

Please Read Instructions on Reverse Side of Yellow copy

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BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

- Mr.
Mrs.
Ms.
Miss

Christopher Martin Claimant

vs.

State of Arkansas, Respondent

Arkansas State Police

Do Not Write in These Spaces
Claim No. 180341
Date Filed October 11, 2017
Amount of Claim \$350,000.00
Fund ASP
MA/ED, Personal Inj, Pain Suffering, Loss Wages

COMPLAINT

Christopher Martin

the above named Claimant, of

(Street or R.F.D. & No.)

(State) (Zip Code) (Daytime Phone No.)

County of

represented by

Morris Thompson
(Legal Counsel, if any, for Claim)

P.O. Box 662, Little Rock AR 72203, (501) 661-8100
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: Arkansas State Police Amount sought: \$350,000.00

Month, day, year and place of incident or service: Oct. 27, 2014, Forrest City, AR.

Explanation:

Mr. Martin brings his claim against the Arkansas State Police & State Trooper Dennis J. Murphy, badge no 387 for false arrest, excessive force, and false imprisonment, and violation of his right to bodily integrity in violation of the U.S. Constitution and the Arkansas Constitution. Claimant's claims are more fully developed in the attached complaint.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?

NO; when? N/A; to whom? N/A; (Department) N/A

and that \$ N/A was paid thereon: (2) Has any third person or corporation an interest in this claim? NO; if so, state name and address

and that the nature thereof is as follows: N/A (Street or R.F.D. & No.) (City) (State) (Zip Code)

: and was acquired on : in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verify believes that they are true.

Morris W. Thompson
(Print Claimant/Representative Name)

Morris W. Thompson
(Signature of Claimant/Representative)

SWORN TO and subscribed before me at Little Rock Arkansas

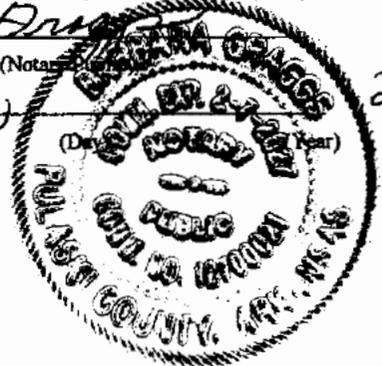
(SEAL)

on this 11 day of October 2017
(Date) (Month) (Year)

Barbara [Signature]

(Notary Public)
My Commission Expires: February 7, 2017
(Month) (Year)

SF1- R799



BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

CHRISTOPHER MARTIN

CLAIMANT

V.

Claim No:

ARKANSAS STATE POLICE, and
TROOPER JASON MURPHY

RESPONDENT

CLAIMANT'S COMPLAINT

On October 27, 2014, at approximately 4:30 pm, Claimant, Christopher Martin was driving his SUV east on Day street approaching a neighborhood store located at the corner of Day and Division Streets. As he approached the store's parking lot, a state trooper, we now know to be State Trooper Dennis J. Murphy, drove into the parking lot positioning his car facing Day street in order to watch Mr. Martin and get in behind as Mr. Martin passed by. It was Trooper Murphy's espoused intention to trail Mr. Martin in hopes Mr. Martin did something that would give him justification for a stop.

Mr. Martin, however, turned into the parking lot passing by Trooper Murphy. When Mr. Martin exited his SUV to go into the store, Trooper Murphy got out of his vehicle and yelled something. As Mr. Martin wasn't certain the Trooper was yelling to him or one of the guys standing near the corner of the store front, he turned to look and see. Believing it wasn't meant for him, Mr. Martin continued to walk toward the front of the store. Trooper Murphy yelled something again which Mr. Martin didn't quite understand. Yet unsure it was meant for him, Mr. Martin looked again to see Murphy reaching for his gun belt. Mr. Martin thought ASP Murphy was going to shoot and Mr. Martin took off running to out of the line of fire. The next clear thing Mr. Martin knew, he was in a hospital in Wynne, Arkansas. Mr. Martin vaguely

remembered being transported to a hospital in Forrest City, and then to Wynne, but it was foggy and not clear. Mr. Martin then learned that the Trooper had shot him with his TASER®. After being shot by the TASER and unable to move his legs, Mr. Martin's momentum carried him forward and face first onto the pavement breaking his jaw, breaking his teeth, and loosening numerous others. See the report of Dr. L.C. Mitchell, D.D.S attached hereto as exhibit A. The impact also knocked Mr. Martin unconscious, causing traumatic brain injury. Due to his broken jaw and the broken and loosen teeth, Mr. Martin's health, and ability to eat and talk has been seriously impaired. Mr. Martin has suffered a protracted impairment of the function of his mouth. In addition, Mr. Martin suffered serious emotional injury as a result of Trooper Murphy's outrageous an unconscionable actions.

Mr. Martin had done nothing to justify being arrested or subjected to the extreme use of force to effect the arrest. Exhibit B hereto is an excerpt of Trooper Murphy's trial testimony abstracted by the State in its appeal to the Arkansas Court of Appeals. The trooper's own testimony shows that he had only seen Mr. Martin driving on a city street, turn into a parking lot, and run when Trooper Murphy reached for a weapon. Trooper Murphy's testimony establishes that had no authority to arrest Mr. Martin as Mr. Martin had committed no misdemeanor in the Trooper's presence. Additionally, Trooper Murphy's own testimony that he intended to trail Mr. Martin in hopes that Mr. Martin did something to justify a stop shows that the Trooper did not have probable cause that Mr. Martin had committed a felony or was driving while intoxicated. Furthermore, the extreme use of force to affect the arrest was unreasonable, unwarranted, and unconstitutional. Despite ASP policy directing state troopers to warn before deploying a TASER, by his own admission, Trooper Murphy did not warning Mr. Martin he was going to shoot. As there was no crime or offense, no arrest was legally justified and no amount of force, regardless

of how minimal or large, was legally warranted. To cover up this unwarranted and unreasonable use of force, Trooper Murphy charged Mr. Martin with a number of trumped up charges, including DWI. When the case went to jury trial in circuit court, at the close of the state's evidence, the trial judge dismissed all the charges because the arrest was illegal and without probable cause. The Court of Appeal affirmed the trial court's decision.

Mr. Martin files his claim against Trooper Jason Murphy for violating his right to be free of unreasonable seizures protected by the 4th Amendment. Thereunder he brings his claims for false arrest and false imprisonment, i.e., the arrest without probable cause; and a claim of excessive force in the arrest. He also makes his claim against the Arkansas State Police, (ASP), for its policies and practices which were a proximate cause of these violations. Mr. Martin also claims damages for the respondents' actions which violated his due process right of bodily integrity protected by the 14th Amendment to the U. S. Constitution.

A TASER®, or conducted electrical weapon, (CEW), is an electroshock weapon manufactured by TASER® International. It operates by delivering no less than 50,000 volts causing neuromuscular incapacitation due to electric current disrupting the person's voluntary control of his or her muscles. A person struck by a TASER experiences extreme pain and over-stimulation of sensory nerves and motor nerves resulting in strong involuntary muscle contractions. The electrical current causes the large voluntary muscles to freeze or lock up so that the person can no longer control them. TASER INTERNATIONAL in March 2013 updated its product warning bulletin to direct: "When practicable avoid using a CEW on a person who could fall and suffer impact injury to the head or another area; **is running, in motion, or moving under momentum.**" [emphasis added]. In recognition of this, standard police training and procedure restrict taser usage under these circumstances. Standard police training and

practice directs that a taser should not be fired at a person who is running, as their momentum carries their bodies forward, with no control over their arms and legs, they will not be able to protect themselves from hitting the ground with full force. See exemplar attached as exhibit B.

However, ASP policy on the use of conducted electrical weapon only provides a general prohibition that the CEW should not be used for, among other things, "in an environment where the subject's fall would likely result in serious physical injury (such as in water or on an elevated structure). See Exhibit C attached hereto. ASP policy on use of force, LE SEC 10, defines serious physical injury as physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ. A.C.A. § 5-1-102(21). Clearly with traumatic brain injury and injury to his mouth as described above, Mr. Martin has suffered protracted impairment of the functions of his brain and mouth.

Despite the general knowledge within the law enforcement community of the specific danger of deploying the TASER at a person who is running, ASP policies do not contain a specific restriction. Consequently, the ASP policy failure gives the trooper unfettered discretion in using this weapon in this fashion. The ASPs' failure to specifically prohibit such usage, despite the known consequence of such usage, demonstrates deliberate indifference to violation of a citizen, such as Mr. Martin's, 4th Amendment right to be free of unreasonable force. The ASP policy decision not to specifically prohibit use of a CEW on a running person was in deliberate indifference to the known and likely constitutional violations result its inaction. Furthermore, the ASP condoned and ratified Murphy's action by refusing and failing to discipline Trooper Murphy when

A TASER® not only causes incapacitation, but pain as well. The device sends a pulsating

electrical charge, 19 pulses a second, that overrides the signals of the body's sensory and motor nervous system that are sent to and from the central nervous system. The electrical impulse normally generated by the human body approximates 100 millivolts. On its standard setting, the pulse cycles for five seconds before shutting off, if the trigger is not held for longer. Thus within the five second cycle, the TASER sends 95 shocks through the body. Each electrical pulse is like a power surge to the nerves. The shock overwhelms the nervous system which causes considerable pain and triggers a contraction in all muscles. When ASP Murphy shot Mr. Martin, the pain from the electrical shock was excruciating.

When Murphy shot Mr. Martin, Mr. Martin's body locked up and with his arms stiff and no longer under his control. Mr. Martin could not protect himself by catching his fall. Unable to move his legs, his momentum carried him forward and face first onto the pavement breaking his jaw, breaking some of his teeth and loosening others. The impact also knocked Mr. Martin unconscious, causing him to suffer a mild traumatic brain injury. Mr. Martin suffered serious physical and emotional injury as a result of Trooper Murphy's outrageous and unconscionable actions.

Mr. Martin claims damages from the Arkansas State Police and Jason Murphy, individually and collectively for their actions which violated his rights protected by the 4th and 14th Amendment to the U. S. Constitution as well as the Arkansas Constitution as redressable through the Arkansas Civil Rights Act.

DAMAGES

As the direct and proximate result of the state's actions, Mr. Martin has suffered as follows:

- a). Pain and suffering;

b). Mental anguish and humiliation in the past and to be experienced for an indefinite time in the future;

c). Loss of teeth;

d). Physical injury requiring the expense of medical treatment and care;

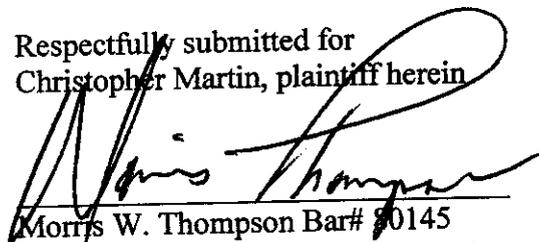
e). Physical impairment to jaw and mouth;

f). loss of earnings, both past and future; and

g) Martin has been or will be forced to expend sums of money for psychological and emotional therapy, treatment, counseling and care.

h) Martin has been and will be forced to expend sums of money for dental injury requiring dental and orthodontic treatment and care.

Respectfully submitted for
Christopher Martin, plaintiff herein



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NOV 02 2020

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

CHRISTOPHER MARTIN

CLAIMANT

RECEIVED

CLAIM NO: 18031

ARKANSAS STATE POLICE

RESPONDENT

AMENDED CLAIM

Comes now the Claimant herein, Christopher Martin (Martin), and for his Claim against the Arkansas State Police (ASP), Respondent, herein, for excessive force, malicious prosecution, civil assault and battery and states:

1. Jurisdiction of this Commission is pursuant to Ark. Code §19-10-204(a) that provides: "Except as otherwise provided by law, the Arkansas State Claims Commission shall have exclusive jurisdiction over all claims against the State of Arkansas and its several agencies, departments, and institutions, but shall have no jurisdiction of claims against municipalities, counties, school districts, or any other political subdivisions of the state."

2 In addition thereto, Ark. Code §19-10-204(b) (2)(A) provides that: "The commission shall have jurisdiction only over those claims which are barred by the doctrine of sovereign immunity from being litigated in a court of general jurisdiction."

3. Martin brings claims arising under 42 U.S.C. § 1983 against the state by and through a agency of the state, the Arkansas State Police, (ASP). Martin seeks redress against ASP for it's acts of commission and omission, policies and procedures, customs and practices which were in violation of Martin's rights protected by the U.S. Constitution as well as federal laws.

4. Additionally, Martin seeks relief under Ark. Const. Art. 2 § 2, and Art. 2 §15 redressable under the Arkansas Civil Rights Act of 1993 (ACRA), codified at A.C.A. § 16-123-

101 et seq.

5. Furthermore, Martin seeks redress for the state tort of malicious prosecution, false imprisonment, and civil assault and battery.

6. All acts complained of occurred within the boundaries of the state of Arkansas.

7. Martin was at all relevant times a citizen of St. Francis County, Arkansas, and was so at all relevant times herein.

8. The ASP is an agency of the State of Arkansas and thus this claim is properly before the Arkansas State Claims Commission and the Commission has jurisdiction.

LAW OF THE CASE

9. The ASP is subject to § 1983 liability for inadequate training of its employees where the failure to train amounts to deliberate indifference to the rights of the persons with whom the police come into contact. See *City of Canton, Ohio v. Harris*, 489 U.S. 378 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989).

10. *Harris* held that if, in light of the duties assigned to law enforcement officers, the need for more or different training is so obvious and the inadequacy so likely to result in a violation of a person's federal rights that the policymakers of the law enforcement agency can reasonably be said to have been deliberately indifferent to the need, the failure to provide proper training may fairly be said to represent a policy for which the agency itself is responsible and for which it will be liable when it causes injury. 489 U.S. 378,390 (1989).

11. An example of when a law enforcement agency's training program is so inadequate that it would trigger agency liability is a police department hiring officers who they know may have to use deadly force and then failing to train those officers on the proper use of

deadly force. *Harris*, Id. Thus if a law enforcement agency fails to train its officers on the proper uses of a firearm, and an officer uses his firearm in an improper fashion that results in harm, the agency itself would be liable for that harm because it is obvious that an officer will need to use his firearm, and if the agency does not train him on how to use a firearm in the right way, that officer is bound to harm someone with that firearm. *Harris*, 489 U.S. at 390 n.10.

12. Like firearms, Tasers are a staple of the law enforcement officer's uniform, particularly patrol officers. And like firearms, Tasers can cause death or serious bodily injury, which means it is incumbent on law enforcement agencies to train their officers on the proper and improper use of Tasers. A law enforcement agency's failure to train its officers on the proper and improper use of Tasers is the equivalent of it failing to train its officers on the proper and improper use of firearms.

13. In June 2012, the ASP began issuing its officers the Taser X26E but did not train them on the proper and improper use of Tasers for many months or years. This failure was an invitation for its officers to kill or seriously injure persons who had the misfortune of encountering one of its untrained officers. In light of the duties of ASP patrol officers (Troopers), the need for training on how to use and not use a Taser was obvious, and the failure to provide that training was so likely to result in a violation of a person's federal rights, the policymakers of the ASP can reasonably be said to be deliberately indifferent to the rights of persons who the untrained trooper's kill or maim. The ASP's failure to train its patrol officers on the proper and improper use of Tasers is a policy for which the agency itself is responsible and for which it is liable when that failure to train results in harm to a person.

14. Here, the ASP equipped the trooper Dennis Jason Murphy with one of these dangerous devices, the Taser X26E, as part of his use of force arsenal with the expectation that

the untrained trooper would use it. ASP knew Murphy, although untrained on the proper and improper use of the dangerous device may have to use the tasers but failed to train him on the proper use of that force. This is the functional equivalent of the example set out in *Harris*.

FACTS

15. ASP patrol officers are responsible for enforcing state laws primarily on local and state roads with an emphasis on criminal activity and unsafe driving practices that pose the greatest threat to the citizens of Arkansas. Troopers often work with other law enforcement agencies for the purpose of preventing and solving crimes, improving the safety of Arkansas highways and providing other services to the citizens of Arkansas.

16. In light of those duties, the ASP expects that Troopers will, in the usual course of their daily duties enforcing state laws on local and state roads deal with suspects and frequently need to use force to make an arrest and take them into custody.

17. To carry out those expected duties, the ASP equips its troopers with an electrical conducted weapon (CEW or ECD) or electroshock weapon manufactured by TASER® International. This CEW or ECD is commonly referred to as a “taser”.

18. A TASER®, is an electroshock weapon that operates by delivering no less than 50,000 volts causing neuromuscular incapacitation due to electric current disrupting the person’s voluntary control of his or her muscles.

19. A person struck by a TASER experiences extreme pain and over-stimulation of sensory nerves and motor nerves resulting in strong involuntary muscle contractions. The electrical current causes the large voluntary muscles to freeze or lock up so that the person can no longer control them.

20. When shot, a standing person will lose the inability to control the large voluntary

muscles, such as the arms and legs and fall to the ground. A person thus shot, will not be able to use their arms to break their fall or use their legs to moderate the impact.

21. TASER INTERNATIONAL on March 1, 2013, provided the following warning to its product:

CEWs in probe-deployment mode can cause muscle contractions resulting in injuries similar to those from physical exertion, athletics, or sports, including hernia rupture, dislocation, tear, or other injury to soft tissue, organ, muscle, tendon, ligament, cartilage, disc, nerve, bone, or joint; or injury or damage associated with or to orthopedic or other hardware. Fractures to bone, including compression fracture to vertebrae, may occur. These injuries may be more serious and more likely to occur in people with pre-existing injuries, orthopedic hardware, conditions or special susceptibilities, including pregnancy; low bone density; spinal injury; or previous muscle, disc, ligament, joint, bone, or tendon damage or surgery. Such injuries may also occur in drive-stun applications or when a person reacts to the CEW deployment by making a rapid or unexpected movement.

Secondary Injury. The loss of control resulting from a CEW exposure may result in injuries due to a fall or other uncontrolled movement. When possible, avoid using a CEW when secondary injuries are likely. Loss of control associated with CEW use can have several causes:

- **Seizure.** Repetitive stimuli (e.g., flashing light or electrical stimuli) can induce seizure in some people, which may result in death or serious injury. This risk may be increased in a person with epilepsy, a seizure history, or if electrical stimuli pass through the head. Emotional stress and physical exertion, both likely in incidents involving CEW and other uses of force, are reported as seizure-precipitating factors.
- **Fainting.** A person may experience an exaggerated response to a CEW exposure, or threatened exposure, which may result in fainting or falling.
- **Muscle contraction, incapacitation, or startle response.** CEW use may cause loss of control from muscle contraction, incapacitation, or startle response.

To reduce these risks, consider the person's location before using a CEW. When practicable, avoid using a CEW on a person in the following circumstances unless the situation justifies a higher risk. When practicable, avoid using a CEW on a person who:

- is on an elevated or unstable surface (e.g., tree, roof, ladder, ledge, balcony, porch, bridge, or stair); could fall and suffer impact injury to the head or other area;
- could fall on a sharp object or surface (e.g., holding a knife, falling on glass);
- is less able to catch or protect self in a fall (e.g., restrained, handcuffed, incapacitated, or immobilized); has impaired reflexes (e.g., from alcohol, drugs or certain medications);
- **is running, in motion, or moving under momentum;** (Bold emphasis added).
- is operating or riding any mode of transportation (e.g., vehicle, bus, bicycle, motorcycle, or train), conveyance (e.g., escalator, moving walkway, elevator, skateboard, rollerblades), or machinery; or
- is located in water, mud, or marsh environment if the ability to move is restricted.

22. In recognition of the foregoing, standard police training and procedure restrict taser usage under these circumstances. Standard police training and practice directs that a taser should not be fired at a person who is running, as their momentum carries their bodies forward, with no control over their arms and legs, they will not be able to protect themselves from hitting the ground with full force.

23. The ASP had a policy, custom, and practice of equipping its patrol officers with tasers then sending them out without properly training them on the appropriate use of the taser.

24. In fact, in 2011, in the User Manual for the Taser X26E™, Taser® International, Inc., warned:

Important Safety and Health Information

Read, understand and follow the product warnings and safety instructions contained in the Product Warnings document included with this electronic control device (ECD). The most current warnings are posted on our website at www.TASER.com. Do not attempt to use this ECD until you have completed training with a TASER International Certified Instructor.

WARNING

Complete Training First

Significant differences exist between each of the TASER ECD models. **Do not use or attempt to use any ECD model unless you have been trained and certified by a Certified TASER Instructor on that particular model.** (Bold added).

Read and Obey

Read, study, understand, and follow all instructions, warnings, information, training bulletins and TASER training materials before using the TASER ECD. **Failure to comply with the product instructions, warnings, information, training bulletins, and TASER training materials could result in death or serious injury to the user, force recipient, and others.** (Bold added).

Obey Applicable Laws

Use the ECD only in accordance with applicable federal, state, and local laws and other regulations or legal requirements. Your agency's guidance must also be followed. Any ECD use must be legally justifiable.

TASER® ECDs are weapons designed to incapacitate a person from a safe distance while reducing the likelihood of death or serious injury. Though they have been found to be a safer and more effective alternative when used as directed to other traditional use

of force tools and techniques, it is important to remember that the very nature of use of force and physical incapacitation involves a degree of risk that someone will get hurt, or may even be killed due to physical exertion, unforeseen circumstances and individual susceptibilities.

25. Despite the warnings about the likelihood of death or serious injury, and the obvious and known dangers and risks of violation of a citizen's rights if the trooper is not trained on the proper use, as of June 2012, the ASP equipped its officers with dangerous use of force weapon and sent the officers on duty enforcing state laws and interacting with the public without any training on the proper use or limitations.

26. This decision to arm patrol officers with these dangerous use of force devices and assign the troopers patrol duties without requiring adequately and proper TASER® certified training for its patrol officers on the dangers and limitations on the usage of ECDs or CEWs before deployment was a deliberate choice made by the policymakers of the ASP.

27. Despite the general knowledge within law enforcement circles and the ASP's specific knowledge as to the dangers and known consequences of such actions, the ASP's policy, practice, and custom of equipping its officers with these dangerous devices and putting the officers into service without requiring them to successfully complete TASER® certified training was a deliberate choice.

28. The ASP decision not to require adequate training and instruction upon equipping its officers with these dangerous force devices before the officer went on duty enforcing state laws and interacting with the public was indifferent to the known risk to citizens.

29. On January 20, 2013, ASP trooper, Dennis Jason Murphy became employed as a patrol officer with the ASP.

30. On June 3, 2013, the ASP, consistent with its policy, practice, and custom,

equipped Murphy with a duty taser as part of his arsenal of use of force weapons and placed him on duty to enforce state laws and interact with the public without requiring him to successfully completing TASER® certified training.

31. Per its policy, practice and custom, Murphy was allowed to perform as a patrol officer enforcing state laws and interacting with the public but not required to take taser training until November 16, 2018, over 4 years after the complained of incident.

32. On October 27, 2014, at approximately 4:30 pm, Mr. Martin was driving his SUV eastbound on Day street on his way to a neighborhood restaurant and grocery store located at the corner of Day and Division Streets.

33. Murphy was facing west stopped on Day Street at the intersection with Division when saw Mr. Martin approximately 200 feet away slowly driving toward him.

34. The neighborhood restaurant/grocery store where Mr. Martin was headed was catacornered across the intersection and to the right of Murphy's position.

35. Murphy made a right turn onto Division Street, then an immediate left into the restaurant/grocery store's parking lot and facing his patrol car toward Day street waiting for Mr. Martin to pass by. See the dash camera video incorporated herein and attached hereto as exhibit A to the initial Complaint.

36. Murphy anticipated Mr. Martin would drive past and Murphy's acknowledged intent was to then get in behind and trail Mr. Martin, in hopes Mr. Martin would violate some traffic law that would give Murphy justification for a stop. See exhibit B, Murphy's trial testimony before the St. Francis County Circuit Court, incorporated herein. ¹

37. However, Mr. Martin turned left into the parking lot passing by Murphy's stationary vehicle.

38. When Mr. Martin got out of his vehicle to go into the store, Murphy got out of his vehicle and yelled something.

39. As Mr. Martin wasn't certain the trooper was yelling to him or one of the men standing near the corner of the store front, he turned to look and see. Believing it wasn't meant for him, Mr. Martin continued to walk toward the front of the store.

40. Murphy yelled something again which Mr. Martin didn't quite understand. Yet unsure what was going on, Mr. Martin looked again in time to see Murphy reaching for his gun belt.

41. Mr. Martin thought Murphy was going to shoot and Mr. Martin began to run to get out of the line of fire. Murphy had in fact drawn his Taser and shot Mr. Martin as Mr. Martin ran to get out of what he believed to be the line of fire. The Taser probes hit Mr. Martin in his back immobilizing his arms and legs causing him to fall face forward onto the pavement.

42. As a result, Mr. Martin was not able to break or brace for his fall onto the pavement and he hit the pavement full force, face first, shattering several teeth, knocking several teeth loose, and breaking his jaw. He was knocked unconscious. The impact also knocked Mr. Martin unconscious, causing traumatic brain injury.

43. The next clear thing Mr. Martin knew, he was in a hospital in Wynne, Arkansas. Mr. Martin vaguely remembered being transported to a hospital in Forrest City, Arkansas and then on to Wynne, but his memory was foggy and not clear.

44. Mr. Martin subsequently learned that trooper Murphy had shot him with a TASER®.

45. The decision by the ASP, despite these obvious and known dangers and risks, not to train it's patrol officers on the dangers of ECDs or CEWs was deliberate and indifferent to

violations of the rights of all citizens with whom the officers would come into contact.

46. To cover his misdeeds, trooper Murphy concocted a number of false charges knowing Mr. Martin had not violated any law in his presence or for which he knew he had no probable cause which authorized an arrest or search of Mr. Martin's person or vehicle. He charged Mr. Martin with violating: DWI 1st, Fleeing on foot, Possession of Controlled Substance, Possession of Drug Paraphernalia, Refusal to Submit to Chemical Test, No Seat Belt, and Driving on Suspended License.

47. Shooting Mr. Martin with the taser was an arrest. Secondly, searching Mr. Martin's pockets and his vehicle when Murphy had neither probable cause or a search or arrest warrant was a flagrant violation of Mr. Martin's rights protected by the 4th Amendment and the ACRA.

48. Mr. Martin had done nothing to justify trooper Murphy arresting him and being subjected to the extreme use of force.

49. Murphy's own testimony shows that he had only seen Mr. Martin driving on a city street, turn into a parking lot, and run when Murphy reached for a weapon.

50. Murphy's testimony established that he had no authority to arrest Mr. Martin as Mr. Martin had committed no misdemeanor in the Trooper's presence, nor did Murphy have reasonable suspicion that Mr. Martin had committed or was in the act of committing a felony.

51. Murphy's testimony that he intended to trail Mr. Martin in hopes that Mr. Martin did something to justify a stop established that Murphy did not have probable cause that Mr. Martin was driving while impaired or had committed a felony or was in the commission of a felony.

52. Furthermore, the extreme use of force was unreasonable, unwarranted, and

unconstitutional.

53. Despite no criminal or traffic violation in Trooper Murphy's presence nor probable cause that Mr. Martin had committed a felony to warrant an arrest, the State pressed forward to jury trial on the bogus charges. After the state put on its evidence and rested its case, the trial judge granted Mr. Martin's motion for a directed verdict dismissing all the charges. The State furthered pressed its violation of Mr. Martin's 4th and 5th Amendment rights by appealing the trial court's findings and verdict to the Arkansas Supreme Court; whereupon the Arkansas Supreme Court affirmed the Circuit Court's decision and dismissed the State's appeal.

54. Furthermore, the ASP's action in exonerating Murphy when Mr. Martin filed a grievance ratified and adopted Murphy's actions as its own. Thus, the ASP had a policy of shooting with a taser unarmed fleeing persons who had not committed a misdemeanor in the trooper's presence or for whom the trooper had probable cause that the fleeing person had committed a felony.

55. Mr. Martin also brings this suit against the ASP as its decision not to train Murphy despite its knowledge of the known dangers and risks of shooting a person who is running was in deliberate indifference to the rights of citizens, including himself resulting excessive force.

56. Mr. Martin brings this suit against the ASP, therefore the State for its policies, practices, and customs which resulted in the violations of Mr. Martin's 4th Amendment rights to be free of unreasonable seizures to include excessive force, false arrest, false imprisonment, his rights to be free of malicious prosecution, abuse of legal process, wrongful institution of legal process and/or wrongful use of judicial process protected by the 4th Amendment.

57. Mr. Martin also claims damages for actions which violated his due process right

of bodily integrity protected by the 14th Amendment to the U. S. Constitution; and violation of his rights of privacy and personal dignity protected by the 14th Amendment.

58. Furthermore, Mr. Martin seeks redress for violations of his rights to be free of unreasonable seizures to include excessive force, false arrest, false imprisonment, his rights to be free of malicious prosecution, abuse of legal process, wrongful institution of legal process and/or wrongful use of judicial process and his rights of privacy and personal dignity all of which are protected by the Arkansas Constitution as redressable through the Arkansas Civil Rights Act, ACRA.

59. Finally, Mr. Martin seeks damages for the state torts of malicious prosecution, false imprisonment, and civil assault and battery.

DAMAGES

60. In addition to his right to recover for and be compensated for the violations of his rights as set out above, Mr. Martin is entitled to be compensated and made whole for the extreme humiliation, embarrassment, and mental anguish he suffered.

61. As the direct and proximate result of the ASP's deliberate indifference, Mr. Martin suffered damages and losses as follows:

- a). Pain and suffering;
- b). Mental anguish and humiliation in the past and to be experienced for an indefinite time in the future;
- c). Loss of teeth;
- d). Physical injury requiring the expense of medical treatment and care;
- e). Physical impairment to jaw and mouth;
- f). loss of earnings, both past and future;

- g) Mr. Martin has been or will be forced to expend sums of money for psychological and emotional therapy, treatment, counseling and care; and
- h) Mr. Martin has been and will be forced to expend sums of money for dental injury requiring dental and orthodontic treatment and care.
- i) Needless expenditure of funds for attorney's fees and cost of attending hearings and trials to fight the unjustified charges; and

62. Mr. Martin reserves the right to plead further should circumstances reveal and dictate the need to amend and/or supplement.

Respectfully submitted for
Christopher Martin, Claimant herein



Morris W. Thompson

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CERTIFICATE OF SERVICE

I, Morris W. Thompson, do hereby certify that I have this day of 2nd day of November, 2020, served the foregoing document to all parties listed below by electronic means and by U.S. mail with sufficient postage affixed thereto to the addresses listed below.

Gregory C. Downs
General Counsel
Arkansas State Police
1 State Police Plaza Drive

Little Rock, AR 72209

1000 N. Main St. Little Rock, AR 72209



Morris W. Thompson

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

CHRISTOPHER MARTIN

CLAIMANT

V.

CLAIM NO. 180341

ARKANSAS STATE POLICE

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is a motion filed by the Arkansas State Police (the “Respondent”) to dismiss the claim of Christopher Martin (the “Claimant”). Based upon a review of the pleadings, motion, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. Claimant filed his claim on October 11, 2017, seeking \$350,000 in damages for false arrest, excessive force, and false imprisonment, and violation of his right to bodily integrity in violation of the U.S. Constitution and the Arkansas Constitution” related to the actions of Trooper Murphy in tasing Claimant on October 27, 2014.

2. Claimant thereafter filed a federal lawsuit against Trooper Murphy and moved to hold the Claims Commission claim in abeyance pending resolution of the federal lawsuit. The Claims Commission granted Claimant’s motion and placed in the claim in abeyance on January 10, 2018.

3. In response to a Claims Commission letter regarding the status of the underlying federal lawsuit, Claimant’s counsel sent correspondence to the Claims Commission in June 2019 advising that the federal lawsuit was “concluded.”

4. Claimant subsequently filed an amended complaint, alleging the following claims:

- Claims arising under 42 U.S.C. § 1983 based upon Respondent’s “acts of commission and omission, policies and procedures, customs and practices which were in violation of Martin’s rights protected by the U.S. Constitution as well as federal laws”; (Cl’s Am. Complaint at ¶ 3).

- Claims arising Ark. Const. Art. 2 §§ 2, 15 “redressable under the Arkansas Civil Rights Act of 1993 (ACRA)”;
- Malicious prosecution;
- False imprisonment; and
- Civil assault and battery.

5. Respondent moved to dismiss the amended claim, arguing that (1) Claimant’s § 1983 claims for wrongful arrest, excessive force, and malicious prosecution were dismissed by the federal court with prejudice as time-barred by the applicable statutes of limitation;¹ (2) any § 1983 claim or federal law claim is outside the jurisdiction of the matter pursuant to Ark. Code Ann. § 19-10-204(a)(1); (3) Claimant failed to state a claim under ACRA because Respondent cannot be held liable under a theory of *respondeat superior* for any unconstitutional acts of its employees pursuant to a prior Claims Commission order² and *Whitson v. Stone County Jail*, 602 F.3d 920, 927–28 (2010); (4) Claimant failed to plead facts to overcome this general principle by demonstrating a “direct, causal link” between Respondent’s policies and the alleged constitutional violation and that the specific policy or training “amounts to deliberate indifference” pursuant to *City of Canton, Ohio v. Harris*, 489 U.S. 378 (1989); (5) Claimant failed to plead facts to state a claim for the state law tort of malicious prosecution; (6) even if Claimant did plead facts to state a claim for the state law tort of malicious prosecution, Respondent would not be liable for the actions of an employee who acted maliciously pursuant to *Early v. Crockett*, 2014 Ark. 278, 436 S.W.3d 141; (7) Claimant’s claim for false imprisonment is barred by the one-year statute of limitations pursuant to Ark. Code Ann. § 16-56-104(2)(B); and (8) Claimant’s claim for assault and battery is

¹ Respondent attached the order of dismissal as Exhibit 1 to the motion.

² Respondent attached the Claims Commission’s order in *Smith v. Ark. State Police*, Claim No. 200377 as Exhibit 3 to the motion.

barred by the one-year statute of limitations pursuant to Ark. Code Ann. § 16-56-104(2)(A). Respondent also argued that Claimant's new causes of action in his amended complaint should be stricken as prejudicial to Respondent, given the unexplained lengthy delay between the dismissal of the underlying federal lawsuit and Claimant's filing of the amended complaint. Respondent also asked the Claims Commission to hold the claim in abeyance pending Claimant's exhaustion of his insurance remedies.

6. Claimant did not respond to the motion.

7. As to Claimant's § 1983 or federal law claims, the Claims Commission agrees with Respondent that the Claims Commission does not have jurisdiction over these claims. Ark. Code Ann. § 19-10-204(a)(1).

8. As to Claimant's claims under ACRA, the Claims Commission agrees with Respondent that Claimant failed to state facts upon which relief can be granted, such that dismissal pursuant to Ark. R. Civ. Proc. 12(b)(6) is proper.

9. As to Claimant's state law claim of malicious prosecution, the Claims Commission agrees with Respondent that Claimant failed to state facts upon which relief can be granted, such that dismissal pursuant to Ark. R. Civ. Proc. 12(b)(6) is proper.

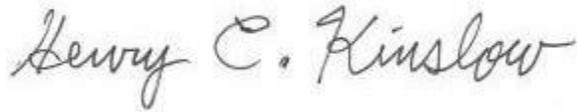
10. As to Claimant's state law claim of false imprisonment, the Claims Commission agrees with Respondent that Claimant is time-barred pursuant to Ark. Code Ann. § 16-56-104(2)(B).

11. As to Claimant's state law claim of assault and battery, the Claims Commission agrees with Respondent that Claimant is time-barred pursuant to Ark. Code Ann. § 16-56-104(2)(A).

12. The Claims Commission GRANTS Respondent's motion to dismiss and DISMISSES Claimant's claim.

13. Respondent's motion to hold claim in abeyance is hereby rendered moot.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird
Dexter Booth
Henry Kinslow, Co-Chair
Paul Morris, Co-Chair
Sylvester Smith

DATE: February 10, 2021

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

CHRISTOPHER MARTIN

CLAIMANT

V.

CLAIM NO. 180341

ARKANSAS STATE POLICE

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is a motion filed by Christopher Martin (the “Claimant”) seeking to vacate or set aside the Claims Commission’s February 10, 2021, order dismissing Claimant’s claim against the Arkansas State Police (the “Respondent”). Based upon a review of the motion and the law of Arkansas, the Claims Commission hereby finds as follows:

1. Claimant filed his claim on October 11, 2017, seeking \$350,000 in damages for false arrest, excessive force, and false imprisonment, and violation of his right to bodily integrity in violation of the U.S. Constitution and the Arkansas Constitution” related to the actions of Trooper Murphy in tasing Claimant on October 27, 2014.

2. After concluding a federal lawsuit against the trooper involved, Claimant filed an amended complaint.

3. On December 2, 2020, Respondent moved to dismiss the amended claim.

4. Pursuant to Ark. R. Civ. Proc. 6, Claimant had ten days to respond excluding weekends and legal holidays.

5. As such, Claimant’s response was due on December 16, 2020.

6. Claimant did not file a response.

7. On February 10, 2021, the Claims Commission entered its order granting Respondent’s motion to dismiss. The order was transmitted to the parties on February 24, 2021.

8. On March 1, 2021, Claimant filed the instant motion to vacate or set aside, arguing that (1) Claimant has a meritorious claim as articulated in Claimant’s amended complaint; (2) Claimant’s counsel did not have internet, email, computer, or phone access from February 10–19; (3) Claimant’s counsel is a solo practitioner with a heavy caseload; (4) Claimant’s counsel does not have staff to assist him; (5) Claimant’s counsel “began working on a response to the State’s motion” when his internet issues were fixed, and he “will be able to finalize a response within the week;” and (6) Claimant’s counsel has been conducting discovery.

9. Respondent filed a response to the motion, arguing that Claimant’s motion should be denied.

10. Ark. R. Civ. Proc. 60(a) provides:

To correct errors or mistakes or to prevent the miscarriage of justice, the court may modify or vacate a judgment, order or decree on motion of the court or any party, with prior notice to all parties, within ninety days of its having been filed with the clerk.

11. Ark. R. Civ. Proc. 60(e) clarifies that this order shall not be set aside unless Claimant “makes a prima facie showing of a valid cause of action.”

12. As to the argument regarding Claimant’s meritorious complaint, the February 10th order specifies why Claimant’s amended complaint is subject to dismissal. The Claims Commission is not persuaded by Claimant’s arguments that he “has clearly articulated the State’s liability in the Amended Claim” and that “his Amended Complaint clearly states the State’s liability . . .” for all of the reasons set forth in its February 10th order.

13. As to the argument that Claimant’s counsel did not have internet, email, computer, or phone access from February 10–19, the Claims Commission finds this irrelevant to Claimant’s failure to respond to the motion to dismiss, given that the response was due December 16, 2020.

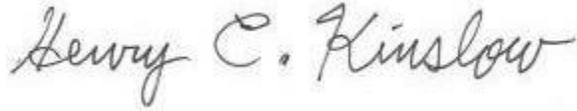
14. As to the arguments regarding Claimant's counsel's heavy caseload and no office staff, the Claims Commission finds that is insufficient to warrant relief under Ark. R. Civ. Proc. 60(a), especially given Claimant's reliance upon his (now dismissed) amended complaint to establish a "valid cause of action" under Ark. R. Civ. Proc. 60(e).

15. As to the argument that Claimant's counsel began working on a response to the motion to dismiss when his internet issues were fixed (which apparently occurred on February 20, 2021), the Claims Commission finds this irrelevant, given that the response was due December 16, 2020.

16. As to the argument that Claimant's counsel has been conducting discovery, the Claims Commission finds this irrelevant to whether the February 10th order should be set aside.

17. Claimant's motion to vacate or set aside the February 10, 2021, order is DENIED.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird
Dexter Booth
Henry Kinslow, Co-Chair
Paul Morris, Co-Chair
Sylvester Smith

DATE: March 5, 2021

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

CHRISTOPHER MARTIN

CLAIMANT

CLAIM NO: 18031

ARKANSAS STATE POLICE

RESPONDENT

NOTICE OF APPEAL

Claimant, Christopher Martin, pursuant to A. C. A. § 19-10-211, hereby provides notice of his Appeal to the General Assembly of the Claims Commission's March 5, 2021, Order denying Claimant's Motion for Reconsideration and to Set Aside and Vacate the Commission's decision to deny his claim. Claimant is also hereby appealing the Commission's February 10, 2021, order granting the Respondent's Motion to Dismiss.

Respectfully submitted for
Christopher Martin, Claimant herein



Morris W. Thompson

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CERTIFICATE OF SERVICE

I, Morris W. Thompson, do hereby certify that I have this day of 15th day of March, 2021, served the foregoing document to all parties listed below by electronic means and by U.S. mail with sufficient postage affixed thereto to the addresses listed below.

Mary Claire McLaurin
Staff Attorney Arkansas State Police

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Morris W. Thompson