one such rioter’s attack using an “artillery shell” style pyrotechnic explosive device—and was also struck by several other types of rioter-thrown projectiles that day.

8. Plaintiff Alexander’s conduct on May 30, 2020 crossed the line of peaceful protest—she committed violent acts that intentionally and directly threatened the health and safety of officers on the scene. Plaintiff’s violent acts far exceeded anything that would be protected by the First Amendment.

9. Over the course of the protest-turned-riot, Officers An and McCameron *never purposefully impacted any person* who was not either actively committing a violent act or was obviously preparing to imminently commit a violent act. Officers An and McCameron never purposefully

¹⁹ Osborne, *supra* fn 17.

²⁰ *Id.*

²¹ 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>.

discharged their weapon in a manner aimed at any rioter's head, neck, or face, and they have no reason to believe that they ever intentionally impacted any rioter's head, neck, or face, nor that they ever caused any protestor-turned rioter any unconstitutional injury whatsoever. At all times, Officers An and McCameron acted pursuant to their training and accepted police procedures. Officers An and McCameron's conduct as law enforcement officers was reasonable, especially when the requisite consideration is given to their surrounding riotous circumstances that were "tense, uncertain, and rapidly evolving."²² They are entitled to the protections of Qualified Immunity as a result.

II. ORIGINAL ANSWER

A. Parties.

10. Defendants lacks sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 1 of Plaintiff's First Amended Complaint.

11. As to the allegations contained within Paragraph 2 of Plaintiff's First Amended Complaint, Defendants admit that the City of Austin is a municipality that operates the Austin Police Department. Otherwise, Defendants lack sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 2.

12. Defendants admit the allegations contained within Paragraphs 3 – 4 of Plaintiff's First Amended Complaint.

B. Jurisdiction and Venue.

13. As to the allegations contained within Paragraphs 5 – 8 of Plaintiff's First Amended Complaint, Defendants deny that they ever intentionally interacted with or engaged in any conduct

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

whatsoever that caused any unconstitutional injury to Plaintiff. Otherwise, Defendants admit the remaining allegations regarding jurisdiction and venue.

C. Facts.

14. As to the allegations contained in Paragraphs 9 – 30 of Plaintiff’s First Amended Complaint, Defendants deny any knowledge of APD officers purposefully firing into a crowd as opposed to aiming at specific individual violent rioters—respectively—and for justifiable reasons. Defendants deny that any use of force against Plaintiff was unconstitutional—as opposed to a justified response to Plaintiff’s violent and unlawful actions. Defendants deny that they had any knowledge of a serious injury to any rioter at the time, and thus deny that they ever knowingly failed to render aid to anyone who suffered a serious injury.

15. As to the allegations in Paragraphs 31 – 35 of Plaintiff’s First Amended Complaint, Defendants admit that Officers have taken the Fifth Amendment to preserve their criminal defense strategies from Travis County District Attorney’s meritless prosecutions against the Austin Police Officers who served their City in response to this violent riot. Otherwise denied.

16. Furthermore, Defendants deny that they ever attempted to use any force that was unjustified or unreasonable—as numerous rioters—including Plaintiff—were assaulting officers with rocks, bottles and other projectiles. Defendants deny that any APD officers overreacted or intentionally used chilling, excessive force against any *peaceful* demonstrators.

17. As to the allegations in Paragraph 36 – 141 of Plaintiff’s First Amended Complaint, the relevant indictment documents, deposition transcripts, text exchanges and settlement documents—regarding allegations made by other individuals as plaintiffs—speak for themselves, and no answer is necessary from these Defendants regarding the same. Defendants admit that they have not been disciplined for anything related to their conduct during the riots at issue. Defendants deny that any

APD officers overreacted or intentionally used chilling, excessive force against any peaceful demonstrators. Defendants deny any personal knowledge of any APD officers using excessive force, failing to intervene, or failing to render aid. Defendants deny that any of their actions were unreasonable or inexplicable, or that they used unreasonable force against any person. Defendant An admits that he has been indicted by the Travis County District Attorney as part of the District Attorney's purely political ploy to prosecute law enforcement officers. Otherwise, Defendants lack sufficient knowledge to form a belief as to the truth of the remaining allegations therein, and therefore deny the same.

D. Causes of Action

18. As to the allegations contained in Paragraph 142, Defendants adopt and incorporate their responses to the previous Paragraphs of the Complaint.

19. As to the allegations contained in Paragraphs 143 – 149 of Plaintiff's First Amended Complaint, Defendants deny that they used excessive force against Plaintiff, or that they caused Plaintiff any constitutional injury. Defendant An admits that he has invoked the Fifth Amendment to preserve his criminal defense strategies from Travis County District Attorney's meritless prosecutions against the Austin Police Officers who served their City in response to this violent riot. Otherwise, these paragraphs merely summarily claim that a constitutional violation occurred. Pursuant to Federal Rule of Civil Procedure 8(b) a defendant need not respond to plaintiff's mere legal conclusions. To the extent the remainder of these paragraphs require a response, denied.

20. As to the allegations contained in Paragraph 150, Defendants adopt and incorporate their responses to the previous Paragraphs of the Complaint.

21. As to the allegations contained in Paragraphs 151 – 156 of Plaintiff's First Amended Complaint, pursuant to Federal Rule of Civil Procedure 8(b) a defendant need not respond to

plaintiff's mere legal conclusions. Defendants admit that Plaintiff brings her claim pursuant to 42 U.S.C. § 1983. Defendants deny Plaintiff's conclusory statement regarding their state of mind. At no point during the violent riot did Defendants take any action that was motivated by a desire to chill speech or conduct protected by the First Amendment. Otherwise, denied.

22. As to the allegations contained in Paragraph 157, Defendants adopt and incorporate their responses to the previous Paragraphs of the Complaint.

23. As to the allegations contained within Paragraph 158 of Plaintiff's First Amended Complaint, Defendants admit that Plaintiff appears to be requesting punitive damages in her suit. Defendants deny that their conduct was wanton, or that any action they took was motivated by malice. Defendants deny Plaintiff is entitled to punitive damages.

24. As to the allegations contained in Paragraph 159, Defendants adopt and incorporate their responses to the previous Paragraphs of the Complaint.

25. As to the allegations contained in Paragraphs 160 – 166 of Plaintiff's First Amended Complaint, these claims assert a *Monell* claim against the City of Austin. Pursuant to Federal Rule of Civil Procedure 8 a defendant need not respond to plaintiff's mere legal conclusions, nor to allegations not asserted against them. To the extent an answer is required—these Defendants admit that Plaintiff brings her claim pursuant to 42 U.S.C. § 1983. Defendants admit they were acting under the color of law. Defendants deny that they used excessive force. Defendants deny Plaintiff's conclusory statement regarding their state of mind. At no point during the violent riot did Defendants take an action that was motivated by a desire to chill speech or conduct protected by the First Amendment. Defendants deny that they had any knowledge of a serious injury to any rioter at the time, and thus deny that they ever knowingly failed to render aid to anyone who suffered a serious injury. Otherwise, denied.

26. Pursuant to Federal Rule of Procedure 8(b)(A) no answer is necessary from these Defendants as to Paragraphs 167 – 171 because these paragraphs support causes of action explicitly not asserted against them. To the extent any answer is deemed necessary, Defendants deny the allegations therein.

27. As to the allegations contained in Paragraphs 172 – 174, no answer is necessary from these Defendants. To the extent any answer is deemed necessary, Defendants admit that Plaintiff seeks the relief requested therein. Defendants deny Plaintiff is entitled to it.

III. AFFIRMATIVE DEFENSES & IMMUNITIES

28. 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.*

29. Defendants hereby invoke the doctrine of Qualified Immunity and Official Immunity. Defendants discharged their obligations and public duties in good faith and would show that their actions were objectively reasonable in light of the law and the information possessed at that time, and that no clearly established law exists prohibiting them from using force to defend themselves and/or other persons from an active or imminent assault with a potentially deadly weapon or projectile, whether during a riot or otherwise.

30. 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 himself, and/or other rioters. To the extent legally applicable herein, Defendants invoke the comparative responsibility provisions of the Texas Civil Practice & Remedies Code.²³

²³ See TEX. CIV. PRAC & REM. CODE ANN. § 33.001.

31. Defendants further 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.

32. Defendants plead that they had legal justification for each and every action taken by them relating to this incident.

33. Defendants assert the limitations and protections of Chapters 41 & 101 of the Texas Civil Practice & Remedies Code, and the due process clause of the United States Constitution.

34. Defendants reserve the right to assert additional affirmative defenses throughout the development of this case.

35. To the extent Defendants did not address a specific averment made by Plaintiff in her First Amended Complaint, Defendants expressly deny all such averments.

IV. JURY DEMAND

36. Pursuant to Federal Rule of Civil Procedure 48, Defendants hereby request a jury trial.

V. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendants Kyu An and Daniel McCameron pray 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 they be awarded attorney fees incurred in the defense of this suit, and for all further relief to which they may be justly entitled.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANTS
KYU AN AND DANIEL McCAMERON**

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of April, 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, in accordance with the Federal Rules of Civil Procedure.

 /s/ Stephen B. Barron

Stephen B. Barron

Exhibit

1



Exhibit

2



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

SARANEKA ALEXANDER

Plaintiff

v.

CITY OF AUSTIN, KYU AN, AND
DANIEL MCCAMERON

Defendants

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Case No. 1:22-cv-00520-RP

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

NOW COME, through undersigned counsel, Plaintiff, Saraneka Alexander and Defendants, The City of Austin, Kyu An and Daniel McCameron (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 its own attorney’s fees and costs of court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 9, 2023, a true and correct copy of the foregoing document was served via email to the following:

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DANIEL R. RICHARDS

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

SARANEKA ALEXANDER,

Plaintiff,

v.

CITY OF AUSTIN, et al.,

Defendants.

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1:22-cv-520-RP

ORDER

On June 9, 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. 24). “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**.

SIGNED on June 14, 2023.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE