

DC-22-05728

CAUSE NO. _____

VINCENT DOYLE, BRANDON
SAENZ AND DAVID MCKEE,

Plaintiffs,

v.

COMBINED SYSTEMS, INC. AND
PENN ARM,

Defendants.

§ IN THE DISTRICT COURT
§
§ 193rd
§
§
§ _____ JUDICIAL DISTRICT
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§
§
§ OF DALLAS COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION & JURY DEMAND

COME NOW, Plaintiffs Vincent Doyle, Brandon Saenz, and David McKee and bring this civil action against Combined Systems, Inc. and Penn Arm, a division of Combined Systems, Inc., and for cause would show the Honorable Court as follows:

I. PARTIES

1. Plaintiff, Vincent Doyle is a citizen and a resident of Atlanta, Georgia.
2. Plaintiff, Brandon Saenz is a citizen and a resident of Tyler, Texas.
3. Plaintiff, David McKee is a resident of Arlington, Texas.
4. Defendant Combined Systems, Inc. ("Combined Systems"), is the manufacturer and seller of the 40mm single shot launcher compact ("40mm Launcher"). Defendant Combined System is a qualified product seller within the meaning of 15 U.S.C. § 7903(6). Defendant Combined System may be served through its registered agent, John R. Watson, 385 Holly Trail East, Holly Lake Ranch, Texas 75765.

5. Defendant Penn Arm ("Penn"), a division of Combined Systems that sells the 40mm Launcher, may be served through its registered agent, John R. Watson, 385 Holly Trail East, Holly Lake Ranch, Texas 75765.

II. JURISDICTION AND VENUE

6. Jurisdiction is proper in this Court as the matters in controversy occurred in Dallas County, Texas, and because the damages sought, exclusive of interest and cost, are within the jurisdictional limits of this Court.

7. Venue is proper in Dallas County, Texas because all or a substantial part of the events giving rise to Plaintiffs' claims occurred and arose in Dallas County, Texas.

8. Plaintiffs seek monetary relief over \$1,000,000 and a demand for judgment for all the other relief to which the parties deem themselves entitled.

III. DISCOVERY LEVEL

9. Plaintiffs intend to conduct discovery in this matter pursuant to the Level Three Discovery Plan.

IV. INTRODUCTION

10. In the wake of the brutal and unjustified May 25, 2020, killing of George Floyd by police officers in Minneapolis, Minnesota, hundreds of thousands of Americans took to public streets and forums to protest police brutality and racial inequality. Dallas was no exception, with peaceful protests occurring across the city for at least one hundred straight days beginning May 29, 2020 and continuing throughout the remainder of 2020 (collectively referred to as the "2020 Protests"). Undeterred by the fact that police officers' use of excessive force was the very subject of these demonstrations, City of Dallas Police Department ("Dallas Police" or "DPD") officers repeatedly used extreme and lethal force against these crowds, targeting peaceful, non-threatening protesters and bystanders with 40mm Launchers, tear gas, smoke bombs, flash-

bangs, Pepper Balls, mace, and what are known as “kinetic impact projectiles,” or “KIPs.” And without regard to the ongoing global pandemic involving respiratory disease COVID-19, police have tear-gassed and smoke-bombed protesters, many of whom may have already been infected with COVID-19, making them more likely to suffer simply because they exercised their First Amendment rights.

11. Kinetic impact projectiles, which include so-called “rubber bullets” or “sponge bullets,” are often used by American police forces to control crowds. The manufacturers, distributors, and sellers of these projectiles—and the police departments that use them against their own citizens—praise these bullets as being “nonlethal” or “less lethal.” They are not. In fact, these KIPs kill approximately three percent of all people they strike. In order to continue profiting from the sale of 40mm Launchers, the Defendants chose to disregard the unreasonable risks the 40mm Launcher posed on innocent citizens.

12. Plaintiffs Vincent Doyle and Brandon Saenz are Black Americans and residents of Georgia and Texas. During the period from May 30 to June 1, 2020, these Plaintiffs each peaceably attempted to exercise their First Amendment rights by participating in the 2020 Protests for reforming policing tactics and resolving racial injustice in Dallas. Plaintiff David McKee, also a Texas resident, did not directly participate in the May 30, 2020, Protests but was simply in the area to observe these historic demonstrations and, in McKee’s case, to capture the moment by photographing the events. That weekend, each of these Plaintiffs became victims of the very same unjustified and horrific police brutality the ongoing 2020 Protests opposed. Specifically, Plaintiffs were all seriously injured when Dallas Police officers, unprovoked, shot them with so-called “less lethal” rubber or sponge bullet KIPs from the 40mm Launcher. Over the course of three days in Dallas, Plaintiff Doyle’s cheek was shattered, Plaintiff Saenz

permanently lost his left eye after being shot in the eye, and Plaintiff McKee, who was shot in the groin area, had to undergo emergency surgery to his left testicle. Many other people were also severely injured by these “less lethal” bullets in Dallas during those three days, including a young woman who was shot in the forehead while walking home from a grocery store.

13. This is a civil action for monetary relief for injuries Plaintiffs sustained as a result of the acts and omissions of Defendants Combined Systems and Penn. These Defendants violated the law against deceptive trade practices by intentionally marketing its weapons to police departments, specifically the Dallas Police Department, as less lethal all the while knowing that the 40mm Launchers is a dangerous weapon. The Defendants’ website touts Penn Arms as setting the standard for less-lethal launchers worldwide for over 20 years. Although advertised as less lethal, and having a minimum safe range 33 ft., this is contradicted by the fact that the 40mm Launcher is marketed by the Defendants as being a “point-of-impact” direct fire round that is most commonly used by tactical teams in situations where greater accuracy and deliverable energy is desired for the incapacitation of an aggressive, non-complaint subject at longer distances. The Defendants further represented on its website that extensive testing was done on the 40mm Launcher to ensure that the round is less lethal when fired within the optimal energy range knowing that not to be the truth.

V. STATEMENT OF FACTS

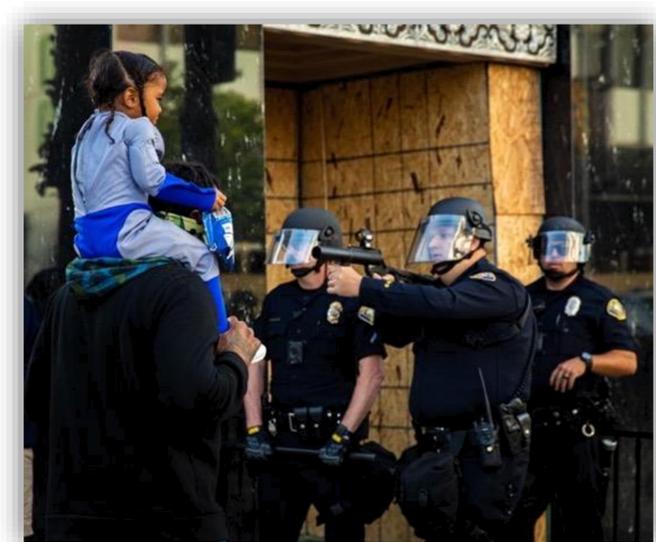
George Floyd’s senseless death at the hands of a Minneapolis police officer in May 2020 again ignites nationwide protests against police brutality.

14. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

15. On Monday, May 25, 2020, an unarmed Black man named George Floyd was murdered by an officer of the Minneapolis Police Department. The events of Mr. Floyd’s arrest

and murder were captured on video by multiple bystanders as well as individual officers' body cameras. The videos depicted Mr. Floyd pinned on the street, face down and increasingly unresponsive, while Minneapolis police officer Derek Chauvin knelt on Mr. Floyd's upper back and neck, two officers held him down, and another stood by. All four officers were fired by the Minneapolis PD, and nationwide protests erupted in response to this police brutality. After days of continual protesting, Chauvin was charged with third degree murder. The other three Minneapolis police officers were then charged with aiding and abetting Mr. Floyd's murder, and Chauvin's charge was upgraded to second degree murder after an independent autopsy report confirmed that Chauvin was the cause of Mr. Floyd's death.

16. Undeterred by the fact that police excessive force was the very subject of these nationwide demonstrations, videos, photos, and reports of police brutality on massive scales at these protests arose in the weeks immediately following Mr. Floyd's death. Here in Dallas, City of Dallas Police Department officers repeatedly used extreme and lethal force against these crowds during the 2020 Protests, targeting peaceful, non-threatening protesters with tear gas, smoke bombs, flash-bangs, Pepper Balls, mace, and ammunition that are known as "kinetic impact projectiles," or "KIPs." And even amid a pandemic respiratory disease, police tear-gassed and smoke-bombed protesters, many of whom may have already been infected with Covid-19, making them more likely to suffer simply because they exercised their First Amendment rights.



Photo, Richard Grant, depicting police officers aiming a riot-control device towards protesters in Long Beach, California.¹

17. Kinetic impact projectiles, which include so-called “rubber bullets” or “sponge bullets,” are often used by American police forces to control crowds. The manufacturers, distributors, and sellers of these projectiles—and the police departments that use them against their own citizens—praise these bullets as being “nonlethal” or “less lethal.” They are not. In fact, the fatality, morbidity, and significant risks of injuries from KIPs have been well documented. Regardless, in cities across the country, including Dallas, police departments have attempted to quell participation in the 2020 Protests by firing KIPs into crowds, even though five decades of evidence shows such weapons can disable, disfigure, and even kill.²

18. For instance, in Minneapolis, free-lance photographer Linda Tirado was shot in the eye with a “rubber bullet.” “I was aiming my next shot, put my camera down for a second,

¹ Richard Grant, @RichardGrant88, TWITTER (June 1, 2020, 1:28 p.m.), <https://twitter.com/richardgrant88/status/1267523353289474048?s=20>.

² Liz Szabo, *Police using rubber bullets on protestors that can blind, maim or kill*, CNN.COM (June 3, 2020 at 3:54 a.m.), <https://www.cnn.com/2020/06/03/health/rubber-bullet-effects-kaiser-partner/index.html>; Rohini J. Haar, Vincent Iacopino, Nikhil Ranadive, Madhavi Dandu, Sheri D. Weiser, Abstract: *Death, Injury and Disability from Kinetic Impact Projectiles in Crowd-Control Settings: a Systematic Review* (Dec. 5, 2017), <https://bmjopen.bmj.com/content/7/12/e018154>.

and then my face exploded,” Tirado told *The New York Times* after she was released from the hospital. “I immediately felt blood and was screaming, ‘I am press! I am press!’”³ Tirado, a career photojournalist, is now permanently blinded in one eye.⁴



*Photo, Linda Tirado, depicting Ms. Tirado’s injuries in Minneapolis (May 30, 2020).*⁵

19. In Louisville, Kentucky, a television reporter was hit by a pepper ball on live television by an officer who appeared to be aiming at her, causing her to exclaim on the air: “I am getting shot! I’m getting shot!”⁶ A protesting grandmother who was struck with a rubber bullet between her eyes in La Mesa, California, landed in the intensive care unit.⁷ And in Los Angeles, police shot Marine Corps veteran C.J. Montano in the head with “rubber bullets,”

³ Frances Robles, *A Reporter’s Cry on Live TV: ‘I’m Getting Shot! I’m Getting Shot!’*, NEW YORK TIMES.COM (May 30, 2020, last updated June 4, 2020), <https://www.nytimes.com/2020/05/30/us/minneapolis-protests-press.html>.

⁴ Linda Tirado, *Police Blinded Me in One Eye. I Can Still See Why My Country’s on Fire*, THE NEW REPUBLIC (June 4, 2020), <https://newrepublic.com/article/158001/police-blinded-one-eye-can-still-see-countrys-fire>.

⁵ See Linda Tirado, @killermartinis, Twitter (May 30, 2020, 1:32 a.m.), <https://twitter.com/KillerMartinis/status/1266618525600399361?s=20>.

⁶ Frances Robles, *supra* n. 3.

⁷ Niala Charles, *Grandmother Hit in Head With LMPD ‘Less Lethal’ Projectile Remains in ICU*, NBC SAN DIEGO.COM (May 31, 2020, last updated June 4, 2020, 11:40 a.m.), https://www.nbcsandiego.com/news/local/grandmother-hit-with-rubber-bullet-remains-in-icu/2337061/?amp&__twitter_impression=true.

despite him having his hands in the air.⁸ In an interview from his hospital bed, Montano confirmed that the ammunition has caused brain bleeding.⁹

20. In the immediate days after Mr. Floyd's death, federal courts in several cities, including Portland, Denver,¹⁰ and Oakland¹¹ began issuing injunctive relief to prohibit police forces from using so-called "less lethal" crowd control tactics on peaceful protesters, such as rubber bullets and tear gas.

Dallas Police responded to the 2020 Protests with unjustified violence, turning peaceful First Amendment protests into massive, dangerous conflicts with civilians.

21. The first Dallas protest in the aftermath of Mr. Floyd's death was on May 29, 2020. On that day for hundreds of days after, peaceful protestors gathered in downtown Dallas to demonstrate against police brutality and racial inequality. Although a small minority of individuals present at the scene of the first weekend of protests engaged in destructive activity, including property destruction, those individuals' behavior was profoundly overshadowed by the thousands of otherwise non-violent, non-threatening demonstrators who peaceably exercised their First Amendment rights. Nonetheless, during the 2020 Protests the Dallas Police Department and other law enforcement departments, at the Dallas PD's and Former Chief Hall's invitation, directed extreme riot control tactics towards entire groups of protesters posing no

⁸ See @LowkeySinistra, TWITTER (May 31, 2020, 10:03 a.m.), <https://twitter.com/LowkeySinistra/status/1267109420955086848>.

⁹ See video of C.J.'s Montano's interview with ABC7, @LowkeySinistra, TWITTER (June 2, 2020), <https://twitter.com/i/status/1268022557061480449>.

¹⁰ See Alta Spells and Madeline Holcombe, *Temporary restraining order prohibits Denver Police from using chemical agents or projectiles against peaceful protesters without supervisor approval*, CNN.com (June 6, 2020 at 5:37 a.m.), <https://www.cnn.com/2020/06/06/us/denver-police-restraining-order-protesters-chemicals-projectiles/index.html>; Nicole Chavez, *Portland is the latest city to suspend the use of tear gas on protesters*, CNN.com (June 6, 2020 at 9:18 p.m.), <https://www.cnn.com/2020/06/06/us/portland-police-tear-gas-protests/index.html>.

¹¹ Andre Torrez, *Judge orders preliminary injunction against Oakland police over crowd control policy*, KVTU.COM (July 29, 2020), <https://www.ktvu.com/news/judge-orders-preliminary-injunction-against-oakland-police-over-crowd-control-policy>.

harm to officers or anyone. Dressed in riot gear and driving armored vehicles, Dallas Police—like police in other cities in 2020—deployed riot control devices against ordinary citizens and journalists alike, without regard to whether the circumstances justified it, and without regard or competence for shooting this “less lethal” weaponry that was everything but less lethal as represented by the Defendants.



Photo, Central Track, depicting protesters marching through Downtown Dallas on June 6, 2020.¹²

22. During the first seven days of demonstrations in Dallas triggered by the murder of George Floyd, Dallas Police officers repeatedly used extreme and lethal force against crowds, directly targeting peaceful, non-threatening protestors with KIPs, tear gas, smoke bombs, and other riot control devices that the City and Former Chief Hall praise as “less lethal.”¹³ In particular, Dallas Police used a type of KIPs called 40mm eXact iImpact extended range

¹² Central Track, @central_track, TWITTER (June 6, 2020, 6:53 p.m.), https://twitter.com/Central_Track/status/1269417106203951104?s=20.

¹³ Lauren Silverman, *Dallas Police To Try 'Sponge Guns' To Help Avoid Deadly Shootings*, KERA News.org (Apr. 28, 2016), <https://www.keranews.org/post/dallas-police-try-sponge-guns-help-avoid-deadly-shootings>.

“sponge” bullets—often referred to as “rubber bullets”—against protestors, bystanders, and journalists in order to suppress their First Amendment rights, without regard to the constitutional limits on the use of force:



Photo, Shane McCormick, depicting sponge/rubber bullet that struck Dallas photographer Shane McCormick and tear gas canister fired nearby at protests in Dallas, Texas on May 30, 2020.

23. Most upsettingly, Dallas Police used these weapons to assert and show their dominance over protestors and the citizens of Dallas seeking to exercise their First Amendment rights and the journalists and photojournalists who are covering these events. Former Chief Hall even defended her decision to shoot protestors with tear gas—a chemical weapon banned in war¹⁴ but nonetheless used against peaceful American civilians by their own governments and in their own cities—during the 2020 Protests in Dallas. Hundreds of reports of peaceful protestors, journalists covering protests, and bystanders bleeding and suffering from unwarranted levels of police force threaten to chill participation in ongoing demonstrations in Dallas. Not even the fact that protestors may have been unknowingly infected with the

¹⁴ Matt Field, *Why is tear gas banned in war but not from peaceful protests?*, BULLETIN OF THE ATOMIC SCIENTISTS (June 4, 2020), <https://thebulletin.org/2020/06/why-is-tear-gas-banned-in-war-but-not-from-peaceful-protests/>.

pandemic respiratory disease COVID-19 deterred police from tear gassing and smoke bombing protesters, making it very possible that many people exercising their First Amendment rights could suffer more severe COVID-19 symptoms aggravated by tear gas and smoke bombs if they became infected or were asymptomatic to the disease at the time.¹⁵

24. Countless non-threatening people present at the first weekend of 2020 Protests in Dallas from May 30 to June 1, 2020, suffered and continue suffer from injuries caused by 40mm Launcher and other less lethal weapons manufactured by the Defendants.

On May 30, 2020, Plaintiffs Vincent Doyle, Brandon Saenz, and David McKee are injured by the 40mm Launcher.

25. **Plaintiff Vincent Doyle.** Plaintiff Vincent Doyle, an aspiring photojournalist, went to downtown Dallas to film and photograph the protests on May 30, 2020.¹⁶ When he arrived and headed to the area near Bank of America, Mr. Doyle said the event was entirely peaceful, with approximately 100 to 200 people kneeling and chanting together. Suddenly, officers told the crowd to disperse and began indiscriminately firing tear gas at the crowd. Mr. Doyle stepped behind police to load more film into his camera, where he had a chance to observe officers' response to what was happening. Instead of expressing concern for citizens' safety, some officers were eating pizza and laughing together. Meanwhile, Mr. Doyle saw protesters being tear gassed, who then frantically tried to alleviate the symptoms and burning of the chemicals by pouring milk in their eyes. He also witnessed people experiencing homelessness who were shot with rubber bullets along with the protesters, as others tried to give aide to them.

¹⁵ Lisa Song, *Tear Gas is Way More Dangerous Than Police Let On—Especially During the Coronavirus Pandemic*, PROPUBLICA.ORG (June 4, 2020, 12:25 p.m.), <https://www.propublica.org/article/tear-gas-is-way-more-dangerous-than-police-let-on-especially-during-the-coronavirus-pandemic>.

¹⁶ See Vincent Doyle interview with Dallas Weekly News (@dallasweekly), INSTAGRAM, <https://www.instagram.com/p/CBCNvDupZ09/> (last visited June 9, 2020).

26. Later, in compliance with police instructions to clear the streets, Mr. Doyle moved to a public parking lot. There, Defendant Melvin Williams, using a 40mm Launcher, shot Mr. Doyle in the face with a sponge/rubber bullet KIP for no lawful reason. Mr. Doyle was not a threat to anyone, was not violating any laws, and at no time was Mr. Doyle harming any officers or any other person when Defendant Williams shot him. As Mr. Doyle heard more projectiles and tear gas being fired around him, blood poured from his face. Mr. Doyle screamed, trying to warn protesters that more tear gas could be coming and began recording video with his phone. At no time did any of the officers attempt to render medical assistance to Doyle.



Photos of Plaintiff Vincent Doyle's injuries¹⁷

¹⁷ Leo & Oginni Trail Lawyers, PLLC, FACEBOOK (June 2, 2002, 12:12 p.m.), <https://www.facebook.com/helpisherelaw/posts/167364944753818>.

27. Numerous other protesters came to Mr. Doyle's side to rush him to the hospital in their car but faced a roadblock, where police said they must await an ambulance indefinitely. At that point, Mr. Doyle felt tired and like he might pass out because he had lost so much blood. Instead, Dallas police officers demanded Mr. Doyle's identification and tried to convince Mr. Doyle to incorrectly admit that he had been instead hit with a *brick* thrown by some *other protester* instead of the 40mm Launcher used to shoot sponge/rubber bullets—which was completely inconsistent with what Mr. Doyle saw, heard, and experienced.

28. The KIP left Mr. Doyle with approximately 40 percent visibility in his left eye and smashed his left cheekbone, which will require him to undergo surgery to have a metal plate implanted, with even further surgery and medical care likely required in the future. The injury to Mr. Doyle has caused him immense physical, emotional, and mental pain, has disfigured his face, and left him physically impaired and unable to work—problems that will continue as he faces ongoing surgery and treatment, currently and in the future. As a result of his injuries, Mr. Doyle has had to undergo to major surgeries and is expected to undergo a third surgery in the near future. Mr. Doyle remains a dedicated aspiring photojournalist and through the fear, anxiety and emotional distress caused by Defendants remains dedicated to observing and recording the ongoing protests in a peaceful exercise of his First Amendment rights. If physically able, Mr. Doyle said he would have returned to the 2020 Protests and protest in the future in Dallas if he knew that Dallas Police were prohibited from using the KIPs and other riot control devices and techniques against non-threatening protestors or in a manner that threatens his constitutional rights.

29. **Plaintiff Brandon Saenz.** The same day—May 30, 2020—26-year-old Brandon Saenz was walking from the dog park near Dallas' main library downtown to look for his

friend, when he was shot in the eye with a sponge or rubber bullet by a Dallas Police officer. Within the first week after being shot with a 40mm Launcher Mr. Saenz, like Mr. Doyle, underwent several surgeries to his head and face to repair the damage caused by the bullet. The left side of Mr. Saenz's face was fractured. Mr. Saenz required reconstructive surgery on his eye socket, suffered at least two badly chipped teeth, and had to have twenty-seven staples on the top and side of his head. And tragically, Mr. Saenz has permanently lost his left eye as a result of the shooting. Doctors implanted metal plates in his face, screws in his nose, and a drain tube in his head to prevent blood clotting. Mr. Saenz will need additional medical treatment in the future as a result of his catastrophic injuries.¹⁸ Mr. Saenz continues to experience severe pain from the injuries caused by the incident.



Photo still of Brandon Saenz's injuries taken from WFAA.com video (June 3, 2020, 6:19 p.m.).¹⁹

30. **Randi Rogers.** Also on May 30, 2020, Randi Rogers planned to meet friends in downtown Dallas to attend the demonstrations. Ms. Rogers and her friends planned to

¹⁸ Dallas Protester Undergoes Multiple Surgeries After Being Shot With Rubber Bullet, DALLAS POLICE, NBCDFW.COM (June 4, 2020, 6:42 p.m.), <https://www.nbcdfw.com/news/local/dallas-protester-undergoes-multiple-surgeries-after-being-shot-with-rubber-bullet/2382882/>.

¹⁹ Kevin Reece, Man who lost an eye to a projectile during Dallas protests demands answers from police, WFAA.COM (June 3, 2020, 6:19 p.m.), <https://www.wfaa.com/article/news/local/man-who-lost-an-eye-to-a-projectile-during-dallas-protests-demands-answers-from-police/287-8b8c4ca8-84bc-4afa-bfcd-a8fcd926c260>.

observe and support the historical protests, rather than directly participate in them. When Ms. Rogers and her friends parked and started walking, Ms. Rogers observed that the area around her seemed calm, with police simply standing by, albeit equipped in riot gear. When officers directed the group of friends and Ms. Rogers to walk a certain way, they complied. As she walked, Ms. Rogers paused and turned around with her phone to take a photo of the riot-gear-clad police. It was then that a Dallas PD officer fired a 40mm Launcher at Ms. Rogers, striking a blow to her head. Ms. Rogers hit the ground, crying, and pleading to know why the officer had shot her. To date, the City has at least failed to disclose—if not intentionally withheld—the identity of the officer who shot Ms. Rogers.

31. As blood gushed down her face, Ms. Rogers believed she was dying. Ms. Rogers pleaded for help from a nearby female police officer, who told Ms. Rogers to sit down. Ms. Rogers' friends stayed by her side, refusing to leave her behind. However, other Dallas Police officers who spotted the group of friends did not offer help. Instead, the officers trampled over Ms. Rogers while pepper spraying her friends. Another civilian—who was also waiting for medical attention—gave Ms. Rogers a shirt to wrap around her headwound to slow the bleeding.

32. Ms. Rogers was eventually taken from the scene of the shooting to a nearby hospital, where she received medical treatment for her headwound. Ms. Rogers later had to undergo reconstructive surgery in an attempt to repair the massive hole in her scalp caused by the 40mm Launcher. The injuries that the 40mm Launcher inflicted on Ms. Rogers, a hair and makeup artist by trade, have impacted her ability to do her job and have caused her severe pain and mental anguish.



Photo, Randi Rogers, depicting Ms. Rogers' post-surgical headwound.

33. **Plaintiff David McKee.** Also on May 30, 2020, Plaintiff David McKee was asked by a photographer friend, Adriana Aguilera, to escort her to the protests to observe and document via photography. McKee and Aguilera arrived downtown and proceeded to photograph the scenes as they unfolded. As McKee and Aguilera wandered through the empty streets, McKee found a sign laying on the ground and picked it up looking for a trash can. McKee and Aguilera rounded the next corner to witness a mass of people running from smoke and gas. People were falling, choking, and being pushed and stepped on. McKee rushed to aid using his cone multiple times to suppress the canisters and squirt bottles to dilute and cleanse the gas from people's eyes, trying also get them to safety.

34. McKee walked into the gas to find anyone else, adrenaline pumping and basic experience with the gas fueling him. McKee was able to pull a couple more people from the gas and smoke and found Ms. Aguilera. During a brief lull in the chaos, McKee and

Aguilera moved back to observing and documenting, even staging a couple pictures with the sign McKee found. As they finished their final shot of the night, they found themselves behind a line of officers moving towards the mass of protestors. McKee and Aguilera began to leave the area when McKee heard someone call out behind him, “to the right!” McKee turned around to see a small line of officers in full SWAT gear holding shotguns and grenade launchers, taking aim at him, Aguilera and a couple of scared and lost protestors.

35. McKee turned to face the DPD officers, and as he fully complied, he heard another call to, “Disperse.” So, McKee held up the sign he was holding for protection and started to back away. The officers continued to tell McKee to disperse, and he continued to back away. While McKee was backing away, a Dallas Police Officer fired a round from a 40mm Launcher containing an impact form projectile at McKee. McKee suddenly felt a sting in his right arm (bicep) but did not pause in his retreat although he was in severe pain from being hit. McKee continued to keep an eye on the line of officers. McKee then saw an officer, on the left side of the line raise his 40mm Launcher, take aim, dial in his sights, dial again, and fire at him for no lawful or justifiable reason. McKee felt a punch to the groin but continued to back up now in severe pain. At no time was McKee threatening any of the officers or any other person.

36. McKee and Aguilera tried to leave the area but were held up for a few minutes and were finally able to get out and shuffle back to McKee’s car as the pain and swelling in McKee’s bicep and groin began to become unbearable. McKee drove straight to Medical City Dallas and was admitted immediately for triage and emergency surgery on his left, and only, testicle. Since then, McKee have been prescribed an HRT of testosterone to mitigate physical and mental health issues stemming from the incident and compounded by a radical

orchiectomy in Nov 2016 due to testicular cancer in his right testicle. This has caused McKee psychological and emotional problems, causing strife in personal relationships and some problems at work, even. Defendants Mabry and Williams were arrested on February 10, 2022 and charged with Aggravated Assault by a Public Servant and Official Oppression in connection with the excessive force used against McKee.

On June 1, 2020, Tasia Williams is injured by a 40mm Launcher.

37. Then on Monday, June 1, 2020, Dallas Police detained approximately 674 protesters on the Margaret Hunt Hill Bridge (the “Bridge”) at the end of a march from the Frank Crowley Courts Building downtown that was, by all accounts, entirely peaceful. Video footage taken by march participants and journalists confirms: the *only* violence on the bridge came from Dallas Police officers who fired so-called “less lethal” rubber bullets at nonthreatening, kneeling demonstrators, along with smoke bombs and tear gas.²⁰

38. But the Dallas Police did *not* “deter” or “disperse” the crowd and instead *prevented* participants from leaving by blockading them onto the bridge, a technique called “kettling.”²¹ When the crowd’s march from downtown reached the intersection with the roadway leading to the bridge, demonstrators found the westbound ramp onto the bridge was not blocked by police, unlike other sides of the intersection. Protesters and journalists on the scene say they were told by officers to “continue moving” but were never warned not to walk up the ramp.²² Once the last of the marchers were on the bridge, police in riot gear and

²⁰ See Matt Goodman, *The Worst City Council Meeting Dallas Has Witnessed in a Decade*, DMAGAZINE.COM (June 6, 2020 12:33 p.m.), <https://www.dmagazine.com/frontburner/2020/06/the-worst-city-council-meeting-dallas-has-witnessed-in-a-decade/>.

²¹ Silas Allen, *Kettling Tactic Dallas Police Used Against Protesters is Steeped in Controversy*, DALLAS OBSERVER (Jun 8, 2020, 4:00 a.m.), <https://www.dallasobserver.com/news/dallas-police-protesters-kettling-margaret-hunt-hill-bridge-11916828>.

²² *Id.*; Goodman, *supra* n. 19.

armored vehicles enclosed protesters on both ends, trapping them on the bridge over thirty feet above the ground.²³



Photo, Dylan Hollingsworth, protesters march south from Riverfront Blvd. past police, turning westward onto Margaret Hunt Hill Bridge, (June 1, 2020)²⁴

39. Video from the leading edge of the westward march shows that as the group approached the center of the bridge, a solid line of police clad in riot gear met them at the bridge's apex, stopping the march in its tracks.²⁵ Protesters could all be seen frozen with hands raised, chanting, "Hands up! Don't shoot!"

²³ Tim Cato, *I was Detained in Dallas' Bridge Raid. It Never Needed to Happen*, DMAGAZINE.COM (June 3, 2020, 3:44 pm), <https://www.dmagazine.com/frontburner/2020/06/i-was-detained-in-dallas-bridge-raid-it-never-needed-to-happen/>.

²⁴ Pete Freedman, *A Few Words on the Ambush at Large Marge*, CENTRALTRACK.COM (June 8, 2020), <https://www.centraltrack.com/a-few-words-on-the-ambush-at-large-marge/>.

²⁵ @thatgirljacqs, TWITTER (June 2, 2020), <https://twitter.com/thatgirljacqs/status/1268002580602421248>, :09.



Photos, Dylan Hollingsworth, Margaret Hunt Hill Bridge, (June 1, 2020).²⁶

40. As the line of police continued to advance eastward toward them, the group kneeled.²⁷ But police continued marching toward the kneeling protesters. Over a minute passed as police closed the gap, coming less than 20 to 30 feet from the group, even as protesters periodically stood to back up before kneeling again. Suddenly and without warning or any provocation, police launched canisters directly at protesters, which caught fire before releasing smoke or tear gas into the crowd.²⁸ At about the same time, tactile weapons could be heard firing, as the peaceful crowd screamed. As the crowd continued to back away from the gas and police, the police line kept marching toward them, shooting projectiles at the retreating protesters.²⁹ As protesters peacefully attempted to retreat, they could be heard pleading: “This is a peaceful protest! We’re peaceful!” “. . . Peaceful!!”³⁰

²⁶ See Freedman, *supra*, note 23.

²⁷ @thatgirljacqs, TWITTER, *supra* note 28, at :15.

²⁸ *Id.* at 1:18; Tim Cato, *I Was Detained in Dallas’ Bridge Raid. It Never Needed to Happen*, D Magazine (June 3, 2020, 3:44 p.m.), <https://www.dmagazine.com/frontburner/2020/06/i-was-detained-in-dallas-bridge-raid-it-never-needed-to-happen/>.

²⁹ @thatgirljacqs, TWITTER, *supra* note 28, at 122–1:57.

³⁰ *Id.* at 1:58–2:09.



Photo, Dylan Hollingsworth, Margaret Hunt Hill Bridge, (June 1, 2020).³¹



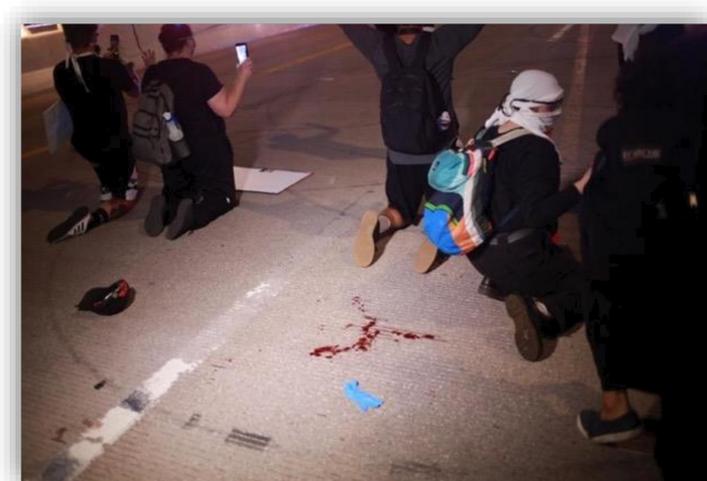
Photo, Dylan Hollingsworth, Margaret Hunt Hill Bridge, (June 1, 2020).³²

41. Having “seen nonviolent protesters in virtually every state get gassed, shot at, beaten, and arrested over the weekend,” the members of the march knew not to resist the police in any way: “Instead, we knelt. We put our hands up. We started chanting, ‘Don’t

³¹ See Freedman, *supra*, note 26.

³² See Freedman, *supra*, note 23.

shoot.’ Local reporters attest we had not committed a single act of violence or destruction the entire night. Moments later, they opened fire on us.”³³ Protestors say that, despite Former Chief Hall’s claim that police warned protestors that marching onto the bridge would lead to arrest, they never heard that warning.³⁴ Additionally, to the extent that police officers are sometimes required to make “split second decisions,” no such quick or life-threatening decisions were required on the Bridge that night. Indeed, the Dallas Police officers engaged in a protracted, slow, and coordinated march towards the peaceful protesters, who never acted threateningly or aggressively in any way.



*Photo, Dylan Hollingsworth, Margaret Hunt Hill Bridge, (June 1, 2020).*³⁵

42. **Tasia Williams.** Tasia Williams was one of the protestors injured on the Bridge by a so-called “less lethal” bullet shot from the 40mm Launcher. Before the tragic turn of events on the Bridge, Tasia Williams was filled with positivity and hope after two hours of demonstrations at the Frank Crowley Courts Building left her celebrating that she felt part of a community that could change things. Ms. Williams was not at the front of the group on the

³³ See Cato, *supra*, note 22.

³⁴ *Id.*

³⁵ See Freedman, *supra*, note 23.

Bridge when the line of police suddenly opened fire on the group, but as she choked from the erupting smoke or tear gas, Ms. Williams moved to the left side by the bridge railing to record her own video, thinking she was not in the line of fire. Then, as the crowd retreated from police, Ms. Williams was left on the front lines, where officers shot two rubber or sponge bullets directly at her and a friend, striking Ms. Williams in the thigh. To date, the City has at least failed to disclose—if not intentionally withheld—the identity of the officer who shot Ms. Williams.

43. Ms. Williams immediately fell to the ground and screamed for medical attention. As the officers advanced, they ignored Ms. Williams' medical needs but proceeded to arrest her regardless, zip-tying her hands behind her back, forcing her to lay on her stomach face-down on the pavement for over 30 minutes while officers zip-tied the hands of the nearly seven hundred other protesters. At least three hours passed by the time Ms. Williams had received medical attention and was released. Police then held Ms. Williams for nearly two hours on the bridge—bleeding and in pain—before providing her any medical attention, despite her pleas. Ms. Williams' eyes burned, and her throat hurt for at least 30 minutes as a result of the tear gas shot by the Dallas Police. After hours of excruciating pain on the Bridge, an EMT from the Dallas Fire Department finally attended to her wound. When the EMT tossed aside the leftover gauze he used to bandage her bloody leg, Ms. Williams asked him to pick it up using a biohazard bag out of concern for transmitting COVID-19, in case she was an asymptomatic carrier of the disease; he was not concerned. By the time police finished processing her at least another hour later, Ms. Williams had temporarily lost the use of her leg. The injury to her leg made it extremely difficult to stand for any extended period of time. Several days after her injury, the wound from the sponge bullet began to form a keloid in the

middle of her leg which will likely require dermatological and other treatment. Ms. Williams continues to suffer from severe emotional distress due to her injuries.

44. Ms. Williams remains a dedicated activist and even through the fear, anxiety and emotional distress remains dedicated to continuing actively protesting in a peaceful exercise of her First Amendment rights. The incident damaged Ms. Williams' trust in police, the City, and government, and she has seen firsthand the very police brutality she showed up to protest. But despite her own suffering, Ms. Williams said she would have returned to the 2020 Protests in Dallas and would attend future protests in Dallas if she knew that Dallas Police were prohibited from using the KIPs and other riot control devices and techniques against non-threatening protestors or in a manner that threatens her constitutional rights.

45. These stories are only some of those that continue to emerge from the 2020 Protests in Dallas. Countless other people have been injured by the 40mm Launcher, including one woman not affiliated with protests who was walking out of Whole Foods after grocery shopping when police shot her in the face with a projectile.³⁶

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³⁶ See Dallas Morning News reporter Kevin Krause, @KevinRKrause, TWITTER (May 30, 2020, 8:04 p.m.), <https://twitter.com/KevinRKrause/status/1266898396339675137/>.



Photo, Kevin Krause, a woman injured by projectile in Dallas (May 30, 2020)³⁷

The “rubber” or “sponge” bullets Dallas Police are using can be deadly.

46. “Rubber bullets are bullets. Bullets can kill.”³⁸ KIPs—often called “rubber,” “sponge,” or “foam” bullets—describe a category of ammunition used commonly in crowd-control settings, including Pepper Balls. Some KIPs are made of hardened foam or plastic, often containing a rigid or metal core. Others are “beanbag” type rounds, and others may be composed of rubber or wood.

³⁷ *Id.*

³⁸ Brian Resnick, *Rubber bullets can seriously mess you up: The dangers of “nonlethal” police weapons—like rubber bullets, flash-bang grenades, and tear gas—explained*, Vox.com (June 4, 2020, 9:21 a.m.), <https://www.vox.com/identities/2020/6/3/21279047/rubber-bullets-flash-bang-tear-gas-police-protests>; Amanda Arnold, *“Rubber Bullets” Are Not Rubber*, THECUT.COM (June 5, 2020), <https://twitter.com/mcgrudis/status/1268591923402436609/photo/1>.



Graphic created for Fowers, Steckelberg & Berkowitz, *WashingtonPost.com* (June 5, 2020).³⁹

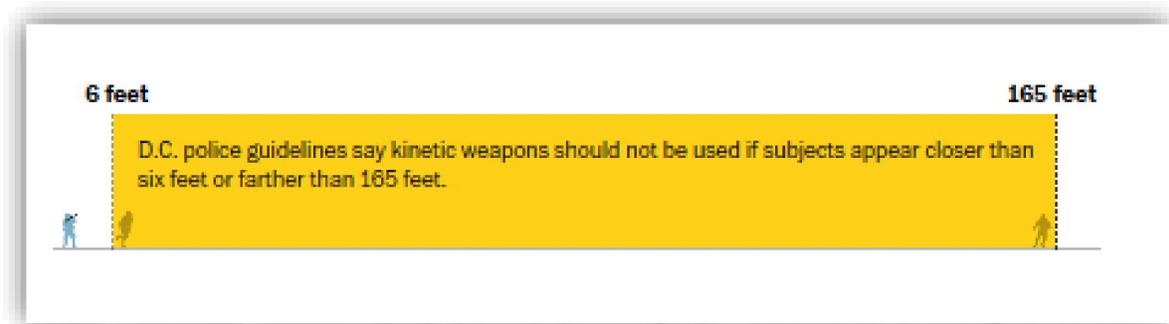
47. “Regardless of their composition, these projectiles are shot out of guns at speeds comparable to that of a typical bullet, and when they hit their target, they can maim, blind, or even kill.”⁴⁰ Although police departments like Dallas often use KIPs in crowd control because they are advertised by the Defendants as “nonlethal” or “less lethal,” research shows they cannot be used safely. At close range, they “can break bones. They can fracture skulls. If they hit the face, they can cause permanent damage and disability.”⁴¹ And even at long distances, they “have unpredicted trajectories, they bounce, and they’re quite indiscriminate.”⁴² In fact, some police departments prohibit KIP usage within 165 feet:

³⁹ Alyssa Fowers, Aaron Steckelberg, & Bonnie Berkowitz, *A guide to the less-lethal weapons that law enforcement uses against protesters*, WASHINGTONPOST.COM (June 5, 2020), <https://www.washingtonpost.com/nation/2020/06/05/less-lethal-weapons-protests/?arc404=true>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*



*Graphic created for Fowers, Steckelberg & Berkowitz, WashingtonPost.com (June 5, 2020).*⁴³

48. An independent 2017 study found that these projectiles have caused significant morbidity and mortality during the past 27 years, much of it from penetrative injuries and head, neck and torso trauma.⁴⁴ Given their inherent inaccuracy despite the Defendants marketing it as being accurate, potential for misuse and associated health consequences of severe injury, disability and death, KIPs do not appear to be appropriate weapons for use in crowd-control settings. There is an urgent need to establish international guidelines on the use of crowd-control weapons to prevent unnecessary injuries and deaths.

49. The findings of the 2017 BMJ study indicate that KIPs have caused serious injury, disability, and death. In the twenty-six studies selected for analysis, researchers identified 1,984 people with injuries, fifty-three of whom died as a result of their injuries. Among those injured, fifteen percent of the injuries resulted in permanent disability; 3 percent resulted in death.⁴⁵ Injuries to the eyes overwhelmingly (84.2 percent) resulted in blindness. Permanent disabilities and severe injuries often resulted from strikes to the head and neck (48

⁴³ See Fowers, Steckelberg & Berkowitz, *supra*, note 39.

⁴⁴ Haar RJ, Iacopino V, Ranadive N, et al. *Death, injury and disability from kinetic impact projectiles in crowd-control settings: a systematic review*. BMJ OPEN (2017), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5736036/>.

⁴⁵ See Resnick, *supra*, note 37.

of deaths and 87% of permanent disabilities). These findings indicate that these “less lethal” weapons still readily cause severe injuries and death.

50. Accordingly, organizations like Physicians for Human Rights have concluded “KIPs in general are not an appropriate weapon for crowd managements and, specifically, for dispersal purposes. Most cannot be used effectively and safely against crowds. At close ranges, levels of lethality and patterns of injury of some KIPS become similar to those of live ammunition. At longer ranges, KIPs are inaccurate and indiscriminate. Some KIPs are lethal in close range and ineffective at longer distances which make safe use difficult.”⁴⁶ That is why law enforcement experts are warning that “[r]ubber bullets should be used only to control “an extremely dangerous crowd,” said Brian Higgins, the former police chief of Bergen County, New Jersey.⁴⁷ “Shooting them into open crowds is reckless and dangerous,” said Dr. Douglas Lazzaro, a professor and expert in eye trauma at NYU Langone Health.

51. Now lawmakers in Texas and nationwide are calling for a ban on this “less lethal ammunition.” Texas State Representative Erin Zwiener said: “We have people in critical condition at the hospital. . . . Even if these are not as life-ending as often, they are certainly life-altering. And I am not seeing these weapons used with the judiciousness and respect for life that a weapon of the kind requires.”⁴⁸

⁴⁶ Physicians for Human Rights, Kinetic Impact Projectiles Factsheet (2016) (citing PHYSICIANS FOR HUMAN RIGHTS & INCLO, *Lethal in Disguise: The Health Consequences of Crowd-Control Weapons* (March 2016)).

⁴⁷ Liz Szabo, *Rubber bullets can kill, blind or maim people for life, but authorities continue to use them*, USATODAY.COM (June 3, 2020, 12:04 p.m.), <https://www.usatoday.com/story/news/health/2020/06/03/rubber-bullets-less-lethal-weapons-can-kill-but-still-used/3134019001/>.

⁴⁸ Nic Garcia, *Texas police deployed less-lethal ammunition to control protests. Now policymakers want to ban the weapons*, DALLASNEWS.COM (June 9, 2020 11:13am), <https://www.dallasnews.com/news/2020/06/09/texas-police-deployed-less-lethal-ammunition-to-control-protests-now-policymakers-want-to-ban-the-weapons/>.

VI. CAUSE OF ACTION

Deceptive Practices/False or Misleading Advertisement

52. Plaintiffs by reference incorporate and reallege all of the preceding paragraphs as though fully stated herein.

53. The Defendants knew, or should have known of, all of the foregoing information alleged in the preceding paragraphs. Based on this and similar information, the Defendants knew, or should have known that the sale of the 40mm Launcher and rubber bullets posed an unreasonable and egregious risk of physical injury to others, including the Plaintiffs.

54. A large event, such as the 2020 Protest in Dallas, was within the scope of the risk created by the Defendants' marketing and sale of the 40mm Launcher as a less lethal weapon.

55. The Defendants knew, or should have known, of the unreasonably high risk that the 40mm Launcher would be used during a Protest such as the 2020 Protest in Dallas to inflict Plaintiffs with serious injury or death.

56. The Defendants knew, or should have known, that large Protests are particularly vulnerable to and frequently targets of officers using the 40mm Launcher.

57. Despite this knowledge, the Defendants unscrupulously marketed and promoted the 40mm Launcher as being less lethal knowing this not to be true.

58. The Defendants, as those who deal in firearms, are required to exercise the closest attention and the most careful precautions in the conduct of their business.

59. The Defendants have for years sold the 40mm Launchers in a manner that foreseeably leads to the use of those weapons by unsafe users.

60. The Defendants' sale of the 40mm Launchers involved an unreasonable and unreasonable risk of physical injury to others.

61. Upon information and belief, the Defendants' conduct as previously alleged also constituted a knowing violation of the Texas Deceptive Trade Practices Act.

62. The Defendants' conduct was a substantial factor resulting in the injuries suffered by the Plaintiffs.

63. As a result of the acts and omissions of the Defendants, Plaintiffs seek compensation as set forth more specifically in the section of this Complaint entitled "Damages."

VII. DAMAGES

64. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

65. In whole or in part, as a result of some or all of the above actions or omissions of Defendants, Plaintiffs have and continue to suffer irreparable harm as a result of these violations. As a direct and proximate result of Defendants' actions and omissions, Plaintiffs have suffered and will continue to suffer severe pain of mind and body, emotional distress, physical manifestations of emotional distress, humiliation, loss of enjoyment of life, disfigurement, physical impairment, and loss of earnings and earning capacity. As a direct and proximate result of Defendants' actions and omissions, Plaintiffs have required and will in the future require medical treatment, therapy, counseling, and/or hospitalization to address the physical and mental injuries caused by Defendants' acts and omissions.

66. As a direct and proximate result of Defendants' actions and omissions, as stated above, Plaintiffs suffered:

67. Physical pain and suffering in the past and future;

68. Mental anguish in the past and future;

69. Medical expenses in the past and future;

- 70. Disfigurement in the past and future;
- 71. Physical impairment in the past and future;
- 72. Lost earnings in the past and future;
- 73. Loss of earning capacity in the past and future;
- 74. Loss of Enjoyment of life in the past and future.

75. As a direct and proximate result of Defendants' acts and omissions in the foregoing respects, Plaintiffs have been required to retain the services of legal counsel and to incur attorney's fees and costs thereby.

- 76. Plaintiffs are entitled to an award of reasonable attorney's fees.

VIII. PUNITIVE/EXEMPLARY DAMAGES

77. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

78. Additionally, and in the alternative, the conduct of Defendants was done with malice and/or a specific intent by Defendants to cause substantial injury or harm to Plaintiffs. As such, Plaintiffs request punitive and exemplary damages to deter this type of conduct in the future.

79. In the alternative, Defendants' heedless and reckless disregard of Plaintiffs' rights, safety, and welfare constitutes more than momentary thoughtlessness, inadvertence, or misjudgment. Instead, Defendants acted with reckless or callous indifference to the rights, safety, or welfare of others. Defendants had actual, subjective awareness of the risks of injury or illegality involved, but nevertheless proceeded with conscious, reckless, or callous indifference to the rights, safety, or welfare of others, including Plaintiffs. Such unconscionable conduct goes beyond ordinary negligence, and as such Plaintiffs request

punitive and exemplary damages are awarded against Defendants in a sum which is within the jurisdictional limits of this court.

IX. JURY TRIAL DEMANDED

80. Plaintiffs demands, in accordance with Texas Rule of Civil Procedure, a trial by jury on all issues so triable.

X. PRAYER

81. WHEREFORE, Plaintiffs request this Court and the finder of fact to enter a Judgment in Plaintiffs' favor against all named Defendants on all counts and claims as indicated above in an amount consistent with the proofs of trial, and seeks against Defendants all appropriate damages arising out of law, equity, and fact for each or all of the above counts where applicable and hereby requests that the trier of fact, be it judge or jury, award Plaintiffs all applicable damages, including but not limited to compensatory, special, exemplary and/or punitive damages, in whatever amount Plaintiffs are entitled, and all other relief arising out of law, equity, and fact, also including but not limited to:

82. Compensatory damages in an amount to be determined as fair and just under the circumstances, by the trier of fact including, but not limited to past and future: pain and suffering, medical expenses, loss of earnings and earning capacity, mental anguish, anxiety, humiliation, and embarrassment, disfigurement, physical impairment, violation of Plaintiffs' Federal and State rights, loss of social pleasure and enjoyment, and other damages to be proved;

83. Punitive and/or exemplary damages in an amount to be determined as reasonable or just by the trier of fact;

84. Reasonable attorney fees, pre-judgment and post-judgment interest, and costs; and

85. Other declaratory, equitable, and/or permanent injunctive relief, as appears to be reasonable and just.

Respectfully Submitted,

By: /s/ Daryl K. Washington

Daryl K. Washington

TX Bar No. 24013714

Admitted

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