

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

YOSHANTA ALBERT, individually and
as representative of the Estate of MARC
DAVIS, and on behalf of their minor
children, AVA DAVIS, MARCAYLE
DAVIS, AMINA DAVIS, SERENITY
MARTIN, AND LEAH DAVIS

PLAINTIFFS

VS.

CASE NO.: 2:18-CV-96-KS-MTP

CITY OF PETAL, LEONARD
FULLER, in his official capacity as
chief of Policy for the Petal Police
Department, OFFICER JOHN DOE, in
their individual and official capacity as
police officers for the City of Petal

DEFENDANTS

**ANSWER OF THE CITY OF PETAL, LEONARD FULLER
AND AARON JERNIGAN TO FIRST AMENDED COMPLAINT**

Defendants, The City of Petal, Leonard Fuller and Aaron Jernigan, file their Answer to
the Complaint as follows:

FIRST DEFENSE

The Amended Complaint fails to state a claim upon which relief may be granted pursuant
to Fed. Rule Civ. Pro. 12(b)(6), *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 570 (2007)
and *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009).

SECOND DEFENSE

Defendants are not liable for the Section 1983 claims, said claims barred by the *Monell*
decision and its progeny.

THIRD DEFENSE

All claims for punitive damages are barred by federal and state laws, the United States Constitution, the Mississippi Constitution and the public policy of Mississippi.

FOURTH DEFENSE

The Defendants acted reasonably and appropriately under the circumstances and are not liable for "excessive force" claims under Section 1983, not liable under "reckless disregard" claims of the Mississippi Tort Claims Act and are not otherwise liable.

FIFTH DEFENSE

The negligence, misconduct and action of Plaintiff's decedent solely and proximately caused Plaintiff's alleged damages.

SIXTH DEFENSE

The illegal conduct of Plaintiff's decedent solely and proximately caused his alleged injuries.

SEVENTH DEFENSE

These Defendants raise all protections and immunities available under Section 1983 decisions, including absolute and qualified immunities.

EIGHTH DEFENSE

These Defendants raise all protections and immunities available under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq.

NINTH DEFENSE

Process and service of process are improper.

TENTH DEFENSE

All claims are barred by the applicable statutes of limitations.

ELEVENTH DEFENSE

Plaintiff failed to comply with the notice of claim requirements of Miss. Code Ann. § 11-46-11.

TWELFTH DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

THIRTEENTH DEFENSE

All Claims are barred by the doctrines of waiver, laches and estoppel.

FOURTEENTH DEFENSE

The City of Petal did not have a policy, practice or custom of depriving citizens of their constitutional rights, and there is no claim which may proceed against the City of Petal pursuant to the *Monell* decision and its progeny.

FIFTEENTH DEFENSE

Aaron Jernigan and/or Leonard Fuller are entitled to qualified immunity while performing their law enforcement duties. Aaron Jernigan and/or Leonard Fuller did not violate the constitutional rights of Plaintiff's decedent, and Aaron Jernigan and/or Leonard Fuller's actions were objectively reasonable in light of clearly established law at the time of the alleged violation.

SIXTEENTH DEFENSE

Aaron Jernigan and/or Leonard Fuller did not engage in unreasonable searches and seizures, did not deprive Plaintiff's decedent of liberty without due process of law, did not use

excessive, unreasonable or unjustified force and did not take arbitrary governmental action which was so outrageous to shock the conscience of a civilized society.

SEVENTEENTH DEFENSE

Aaron Jernigan and/or Leonard Fuller at all times acted in good faith, objectively reasonable in their actions, were engaged in police protection for the city and adequately fulfilled their law enforcement duties, not violating any clearly established constitutional rights.

EIGHTEENTH DEFENSE

Plaintiff's decedent posed a threat to the safety of Aaron Jernigan and/or bystanders and as such Aaron Jernigan acted reasonably in defense of himself an/or others.

NINETEENTH DEFENSE

Plaintiffs do not have standing.

ANSWER

Defendants, City of Petal, MS, Lieutenant Leonard Fuller, and Aaron Jernigan, answer the consecutively numbered paragraphs of the Complaint as follows:

1. Defendants are without sufficient knowledge to admit or deny the statements in Paragraph 1 of the Complaint pertaining to the identities of the Plaintiffs, therefore the same are denied. The remaining allegations of Paragraph 1 are denied.

2. Denied.

3. Denied.

4. Defendants are without sufficient knowledge to admit or deny the statements in Paragraph 4 of the Complaint, therefore the same are denied.

5. Defendants admit that the City of Petal is a political subdivision of the State of Mississippi. The remainder of Paragraph 5 of the Complaint is denied.

6. Denied.

7. Denied.

8. Defendants admit Aaron Jernigan and/or Leonard Fuller were acting in the course and scope of their employment. The remainder of Paragraph of the Complaint is denied.

9. Admitted.

10. Admitted.

11. Denied.

12. Denied.

13. Defendants are without sufficient knowledge to admit or deny the statements in Paragraph 4 of the Complaint, therefore the same are denied.

14. Denied.

15. Denied.

16. Defendants are without sufficient knowledge to admit or deny the statements in Paragraph 4 of the Complaint, therefore the same are denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied, including all subparts.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Defendants readopt, reallege and reaver all of the admissions, denials and defenses previously set forth herein.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Defendants readopt, reallege and reaver all of the admissions, denials and defenses previously set forth herein.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Defendants readopt, reallege and reaver all of the admissions, denials and defenses previously set forth herein.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

Defendants deny the allegations of the paragraph beginning with “WHEREFORE, Plaintiffs pray...”, and ending with “...deems necessary, just and proper” of the Complaint, including all subparts; and Defendants deny that Plaintiffs are entitled to any relief whatsoever.

Respectfully submitted this 5th day of November, 2018.

Respectfully submitted,

THE CITY OF PETAL, LEONARD FULLER, and
AARON JERNIGAN

s/ Rocky W. Eaton
COUNSEL FOR DEFENDANTS

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 5th day of November, 2018 served a copy of the above and foregoing by electronic means via the CM/ECF to those registered with the CM/ECF.

s/ Rocky W. Eaton