

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

GEOFFREY C. CLAYTON

*

CIVIL ACTION

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VERSUS

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NO.:

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**OFFICER DAVID ZULLO, Individually
and in his official capacity as a New Orleans
Police Officer; OFFICER ROBERT
THOMAS, Individually and in his capacity
as a New Orleans Police Officer;
SUPERINTENDENT WARREN J. RILEY,
Individually and in his official capacity as
the SUPERINTENDENT OF THE NEW
ORLEANS POLICE DEPARTMENT;
THE NEW ORLEANS POLICE
DEPARTMENT, THE CITY OF NEW
ORLEANS and ABC INSURANCE
COMPANY**

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SECTION:

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DIVISION:

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JURY TRIAL REQUESTED

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ORIGINAL COMPLAINT

1.

PRELIMINARY STATEMENT

This Civil Complaint is brought pursuant to Title 42 U.S.C. §§ 1983, 1985, 1986 and 1988, as an action at law to redress the intentional, malicious deprivation, under color of law, statute, ordinance, regulation, custom or usage, of the rights, privileges, or immunities secured to Petitioner by the Constitution of the United States, including, but not necessarily limited to the Fourth

Amendment, the Fifth Amendment, the Eighth Amendment, the Fourteenth Amendment, and/or by Acts of Congress and the U.S. Constitution. Petitioner further asserts claims pursuant to the Constitution of the State of Louisiana and other pertinent statutes, laws and ordinances of that State.

2.

STATEMENT OF JURISDICTION

Jurisdiction is vested in this Honorable Court pursuant to 28 U.S.C. § 1331 and/or 28 U.S.C. § 1343. This Honorable Court also has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332 and/or § 1441, as the citizenship of the parties hereto is diverse and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. More particularly, Petitioner, Geoffrey C. Clayton, is a resident and domiciliary of the State of Missouri and Defendants, Officer David Zullo, Superintendent Warren J. Riley, The New Orleans Police Department and The City of New Orleans, are citizens and domiciliaries of the Parish of Orleans, State of Louisiana. Supplemental jurisdiction is asserted for all claims cognizable under the laws of the State of Louisiana.

3.

PARTIES

The Petitioner in this cause of action is as follows:

- A. **GEOFFREY C. CLAYTON**, (Sometimes referred to as “Sgt. Clayton” and/or “Petitioner”) a person of the full age of majority and a resident and domiciliary of the State of Missouri.

4.

The Defendants to this cause of action are as follows:

- A. **DAVID ZULLO**, (“Officer Zullo”) Individually and in his official capacity as a New Orleans Police Officer, a person of the full age of majority and, upon information and belief, a resident and domiciliary of the Eastern District of Louisiana;

- B. **ROBERT THOMAS**, (“Officer Thomas”) Individually and in his official capacity as a New Orleans Police Officer, a person of the full age of majority and, upon information and belief, a resident and domiciliary of the Eastern District of Louisiana;
- C. **SUPERINTENDENT WARREN J. RILEY**, (“Superintendent Riley”) Individually and in his official capacity as the Superintendent of the New Orleans Police Department, a person of the full age of majority and, upon information and belief, a resident and domiciliary of the Parish of Orleans, State of Louisiana;
- D. **THE NEW ORLEANS POLICE DEPARTMENT** (“N.O.P.D.”) a municipal department withint he supervision and control of The City of New Orleans;
- E. **THE CITY OF NEW ORLEANS**, a self-insured municipal corporation authorized to do and doing business in the Parish of Orleans, State of Louisiana.
- F. **ABC INSURANCE COMPANY**, a fictitious name for an actual insurance business licensed and duly authorized to do and doing business in the State of Louisiana on or about, prior to and since, May 2, 2009, and that upon information and belief, provided insurance coverage for the acts and omissions of Defendants, Officer David Zullo, Officer Robert Thomas, Superintendent Warren J. Riley, The New Orleans Police Department and The City of New Orleans, made the basis of suit herein.

5.

All of the above named Defendants are bound jointly, severally and in solido unto your Petitioner, Geoffrey C. Clayton, in an amount fair and reasonable under the premises, together with legal interest thereon from the date of judicial demand until paid, and for all costs of these proceedings, including attorney’s fees, for the following reasons, to wit:

6.

FACTUAL BACKGROUND

In July, 2005, Petitioner, Geoffrey Clayton, enlisted in the United States Army National Guard in his home state of Missouri. At the time of the acts and omissions forming the basis of this suit, Petitioner had been promoted to the rank of E-4, Specialist. In February, 2010, Petitioner received another promotion and is currently an E-5, Sargent.

7.

In July, 2007, Petitioner's unit was federalized (placed on active duty in preparation for combat) and Petitioner was deployed to Baghdad, Iraq, in July, 2007. Petitioner's method of service (MOS) was Combat Engineer. During his tour, Petitioner was a member of a special team that searched for and neutralized improvised explosive devices (IEDs) and road-side bombs.

8.

During his tour, Sgt. Clayton was involved in heavy combat. Specifically, Petitioner survived eleven separate bomb blasts, nine close proximity rocket attacks and numerous small arms engagements. As a result of his combat exposure, Sgt. Clayton sustained significant bilateral hearing loss and was diagnosed with post traumatic stress disorder (P.T.S.D.). At the end of his tour, Sgt. Clayton returned home in August, 2008.

9.

Petitioner, Geoffrey C. Clayton currently is, and at all times relevant hereto was, a member of the United States Armed Forces.

10.

FACTUAL ALLEGATIONS

All of the acts and omissions complained of herein were done with actual malice toward Petitioner and with willful and wanton indifference to and deliberate disregard for Petitioner's Constitutional rights.

11.

Upon information and belief, at all times pertinent hereto, Defendant, the City of New Orleans, was self-insured for the acts and omissions of Defendants, Officer David Zullo, Officer Robert Thomas, Superintendent Warren J. Riley, The New Orleans Police Department and The City of New Orleans, made the basis of this suit.

12.

Alternatively, Defendant, ABC INSURANCE COMPANY, had in full force and effect a policy or policies of liability insurance under the terms of which Defendants, Officer David Zullo, Officer Robert Thomas, Superintendent Warren J. Riley, The New Orleans Police Department and The City of New Orleans, were provided with liability insurance coverage for the acts and omissions of said Defendants made the basis of this suit. The precise terms and numbers embodied in said policy of insurance are incorporated herein by reference and are specifically pled herein as if set forth *in extenso*.

13.

At all times pertinent hereto, Defendants, Officer Zullo and Officer Thomas, were employed as police officers by Defendant, N.O.P.D. and/or The City of New Orleans, and at all times relevant hereto, Defendants, Officer Zullo and Officer Thomas, were acting in the course and scope of their employment, and all acts and/or omissions were performed under the color of statutes and ordinances of the Parish of Orleans and the laws of the State of Louisiana.

14.

Defendants, Officer David Zullo, Officer Robert Thomas and Superintendent Warren J. Riley, may not avail themselves of the defense of qualified immunity, as said Defendants created, supported and/or promulgated the customs and policies which lead to some or all of the constitutional deprivations and state law tortious conduct claims alleged herein; Defendants' personal involvement and/or their causal connection to the acts and omissions leading to the deprivation of constitutionally protected rights further disqualify the doctrine of qualified immunity as a legitimate defense.

15.

Defendants, The New Orleans Police Department and The City of New Orleans, may not avail themselves of the defense of qualified immunity because the acts and omissions which lead to some and/or all of the constitutional deprivations and state law tortious conduct claims alleged herein were the result of grossly deficient customs and policies created, supported and/or promulgated by said Defendants, as is more fully described herein below.

16.

On May 1st, 2009, Petitioner, Geoffrey Clayton, was visiting The City of New Orleans.

17.

On May 2, 2009, Sgt. Clayton flagged down a New Orleans Police Department squad car being driven by Officer David Zullo. Petitioner asked Officer Zullo if he had any military experience and Officer Zullo explained that he served in the Marine Corps, which eased Petitioner's mind.

18.

Sgt. Clayton told Officer Zullo that he was suffering with a bout of P.T.S.D. and asked Officer Zullo to direct him to a place where he could receive medical attention.

19.

Officer Zullo completely ignored everything that Sgt. Clayton had just explained to him.

20.

Officer Zullo then walked away which led Petitioner to believe that Officer Zullo was not going to offer him any assistance during his time of need.

21.

Officer Zullo then approached Petitioner from the rear; standing approximately ten to fifteen feet away.

22.

When Petitioner turned he saw Officer Zullo standing at full draw with a black object pointed at him. Without any warning or other communication Officer Zullo fired his taser gun and hit Petitioner in the chest directly above the heart.

23.

Officer Zullo then activated the taser, sending electricity through Sgt. Clayton's body. Sgt. Clayton immediately lost control of the sensory and motor functions of his peripheral nervous system. Sgt. Clayton immediately blacked out, fell to the ground and his head slammed into the concrete sidewalk.

24.

The next thing Petitioner remembers is waking up in the hospital.

25.

Officer Zullo did not attempt to peacefully restrain Sgt. Clayton before using the taser gun.

26.

At no point was Petitioner confrontational or uncooperative with Officer Zullo.

27.

Moreover, Petitioner was alone and unarmed at the time Officer Zullo tasered him.

28.

Ten days after the taser incident, on May 12, 2009, Sgt. Clayton was wrongfully charged with allegedly violating New Orleans Municipal Ordinance Sections 54-405, Public Drunkenness and 54-441, Resisting an Officer, both of which are individually punishable by a fine in the amount of \$500.00 and a five month term in Orleans Parish Prison.

29.

The charges filed against Sgt. Clayton were dismissed on May 12, 2009.

30.

In an attempt to cover up his wrongful conduct, Officer Zullo conspired with his supervisor, Officer Robert Thomas, by filing a bill of information in Orleans Parish Municipal Court, charging Petitioner with a high crime and misdemeanor he did not commit.

31.

Alternatively, Officer Robert Thomas ordered Officer Zullo to file the above mentioned charges against Petitioner in an attempt to steer The New Orleans Police Department away from any liability for the wrongful conduct of Officer Zullo complained of herein.

32.

Petitioner remained unconscious for approximately four and one half (4.5) hours after he was tasered by Officer Zullo.

33.

Petitioner was taken from the scene of the incident to the emergency room at University Hospital where he was kept in the intensive care unit for one week.

34.

When Sgt. Clayton fell to the ground after being tasered he slammed his head slammed into the concrete sidewalk causing him to sustain intracranial hemorrhage and a basal skull fracture— a mild-moderate traumatic brain injury.

35.

As a result of those brain injuries, Sgt. Clayton has lost his sense of smell, experiences constant headaches and numbness on the left side of his forehead.

36.

A neuropsychological evaluation performed after the taser incident revealed that Petitioner experiences difficulty performing tasks involving motor speed, has a delayed visual memory, and decreased category fluency and category switching.

37.

The final sequella of Sgt. Clayton's injuries sustained as a result of being tasered by Officer Zullo is unknown.

38.

As a direct result of the incident complained of herein, Petitioner, Geoffrey C. Clayton, has incurred damages, including but not limited to, physical pain and suffering, embarrassment and humiliation, emotional distress, medical expenses, legal fees and costs and other losses that shall be proven at the trial on the merits of this action.

39.

Defendant, Officer Zullo, acted with actual malice toward Petitioner, Geoffrey C. Clayton, and with willful and/or wanton indifference to and deliberate disregard for Petitioner's statutory and constitutional rights. Officer Zullo's actions constituted unconstitutional and unreasonable excessive use of force and deprivation of liberty without due process of law.

40.

Upon information and belief, Defendants, Superintendent Warren J. Riley, The New Orleans Police Department, Officer Robert Thomas and The City of New Orleans, permitted and tolerated a pattern and practice of excessive and/or unnecessary use of force by police officers of the New Orleans Police Department.

41.

Upon information and belief, the New Orleans Police Department and Superintendent Warren J. Riley, have maintained a system of review of police conduct which is so untimely and cursory as to be ineffective and to permit and tolerate the practice of excessive and/or unnecessary use of force by police officers.

42.

The acts, omissions, systematic flaws, policies, and customs of the New Orleans Police Department, have caused police officers of the New Orleans Police Department and Superintendent Warren J. Riley to believe that the excessive and/or unnecessary use of force would not be aggressively, honestly, and properly investigated, with the foreseeable result that officers are more likely to use excessive and/or unnecessary force against Petitioner, Geoffrey C. Clayton, and others in the future.

43.

CLAIMS FOR RELIEF

FEDERAL CAUSES OF ACTION

**COUNT I: VIOLATION OF
CONSTITUTIONAL RIGHT TO PHYSICAL LIBERTY**

Petitioner hereby incorporates by reference Paragraphs 1 through 43.

44.

It was the policy and practice of Defendants, Superintendent Warren J. Riley and The New Orleans Police Department, to employ certain police officers, including Defendant, Officer David Zullo mentioned in the foregoing paragraphs.

45.

Defendant, Officer Zullo, unlawfully detained and arrested Petitioner, Geoffrey Clayton, by using unnecessary and excessive force. More particularly, Petitioner was unarmed and seeking medical attention at the time he was tasered by Officer Zullo. Then, on May 12, 2009, ten days after Petitioner was wrongfully arrested and detained, Officer Zullo charged Petitioner he was charged with allegedly perpetrating high crimes and misdemeanors that he did not commit. By wrongfully tasing Petitioner and falsely charging Petitioner with two separate crimes that he did not commit, Officer Zullo violated Petitioner's right to physical liberty.

46.

The unlawful detainment and arrest of Petitioner, Geoffrey Clayton, was performed under color of law, effected by the wrongful conduct of Defendant, Officer Zullo, was done with actual malice toward Petitioner and with willful and wanton indifference to and deliberate disregard for Petitioner's Constitutional rights. Petitioner, Geoffrey Clayton, is thus entitled to punitive damages, in addition to all available compensatory and special damages.

47.

COUNT II: VIOLATION OF CONSTITUTIONAL RIGHTS

Petitioner hereby incorporates by reference Paragraphs 1 through 47.

48.

The intentional use of excessive and unnecessary force and intentional harassment of Petitioner, Geoffrey Clayton, violated Petitioner's rights as secured by the Fourth, Eighth and Fourteenth Amendments to the United States Constitution, for which the Defendant, Officer Zullo is individually liable.

49.

COUNT III: USE OF EXCESSIVE FORCE

Petitioner hereby incorporates by reference Paragraphs 1 through 49.

50.

At no point did Petitioner, Geoffrey C. Clayton, pose a risk of physical harm to Officer Zullo or others; Petitioner was unarmed, non-combative and seeking medical attention at the time Officer Zullo tasered Petitioner. Officer Zullo's use of his taser gun to restrain and detain Petitioner constituted the use of unnecessary and excessive force, as evidenced by the fact that Petitioner was unarmed and seeking medical attention at the time he was tasered.

51.

The intentional use of excessive and unnecessary force and intentional harassment of Petitioner, Geoffrey C. Clayton, by Defendant, Officer Zullo, violated the Rights of Petitioner, Geoffrey C. Clayton, as secured by the Fourth, Eight and Fourteenth Amendments to the United States Constitution, for which the Defendant, Officer Zullo is individually liable.

52.

COUNT IV: VIOLATION OF CONSTITUTIONAL RIGHTS

Petitioner hereby incorporates by reference Paragraphs 1 through 52.

53.

The intentional use of excessive and unnecessary force against Petitioner, Geoffrey C. Clayton, by Defendant, Officer Zullo, when Petitioner was unarmed, did not pose a threat of death or grievous bodily injury to Officer Zullo or others, had committed no crime, when Defendant had no lawful authority to detain Petitioner, use force, or threaten to use force against Petitioner, was

done with actual malice toward Petitioner and/or with willful and wanton indifference to and deliberate disregard for the Constitutional Rights of Petitioner, Geoffrey C. Clayton. Petitioner is thus entitled to punitive damages in addition to all available compensatory and special damages.

54.

COUNT V: CUSTOM AND POLICY OF CONSTITUTIONAL VIOLATIONS

Petitioner, Geoffrey C. Clayton, incorporates herein by reference paragraphs 1 through 54.

55.

Upon information and belief, prior to May 2, 2009, Defendants, The New Orleans Police Department, The City of New Orleans and Superintendent Warren J. Riley, permitted, encouraged, tolerated and ratified an unjustified and unreasonable pattern and practice of the use of excessive and/or unnecessary force in the following non-exclusive list of particulars, to wit:

- a. Failing to properly instruct and/or train officers the proper practices and procedures for using taser guns;
- b. Authorizing, promoting and issuing taser guns to police officers;
- c. Authorizing, promoting and issuing taser guns to police officers when an equally effective non-lethal weapon exists, namely pepper spray and/or tear gas;
- d. Failing to perform meaningful internal reviews and evaluations of incidents where officers used taser guns on citizens;
- e. Failing to properly train officers to identify those situations where the use of taser guns is inappropriate;
- f. Failure to enforce the laws of the State of Louisiana and the regulations of the The New Orleans Police Department regarding the use of excessive and/or unnecessary force;
- g. Failure to exercise cautious regard for the rights of persons seeking police assistance;
- h. Disregard of the rights of individuals who are unarmed and who do not pose a threat of physical violence to police officers and/or members of the general public;

- i. Failure to enforce the laws of the State of Louisiana and the regulations of The New Orleans Police Department pertaining to the rights of individual citizens walking the streets of The City of New Orleans;
- j. Failing to employ a sufficient number of police officers causing existing members of the police force to become over worked and in turn exhibit sub-standard performance of their duties;
- k. Negligent hiring of individuals unable to competently perform the duties required of them;
- l. all other acts of negligence which will be proven at the trial of this matter; all in violation of the pertinent statutes of the State of Louisiana and ordinances of The City of New Orleans, which are specifically pled herein as if set forth in extenso as well as all violations of constitutional and civil rights protected by the laws of the United States and the State of Louisiana.

56.

Defendants, The New Orleans Police Department and/or The City of New Orleans and/or Superintendent Warren J. Riley, have maintained an inadequate system of review of incidents involving the use of taser guns by officers employed by The New Orleans Police Department which system has caused police officers to fail to identify instances where the use of taser guns is inappropriate or to discipline, more closely supervise, or retrain officers who are, in fact, initially responsible for the safety of citizens they encounter face-to-face during their shift, as your Petitioner was unarmed, non-aggressive and seeking medical attention at the time he was tasered by Officer Zullo.

57.

On information and belief, the systemic deficiencies include but are not limited to:

- (a) Allowing untrained and unqualified officers to carry and use taser guns while on duty;
- (b) Failure to train or instruct police officers to recognize the situations where the use of a taser gun is inappropriate and/or unnecessary;

- (c) Failure to train or instruct police officers that the use of taser guns is not the appropriate method of detaining an unarmed individual seeking medical attention;
- (d) Failure to train or instruct police officers how to neutralize a situation the officer perceives as hazardous without the use of a taser gun;
- (e) Failure to establish a meaningful procedure for the review and evaluation of those incidents where an officer uses his taser gun on an individual;
- (f) The operation of a sub-standard and biased procedure for the review and evaluation of the use of taser guns;
- (g) Failure to establish policies which allow for the review of the use of taser guns;
- (h) All other systemic deficiencies that shall be proven at the trial on the merits of this matter.

58.

Upon information and belief, Defendants, The New Orleans Police Department and/or The City of New Orleans and/or Superintendent Warren J. Riley, also maintain a system of grossly inadequate training pertaining to the use of taser guns.

59.

The foregoing acts, omissions, and systematic deficiencies are policies and customs of Defendants, The New Orleans Police Department and/or The City of New Orleans and/or Superintendent Warren J. Riley, which cause police officers to be unaware of the rules and laws governing the use of taser guns and the use of excessive and/or unnecessary force and to believe that the propriety of the use of taser guns is entirely within the discretion of the police officer brandishing the weapon and that the improper use of taser guns would not be honestly and properly investigated, all with the foreseeable result that members of the N.O.P.D. are more likely to use taser guns in situations where such use is neither reasonable nor legal, as evidenced by the fact that your Petitioner was tasered while he non-combative, unarmed and requesting medical attention.

60.

As a direct and proximate result of the aforesaid acts, omissions, systematic deficiencies, policies and customs of Defendants, The New Orleans Police Department and/or The City of New Orleans and/or Superintendent Warren J. Riley, Petitioner was deprived of his rights to due process in violation of 42 U.S.C. § 1983.

61.

As a direct and proximate result of the aforesaid acts, omissions, systematic deficiencies, policies and customs of Defendants, The New Orleans Police Department and/or The City of New Orleans and/or Superintendent Warren J. Riley, Petitioner was deprived of his right to not be subjected to the use of excessive force and cruel and unusual punishment in violation of 42 U.S.C. § 1983.

62.

COUNT VI: CONSPIRACY

Petitioner hereby incorporates by reference Paragraphs 1 through 62.

63.

It was the policy and practice of Defendants, The New Orleans Police Department, The City of New Orleans and/or Superintendent Warren J. Riley, to employ certain police officers, including Defendants, Officer Zullo and Officer Thomas, described in the foregoing paragraphs.

64.

Officer Zullo and Officer Thomas conspired in an effort to cover up the wrongful conduct of Officer Zullo described in tasing Petitioner, Sgt. Clayton. To effectuate said conspiracy, on May 12, 2009, Officer Zullo and Officer Thomas falsely charged Petitioner with allegedly perpetrating

high crimes and misdemeanors, specifically, Resisting an officer and Public drunkenness, that Petitioner did not commit, ten days after the alleged illegal conduct occurred, believing that the filing of formal charges against Petitioner would absolve Officer Zullo and The New Orleans Police Department of any liability for the wrongful conduct of Officer Zullo in using his taser gun against Petitioner, Geoffrey C. Clayton. Said conspiracy violated the rights of Petitioner, Geoffrey C. Clayton, as guaranteed by the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983.

65.

It was the policy and practice of Defendants, Superintendent Warren J. Riley, Officer Zullo and Officer Thomas to conspire against individuals and take affirmative steps to cover up their wrongful conduct by charging those individuals with crimes they did not commit. Upon information and belief, it was also the custom and practice of said Defendants to cover up their conspiracy, thereby encouraging and causing some or all of the constitutional violations described in the foregoing paragraphs.

66.

At all times pertinent hereto, Defendants, Officer Thomas, The New Orleans Police Department and/or The City of New Orleans, supervised the officers who unlawfully violated Petitioner's rights, encouraged and tolerated the policies and practices described in the foregoing paragraphs; said Defendants refused to adequately train, direct, supervise, or control police officers, including Officer Zullo and Officer Thomas, so as to prevent the violation of Petitioner's constitutional rights, in violation of 42 USC § 1983.

67.

At all times pertinent hereto, Defendants, Superintendent Warren J. Riley, Officer Zullo and Officer Thomas were acting within the course and scope of their employment and pursuant to the aforementioned policies and practices of Defendants, The New Orleans Police Department, The City of New Orleans and Superintendent Warren J. Riley. These policies and practices were enforced by Defendants, The New Orleans Police Department, The City of New Orleans and Superintendent Warren J. Riley, and were the moving force, proximate cause, or affirmative link behind the conduct causing Petitioner's injuries. The New Orleans Police Department and The City of New Orleans are therefore liable for the violation of Petitioner's constitutional rights by Defendants, Officer Zullo, Officer Thomas and Superintendent Warren J. Riley.

68.

COUNT VII:NEGLECT TO PREVENT CONSPIRACY

Petitioner hereby incorporates herein by reference paragraphs 1 through 68.

69.

Defendants, Superintendent Warren Riley and/or The New Orleans Police Department and/or The City of New Orleans, had knowledge of the wrongs conspired to be done to Petitioner, or about to be committed, and said Defendants had the power to prevent or aid in preventing the commission of the same but neglected or failed to do so despite the fact that reasonable diligence to prevent the wrongs was within their power.

70.

Defendants, Superintendent Warren Riley and/or The New Orleans Police Department and/or The City of New Orleans neglect to prevent the conspiracy renders them liable under 42 USC § 1986.

71.

Alternatively, Defendants, Officer Thomas, Officer Zullo and Superintendent Warren J. Riley, had knowledge of the wrongs conspired to be done to Petitioner, or about to be committed, and said Defendants had the power to prevent or aid in preventing the commission of the same but neglected or failed to do so despite the fact that reasonable diligence to prevent the wrongs was within their power.

72.

Defendants, Officer Thomas, Officer Zullo and Superintendent Warren J. Riley, neglect to prevent the conspiracy renders them liable under 42 USC § 1986.

73.

PENDENT CAUSES OF ACTION

COUNT VIII: NEGLIGENCE

Petitioner hereby incorporates by reference Paragraphs 1 through 73.

74.

Petitioner specifically invokes the supplemental jurisdiction of this Honorable Court to hear and determine the pendent claims presented in this Original Complaint.

75.

The direct and proximate cause of Petitioner, Geoffrey C. Clayton's, injuries and damages complained of and set forth in detail herein, as well as the mental anguish, loss of enjoyment of life and loss of earning capacity, was the gross and wanton negligence, carelessness and recklessness of Defendants, Superintendent Warren J. Riley, The New Orleans Police Department and The City of New Orleans, through its employees, agents and members as detailed herein, in the following non-exclusive particulars, to-wit:

- a. Failing to properly instruct and/or train officers the proper practices and procedures for using taser guns;
- b. Authorizing, promoting and issuing taser guns to police officers;
- c. Authorizing, promoting and issuing taser guns to police officers when an equally effective non-lethal weapon exists, namely pepper spray and/or tear gas;
- d. Negligent hiring of individuals unable to competently perform the duties required of them;
- e. Failure to adequately train, supervise, discipline or in any way control jail staff in the exercise of their duties towards detainees and inmates;
- f. Failure to exercise cautious regard for the rights of persons seeking police assistance;
- g. Disregard of the rights of individuals who are unarmed and who do not pose a threat of physical violence to police officers and/or members of the general public;
- h. Failure to enforce the laws of the State of Louisiana and the regulations of The New Orleans Police Department pertaining to the rights of individual citizens walking on the streets of The City of New Orleans;
- i. Failing to employ a sufficient number of police officers causing existing members of the police force to become over worked and in turn perform their duties in a substandard manner;
- j. all other acts of negligence which will be proven at the trial of this matter; all in violation of the pertinent statutes of the State of Louisiana and ordinances of The City of New Orleans, which are specifically pled herein as if set forth *in extenso* as well as all violations of constitutional and civil rights protected by the laws of the United States and the State of Louisiana.

76.

At all times pertinent hereto, Defendants, Officer David Zullo, Officer Robert Thomas and Superintendent Warren J. Riley, were acting in the course and scope of their employment with Defendants, The City of New Orleans and The New Orleans Police Department, who, under the doctrine of *Respondeat Superior*, is/are liable for the acts and/or omissions made the basis of this suit.

77.

Alternatively, the acts and omissions made the basis of this suit occurred with the full knowledge and consent of Defendants, The New Orleans Police Department, The City of New Orleans and Superintendent, Warren J. Riley. The laws of vicarious liability are plead herein as if set out in extenso.

78.

Alternatively, Officer David Zullo, Officer Robert Thomas and Superintendent Warren J. Riley, are individually liable for said acts and/or omissions and may not avail themselves of the defense of qualified immunity as said Defendants created, supported and/or promulgated the customs and policies which lead to the constitutional deprivations alleged herein.

79.

COUNT IX: BATTERY

Petitioner hereby incorporates by reference Paragraphs 1 through 79.

80.

Defendant, Officer Zullo, committed a battery upon Petitioner, Geoffrey C. Clayton, by intentionally firing his taser gun at Petitioner without provocation or other good reason, activating his taser gun, causing Petitioner to lose consciousness and fall to the ground where Petitioner's head slammed into the concrete sidewalk, causing the injuries and damages detailed herein above.

81.

COUNT X: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Petitioner hereby incorporates by reference Paragraphs 1 through 81.

82.

Defendants, Officer David Zullo and Officer Robert Thomas, intentionally abused, humiliated and embarrassed Petitioner, Geoffrey C. Clayton, in a manner that was extreme, outrageous, and unjustified. Said Defendants caused Petitioner to suffer physical and emotional distress for which Defendants, Officer David Zullo and Officer Robert Thomas, are individually liable.

83.

COUNT XI: VICARIOUS LIABILITY

Petitioner hereby incorporates by reference Paragraphs 1 through 83.

84.

At all times pertinent hereto, Defendants, Officer David Zullo, Officer Robert Thomas and Superintendent Warren J. Riley, were employed by Defendants, The New Orleans Police Department and/or The City of New Orleans, and were acting in the course and scope of their employment with Defendants, The New Orleans Police Department and/or The City of New Orleans, who, under the doctrine of Respondeat Superior/Vicarious Liability is/are liable for the acts and/or omissions made the basis of this suit.

85.

Alternatively, Defendants, Officer David Zullo, Officer Robert Thomas and Superintendent Warren J. Riley, are individually liable for said acts and/or omissions and may not avail themselves of the defense of qualified immunity as said Defendants created, supported and/or promulgated the customs and policies which lead to the constitutional deprivations and damages alleged herein;

Defendants' personal involvement and/or their casual connection to the acts and omissions leading to the deprivation of constitutionally protected rights further disqualify the doctrine of qualified immunity as a legitimate defense.

86.

DAMAGES

- | | | |
|-----|---|---------------------|
| (a) | <u>COMPENSATORY DAMAGES</u> | |
| | Physical Pain and Suffering: | \$250,000.00 |
| | Mental Anguish: | \$250,000.00 |
| | Humiliation and Denial of Civil Rights: | \$250,000.00 |
| | Loss of Earnings/Earning Capacity: | \$500,000.00 |
| | Future Medical Expenses: | \$ 50,000.00 (est.) |
| (b) | <u>PUNITIVE DAMAGES:</u> | \$2,000,000.00 |
| (c) | Any and all other relief which this Honorable Court Deems appropriate, including attorney's fees. | |

87.

ATTORNEY'S FEES

Undersigned counsel specifically pleads his right to attorney's fees as authorized by the Civil Rights Attorney's Fees Awards Act of 1976, amending Title 42 U.S.C. Sec. 1988, for his actions in enforcing Sections 1983 and 1985 of Title 42 of the United States Code.

88.

All of the Defendants named herein are liable unto your Petitioner, Geoffrey C. Clayton, jointly, severally, and *in solido*.

89.

Inasmuch as any of the allegations contained herein are inconsistent, they are deemed to have been pled in the alternative.

90.

Petitioner is entitled to and requests a trial by jury.

91.

PRAYER FOR RELIEF

Petitioner, Geoffrey C. Clayton, respectfully prays:

- a) That Defendants, Officer David Zullo, Officer Robert Thomas, Superintendent Warren J. Riley, The New Orleans Police Department, The City of New Orleans and ABC Insurance Company be duly served with a copy of this Original Complaint and ordered to appear and Answer same;
- b) That after all legal delays have expired there be Judgment entered herein in favor of Petitioner, Geoffrey C. Clayton, and against Defendants, Officer David Zullo, Officer Robert Thomas, Superintendent Warren J. Riley, The New Orleans Police Department, The City of New Orleans and ABC Insurance Company, jointly, severally and *in solido*, in the true and total sum of \$3,300,000.00, plus any other further relief that this Court deems appropriate, including all costs and attorneys' fees as well as legal interest on all amounts awarded to Petitioner from the date of judicial demand until paid;
- c) That this Court exercise its supplemental jurisdiction and hear any and all state law claims asserted herein against Defendants, Officer David Zullo, Officer Robert Thomas, Superintendent Warren J. Riley, The New Orleans Police Department, The City of New Orleans and ABC Insurance Company; and
- d) For all other legal and equitable relief that this Court deems appropriate.

Respectfully Submitted,

[s/] D. Douglas Howard, Jr.

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