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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

ASHTYNE WHITING

Plaintiff,

vs.

CITY OF REXBURG; REXBURG POLICE  
DEPARTMENT; POLICE CHIEF SHANE  
TURMAN in his official and individual  
capacity; OFFICER BRANSEN DEVEY  
individually; OFFICER DANIEL ALLEN  
individually; OFFICER JORDAN FREI  
individually; OFFICER JOHN BONE  
individually; OFFICER RONALD BALL  
individually; and JOHN and JANE DOES  
I-XX, in their official and individual  
capacities,

Defendants.

**MOTION TO WAIVE BOND OR SET AT  
0\$**

Civil No.: 4:21-cv-00371

**COMES NOW** Plaintiff Ashtyne Whiting, by and through his attorneys of record May, Rammell & Wells, Chartered, and hereby move this Court for a waiver of the payment of a bond in this matter, or a setting of the bond at \$0 pursuant to Idaho Code § 31-3220. Mr. Whiting's affidavit is attached in support of this Motion.

IDAHO CODE § 6-610 requires that for the prosecution of any civil action against a law enforcement officer the Plaintiff post a bond at the time of filing the Complaint to ensure that the officer's fees and costs may be compensated should the officer prevail in the litigation. However,

Idaho Code § 31-3220 supersedes the bond requirement and allows this Court to waive the requirement of bond if the individual can prove that he is indigent.

In addition, this Court does not dismiss the state law claims even if the Court does not find indigency. However, the Court will usually grant the Plaintiff additional time to post a bond even if Plaintiff has already filed his Complaint. *See Walker v. City of Post Falls*, No. CV07-264-N-EJL, 2007 WL 2609899, at \*2 (D. Idaho Sept. 6, 2007)

Plaintiff is currently indigent and is struggling with the medical bills made necessary by the conduct of the Defendants in this matter. He has a modest income which barely allows him to provide for his basic needs. He does not have any substantial resources or means. Due to his indigency, Plaintiff is unable to pay any bond. If Plaintiff is required to post a bond in this matter, it will serve as a substantial limitation to his access to the courts and would be contrary to the interests of justice.

Plaintiffs therefore respectfully request that this Court waive the posting of a bond as required by IDAHO CODE § 6-610 for the grounds and reasons that he is indigent and cannot afford to post any bond. However, in the alternative that the Court requires a bond, Mr. Whiting requests that the Court set the bond at a minimal amount.

Also attached for the Court's convenience is a copy of the *Complaint* to be filed in this matter. Plaintiff therefore requests that this Court waive the payment of bond required by IDAHO CODE § 6-610.

If necessary, Plaintiff requests oral argument on this issue.

DATED this 14th day of September, 2021.

MAY, RAMMELL AND WELLS, CHTD.  
*Attorneys for Plaintiff*

/s/ Kyle R. May  
KYLE R. MAY

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Ashtyne Whiting

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Kyle R. May & Andrew N. Hart May, Rammell & Wells,  
CHTD 216 West Whitman st. (208) 233-0132

**DEFENDANTS**

City of Rexburg et. al

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |                                         | PTF                        | DEF                        |                                                               | PTF                        | DEF                        |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation                                                | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>INTELLECTUAL PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
1983

Brief description of cause:  
1983 Civil action for deprivation of rights

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE

09/14/2021

SIGNATURE OF ATTORNEY OF RECORD

Kyle R. May

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

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individually; OFFICER JORDAN FREI  
individually; OFFICER JOHN BONE  
individually; OFFICER RONALD BALL in  
individually; and JOHN and JANE DOES  
I-XX, in their official and individual  
capacities,

Defendants.

**COMPLAINT AND JURY DEMAND**

Civil No.: 4:21-cv-00371

COME NOW Plaintiff Ashtyne Whiting, by and through his attorneys of record, the law firm of May, Rammell and Wells Chtd., and hereby file this Complaint against Defendants as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action under the laws of the State of Idaho and the United States, including 42 U.S.C. §§1983 and 1988.
2. This action seeks redress for violations of the civil rights laws of the United States, and jurisdiction is therefore invoked pursuant to 28 U.S.C. § 1343 and 42 U.S.C. § 1983
3. The claims made in this Complaint occurred and arose in the State of Idaho, in this District. Venue is therefore proper under 28 U.S.C. § 1391 and 28 U.S.C. § 1331.
4. Jurisdiction for violations of the Idaho Constitution and Idaho Tort Claims Act is founded upon supplemental jurisdiction because the claims of violations of federal law are substantial and the supplemental claims derive from a common nucleus of operative facts and are so related to the federal claims that they form part of the same case or controversy under Article III of the United States Constitution.
5. Plaintiff is seeking damages under federal and state law pursuant to the claims for relief specified below.
6. Attorney fees and costs are requested pursuant to 42 U.S.C. § 1988.
7. This Court also has jurisdiction over any State claims Plaintiff has brought, pursuant to 28 U.S.C. § 1367.

### **PARTIES**

8. At all times relevant to this matter, Plaintiff Ashtyne Whiting (“Plaintiff” or “Ashtyne”) was a resident of the State of Idaho.

9. Defendant The City of Rexburg (“Rexburg”) is a political subdivision of the state of Idaho
10. Defendant Rexburg Police Department (“Rexburg Police”) is a political subdivision of the state of Idaho, and is controlled and operated by the City of Rexburg.
11. Rexburg and Rexburg Police are responsible for the use, training, implementation, and supervision of the police officers they employ.
12. Upon information and belief, at all times relevant to this action, Officer Bransen Devey (“Devey”), Officer Daniel Allen (“Allen”), Officer Jordan Frei (“Frei”), Officer John Bone (“Bone”), and Officer Ronald Ball (“Ball”) (collectively “Officer Defendants”) were all residents of the State of Idaho.
13. Upon information and belief, at all times relevant to this action, Police Chief Shane Turman (“Turman”) was a resident of the state of Idaho.
14. Upon information and belief the Officer Defendants were employed by Rexburg and Rexburg Police at all times relevant.
15. The Officer Defendants are all sued in their individual capacities pursuant to 42 U.S.C. §1983.
16. Defendants John and Jane Does I-XX are sued in their individual capacities and consist of individuals who were likely employed by Rexburg and Rexburg Police, or who worked as the 911 dispatcher relevant to the allegations in this complaint, and who contributed to the violations of Plaintiff’s constitutional rights, but whose full names are not known at this time.

**FACTS**

17. The preceding paragraphs are fully incorporated herein by this reference.
18. On October 22, 2019, Plaintiff Ashtyne Whiting found himself in an argument with his roommate, non-party Chelsi Faith Nuttall (“Chelsi”).
19. In order to defuse the argument, Ashtyne decided to leave their home so that both parties could cool off.
20. Ashtyne got into his car and left the home.
21. Chelsi became concerned for Ashtyne’s wellbeing.
22. She called 911 dispatch and reported that an argument had occurred between her and Ashtyne and that he had left the home.
23. Chelsi also made it clear to dispatch that she had not been harmed by Ashtyne and was merely calling out of concern for his own welfare.
24. The 911 operator passed this information on to Rexburg Police who dispatched officers to Chelsi’s and Ashtyne’s home
25. Officer Devey and Officer Allen arrived at Ashtyne and Chelsi’s home before Ashtyne had returned.
26. Around this time, Ashtyne felt that he had calmed down sufficiently, and decided to return to the home to resolve his argument with Chelsi.
27. When Ashtyne returned to his home, there were no police units parked in his driveway and he could not see officers present.
28. The officers present had parked down the street and did not have their emergency lights engaged. Due to the fact that this occurred at night, Ashtyne had no way of knowing that the police were even present at his home.



29. At all times during his approach to the home, and when he turned into his shared driveway, Ashtyne was operating his vehicle in a non-threatening and reasonable manner.
30. Ashtyne entered the shared driveway at a speed of about five miles per hour.
31. Due to the location of his neighbors' parked car in their shared driveway, Ashtyne attempted to park his vehicle in a position that was approximately thirty to forty feet from the entrance to his home.
32. At the time Ashtyne pulled into the driveway, Officer Devey and Officer Bransen were outside of the home speaking with Chelsi in the front yard.
33. While Officer Bransen and Chelsi were speaking in the front yard, Ashtyne's neighbors car was parked in the driveway. The location of the neighbor's vehicle was between Officer Branson and Ashtyne's vehicle when he pulled in. The vehicle clearly blocked Ashtyne from being able to drive towards Officer Branson.
34. At all times relevant, Officer Devey and Officer Bransen were never more than about thirty to forty feet away from Ashtyne's slowly approaching vehicle.
35. As he attempted to park, Ashtyne's car was not pointed at Officers Devey and Bransen, but was slowly heading North to the open parking space.
36. Officers Devey and Bransen were standing perpendicular to the vehicle, about thirty or forty feet to the west of the parking spot where Ashtyne was driving his vehicle.
37. Also, a neighbor's vehicle was parked in between Ashtyne's vehicle and the area where Officers Devey and Bransen stood at that time.

38. Needless to say, Ashtyne's act of entering the driveway and attempting to park his vehicle presented no reasonable threat to Officers Devey and Bransen, or any one else.
39. Without warning or provocation, Officer Bransen pulled out his handgun and began firing at Ashtyne.
40. Prior to firing upon Ashtyne, Officer Bransen did not issue any command or warning to Ashtyne to stop or exit the car. Furthermore, he did not even make himself known to Ashtyne.
41. Immediately after Officer Bransen began firing, Ashtyne immediately stopped his car, but Officer Bransen continued to fire at him.
42. Officer Bransen severely injured Ashtyne by shooting him twice; once in the back of his shoulder and once in the back of his leg.
43. Both shots entered or hit Ashtyne from behind, not in the front.
44. By this time Officer Frei had arrived at the scene and facilitated and participated in the unlawful seizure and arrest.
45. The officers on the scene ordered Ashtyne out of the vehicle at gunpoint.
46. The officers on the scene could see that Ashtyne had been shot in the shoulder but ordered him to the ground where they placed him in handcuffs.
47. Defendants later charged Ashtyne with a single misdemeanor (driving under the influence), and this charge was later dismissed by the prosecutor.
48. Either Officer Bransen or Officer Devey then called for assistance from other officers from the Rexburg Police.
49. An ambulance transported Ashtyne to Madison Memorial Hospital.

50. As a result of Defendants' tortious and unconstitutional behavior, Ashtyne suffered severe pain, lost a significant amount of blood, and had to undergo surgery to remove the bullet in his shoulder and to repair her other gunshot wounds.
51. To date, Ashtyne continues to suffer the physical and mental trauma caused by Defendants' unconstitutional and tortious conduct.
52. Ashtyne also suffered damages as a result of Defendants' violation of his constitutional rights, including, but not limited to violations of the Fourth Amendment and the unreasonable use of deadly force.
53. The City of Rexburg and the Rexburg City Police Department violated Ashtyne's civil rights by illegally and unlawfully arresting Ashtyne without having probable cause and condoning the illegal seizure/shooting and by their failure to train and/or implement procedures that would protect citizens like Ashtyne from unwarranted and illegal use of excessive and unreasonable deadly force by law enforcement officers.
54. As a result of the Defendants' actions, Plaintiffs have suffered severe injuries and suffered damages.
55. Pursuant to 42 U.S.C. §1988, Ashtyne is entitled to attorney fees and costs associated with the violation and deprivation of his civil rights, and any and all damages associated therewith.

CLAIMS BROUGHT PURSUANT TO U.S.C. 42 § 1983

**COUNT I**

**(Fourth Amendment Violations Against all Defendants)**

56. The preceding paragraphs are fully incorporated herein by this reference.
57. The Fourth Amendment of the United States Constitution guarantees Ashtyne's right to be secure in her persons and property and protects her from unreasonable searches and seizures.
58. Defendants Devey, Frei, and Allen violated Plaintiffs' Fourth Amendment rights when they arrested Ashtynne without a warrant or probable cause to believe that he had committed a crime.
59. At the time that Defendants' Devey, Frei, and Allen used excessive and unreasonable deadly force to seize Ashtyne, they had no reason to suspect that Ashtyne had committed a crime, let alone driving under the influence.
60. While Officer Devey has not publicly articulated what crime he suspected Ashtyne of committing at the time he opened fire on him, it is clear that Defendant Devey had no reason to suspect that Ashtyne had committed any crime when he shot him.
61. The physical evidence that was readily available and apparent at the time that the defendant officers arrested Ashtyne clearly contradicts Officer Devey's claim that Ashtyne was driving towards him at the time he shot Ashtyne.
62. Said evidence, includes, but is not limited to: the positioning of Officer Devey relative to Ashtyne's vehicle at the time he was shot, the positioning of Ashtyne's vehicle relative to where officer Devey shot him from, the eye witness account of Chelsi, and the fact that the bullets entered Ashtyne from behind.

63. Officer Frei was the ranking officer on the scene at the time Ashtyne was shot, seized, and arrested.
64. Officer Frei and Officer Allen, could have intervened in the illegal arrest of Ashtyne at any time, but failed to do so.
65. Officer Frei and Officer Allen, facilitated and participated in the illegal arrest of Ashtyne.
66. The City of Rexburg and the Rexburg Police Department are responsible for the training and supervision of their law enforcement officers, including Officers Frei, Allen, and Devey.
67. The City of Rexburg and the Rexburg Police Department failed to adequately train their officers, or implement policies, to prevent its officers from arresting or seizing citizens without a warrant or probable cause that a crime has been committed.
68. All defendants who effectuated, allowed, caused, or participated in the unlawful seizure and arrest of Ashtyne, operated under the color of state law, as well as the policies and customs of the City of Rexburg and the Rexburg Police Department.
69. Defendants' conduct proximately caused the violation of Ashtyne's Fourth Amendment rights.
70. Plaintiff is entitled to attorney fees and costs for the maintenance of this action pursuant to 42 U.S.C. §1988.

**COUNT II**  
**(Fourth Amendment Violations Against Devey, The City of Rexburg, and The Rexburg Police Department)**

71. The preceding paragraphs are fully incorporated herein by this reference.

72. The Fourth Amendment of the United States Constitution guarantees Ashtyne's right to be secure in her persons and property and protects her from unreasonable searches and seizures.
73. Defendant Devey violated Plaintiffs' Fourth Amendment rights when he used excessive and unreasonable deadly force to seize and arrest Ashtynne.
74. The act of shooting Ashtyne from behind, ordering him out of the vehicle at gun point, and then handcuffing him with a shoulder injury was objectively unreasonable and excessive under the circumstances.
75. The City of Rexburg and the Rexburg Police Department are responsible for the training and supervision of their law enforcement officers, including Officers Frei, Allen, and Devey.
76. The City of Rexburg and the Rexburg Police Department failed to adequately train their officers, or implement policies, to prevent its officers from using excessive and unreasonable force.
77. At all times relevant, Officer Devey, and the other Defendants, operated under the color of state law, as well as the policies and customs of the City of Rexburg and the Rexburg Police Department, to deprive Ashtyne of his civil rights.
78. Defendants' conduct proximately caused the violation of Ashtyne's Fourth Amendment rights.
79. Plaintiff is entitled to attorney fees and costs for the maintenance of this action pursuant to 42 U.S.C. §1988.

**COUNT III**  
**(Malicious Prosecution against all Defendants)**

80. The preceding paragraphs are fully incorporated herein by this reference.
81. The Fourteenth Amendment of the United States Constitution guarantees Ashtyne the right to be free from the deprivation of his life, liberty, or property without due process of law.
82. Defendants prosecuted Plaintiff with malice as evidenced by the fact that there was no probable cause for her arrest or prosecution at the time of Plaintiff's arrest.
83. Defendants arrested and prosecuted Ashtyne for the purpose of denying him his constitutional rights; Specifically his constitutional rights guaranteed by the Fourth and Fourteenth Amendment.
84. Defendant defended himself against the prosecution of these crimes and the case was ultimately dismissed by the prosecutor in Ashtyne's favor.
85. Defendants' unconstitutional acts and omissions were the proximate cause of Ashtyne's damages, including his legal fees and costs.
86. At all times relevant, the Defendants acted pursuant of their official power and authority granted to them under the color of state law.
87. Both the City of Rexburg and the Rexburg Police Department are liable to Ashtyne for his damages.
88. The violation of Ashtyne's constitutional rights are attributable to the policies, practices, and or decisions of the City of Rexburg and Rexburg Police Department.

89. Said policies, practices, and or decisions include, but are not limited to, a deliberate indifference or failure to train officers on when to arrest or prosecute a person, free of malice, and a deliberate indifferent failure to adopt policies necessary to prevent its officers from engaging in malicious prosecution
90. Plaintiffs are entitled to attorney fees and costs for the maintenance of this action pursuant to 42 U.S.C. §1988.

#### **COUNT IV**

##### **(Failure to Train Against the City of Rexburg and Rexburg City Police Department)**

91. The preceding paragraphs are realleged and fully incorporated herein by this reference.
92. The United States Constitution guarantees the right to be free from unreasonable searches and seizures.
93. The Fourteenth Amendment of the United States Constitution guarantees Ashtyne the right to be free from the deprivation of his life, liberty, or property without due process of law.
94. Defendants City of Rexburg and Rexburg Police Department (collectively “Supervisor Defendants”) employed the Defendant Officers at all times relevant.
95. The Supervisor Defendants are responsible for the training supervision and formulation of policies or practices related to the conduct of the Defendant Officers.
96. The Supervisor Defendants’ failed to provide their officers with adequate training regarding, but not limited to: the necessity of probable cause for an arrest; the



necessity of reasonable suspicion for a seizure; the use of force on individuals to seize and arrest individuals; the use of a fire arm in seizing and arresting an individual; and to abstain from prosecuting suspects without probable cause.

97. The Supervisor Defendants failed to properly train and supervise the Defendant Officers so as to prevent the Defendant Officers from violating Ashtyne's constitutional rights.
98. The Supervisor Defendants failed to protect Ashtyne from the Defendant Officers' unconstitutional conduct.
99. It was reasonably foreseeable that the Supervisor Defendants failure to properly train and supervise the Defendant Officers would result in harm, including, but not limited to, the deprivation of Ashtyne's constitutional rights.
100. The Supervisor Defendants' deliberate indifferent training was the moving force, and direct cause, of Ashtyne's constitutional violations.
101. Accordingly, the Supervisor Defendants' actions were also in violation of the Fourth and Fourteenth Amendments and caused Ashtyne's damages.

#### **COUNT V**

#### **(Lack of Policy or Unconstitutional Policy Against the City of Rexburg and Rexburg Police Department)**

102. The preceding paragraphs are realleged and fully incorporated herein by this reference.
103. The United States Constitution guarantees the right to be free from unreasonable searches and seizures.

104. The Fourteenth Amendment of the United States Constitution guarantees Ashtyne the right to be free from the deprivation of his life, liberty, or property without due process of law.
105. Supervisor Defendants employed the Defendant Officers at all times relevant.
106. The Supervisor Defendants are responsible for the training supervision and formulation of policies or practices related to the conduct of the Defendant Officers.
107. The Supervisor Defendants' were deliberately indifferent in their failure to implement or change policies regarding, but not limited to: the necessity of probable cause for an arrest; the necessity of reasonable suspicion for a seizure; the use of force and firearms to seize and arrest individuals; and to abstain from prosecuting suspects without probable cause.
108. The Supervisor Defendants' have publicly condoned the officer defendants' unconstitutional conduct and stated that it was inline with their policies.
109. The Supervisor Defendants failed to implement or change policies or customs so as to prevent the Defendant Officers from violating Ashtyne's constitutional rights.
110. The Supervisor Defendants failed to protect Ashtyne from the Defendant Officers' unconstitutional conduct.
111. It was reasonably foreseeable that the Supervisor Defendants failure to properly implement or change policies or customs sufficient to protect people's constitutional rights would result in harm, including, but not limited to, the deprivation of Ashtyne's constitutional rights.

112. The Supervisor Defendants' failure to implement or change policies or customs was the moving force, and direct cause, of the violation of Ashtyne's constitutional rights.

113. Accordingly, the Supervisor Defendants' actions were also in violation of the Fourth and Fourteenth Amendments and caused Ashtyne's damages.

**SIXTH CAUSE OF ACTION**

**(Failure to Intervene Against Officer Frei and Officer Allen)**

114. The preceding paragraphs are realleged and fully incorporated herein by this reference.

115. The United States Constitution guarantees the right to be free from unreasonable searches and seizures.

116. The Fourteenth Amendment of the United States Constitution guarantees Ashtyne the right to be free from the deprivation of his life, liberty, or property without due process of law.

117. Officers Frei and Allen as law enforcement officers had an obligation to intervene to prevent other law enforcement officers from infringing upon the constitutional rights of other citizens, when they have reason to know of said violations have occurred, or said violations are done in their presence.

118. After officer Devey shot Ashtyne, Officers Frei and Allen assisted Officer Devey in arresting Ashtyne.

119. Officers Frei and Allen could see the circumstances surrounding Ashtyne's arrest, including the fact that it was unconstitutional and not justified by probable cause.

120. Officers Frei and Allen also observed the excessive force that was used to seize Ashtyne.
121. Officer Frei was the ranking officer and could have intervened to stop the Defendant Officers from violating Ashtyne's constitutional rights, but failed to do so.
122. Both Officers Frei and Allen had a realistic opportunity to intervene and stop the Defendant Officers from violating Ashtyne's rights, but failed to do so.

#### CLAIMS BROUGHT UNDER THE LAWS OF THE STATE OF IDAHO

##### **SEVENTH CAUSE OF ACTION**

##### **(Negligence against all Defendants)**

123. The preceding paragraphs are realleged and fully incorporated herein by this reference.
124. Defendants owed a duty to Plaintiff to exercise ordinary care to prevent unreasonable and foreseeable risk of harm to others including Plaintiff.
125. The duties that Defendants City of Rexburg, Rexburg Police Department, and Turman (the "Supervisory Defendants") owed to Plaintiff include, but are not limited to the following:
  - a. The duty to ensure that the officers of the Rexburg Police Department are reasonably trained to know when they may constitutionally use deadly force;

- b. The duty to ensure that officers of the Rexburg Police Department are reasonably trained to know when probable cause exists to effectuate a seizure/arrest;
- c. The duty to refrain from employing officers who are reasonably believed to pose a danger to the public and their legal and constitutional rights;
- d. The duty to control officers of the Rexburg Police Department and take reasonable measures to ensure that their conduct does not violate the legal and constitutional rights of the public; and,
- e. The duty to adopt and/or enforce policies and procedures, written or otherwise, to prevent officers of the Rexburg Police Department from violating the legal and constitutional rights of the public.

126. Defendants Devey, Frei, Bone, Ball, Officer Daniel Allen (“Allen”), Officer Jordan Frei (“Frei”), Officer John Bone (“Bone”), and Officer Ronald Ball (“Ball”) (collectively “Officer Defendants”) were all residents of the State of Idaho.

127. The duties which the Officer Defendants owed to Plaintiff include, but are not limited to:

- a. The duty to ensure that they are reasonably trained and knowledgeable to know when they may constitutionally use deadly force;
- b. The duty to ensure that they are reasonably trained and knowledgeable to know when probable cause exists to effectuate a seizure/arrest;
- c. The duty to refrain from using a firearm and/or deadly force when it is unreasonable or unsafe to do so;

- d. The duty to prevent other person from violating the legal and constitutional rights of the public; and,
- e. The duty to perform their job in a reasonable manner so as not to create unnecessary danger to the public.

128. Defendants breached their duty to Plaintiff by failing to perform each of the previously enumerated duties.

129. Defendants' tortious conduct described is the proximate and direct cause of Plaintiff's injuries.

130. Plaintiff has suffered actual loss and damages as a result of Defendants' conduct, including, but not limited to, medical bills, lost wages, permanent injury, and general damages.

131. The Officer Defendants' negligent conduct occurred during and within the scope of their employment with the Rexburg Police Department. The Supervisory Defendants are liable for all of the negligent actions of the Officer Defendants described above.

#### **EIGHTH CAUSE OF ACTION**

##### **(False Arrest against all Defendants)**

132. The preceding paragraphs are realleged and fully incorporated herein by this reference.

133. The Officer Defendants, forcibly arrested Plaintiff beginning when Officer Bransen drew his weapon and fired upon Ashtyne.

134. All Officer Defendants intentionally participated in the forcible and unreasonable arrest of Ashtyne, either actively or passively.

135. Officers, Frei and Devey assisted Officer Bransen in the false arrest by ordering Ashtyne out of his vehicle by gunpoint and placing handcuffs on him.
136. All other Officer Defendants intentionally participated in the false arrest by failing to intervene despite clear and apparent evidence to show that the arrest was unlawful.
137. Due to the fact that there was no probable cause that Ashtyne had committed a crime at the time that Officer Bransen shot Ashtyne, said arrest was unlawful.
138. Plaintiff has suffered actual loss and damages as a result of Defendants' conduct, including, but not limited to, medical bills, lost wages, permanent injury, and general damages.
139. The Officer Defendants' tortious conduct described above occurred during and within the scope of their employment with the Rexburg Police Department. The Supervisory Defendants are liable for all of the tortious actions of the Officer Defendants described above.

#### **NINTH CAUSE OF ACTION**

##### **(Battery against all Defendants)**

140. The preceding paragraphs are realleged and fully incorporated herein by this reference.
141. The officers Bransen, Frei, and Devey intentionally touched Ashtynne, or caused Ashtynne to be touched, when Officer Bransen shot Ashtynne, when the officers Frei, Devey, and Bransen placed Ashtyne in handcuffs.
142. Ashtyne did not permit or consent to this touching other than submitting to their illegal use of authority to conduct the arrest.

143. The Officer Defendants knew that shooting Ashtyne and then placing him in handcuffs was unlawful, harmful, and offensive as it was a violation of her Fourth amendment rights.
144. The act of shooting Ashtyne and then placing her in handcuffs was unlawful, harmful, and offensive as it caused great bodily harm and was not supported by probable cause that Ashtyne had committed a crime.
145. Plaintiff has suffered actual loss and damages as a result of Defendants' conduct, including, but not limited to, medical bills, lost wages, permanent injury, and general damages.
146. The Officer Defendants' tortious conduct described above occurred during and within the scope of their employment with the Rexburg Police Department. The Supervisory Defendants are liable for all of the tortious actions of the Officer Defendants described above.

**TENTH CAUSE OF ACTION**

**(Malicious Prosecution against all Defendants)**

147. The preceding paragraphs are realleged and fully incorporated herein by this reference.
148. When the Officer Defendants arrested Ashtyne, they initiated prosecution against Ashtynne that would later take the form of Madison County Criminal Case CR33-19-2679
149. This case was later dismissed on motion of the Madison county prosecutor.



150. As the Officer Defendants were the ones to decide to initially arrest and charge Ashtynne, they are the prosecutor's for purposes of a claim for Malicious prosecution.

151. The Officer Defendants acted with malice in bringing criminal charges against Ahstynne as evidenced by the fact that there was no probable cause at the time that the Officer Defendants arrested Ashtynne.

152. Malice is also evidenced by the facts and circumstances that were readily apparent at the time that Ashtynne was arrested show that the arrest and use of deadly force were completely unwarranted.

153. Plaintiff has suffered actual loss and damages as a result of Defendants' conduct, including, but not limited to, medical bills, lost wages, permanent injury, and general damages.

154. The Officer Defendants' tortious conduct described above occurred during and within the scope of their employment with the Rexburg Police Department. The Supervisory Defendants are liable for all of the tortious actions of the Officer Defendants described above.

**WHEREFORE**, Plaintiff respectfully prays for judgment against Defendants as follows:

1. For recovery of all special and general damages sustained as a direct and proximate result of the illegal actions, violations of constitutional duties and any other wrongful acts of the Defendants, in a sum exceeding \$10,000;
2. For the recovery of all reasonable costs and attorney's fees pursuant to Federal law, including, but not limited to, 42 U.S.C. § 1988 and 15 U.S.C. § 1681 *et seq.*;

3. For any and all further relief the Court deems just and equitable;
4. Plaintiffs demand a trial by jury in this matter.

DATED this 14th day of September, 2021.

/s/ Kyle R. May  
KYLE R.. MAY