

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

6. Venue of this cause is proper in the Western District pursuant to 28 U.S.C. § 1391(b)(1) 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

7. On May 30, 2020, Mr. Campbell went downtown to participate in a demonstration against police brutality following the police killings of George Floyd and Michael Ramos.

8. Mr. Campbell posed no threat to anyone.

9. Mr. Campbell was doing nothing that could conceivably be perceived as threatening to anyone.

10. Mr. Campbell was completely and totally innocent.

11. Mr. Campbell was unarmed.

12. Mr. Campbell made no suspicious movements that could conceivably lead officers to believe that he was armed.

13. Despite this, an APD officer inexplicably, unconscionably, and unreasonably shot him in the head with a potentially lethal projectile – a so-called “less lethal” “beanbag” round fired from a shotgun.

14. The projectile hit Mr. Campbell's hand.

15. As a consequence, Mr. Campbell suffered a traumatic injury to his hand. The projectile immediately – and to this day – caused Mr. Campbell to suffer significant physical pain, mental anguish, impairment, and disfigurement.

16. Tragically, Mr. Campbell was just one of many innocent people APD officers used

excessive force against on May 30 and May 31 who were doing nothing more than attending an event protesting police violence against Black people.

17. In fact, on May 30, 2020, APD officers used grotesque excessive force numerous times, seriously injuring several people with “bean bag” shotgun rounds, and otherwise attacking innocent demonstrators who did nothing more than exercise their free speech and assembly rights. Among others, APD’s victims from May 30 and 31, 2020 included Sage Avvocato, Jason Gallagher, Saraneka Martin, Levi Ayala, Bomani Barton, Steven Arawn, Gemicah Volter-Jones, Meredith Williams, Nicole Underwood, and Joe Herrera..

18. Police force against Ayala was not justified by any facts known to APD or its officers.

19. Police force against Gallagher was not justified by any facts known to APD or its officers.

20. Police force against Martin was not justified by any facts known to APD or its officers.

21. Police force against Barton was not justified by any facts known to APD or its officers.

22. Police force against Arawn was not justified by any facts known to APD or its officers.

23. Police force against Volter-Jones was not justified by any facts known to APD or its officers.

24. Police force against Williams was not justified by any facts known to APD or its officers.

25. Police force against Underwood was not justified by any facts known to APD or its officers.

26. Police force against Herrera was not justified by any facts known to APD or its officers.

27. While numerous people had been injured by APD, including several who had suffered serious injuries (including head injuries) from “beanbag” shotgun rounds fired by APD on May 30, 2020, rather than correct this unconstitutional behavior by his officers, of which he, Mayor Adler, City Manager Kronk, and several City Council members were made aware of, Chief Manley

and his senior leadership permitted APD to continue firing kinetic projectiles dangerously from “beanbag” shotguns at innocent people and into crowds on May 31, 2020 as well.

28. As a consequence, in addition to Mr. Campbell, numerous other innocent, defenseless individuals were shot in the head or face and seriously injured with projectile “beanbag” shotgun rounds on May 31, 2020. Among others, these include Anthony Evans, Annette Chavez, Christen Warkoczewski, Sage Avvocato, and Samuel Kirsch

29. Police force against Avvocato was not justified by any facts known to APD or its officers

30. Evans was also doing absolutely nothing wrong and was shot in the face with a projectile fired by APD.

31. Police used force against Evans that was not justified by any facts known to APD or its officers.

32. Police force against Chavez was also not justified by any facts known to APD or its officers. Yet she was shot in the back of the head as well.

33. And the force used against Christen Warkoczewski – shooting her in the head as she ran away – was not reasonable and not justified by any facts known to APD or its officers.

34. Upon information and belief, when APD shot Mr. Cambell and the others, the officers were substantially motivated by their opposition to the demonstrators’ message that police violence must end.

35. Among others, these include (but are by no means limited to) force used against Jesus Hernandez, Pete Hernandez, Sir Smith, Carlos Chacon, and Braion King, as well as the killings of David Joseph, Larry Jackson, Jr., Kevin Brown, Byron Carter, Ahmede Bradley, Jason Roque, Nathan Sanders, Daniel Rocha, and Michael Ramos. All of the preceding were unarmed when APD officers assaulted or killed them.

36. Further indicative of APD's failure to remedy its discriminatory practices is a 2020 analysis

of city traffic data that found that Black motorists comprise 25% of APD's arrests despite representing only 8% of its population.

37. In any event, APD's shooting of Mr. Campbell with a kinetic projectile "beanbag" was objectively unreasonable and shocks the conscience .

38. Moreover, the attack on Mr. Campbell would chill a person of ordinary firmness from continuing to engage in protected speech and assembly.

39. Numerous APD officers watched the officer shoot Mr. Campbell, but not one officer intervened to stop the outrageous shooting, just as no one intervened to stop the prior shootings.

40. Moreover, APD Chief of Police, Brian Manley, adopted policies that 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 innocent and 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 prior to the attack on Mr. Campbell. Despite this, and Manley's awareness of the severe injuries caused by "beanbag" shotgun rounds, APD policies – and Manley – authorized their continued use.

41. Likewise, APD had a long-standing policy of paramilitary training for its officers to act as "warriors," and see conflict with members of the public as inevitable as part of an "us vs. them" culture. Officers were trained to be "indifferent to the community," according to a report commissioned by the City.

42. 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."

43. Another instructor told cadets to "pick someone out of a crowd, and ask yourself, 'how

could I kill that person?”

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

45. 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.”

46. Chief Manley knew, as any reasonable policymaker would also know, that as a direct and proximate consequence of such practices, innocent people like Mr. Campbell would be seriously injured and victimized, and their constitutional rights violated.

47. 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 – before Mr. Campbell was senselessly shot.

48. According to Dell Seton Medical Center’s physicians, seven victims required surgical interventions and four victims retained portions of the “beanbag” shotgun rounds in their bodies/heads.

49. More particularly, victims suffered intercranial hemorrhages, depressed skull fractures, depressed frontal bone fracture, fractured jaws and brain damage.

50. Upon information and belief, Manley knew that APD had inflicted this type of serious injury on innocent demonstrators before his officer shot and critically injured Mr. Campbell.

51. After ignoring the pattern of excessive force that preceded the attack on Mr. Campbell for several more days, multiple members of the City Council called for Manley to be removed as APD’s Chief of Police.

52. Following the calls to remove him, Chief Manley acknowledged the obvious: the policies

at Austin Police Department concerning the use of “beanbag” shotguns were dangerously flawed and he agreed to change them – a change any reasonable policymaker should have known to have made prior to Mr. Campbell being shot and seriously injured.

53. The injury Mr. Campbell suffered is substantial.

54. Tragically, Mr. Campbell’s injury will impair him for the rest of his life.

IV. CAUSES OF ACTION

The City of Austin directly and through its practices caused Plaintiff’s rights to be violated and caused him to suffer serious injuries.

55. At least one Austin Police Department Officer, while acting under color of law, used excessive force that shocks the conscience on Mr. Campbell when he posed no danger to anyone.

56. This use of force shocks the conscience, was wholly excessive to any conceivable need, and was objectively unreasonable. Therefore, Defendant’s employee violated Plaintiff’s rights under the Fourth and Fourteenth Amendments.

57. As a direct and proximate result, Mr. Campbell suffered and continues to suffer significant injuries.

58. Likewise, the First Amendment’s protections for free speech and assembly prohibit agents of the government from subjecting an individual, like Mr. Campbell, to retaliation for engaging in protected speech rights.

59. Mr. Campbell exercised his free speech and assembly rights by attending the demonstration against police violence.

60. Upon information and belief, the officer’s use of force against Mr. Campbell was substantially motivated by his disagreement with the content of Mr. Campbell’s speech. Upon information and belief, the officer shot Mr. Campbell with the beanbag shotgun substantially because the officer disagreed with Mr. Campbell’s right to assemble and/or his protected speech.

61. In addition, Mr. Campbell was yet one more unarmed person senselessly injured by APD’s

long-standing pattern of using excessive force against people on May 30 and May 31. Among others from that weekend alone, these include Saraneka Martin, Levi Ayala, Bomani Barton, Anthony Evans, Anette Chavez, and Joe Herrera.

62. Moreover, Defendant City of Austin had the following policies, practices, or customs in place when an APD Officer unreasonably shot Plaintiff Mr. Campbell:

- a. Shooting kinetic projectiles into crowds where innocent people could be injured;
- b. Shooting people in the head 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. Allowing officers with pending Internal Affairs investigations to use “less lethal” beanbag shotguns as crowd control devices;
- g. 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;
- 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. Failing to train or instruct officers about specific incidents it considers unreasonable, excessive force, or in violation of the Constitution;
- k. 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;
- l. Disproportionately using and tolerating excessive force, including deadly force, against unarmed people of color; and
- m. Using munitions that are dangerous or expired.

63. 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, and was promulgated with deliberate indifference to Mr. Campbell’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.

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

65. Moreover, Chief Manley and senior level APD superiors knew that multiple officers had violated individuals' right to speech and assembly and had used excessive force at the protests the day before and earlier on May 31. As a consequence of them not stopping the abusive tactics, they caused numerous people to suffer serious injuries. Thus, they condoned and ratified the abuse. Moreover, the City and its leadership, including Chief Manley, is aware through court findings, litigation, reports commissioned by the City, video footage, and investigations of a pattern of racism and disproportionate and excessive force used against minorities by APD officers. Accordingly, the City is also liable directly for its policymakers' misconduct and failure to adequately supervise, train, and stop APD officers from using excessive force and violating protestors' first amendment and equal protection rights, which was a proximate cause of Plaintiff's deprivation of rights and injuries.

66. Manley failed to supervise the officer that shot Mr. Campbell and by authorizing, encouraging, and failing to stop officers from engaging in reckless police tactics like firing "beanbag" shotgun rounds into crowds of non-violent demonstrators, and the other above delineated policies, all of which caused the violation of Mr. Campbell's constitutional rights. Manley was deliberately indifferent to the known and obvious consequences of these policies, practices, and customs which he was aware of, authorized, and encouraged, rather than acting to correct them. Manley was

actually aware of facts from which any reasonable policymaker could draw the inference that a substantial risk of serious harm and violations of constitutional rights existed, and actually drew that inference. Manley was aware of the pattern of similar incidents that occurred before and after Mr. Campbell's serious injuries, although it was also apparent and obvious that a constitutional violation was a highly predictable consequence of the City's above delineated policies.

67. Likewise, Manley knew or should have known that training his officers it was acceptable to fire "beanbag" shotgun rounds into crowds of nonviolent demonstrators, among the other dangerous policies delineated above, were particular omissions in the City's training program that would cause City employees to violate the constitutional rights of members of the public they encountered, like Mr. Campbell. Nevertheless, though Manley knew of these obvious deficiencies, and even the serious injuries they caused the day before, he chose to retain this dangerously flawed training program and did nothing to correct his officers despite knowing that demonstrations would continue on May 31, 2020.

68. Plaintiff Campbell brings this claim pursuant to 42 U.S.C. § 1983.

V. DAMAGES

69. Plaintiff Campbell 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; and
- f. Attorneys' fees pursuant to 42 U.S.C. § 1988.

VI. PRAYER FOR RELIEF

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

- g. Award compensatory damages against the City of Austin,;
- h. Award Plaintiff costs and fees, including but not limited to expert fees and attorneys' fees, pursuant to 42 U.S.C. § 1988;
- i. Award pre-judgment and post-judgment interest at the highest rate allowable under the law; and,
- j. Award and grant such other just relief as the Court deems proper.

Dated: May 26, 2022

Respectfully submitted,

CAMPOS LAW GROUP, P.L.L.C.,

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ATTORNEYS FOR PLAINTIFF

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

**ADAM CAMPBELL,
Plaintiff,**

v.

**CITY OF AUSTIN,
Defendant.**

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CIVIL ACTION NO. 1:22-cv-00517-RP

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

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant City of Austin (“City”) files this Answer and Affirmative Defenses to Plaintiff’s Original Complaint (Doc. No. 1). Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendant respectfully shows the Court the following:

ORIGINAL ANSWER

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

This Defendant denies the allegations contained in the first unnumbered paragraph in Plaintiff’s Original Complaint.

I. PARTIES

1. Upon information and belief, Defendant admits the allegations contained in Paragraph 1.

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

2. Defendant admits the allegations contained in Paragraph 2.

II. JURISDICTION AND VENUE

3. Defendant admits the allegations contained in Paragraph 3.

4. Defendant admits that this Court has general personal jurisdiction over the Defendant.

5. Defendant admits that this Court has specific *in personam* jurisdiction over the Defendant.

Defendant denies the remaining allegations contained in Paragraph 5.

6. Defendant admits the allegations contained in Paragraph 6.

III. FACTS

7. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 7 of the Original Complaint and therefore denies the same.

8. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 8 of the Original Complaint and therefore denies the same.

9. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 9 of the Original Complaint and therefore denies the same.

10. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 10 of the Original Complaint and therefore denies the same.

11. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 11 of the First Amended Complaint and therefore denies same.

12. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 12 of the Original Complaint and therefore denies same.

13. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 13 and therefore denies the same.

14. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 14 and therefore denies the same.
15. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 15 and therefore denies the same.
16. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 16 and therefore denies the same.
17. Defendant denies the allegations contained in Paragraph 17.
18. Defendant denies the allegations contained in Paragraph 18.
19. Defendant denies the allegations contained in Paragraph 19.
20. Defendant denies the allegations contained in Paragraph 20.
21. Defendant denies the allegations contained in Paragraph 21.
22. Defendant denies the allegations contained in Paragraph 22.
23. Defendant denies the allegations contained in Paragraph 23.
24. Defendant denies the allegations contained in Paragraph 24.
25. Defendant denies the allegations contained in Paragraph 25.
26. Defendant denies the allegations contained in Paragraph 26.
27. Defendant denies the allegations contained in Paragraph 27.
28. Defendant denies the allegations contained in Paragraph 28.
29. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 29 of the Original Complaint and therefore denies the same.
30. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 30 of the Original Complaint and therefore denies the same.

31. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 31 of the Original Complaint and therefore denies same.
32. Defendant denies the allegations contained in Paragraph 32.
33. Defendant denies the allegations contained in Paragraph 33.
34. Defendant denies the allegations contained in Paragraph 34.
35. Defendant denies the allegations contained in Paragraph 35.
36. Defendant denies the allegations contained in Paragraph 36.
37. Defendant denies the allegations contained in Paragraph 37.
38. Defendant denies the allegations contained in Paragraph 38.
39. Defendant denies the allegations contained in Paragraph 39.
40. Defendant denies the allegations contained in Paragraph 40.
41. Defendant denies the allegations contained in Paragraph 41.
42. Defendant denies the allegations contained in Paragraph 42.
43. Defendant denies the allegations contained in Paragraph 43.
44. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 44 of the Original Complaint and therefore denies same.
45. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 45 of the Original Complaint and therefore denies same.
46. Defendant denies the allegations contained in Paragraph 46.
47. Defendant denies the allegations contained in Paragraph 47.
48. Upon information and belief, Defendant admits the allegations contained in Paragraph 48.
49. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 49 of the Original Complaint and therefore denies same.

50. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 50 of the Original Complaint and therefore denies same.

51. Defendant denies the allegations contained in Paragraph 51.

52. Defendant denies the allegations contained in Paragraph 52.

53. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 53 of the Original Complaint and therefore denies same.

54. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 54 of the Original Complaint and therefore denies same.

IV. CAUSES OF ACTION

55. Defendant denies the allegations contained in Paragraph 55.

56. Defendant denies the allegations contained in Paragraph 56.

57. Defendant denies the allegations contained in Paragraph 57.

58. Defendant denies the allegations contained in Paragraph 58.

59. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 59 of the Original Complaint and therefore denies same.

60. Defendant denies the allegations contained in Paragraph 60.

61. Defendant denies the allegations contained in Paragraph 61.

62. Defendant denies the allegations contained in Paragraph 62.

63. Defendant denies the allegations contained in Paragraph 63.

64. Defendant denies the allegations contained in Paragraph 64.

65. Defendant denies the allegations contained in Paragraph 65.

66. Defendant denies the allegations contained in Paragraph 66.

67. Defendant denies the allegations contained in Paragraph 67.

68. Defendant denies the allegations contained in Paragraph 68.

V. DAMAGES

69. Defendant denies the allegations contained in Paragraph 69.

VI. PRAYER FOR RELIEF

70. Defendant denies the allegations contained in Paragraph 70 and specifically denies that the Plaintiff is entitled to any relief whatsoever of and from the Defendant.

AFFIRMATIVE DEFENSES

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.
2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.
3. As a political subdivision, Defendant City of Austin denies that it can be liable for exemplary/punitive damages under 42 U.S.C. § 1983.
4. Defendant reserves the right to assert additional affirmative defenses throughout the development of the case.

DEFENDANT'S PRAYER

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

RESPECTFULLY SUBMITTED,

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

/s/ Brandon J. Mickle

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CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 24th day of June 2022.

Via CM/ECF:

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