

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**MELODEE THOMPSON, CORDARIUS
THOMPSON, KENNETH C. THOMPSON,
JR., and CLAYEISHA THOMPSON, INDIVIDUALLY
AND ON BEHALF OF HER MINOR CHILDREN**

PLAINTIFFS

VS.

CAUSE NO.: 17-986

**CITY OF JACKSON, CHIEF LEE VANCE,
IN HIS OFFICIAL CAPACITY, OFFICER
BRANDON CASTON, IN HIS INDIVIDUAL
AND OFFICIAL CAPACITY, OFFICER “JOHN”
MOORE, IN HIS INDIVIDUAL AND OFFICIAL
CAPACITY, OFFICER “JOHN” DUKE, IN HIS
INDIVIDUAL AND OFFICIAL CAPACITY, OFFICER
KOURTNEY KELLY, IN HIS INDIVIDUAL AND
OFFICIAL CAPACITY, AND
OFFICERS JOHN DOES 1-5, ALL IN THEIR
INDIVIDUAL AND OFFICIAL CAPACITIES**

DEFENDANTS

**CITY OF JACKSON, DEFENDANTS’ ANSWER AND
AFFIRMATIVE DEFENSES TO COMPLAINT**

COMES NOW, the City of Jackson, Mississippi and Lee Vance, in his Official Capacity, collectively referred to herein as the “the City” or “City of Jackson Defendants”¹, by and through counsel, pursuant to the Federal Rules of Civil Procedure and other applicable authority, and files their Answer and Affirmative Defenses. In support thereof, the City of Jackson Defendants state as follows:

The first unnumbered paragraph commencing with the words, “COME NOW...” appears introductory in nature and therefore does not require a response. To the extent

¹ The City of Jackson Defendants includes the Municipality of Jackson, Mississippi and Lee Vance in his Official Capacity which is tantamount to suing the City itself.

the introductory, unnumbered paragraph seeks to impose liability on the City, the City denies same and specifically denies that Plaintiffs are entitled to any recovery whatsoever against the City if Jackson Defendants.

PARTIES

1. The City is without sufficient information to admit or deny the allegations contained in Paragraph 1 of the Complaint, however the City denies any allegations in said paragraph which directly or indirectly imply any liability for any acts and/or omissions on the part of the City of Jackson or its employees.

2. The City is without sufficient information to admit or deny the allegations contained in Paragraph 2 of the Complaint, however the City denies any allegations in said paragraph which directly or indirectly imply any liability for any acts and/or omissions on the part of the City of Jackson or its employees.

3. The City is without sufficient information to admit or deny the allegations contained in Paragraph 3 of the Complaint, however the City denies any allegations in said paragraph which directly or indirectly imply any liability for any acts and/or omissions on the part of the City of Jackson or its employees.

4. The City is without sufficient information to admit or deny the allegations contained in Paragraph 4 of the Complaint, however the City denies any allegations in said paragraph which directly or indirectly imply any liability for any acts and/or omissions on the part of the City of Jackson or its employees.

5. Without waiver of any of their defenses herein, the City admits the allegations contained in Paragraph 5 of the Complaint. However, the City denies that they are liable whatsoever to Plaintiffs.

6. The City denies the allegations contained in Paragraph 6 of the Complaint as phrased.

7. Without waiver of any of their defenses herein, the City of Jackson Defendants admits the allegations contained in Paragraph 7 of the Complaint.

8. The City denies the allegations contained in Paragraph 8 of the Complaint as phrased.

9. The City is without sufficient information to either admit or deny the allegations contained in Paragraph 9 of the Complaint and, therefore, denies the same as phrased.

10. Without waiver of any of their defenses herein, the City of Jackson Defendants admits the allegations contained in Paragraph 10 of the Complaint.

11. The City is without sufficient information to either admit or deny the allegations contained in Paragraph 11 of the Complaint and, therefore, denies the same.

JURISDICTION AND VENUE

12. Without waiver of any of their defenses herein, and upon information and belief, the City admits that this Court has federal question jurisdiction of this matter as alleged in Paragraph 12 of the Complaint. However, the City denies that they are liable whatsoever to Plaintiffs.

13. Without waiver of any of their defenses herein, and upon information and belief, the City admits that venue is proper in this Court as alleged in Paragraph 13 of the Complaint. However, the City denies that they are liable whatsoever to Plaintiffs.

FACTS

14. The City denies the allegations contained in Paragraph 14 of the Complaint in its entirety and demand strict proof thereof.

15. The City denies the allegations contained in Paragraph 15 of the Complaint in its entirety and demand strict proof thereof.

16. The City denies the allegations contained in Paragraph 16 of the Complaint as phrased.

17. The City is without sufficient information to admit or deny whether “Plaintiffs Melodee and Cordarius were inside of the home and unaware of what was happening in their yard . . .” as alleged in Paragraph 17 of the Complaint and therefore denies same. The City denies the remaining allegations contained in Paragraph 17 of the Complaint as phrased.

18. The City denies the allegations contained in Paragraph 18 of the Complaint as phrased.

19. The City denies the allegations contained in Paragraph 19 of the Complaint.

20. The City denies the allegations contained in Paragraph 20 of the Complaint.

21. The City denies the allegations contained in Paragraph 21 of the Complaint.

22. The City denies the allegations contained in Paragraph 22 of the Complaint as phrased.

23. The City denies the allegations contained in Paragraph 23 of the Complaint.

24. The City is without sufficient information to admit or deny whether Plaintiff Melodee was transported via ambulance to Baptist Medical Center as alleged in

Paragraph 24 of the Complaint and therefore denies same. The City denies the remaining allegations contained in Paragraph 24 of the Complaint.

25. The City denies the allegations contained in Paragraph 25 of the Complaint as phrased.

26. The City denies the allegations contained in Paragraph 26 of the Complaint.

27. The City denies the allegations contained in Paragraph 27 of the Complaint and demands strict proof thereof.

COUNT ONE
VIOLATION OF 4TH AND 14TH AMENDMENT RIGHTS UNDER 42 U.S.C.
Section 1983 AND 28 U.S.C. Section 1343 et al

28. The City re-asserts all responses and defenses to all prior paragraphs, averments, and statements. Further, to the extent Paragraph 28 seeks to impose liability on the City, the City denies same and demands strict proof thereof.

29. The City denies the allegations contained in Paragraph 29 of the Complaint, and specifically denies that Plaintiffs are entitled to any recovery whatsoever against the City.

30. The City denies the allegations contained in Paragraph 30 of the Complaint, and specifically denies that Plaintiffs are entitled to any recovery whatsoever against the City.

COUNT TWO
EXCESSIVE FORCE

31. The City re-asserts all responses and defenses to all prior paragraphs, averments, and statements. Further, to the extent Paragraph 31 seeks to impose liability on the City, the City denies same and demands strict proof thereof.

32. The City denies the allegations contained in Paragraph 32 of the Complaint, and specifically denies that Plaintiffs are entitled to any recovery whatsoever against the City.

**COUNT THREE
DELAY/DENIAL OF MEDICAL CARE**

33. The City re-asserts all responses and defenses to all prior paragraphs, averments, and statements. Further, to the extent Paragraph 33 seeks to impose liability on the City, the City denies same and demands strict proof thereof.

34. The City denies the allegations contained in Paragraph 34 of the Complaint, and specifically denies that Plaintiffs are entitled to any recovery whatsoever against the City.

35. The City denies the allegations contained in Paragraph 35 of the Complaint, and demand strict proof thereof.

**COUNT FOUR
NEGLIGENT/INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(BYSTANDER'S CLAIM)**

36. The City re-asserts all responses and defenses to all prior paragraphs, averments, and statements. Further, to the extent Paragraph 36 seeks to impose liability on the City, the City denies same and demands strict proof thereof.

37. The City denies the allegations contained in Paragraph 37 of the Complaint, and demand strict proof thereof.

38. The City denies the allegations contained in Paragraph 38 of the Complaint, and demand strict proof thereof.

**COUNT FIVE
RECKLESS ENDANGERMENT**

39. The City re-asserts all responses and defenses to all prior paragraphs, averments, and statements. Further, to the extent Paragraph 39 seeks to impose liability on the City, the City denies same and demands strict proof thereof.

40. The City denies the allegations contained in Paragraph 40 of the Complaint, and demand strict proof thereof.

**COUNT SIX
RECKLESS DISREGARD**

41. The City re-asserts all responses and defenses to all prior paragraphs, averments, and statements. Further, to the extent Paragraph 41 seeks to impose liability on the City, the City denies same and demands strict proof thereof.

42. The City denies the allegations contained in Paragraph 42 of the Complaint, and specifically denies that Plaintiffs are entitled to any recovery whatsoever against the City.

**COUNT SEVEN
CIVIL ASSAULT AND BATTERY**

43. The City re-asserts all responses and defenses to all prior paragraphs, averments, and statements. Further, to the extent Paragraph 43 seeks to impose liability on the City, the City denies same and demands strict proof thereof.

44. The City denies the allegations contained in Paragraph 44 of the Complaint, and specifically denies that Plaintiffs are entitled to any recovery whatsoever against the City.

45. The City denies the allegations contained in Paragraph 45 of the Complaint, and demand strict proof thereof.

46. The City denies the allegations contained in Paragraph 46 of the Complaint, and demand strict proof thereof.

**COUNT EIGHT
TRESPASSING**

47. The City re-asserts all responses and defenses to all prior paragraphs, averments, and statements. Further, to the extent Paragraph 47 seeks to impose liability on the City, the City denies same and demands strict proof thereof.

48. The City denies the allegations contained in Paragraph 48 of the Complaint, and specifically denies that Plaintiffs are entitled to any recovery whatsoever against the City.

**COUNT NINE
ABUSE OF PROCESS**

49. The City re-asserts all responses and defenses to all prior paragraphs, averments, and statements. Further, to the extent Paragraph 49 seeks to impose liability on the City, the City denies same and demands strict proof thereof.

50. The City denies the allegations contained in Paragraph 50 of the Complaint, and demand strict proof thereof.

51. The City denies the allegations contained in Paragraph 51 of the Complaint, and demand strict proof thereof.

52. The City denies the allegations contained in Paragraph 52 of the Complaint, and demand strict proof thereof.

53. The City denies the allegations contained in Paragraph 53 of the Complaint, and specifically denies that Plaintiffs are entitled to any recovery whatsoever against the City.

**COUNT TEN
MALICIOUS PROSECUTION**

54. The City re-asserts all responses and defenses to all prior paragraphs, averments, and statements. Further, to the extent Paragraph 54 seeks to impose liability on the City, the City denies same and demands strict proof thereof.

55. The City denies the allegations contained in Paragraph 55 of the Complaint, and specifically denies that Plaintiffs are entitled to any recovery whatsoever against the City.

56. The City denies the allegations contained in Paragraph 56 of the Complaint, and specifically denies that Plaintiffs are entitled to any recovery whatsoever against the City.

57. The City denies the allegations contained in Paragraph 57 of the Complaint, and specifically denies that Plaintiffs are entitled to any recovery whatsoever against the City.

58. The City denies the allegations contained in Paragraph 58 of the Complaint, and specifically denies that Plaintiffs are entitled to any recovery whatsoever against the City.

59. The City denies the allegations contained in Paragraph 59 of the Complaint, and specifically denies that Plaintiffs are entitled to any recovery whatsoever against the City.

60. The City denies the allegations contained in Paragraph 60 of the Complaint, and specifically denies that Plaintiffs are entitled to any recovery whatsoever against the City.

COUNT ELEVEN
NEGLIGENT, GROSSLY NEGLIGENT, AND WANTON FAILURE IN HIRING
AND TO MONITOR, TRAIN, AND SUPERVISE THE OFFICERS INVOLVED

61. The City re-asserts all responses and defenses to all prior paragraphs, averments, and statements. Further, to the extent Paragraph 61 seeks to impose liability on the City, the City denies same and demands strict proof thereof.

62. The City denies the allegations contained in Paragraph 62 of the Complaint, and specifically denies that Plaintiffs are entitled to any recovery whatsoever against the City.

63. The City denies the allegations contained in Paragraph 63 of the Complaint, and specifically denies that Plaintiffs are entitled to any recovery whatsoever against the City.

**COUNT ELEVEN
BYSTANDER LIABILITY**

64. The City re-asserts all responses and defenses to all prior paragraphs, averments, and statements. Further, to the extent Paragraph 64 seeks to impose liability on the City, the City denies same and demands strict proof thereof.

65. The City denies the allegations contained in Paragraph 65 of the Complaint, and specifically denies that Plaintiffs are entitled to any recovery whatsoever against the City.

PRAYER FOR APPROPRIATE RELIEF

66. The City re-asserts all responses and defenses to all prior paragraphs, averments, and statements. Further, to the extent Paragraph 66 seeks to impose liability on the City, the City denies same and demands strict proof thereof.

67. The City denies the allegations contained in Paragraph 67 of the Complaint, and demand strict proof thereof.

68. The City denies the allegations contained in Paragraph 68 of the Complaint, and specifically denies that Plaintiffs are entitled to any recovery whatsoever against the City.

69. The City denies the allegations contained in Paragraph 69 of the Complaint, and specifically denies that Plaintiffs are entitled to any recovery whatsoever against the City.

70. The City denies the allegations contained in Paragraph 70 of the Complaint, and specifically denies that Plaintiffs are entitled to any recovery whatsoever against the City.

The City denies the allegations contained in the last unnumbered paragraph of the Complaint commencing with the words “**WHEREFORE, THE ABOVE BEING CONSIDERED, ...**” The City specifically denies that Plaintiffs are entitled to any relief whatsoever against the City and demands strict proof thereof.

AND NOW, having fully and completely answered the Complaint and allegations filed against it, the City of Jackson Defendants pleads as follows:

First Defense

The Complaint fails to state a claim upon which relief can be granted and should be dismissed with prejudice.

Second Defense

Defendant City of Jackson has not breached any duty owed to the Plaintiffs, whether contractual, common law, state or federal statutory law.

Third Defense

The City owed no duty to Plaintiffs that was breached in this action.

Fourth Defense

The City reserves all statutory and/or indemnity rights they may have against all others whether parties to this action or not.

Fifth Defense

The City denies that any of its actions and/or omissions caused Plaintiffs harm or special harm.

Sixth Defense

The City's actions with Plaintiffs, if any, were conducted in good faith.

Seventh Defense

The City denies each and every allegation in which Plaintiffs seek to impose liability upon it, whether expressly denied herein or not.

Eighth Defense

Plaintiffs' Complaint is barred by the applicable statute of limitations and should therefore be dismissed with prejudice with all costs assessed against the Plaintiff.

Ninth Defense

The sole proximate and/or contributing cause of the Plaintiffs' damages, if any, were not caused or contributed to by any act or omission of the City, but such damages, if any, were caused and/or contributed to by the acts and/or omissions of the Plaintiffs and/or others for which Defendant City of Jackson cannot be held liable.

Tenth Defense

Any damages sustained by the Plaintiffs were solely and proximately caused and/or contributed to by the unforeseeable, intervening or superseding causes and/or other causes attributable to persons, entities or events with respect to which the City had

neither control, right to control, duty to control nor any other legal relationship whatsoever.

Eleventh Defense

Plaintiffs' Complaint is barred by the doctrine of laches and should therefore be dismissed with prejudice.

Twelfth Defense

The Complaint is barred by the doctrine of waiver and estoppel and should, therefore, be dismissed with prejudice with all costs assessed against Plaintiffs.

Thirteenth Defense

Plaintiffs failed to comply with any and all statutory, administrative and procedural prerequisites before filing suit.

Fourteenth Defense

The City invokes and asserts all privileges and immunities afforded to it under both the federal and state constitutions and statutory and common law.

Fifteenth Defense

An award of compensatory damages, pre-judgment and post-judgment interest, attorney's fees, costs of suit and for such other and further relief against the City are not warranted in this case.

Sixteenth Defense

Without waiving any other affirmative defenses, the City affirmatively pleads and alleges that it is not responsible for the intentional acts, if any, by any agents, representatives or employees of the City or any other Defendant toward the Plaintiffs and that any alleged intentional acts of any agent, representative or employee of the City

and/or any other Defendant, if any, were not reasonably foreseeable by Defendant City of Jackson.

Seventeenth Defense

Plaintiffs' claims against the City of are prohibited by statute because they appear to be alleged to have arisen from alleged failures of the City of Jackson and its employees to execute or perform a statute, ordinance, or regulation.

Eighteenth Defense

The City affirmatively asserts and invokes all substantive and procedural defenses available to them for which a good faith legal and/or factual basis exists or may exist in their favor pursuant to Miss. Code Ann. § 11-46-1 *et seq.* (the Mississippi Tort Claims Act, hereinafter "MTCA"), specifically including, but not limited to, Miss. Code Ann. § 11-46-5; § 11-46-7; § 11-46-9; § 11-46-11; § 11-46-15; and § 11-46-17 as to all of Plaintiffs' claims, state and federal, if any. To the extent Plaintiffs' Complaint, or any subsequently filed pleading may seek a trial by jury on state law claims against Defendant City of Jackson, then Defendant City of Jackson specifically moves this Court to strike any such jury demand on the basis that same is prohibited by the aforementioned statutes.

Nineteenth Defense

The Plaintiffs are not entitled to recover punitive damages pursuant to 42 U.S.C.A. § 1983 or official capacity theory against the City, as recovery of such damages against the City, a political subdivision and/or municipality, is prohibited.

Twentieth Defense

The City affirmatively pleads that the Plaintiffs' claims against it are barred because

the Plaintiffs cannot show any actual injury. *Al-Amin v. Smith*, 511 F. 3d 1317 (C.A. 11(Ga.) 2008), *cert. denied*. 129 S. Ct. 104 (lack of showing actual injury precluded § 1983 action against law enforcement officials where only conclusory allegations were made by plaintiff without plaintiff ever providing specifics). The Plaintiffs' lack and/or inability to show or articulate injury precludes the Plaintiffs recovery against the City under Section 1983.

Twenty-First Defense

The City asserts that the Plaintiffs have failed to exhaust all available administrative and/or other judicial remedies before filing the instant action.

Twenty-Second Defense

Plaintiffs' claims of negligence, and gross negligence, and/or wanton failure in hiring and/or to manage, train and supervise employees of the City of Jackson and made against the City, if any, are barred by Miss. Code Ann. § 11-46-7(1) (Rev. 2002).

Twenty-Third Defense

Plaintiffs' claims of intentional and/or negligent infliction of emotional distress, if any, are specifically barred by Miss. Code Ann. § 11-46-9 (c).

Twenty-Fourth Defense

The City asserts all other affirmative defenses to which it may be entitled, including contributory negligence, estoppel, fraud, illegality, release, res judicata, collateral estoppel, statute of frauds and waiver.

Twenty-Fifth Defense

The claims against the City are prohibited by prevailing Federal and State Law and all other applicable defenses thereto as is alleged to have arisen out of the acts, practices, policies or procedures, or omissions of a government entity.

Twenty-Sixth Defense

The City has no custom, practice or policy that caused or contributed to the alleged deprivations, injuries and/or damages suffered by the Plaintiff.

Twenty-Seventh Defense

The City asserts all rights of credit, set off and/or contribution that they may have pursuant to the laws of the State of Mississippi.

Twenty-Eight Defense

The City hereby asserts the defenses of sovereign immunity, *Monell*, qualified immunity, immunity for discretionary acts, and any other immunity available under federal or state law.

Twenty-Ninth Defense

At all material times, herein, the City and its employees, agents, and servants, at all times relevant hereto, used the degree of care required of them under law and are not liable in damages to Plaintiffs.

Thirtieth Defense

The City asserts any and all other defenses available to them under Miss. Code Ann. § 85-5-7 and Miss. Code Ann. § 11-1-65.

Thirty-First Defense

The City hereby gives notice that they intend to rely upon such other and further defenses that may become available or apparent during discovery in this civil action and reserves the right to amend their answer to assert any such defenses.

Thirty-Second Defense

Plaintiff's claims, if any, against the City, that may be alleged to have possibly arisen from judicial and/or administrative inaction of the City of Jackson, are prohibited by statute, where said allegations claim that City employees were acting within the scope of their employment for the City of Jackson.

Thirty-Third Defense

The Plaintiffs' claims against the City are prohibited because the City is immune from allegations based on the City's exercise or performance or the failure to exercise or perform a discretionary function or duty.

Thirty-Fourth Defense

The alleged acts or omissions by the City, as may be set forth in the Complaint herein, do not rise to the level of a constitutional violation.

Thirty-Fifth Defense

The City specifically invokes and/or reserves the defense of collateral estoppel to Plaintiffs' 42 U.S.C.A § 1983 claims, to which they may be entitled.

Thirty-Sixth Defense

The City is not liable to the Plaintiffs under the doctrine of *respondeat superior* pursuant to 42 U.S.C.A. § 1983 for any alleged acts or omissions of employees of Defendant City of Jackson.

Thirty-Seventh Defense

The Plaintiffs are not entitled to recover punitive damages pursuant to 42 U.S.C.A § 1983 or official capacity theory against Defendant City of Jackson, as recovery of such damages against the City of Jackson, a political subdivision and/or municipality, are prohibited.

Thirty-Eighth Defense

Pursuant to F.R.C.P. 12(b)(7), 17 and 19, if the damages, or any part thereof, claimed by Plaintiff in the Complaint have been paid or provided by any person, corporation or party, including insurer, worker's compensation carrier, employer or governmental entity, which holds any rights of subrogation, assignment, loan receipt or lien holder interest therefore as a result of such payment(s), then under F.R.C.P. 12(b)(7), 17 and 19, any and all such persons, corporations or parties whatever are real parties in interest herein, including for such subrogation, assignment, lien or otherwise, and must be joined as a party needed for just adjudication herein. If any such person, company or party exists, he, she or it should be joined by order of this court either as a Plaintiff or an involuntary Plaintiff. Further, pursuant to F.R.C.P. 12(b)(7), 17 and 19, any such person, corporation or party whatsoever who has paid or provided all or any part of Plaintiff's claimed damages, if any, and thereby holds subrogation rights, assignment rights, loan receipt, lien holder rights, or rights otherwise arising from the incident is a real party in interest pursuant to F.R.C.P. 17, and for such payment and interest, the damages claimed in this action to the extent of such rights must be brought in the name of the subrogee, assignee, loan receipt holder, lien holder or other party whatsoever holding such interest; and Plaintiff has no further interest or right of recovery thereto.

Thirty-Ninth Defense

The City affirmatively asserts that Plaintiffs' claims under the Fourth and Fourteenth Amendment, if any, are barred, as the totality of the circumstances and/or events as set forth in the Complaint, do not show that Plaintiff was subjected to unreasonable searches and seizures. As a result, any of Plaintiffs' claims against the City made pursuant to the Fourth and Fourteenth Amendment must be dismissed.

Fortieth Defense

Any damages sustained by the Plaintiffs were solely and proximately caused and/or contributed to by the unforeseeable, intervening or superseding causes and/or other causes attributable to persons, entities or events with respect to which the City has neither control, right to control, duty to control nor any other legal relationship whatsoever.

Forty-First Defense

Without waiver of any other affirmative defense, the City affirmatively pleads that Plaintiffs' claims as set forth in the Complaint are barred by the doctrine of unjust enrichment.

Forty-Second Defense

Plaintiffs' Complaint is barred as it does not meet the standard required by 42 U.S.C. § 1983 and applicable case precedent as the Complaint does not assert that the actions, upon which the Complaint is based, is attributable to an official policy.

Forty-Third Defense

The actions or inactions on the part of Plaintiffs were the sole, proximate and only cause of the incident complained of and the alleged damages sustained by

Plaintiffs, if any. In the alternative, the actions or inactions on the part of the Plaintiffs amounted to an intervening cause and as such, constitute the sole, proximate, and only cause of the incident complained of and the damages sustained by the Plaintiffs, if any.

Forty-Fourth Defense

The City affirmatively asserts any and all equitable defenses available as a bar to Plaintiffs' claims, including, but not limited to, Plaintiffs' unclean hands.

Forty-Fifth Defense

If the actions or inaction on the part of Plaintiffs were not the sole, proximate cause of the incident complained of and the alleged damages sustained by Plaintiffs, if any, the actions or inactions on the part of Plaintiffs caused and contributed to the incident complained of and the damages sustained by Plaintiffs, if any, and any damages which Plaintiffs would otherwise be entitled, must be reduced in degree and to the proportion that the action or inaction of Plaintiffs caused or contributed to the incident.

Forty-Sixth Defense

Plaintiffs' claims of civil assault and battery against the City, if any, are specifically barred by Miss. Code Ann. § 11-46-5(2) and Miss. Code Ann. § 11-46-7(2).

Forty-Seventh Defense

Plaintiffs' claims of wrongful (malicious) arrest and/or prosecution against the City, if any, are specifically barred by Miss. Code Ann. § 11-46-5(2) and Miss. Code Ann. § 11-46-7(2).

Forty-Eighth Defense

The City hereby gives notice that they intend to rely upon other and further defenses that may become available or apparent during discovery in this civil action and reserves the right to amend its answer to assert any such defenses.

Forty-Ninth Defense

The City affirmatively asserts that the language of Miss. Code Ann. § 11-46-9, clearly states that law enforcement officers acting within the course and scope of their employment, while engaged in the performance of duties related to police protection, without reckless disregard for the safety and well-being of others not engaged in criminal conduct, are entitled to immunity. Therefore, Plaintiffs claims against the City are barred.

Fiftieth Defense

The City affirmatively pleads that Plaintiffs' claims under the Fourth Amendment, if any, are barred, as the totality of the circumstances and/or events as set forth and the Complaint, do not show that any particular use of force, by the City or any other Defendant, was clearly unreasonable or clearly excessive. As a result, any of Plaintiffs' claims against the City made pursuant to the Fourth Amendment must be dismissed. See **Ramirez v. Knoulton**, 542 F. 3d 124, 128 (5th Cir. 2008).

AND NOW, having fully answered Plaintiffs' Complaint, the City requests that it be dismissed and that they be awarded their attorney's fees, costs and all other appropriate relief.

THIS the 4th day of January, 2018.

Respectfully submitted,

CITY OF JACKSON DEFENDANTS

By: /s/ LaShundra Jackson-Winters
LaShundra Jackson-Winters, MSB # 101143
Deputy City Attorney

OF COUNSEL:

OFFICE OF THE CITY ATTORNEY

James Anderson, Interim City Attorney

Mississippi Bar No.

455 East Capitol Street

Post Office Box 2779

Jackson, Mississippi 39207-2779

CERTIFICATE OF SERVICE

I, LaShundra Jackson-Winters, one of the attorneys for the City of Jackson Defendants, do hereby certify that I have this day delivered a true and correct copy of the above and foregoing document, via ECF to the following:

Carlos E. Moore, Esq.
TUCKER/MOORE GROUP, LLP
306 Branscome Drive
P.O. Box 1487
Grenada, MS 38902-1487
Attorney for Plaintiffs

THIS the 4th day of January, 2018.

/s/ LaShundra Jackson-Winters
LaShundra Jackson-Winters