

CAUSE NO. _____

DESHAWN WILLIS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
V.	§	JEFFERSON COUNTY, TEXAS
	§	
A1 BOX & TANK WASH LLC and	§	
JAMES STEVENSON RUCKER,	§	
Defendants.	§	_____ DISTRICT COURT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **DESHAWN WILLIS**, hereinafter referred to as Plaintiff, complaining of and about **A1 BOX & TANK WASH LLC** (hereinafter referred to as "Defendant A1 Box") and **JAMES STEVENSON RUCKER** (hereinafter referred to as "Defendant Rucker"), hereinafter referred to as Defendants, and for cause of action would respectfully show the Court the following:

1. DISCOVERY CONTROL PLAN

Discovery is intended to be conducted under Level 3 of Texas Rules of Civil Procedure, 190.

2. PARTIES

Plaintiff was, at all times material, a Texas citizen residing in Jefferson County, Texas.

Defendant **A1 BOX & TANK WASH LLC** is a Texas corporation authorized to do business in the State of Texas and is deemed a Texas citizen. **A1 BOX & TANK WASH LLC** may be served through its registered agent, James Rucker, at 3077 Highway 69 North in Nederland, Texas 77627.

Defendant **JAMES STEVENSON RUCKER** is a Texas citizen and an individual residing in and domiciled in the State of Texas. This defendant may be served at 2112 Helena Avenue, Apartment 2, in Nederland, Texas 77627.

3. JURISDICTION AND VENUE

This is a personal injury suit. Both jurisdiction and venue are proper in this cause.

The Court has jurisdiction over this cause of action because the amount in controversy is within the jurisdictional limits of the Court. Plaintiff is seeking monetary relief over \$1,000,000. Plaintiff reserves the right to amend his petition during and/or after the discovery process.

The Court has jurisdiction over Defendant **A1 BOX & TANK WASH LLC** because this defendant is a Texas company that engages in business in the State of Texas and is deemed a citizen of Texas.

The Court has jurisdiction over Defendant **JAMES STEVENSON RUCKER** because he is an individual who resides in and is domiciled in the State of Texas, is a citizen of Texas, and an employec and/or owner and/or officer and/or vice principal of **A1 BOX & TANK WASH LLC**, who was acting in the course and scope of his employment at the time of the incident and collision made the basis of this suit.

There is a lack of diversity among the parties since both the Plaintiff and Defendants **JAMES STEVENSON RUCKER** and **A1 BOX & TANK WASH LLC** are citizens of the State of Texas. Additionally, Plaintiff is not making any claims for relief under federal law. As such, removal of this action to federal court is *per se* improper and will be met with an immediate motion for remand including a request that sanctions be imposed against Defendants for their improper removal of this action.

Venue is likewise proper in this county pursuant to Tex. Civ. Prac. & Rem. Code §15.002(a)(1) because all or a substantial amount of the events occurred in Jefferson County, Texas. Moreover, venue is proper in this county pursuant to Tex. Civ. Prac. & Rem. Code §15.002(a)(2) because Defendant Rucker is a natural person and resided in Jefferson County, Texas at the time the cause of action accrued.

4. FACTS

At around 5:30 p.m. on June 14, 2019, Plaintiff arrived at A1 Box & Tank Wash LLC, located in Jefferson County, Texas, to pick up his bonus check. Plaintiff was entitled to said check. After speaking to an employee of Defendant A1 Box, Plaintiff asked the owner of Defendant A1 Box, Defendant Rucker, whether his check was ready for pick up. Defendant Rucker began to threaten Plaintiff for no reason. Suddenly and unexpectedly, while discussing A1 Box business and on A1 Box property, Defendant Rucker pulled out his nine-millimeter handgun and shot Plaintiff in the neck and/or shoulder.

At all times material, Defendant Rucker was acting in the course and scope of his employment with Defendant A1 Box, and the relevant events took place on A1 Box property during business hours. This incident was brought to occur and was proximately caused by the negligence, direct and vicarious, of Defendants **JAMES STEVENSON RUCKER and A1 BOX & TANK WASH LLC.**

5. NEGLIGENCE OF JAMES STEVENSON RUCKER

Plaintiff herein pleads a cause of action sounding in negligence over against Defendant **JAMES STEVENSON RUCKER.** In this regard, Defendant was negligent in multiple and many ways, including but not limited to the following:

- (1) In failing to exercise ordinary care;

- (2) In failing to exercise reasonable care to avoid a foreseeable risk of injury to others;
- (3) In failing to exercise ordinary care to protect others from peril when the peril is under the defendants' control;
- (4) In failing to exercise ordinary care in not placing others in harm's way;
- (5) In failing to take timely and/or proper action as would have been made by a person of ordinary care under the same or similar circumstances;
- (6) In violating state law, so as to make this defendant negligent *per se*; and
- (7) In other acts of omission and/or commission, to be shown after an adequate time for discovery and/or at the time of trial.

The acts of negligence as set out above were a proximate cause of the injuries made the basis of this lawsuit. Plaintiff reserves his right to amend these allegations as further facts, investigation and discovery may warrant.

6. VICARIOUS LIABILITY OF A1 BOX & TANK WASH LLC

Defendant **A1 BOX & TANK WASH LLC** is vicariously liable for the negligence of Defendant **JAMES STEVENSON RUCKER** under the theory *respondeat superior* as, at all times material, **JAMES STEVENSON RUCKER** was employed by Defendant **A1 BOX & TANK WASH LLC** and was acting within the course and scope of said employment, was an officer and/or vice principal and/or owner, and in the furtherance of said Defendant's business, at the time of the incident made the basis of this lawsuit. Pleading further, and in the alternative, Plaintiff would show that, at all times material, Defendant **JAMES STEVENSON RUCKER** was the '*statutory employee*' of Defendant **A1 BOX & TANK WASH LLC**.

7. DIRECT LIABILITY OF A1 BOX & TANK WASH LLC

Defendant **A1 BOX & TANK WASH LLC** is directly and independently liable to Plaintiff for its own negligent acts and omissions as committed by it and its agents, employees, servants, employees, officers, owners, and representatives. This defendant owed specific duties to Plaintiff as well as the general public, said duties existing and created by common law, statutory law and regulatory laws, rules and regulations. Defendant **A1 BOX & TANK WASH LLC** breached these duties and is thus negligent in multiple ways including (but not limited to) the following:

- (1) In failing to exercise ordinary care in the training and supervision of Defendant **JAMES STEVENSON RUCKER**;
- (2) In failing to exercise ordinary care in the performance and/or execution of a background check on Defendant **JAMES STEVENSON RUCKER**;
- (3) In failing to exercise ordinary care in the monitoring and supervision of the activities of Defendant **JAMES STEVENSON RUCKER**;
- (4) In allowing Defendant **JAMES STEVENSON RUCKER** to possess and/or operate a nine-millimeter handgun on the premises at a time or under circumstances when Defendant **A1 BOX & TANK WASH LLC** knew, or in the exercise of ordinary care should have known, that Defendant **JAMES STEVENSON RUCKER** was unable to safely possess and/or operate a nine-millimeter handgun.
- (5) In failing to promulgate adequate policies and procedures for the possession and/or use of weapons, including handguns, on the premises during business hours;
- (6) If permitting the presence of weapons or handguns on premises, in failing to adequately train or ensure adequate training and/or safety with respect to those weapons; and

- (7) In other acts of omission and/or commission, to be shown after an adequate time for discovery and/or at the time of trial.

The acts of negligence as set out above were a proximate cause of the incident made the basis of this lawsuit. Plaintiff reserves his right to amend these allegations as further facts, investigation and discovery may warrant.

8. DEFENDANTS' CONDUCT JUSTIFIES AND REQUIRES IMPOSITION OF PUNITIVE AND/OR EXEMPLARY DAMAGES

The above-stated facts that set forth the Defendants' acts and omissions constitute more than ordinary negligence. They are of such a nature so as to constitute gross negligence and to further and otherwise justify and require the imposition of punitive and exemplary damages over and against Defendants. Plaintiff hereby sues for the recovery of such damages.

9. PLAINTIFF'S DAMAGES

As a result of the incident made the basis of this lawsuit, Plaintiff suffered severe, significant, disabling and life-altering personal injuries, damages and losses. As such, he is entitled to recover and hereby sues for the recovery of the following elements of damages:

- (1) Reasonable and necessary medical and other health care-related expenses sustained in the past and which, in reasonable probability, he will sustain in the future;
- (2) Loss and/or impairment of earnings and/or earning capacity sustained in the past and which, in reasonable probability, he will sustain in the future;
- (3) Physical pain sustained in the past and which, in reasonable probability, he will sustain in the future;
- (4) Mental anguish and emotional distress sustained in the past and which, in reasonable probability, he will sustain in the future;

(5) Physical impairment sustained in the past and which, in reasonable probability, he will sustain in the future;

(6) Physical disfigurement sustained in the past and which, in reasonable probability, he will sustain in the future;

(7) Loss and/or impairment of his enjoyment of life sustained in the past and which, in reasonable probability, he will sustain in the future;

10. PRE- AND POST JUDGMENT INTEREST

Plaintiff further seek the recovery of all interest allowed at law, including pre-judgment and post-judgment interest.

11. CONDITIONS PRECEDENT

Plaintiff would show that all conditions precedent to the maintenance of this action have been met and satisfied.

12. RIGHT TO AMEND

Furthermore, Plaintiff would state that because of the complex nature of the incident, including the implication of multiple parties, some of which may be unknown to Plaintiff, and because without first conducting some discovery in this suit, Plaintiff cannot discover the identities of additional, responsible parties and/or additional witnesses, or reasonably discover information that will form the basis for additional, appropriate claims and causes of action that may properly be asserted in this suit, Plaintiff reserves the right to amend his pleading to join and/or omit parties as appropriate and to assert additional or different claims, allegations, causes of action, and grounds for recovery.

13. SELF-AUTHENTICATION

Pursuant to Rule 193.7 of the TEXAS RULES OF CIVIL PROCEDURE, this is the "actual" written notice that all documents produced in this litigation shall be used by the Plaintiff at pretrial proceedings and trial. Hence, all documents produced in this litigation are deemed self-authenticating for use in any pretrial proceeding or at trial; and any objections thereto by the Defendants shall be in writing or placed on the record, giving Plaintiff a reasonable opportunity to establish the challenged document's authenticity.

14. WRITTEN DISCOVERY

REQUESTS FOR DISCLOSURE

Plaintiff's First Request for Disclosure to Defendant JAMES STEVENSON RUCKER is attached as "Exhibit A."

Plaintiff's First Request for Disclosure to Defendant A1 BOX & TANK WASH LLC is attached as "Exhibit A-1."

REQUEST FOR PRODUCTION

Plaintiff's First Request for Production to Defendant JAMES STEVENSON RUCKER is attached as "Exhibit B."

Plaintiff's First Request for Production to Defendant A1 BOX & TANK WASH LLC is attached as "Exhibit B-1."

INTERROGATORIES

Plaintiff's First Set of Interrogatories to Defendant JAMES STEVENSON RUCKER is attached as "Exhibit C."

Plaintiff's First Set of Interrogatories to Defendant A1 BOX & TANK WASH LLC is attached as "Exhibit C-1."

REQUEST FOR ADMISSIONS

Plaintiff's First Request for Admissions to Defendant JAMES STEVENSON RUCKER is attached as "Exhibit D."

Plaintiff's First Request for Admissions to Defendant A1 BOX & TANK WASH LLC is attached as "Exhibit D-1."

15. JURY DEMAND

Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon trial hereof, Plaintiff has and recovers such sums as would reasonably and justly compensate him, in accordance with the rules of law and procedure as to actual damages, exemplary damages, and court costs. In addition, Plaintiff requests the award of attorneys' fees for the trial and any appeal of this case, for all costs of Court on her behalf expended, for pre-judgment and post-judgment interest as allowed by law, and for any other and further relief, either at law or in equity, to which he may show himself justly entitled.

Respectfully submitted,

THE FERGUSON LAW FIRM, LLP
350 PINE STREET, SUITE 1440
Beaumont, Texas 77704-4905
(409) 832-9700 (phone)
(409) 832-9708 (fax)

/s/ Mark C. Sparks
Mark Sparks
Texas Bar No. 24000273
mark@thefergusonlawfirm.com
Timothy M. Ferguson
State Bar No. 24099479
tferguson@thefergusonlawfirm.com

AND: