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Frederick C. Stavins, City Attorney
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September 24, 2020

Mr. Christopher Hansen
corruptcu@gmail.com

RE: FOIA request #20-178 – Tavion Jones-Premo Arrest & Settlement

Dear Mr. Hansen:

On September 17, 2020, you made the following request for records:

“Please send any and all documents and records related to the Tavion Jones-Premo arrest and resulting settlement. If available, please include any related video/audio records.”

The settlement documents you have requested can be found on the City’s website and can be accessed with the link provided below:

<http://documents.ci.champaign.il.us/v/1nzRN77PMQEzvVPB8fhOnN9pID9EtYG7T>

Per the City’s litigation counsel, the requested reports and footage of the December 28, 2018 incident involving Tavion Jones-Premo are exempt from disclosure for the following reasons.

- (1) They are the subject of the enclosed agreed protective order in the following case, *Tavion J. Jones Premo v. City of Champaign, et al.*, Case No. 19cv1078 (C.D.Ill.).
- (2) At the time of the December 28, 2018 incident, Tavion Jones-Premo was a minor; therefore, reports and footage of the incident involving him is exempt from disclosure pursuant to the Juvenile Court Act, specifically 705 ILCS 405/1-7(A).

Public court pleadings that were filed in this case are available to be obtained in the above-cited case, but are enclosed for your convenience.

You have a right to request review of this response by the Illinois Public Counselor:

Public Access Bureau
Office of the Attorney General
500 S. 2nd Street
Springfield, Illinois, 62706
(217) 558-0486
publicaccess@atg.state.il.us

If you choose to file a Request for Review with the PAC, you must do so within 60 calendar days of the date of this denial letter. 5 ILCS 140/9.5(a)

You may also file suit for injunctive or declaratory relief in the Circuit Court of Champaign County, Illinois. 5 ILCS 140/11

Sincerely,

Kathryn Cataldo

Kathryn Cataldo
Assistant City Attorney

KC/sjg
Enclosures

J:\LEG\WORD\FOIA\Requests Specific\2020\#20-178 - Hansen, Christopher (Tavion Jones-Premo - Arrest & Settlement)\Letter - Hansen, Christopher (Response-Final) 9-24-20.docx

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

THERESA PREMO,
as next friend to TJP, a minor,

Plaintiff,

v.

CITY OF CHAMPAIGN POLICE OFFICERS
TIMOTHY ATTEBERRY, DANE KALDAHL,
ARTHUR MILLER, JORDAN HAGEMANN,
JAMES HOBSON, SERGEANT BRIAN ROGERS,
and THE CITY OF CHAMPAIGN, ILLINOIS,
a municipal corporation,

Defendants.

CASE No. 19-CV-1078-CSB-EIL

AGREED PROTECTIVE ORDER

The parties to this action have moved this Court and the Court has determined that the terms set forth herein are appropriate to protect the interests of the respective parties, the public and the Court. Accordingly, good cause having been shown, it is ORDERED:

1. Scope. All materials produced or adduced in the course of discovery, including initial disclosures, responses to discovery requests, deposition testimony and exhibits, and information derived directly therefrom (hereinafter collectively “documents”), shall be subject to this Order concerning Confidential Information as defined below. This Order is subject to the Local Rules of this District and the Federal Rules of Civil Procedure on matters of procedure and calculation of time periods.

2. Confidential Information. As used in this Order, “Confidential Information” means information designated as “CONFIDENTIAL” by the producing party that falls within one or more of the following categories: (a) information prohibited from disclosure by statute; (b) information that reveals trade secrets; (c) research, technical, commercial or financial

information that the party has maintained as confidential; (d) medical and mental health information concerning any individual; (e) personal identity information; (f) income tax returns (including attached schedules and forms), W-2 forms, 1099 forms, and documents related to net worth and assets; and (g) personnel or employment records. Information or documents that are available to the public may not be designated as Confidential Information

3. Designation. A party may designate a document as Confidential Information for protection under this Order by placing or affixing the word “CONFIDENTIAL” on the document and on all copies in a manner that will not interfere with the legibility of the document. As used in this Order, “copies” includes electronic images, duplicates, extracts, summaries or descriptions that contain the Confidential Information. The marking “CONFIDENTIAL” shall be applied prior to or at the time of the documents are produced or disclosed. Applying the marking “CONFIDENTIAL” to a document does not mean that the document has any status or protection by statute or otherwise except to the extent and for the purposes of this Order. Any copies that are made of any documents marked “CONFIDENTIAL” shall also be so marked, except that indices, electronic databases or lists of documents that do not contain substantial portions or images of the text of marked documents and do not otherwise disclose the substance of the Confidential Information are not required to be marked. The designation of a document as Confidential Information is a certification by an attorney that the document contains Confidential Information as defined in this order.

4. Depositions. Unless all parties agree on the record at the time the deposition testimony is taken, all deposition testimony taken in this case shall be treated as Confidential Information until the expiration of the following: No later than 30 days after the transcript is delivered to any party or the witness, and in no event later than 60 days after the testimony was

given. Within this time period, a party may serve a Notice of Designation to all parties of record as to specific portions of the testimony that are designated CONFIDENTIAL INFORMATION, and thereafter only those portions identified in the Notice of Designation shall be protected by the terms of this Order. The failure to serve a timely Notice of Designation shall waive any designation of testimony taken in that deposition as CONFIDENTIAL INFORMATION, unless otherwise ordered by the Court or agreed by the parties, including any agreement made during the deposition.

5. Protection of Confidential Information.

a. General. Confidential Information shall not be used or disclosed by the parties, counsel for the parties or any other person identified in subparagraph (b) for any purpose whatsoever other than in this litigation, including any appeal thereof.

b. Limited Disclosure. The parties and counsel for the parties shall not disclose or permit the disclosure of any Confidential Information to any third person or entity except as set forth below. Subject to these requirements, the following categories of persons may be allowed to review Confidential Information.

- i. Counsel for the parties and counsel's employees;
- ii. Parties. Individual parties and employees of a party but only to the extent counsel determines in good faith that the employee's assistance is reasonably necessary to the conduct of the litigation in which the information is disclosed;
- iii. The Court and its personnel;
- iv. Court Reporters and Recorders. Court reporters and recorders engaged for depositions;

- v. Contractors. Those persons specifically engaged for the limited purpose of making copies of documents or organizing or processing documents, including outside vendors hired to process electronically stored documents;
- vi. Consultants and Experts. Consultants, investigators, or experts employed by the parties or counsel for the parties to assist in the preparation and trial of this action but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound;
- vii. Witnesses at depositions. During their depositions, witnesses in this action to whom disclosure is reasonably necessary. Witnesses shall not retain a copy of documents containing Confidential Information, except witnesses may receive a copy of all exhibits marked at their depositions in connection with review of the transcripts; and
- viii. Others by Consent. Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered.

6. No Greater Protection of Specific Documents. Except on privilege grounds not addressed by this Order, no party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Order unless the party moves for an order providing such special protection.

7. Challenges by a Party to Designation as Confidential Information.

a. Meet and Confer. A party challenging the designation of Confidential Information must do so in good faith and must begin the process by conferring directly with counsel for the designating party.

b. Judicial Intervention. A party electing to challenge the designation may file a motion with the Court without disclosing the Confidential Information. Until the Court rules on the challenge, all parties shall continue to treat the materials as Confidential Information under the terms of this Order.

8. Use of Confidential Documents or Information at Trial. Nothing in this Order shall be construed to affect the use of any document, material, or information at any trial or hearing. A party that intends to present or that anticipates that another party may present Confidential information at a hearing or trial shall bring that issue to the Court's and parties' attention by motion or in a pretrial memorandum without disclosing the Confidential Information. The Court may thereafter make such orders as are necessary to govern the use of such documents or information at trial.

9. Challenges by Members of the Public to Sealing Orders. A party or interested member of the public has a right to challenge the sealing of particular documents that have been filed under seal, and the party asserting confidentiality will have the burden of demonstrating the propriety of filing under seal.

10. Obligations upon Conclusion of Litigation

a. Order Continues in Force. Unless otherwise agreed or ordered, this Order shall remain in force after dismissal or entry of final judgment not subject to further appeal.

b. Obligation. Within 60 days after dismissal or entry of final judgment not subject to further appeal, all Confidential Information and documents marked

“CONFIDENTIAL” under this Order, including copies as defined in herein shall be returned to the producing party unless: (1) the document has been offered into evidence or filed without restriction as to disclosure; (2) the parties agree to destruction to the extent practicable in lieu of return; or (3) as to documents bearing the notations, summations, or other mental impressions of the receiving party, that party elects to destroy the documents and certifies to the producing party that it has done so.

c. Retention of Work Product and one set of Filed Documents.

Notwithstanding the above requirements to return or destroy documents, counsel may retain (1) attorney work product, including an index that refers or relates to designated Confidential Information, so long as that work product does not duplicate verbatim substantial portions of Confidential Information, and (2) one complete set of all documents filed with the Court including those filed under seal. Any retained Confidential Information shall continue to be protected under this Order. An attorney may use his or her work product in subsequent litigation, provided that its use does not disclose or use Confidential Information.

11. Modification. This Order shall be subject to modification by the Court on its own initiative or on motion of a party or any other person with standing regarding the subject matter.

12. No Prior Judicial Determination. This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any document or material designated Confidential Information by counsel or the parties is entitled to protection under Rule 26(c) of the Federal Rules of Civil Procedure or otherwise until such time as the Court may rule on a specific document or issue.

13. Filing Under Seal. This Order does not, by itself, authorize the filing of any document under seal. If a party seeks to file with the Court a document(s) designated Confidential Information, then the party will be required to follow Local Rule 5.10 and request leave to file the subject document(s) under seal accordingly.

14. Persons Bound. This Order shall take effect when entered and shall be binding upon all counsel of record and their law firms, the parties, and person made subject to this Order by its terms.

15. Inadvertent Failure to Designate. An inadvertent failure to designate a document as Confidential Information does not, standing alone, waive the right to so designate the document; provided, however, that a failure to serve a timely Notice of Designation of deposition testimony as required by this Order, even if inadvertent, waives any protection for deposition testimony. If a party designates a document as Confidential Information after it was initially produced, the receiving party, on notification of the designation, must make a reasonable effort to assure that the document is treated in accordance with the provisions of this Order. No party shall be found to have violated this Order for failing to maintain the confidentiality of material during a time when that material has not been designated Confidential Information, even where the failure to so designate was inadvertent and where the material is subsequently designated Confidential Information.

IT IS SO ORDERED.

Entered this 20th day of May, 2019.

BY THE COURT:

s/ ERIC I. LONG

The Honorable Eric I. Long
United States Magistrate Judge

AGREED TO BY:

HALE & MONICO LLC

s/Shawn W. Barnett
(approved by email 5/16/2019)
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AGREED TO BY:

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ATTORNEYS FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

THERESA PREMO,
as next friend to TJP, a minor,

Plaintiff,

v.

CITY OF CHAMPAIGN POLICE OFFICERS
TIMOTHY ATTEBERRY, DANE KALDAHL,
ARTHUR MILLER, JORDAN HAGEMANN,
JAMES HOBSON, SERGEANT BRIAN ROGERS,
and THE CITY OF CHAMPAIGN, ILLINOIS,
a municipal corporation,

Defendants.

CASE No. 19-cv-1078-CSB-EIL

**ACKNOWLEDGMENT AND
AGREEMENT TO BE BOUND**

The undersigned hereby acknowledges that he/she has read the Agreed Protective Order dated _____ in the above-captioned action and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the United States District Court for the Central District of Illinois in matters relating to the Protective Order and understands that the terms of the Protective Order obligate him/her to use materials designated as Confidential Information in accordance with the Order solely for the purposes of the above-captioned action, and not to disclose any such Confidential Information to any other person, firm or concern.

The undersigned acknowledges that violation of the Protective Order may result in penalties for contempt of court.

Date: _____ Signature: _____
Name: _____
Job Title: _____
Employer: _____
Business Address: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

THERESA PREMO,
as next friend to TJP, a minor,

Plaintiff,

v.

CITY OF CHAMPAIGN POLICE OFFICERS
TIMOTHY ATTEBERRY, DANE KALDAHL,
ARTHUR MILLER, JORDAN HAGEMANN,
JAMES HOBSON, SERGEANT BRIAN ROGERS,
and THE CITY OF CHAMPAIGN, ILLINOIS,
a municipal corporation,

Defendants.

CASE No. 19-cv-1078-CSB-EIL

JURY TRIAL DEMANDED

**DEFENDANT TIMOTHY ATTEBERRY'S
ANSWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND**

NOW COMES Defendant TIMOTHY ATTEBERRY (“Defendant”), by and through his undersigned counsel, and in answer to Plaintiff’s complaint, states as follows. Defendant generally denies the allegations in Plaintiff’s complaint, including any in the unnumbered headings, except for those allegations specifically admitted in this answer.

1. Defendant admits that Defendants Atteberry and Kaldahl arrested TJP on December 28, 2018, and that Defendants Miller, Hagemann, and Hobson were in the vicinity. Defendant denies the remaining allegations in paragraph 1 of Plaintiff’s complaint.

2. Defendant admits that Plaintiff Theresa Premo purports to bring this lawsuit as the next friend of TJP to seek redress against Defendants. Defendant denies the remaining allegations in paragraph 2 of Plaintiff’s complaint.

3. Defendant admits that Plaintiff claims to have causes of action under the Fourth and Fourteenth Amendments, 42 U.S.C. §§ 1983 and 1988, and Illinois state law. Defendant

denies the remaining allegations in paragraph 3 of Plaintiff's complaint, including the suggestion that Plaintiff has valid claims.

4. Defendant admits that Plaintiff invokes jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3), and that Plaintiff invokes supplemental jurisdiction under § 1367(a). Defendant denies the remaining allegations in paragraph 4 of Plaintiff's complaint, including the suggestion that Plaintiff has valid claims.

5. Defendant admits that venue is proper in this district under 28 U.S.C. § 1391(b)(2). To the extent that Plaintiff incorporates allegations about events from other parts of her complaint, Defendant incorporates its responses to those allegations here.

6. Defendant admits that Plaintiff Theresa Premo purports to bring this lawsuit as the next friend of TJP. Defendant admits the remaining allegations in paragraph 6 of Plaintiff's complaint, based upon information and belief.

7. Defendant admits the allegations in paragraph 7 of Plaintiff's complaint, based upon information and belief.

8. Defendant admits the allegations in paragraph 8 of Plaintiff's complaint, except that, when Defendant Atteberry was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

9. Defendant admits the allegations in paragraph 9 of Plaintiff's complaint, except that, when Defendant Kaldahl was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

10. Defendant admits the allegations in paragraph 10 of Plaintiff's complaint, except that, when Defendant Miller was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

11. Defendant admits the allegations in paragraph 11 of Plaintiff's complaint, except that, when Defendant Hagemann was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

12. Defendant admits the allegations in paragraph 12 of Plaintiff's complaint, except that, when Defendant Hobson was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

13. Defendant admits the allegations in paragraph 13 of Plaintiff's complaint, except that, when Defendant Rogers was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

14. Defendant admits that Defendant City of Champaign was the employer of the individual Defendant officers during the relevant time. Defendant admits that Plaintiff purports to sue Defendant City of Champaign directly under a *Monell* claim. Defendant denies the remaining allegations in paragraph 14 of Plaintiff's complaint, including the erroneous assertion that a municipality may be held liable under 42 U.S.C. § 1983 on a *respondeat superior* theory, which Plaintiff does not plead anywhere else below.

15. Defendant admits that TJP was 16 years old as of December 28, 2018 and that he is African-American, based upon information and belief. Defendant denies the remaining allegations in paragraph 15 of Plaintiff's complaint.

16. Defendant admits the allegations in paragraph 16 of Plaintiff's Complaint.

17. Defendant admits the allegations in paragraph 17 of Plaintiff's Complaint.

18. Defendant admits the allegations in paragraph 18 of Plaintiff's Complaint, as of the time he observed the vehicle.

19. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who resided in the premises and who was related to TJP. Defendant admits the remaining allegations in paragraph 19 of Plaintiff's Complaint.

20. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 20 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. Defendant admits that Defendant Atteberry walked up to the vehicle, instructed the vehicle's occupants to exit at various times, and searched at least some of the occupants, and Defendant admits that all three occupants were searched. Defendant denies the remaining allegations in paragraph 20 of Plaintiff's complaint.

21. To the extent that Plaintiff is purporting to quote a recording, the recording speaks for itself, and Defendant denies any allegation in paragraph 21 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 21 of Plaintiff's complaint.

22. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who resided in the premises and who was related to TJP. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 22 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant admits that a woman appeared and asked Defendant Hagemann something to that effect. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 22 of Plaintiff's complaint.

23. Defendant admits that TJP exited the house and stood on the top of the stairs. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 23 of Plaintiff's complaint.

24. Defendant admits the allegations in paragraph 24 of Plaintiff's Complaint.

25. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who was related to TJP. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 25 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant admits that the woman near the door made statements to that effect.

26. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 26 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Atteberry made a statement to that effect.

27. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who was related to TJP. To the extent that Plaintiff is purporting to quote or paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 27 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant admits that the woman near the door made statements to that effect.

28. To the extent that Plaintiff is purporting to quote a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 28 of Plaintiff's

complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Atteberry made a statement to that effect.

29. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 29 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Atteberry reached for TJP and made a statement to that effect.

30. Defendant denies the allegations in paragraph 30 of Plaintiff's complaint.

31. Defendant denies the allegations in paragraph 31 of Plaintiff's complaint.

32. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who was related to TJP. To the extent that Plaintiff is purporting to quote or paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 32 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant admits that Defendant Hagemann did not try to prevent Defendant Atteberry from reaching for TJP, that Defendant Hagemann blocked a woman as she attempted to reach Defendant Atteberry, and that she made a comment to that effect. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 32 of Plaintiff's complaint.

33. Defendant admits that Defendant Kaldahl arrived at the location of Defendant Atteberry and TJP. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 33 of Plaintiff's complaint.

34. Defendant admits that Defendant Atteberry had TJP's right arm. Defendant denies the remaining allegations in paragraph 34 of Plaintiff's complaint.

35. Defendant admits that Defendant Kaldahl grabbed TJP's left arm. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 35 of Plaintiff's complaint.

36. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 36 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Miller drew his taser device, aimed it at TJP, and ordered him to get on the ground.

37. Defendant admits that Defendant Atteberry and Defendant Kaldahl took TJP to the ground. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 37 of Plaintiff's complaint.

38. Defendant denies the allegations in paragraph 38 of Plaintiff's complaint.

39. Defendant admits that Defendant Kaldahl placed handcuffs on TJP in the vicinity of Defendant Atteberry. Defendant denies the remaining allegations in paragraph 39 of Plaintiff's complaint.

40. Defendant denies the allegations in paragraph 40 of Plaintiff's complaint.

41. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 41 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to

form a belief about the truth of the remaining allegations in paragraph 41 of Plaintiff's complaint.

42. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 42 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 42 of Plaintiff's complaint.

43. Defendant admits that Defendant Hobson did not intervene. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 43 of Plaintiff's complaint.

44. Defendant admits the allegations in paragraph 44 of Plaintiff's Complaint.

45. Defendant admits that Defendant Rogers was called to the scene, that he was a sergeant, that he was Defendant Hobson's direct supervisor, and that he had command authority over the remaining officers.

46. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 46 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 46 of Plaintiff's complaint.

47. Defendant admits that TJP made a statement to that effect and that Defendant Rogers loosened the left handcuff. Defendant denies the remaining allegations in paragraph 47 of Plaintiff's complaint.

48. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 48 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 48 of Plaintiff's complaint.

49. To the extent that Plaintiff's vague allegations are meant to reference the City of Champaign's police station, Defendant denies the allegations in paragraph 49 of Plaintiff's complaint. To the extent that Plaintiff's vague allegations are meant to reference the Champaign County Juvenile Detention Center that detained TJP, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about whether medical care was provided there.

50. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about events that occurred after the Champaign County Juvenile Detention Center detained TJP, including the duration of detention or the medical attention provided or withheld. Defendant denies the remaining allegations in paragraph 50 of Plaintiff's complaint.

51. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about why TJP's probation was revoked or the consequences of revocation. Defendant denies the remaining allegations in paragraph 51 of Plaintiff's complaint.

COUNT I – FEDERAL CLAIM
42 U.S.C. § 1983 EXCESSIVE FORCE
DEFENDANTS ATTEBERRY, KALDAHL, AND MILLER

52. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here.

53. Defendant denies the allegations in paragraph 53 of Plaintiff's complaint.

54. Defendant denies the allegations in paragraph 54 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count I be dismissed with prejudice and with an award of costs to Defendant.

COUNT II – FEDERAL CLAIM
42 U.S.C. § 1983 FALSE ARREST
DEFENDANTS ATTEBERRY AND KALDAHL

55. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here.

56. Defendant denies the allegations in paragraph 56 of Plaintiff's complaint.

57. Defendant denies the allegations in paragraph 57 of Plaintiff's complaint.

58. Defendant denies the allegations in paragraph 58 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count II be dismissed with prejudice and with an award of costs to Defendant.

COUNT III – FEDERAL CLAIM
42 U.S.C. § 1983 FAILURE TO INTERVENE
DEFENDANTS MILLER, HAGEMANN, AND HOBSON

59. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

60. Defendant admits that Defendants Miller, Hagemann, and Hobson were present at the property. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 60 of Plaintiff's complaint.

61. Defendant admits that Defendants Miller, Hagemann, and Hobson did not intervene to prevent the use of force or the arrest. Defendant denies the remaining allegations in paragraph 61 of Plaintiff's complaint.

62. Defendant denies the allegations in paragraph 62 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count III be dismissed with prejudice and with an award of costs to Defendant.

COUNT IV – FEDERAL CLAIM
42 U.S.C. § 1983 SUPERVISORY LIABILITY
DEFENDANTS ROGERS

63. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

64. Defendant admits that Defendant Rogers was aware of the arrest and of officer conduct. Defendant denies the remaining allegations in paragraph 64 of Plaintiff's complaint.

65. Defendant admits the allegations in paragraph 65 of Plaintiff's Complaint.

66. Defendant admits the allegations in paragraph 66 of Plaintiff's Complaint.

67. Defendant denies the allegations in paragraph 67 of Plaintiff's complaint.

68. Defendant denies the allegations in paragraph 68 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count IV be dismissed with prejudice and with an award of costs to Defendant.

COUNT V – FEDERAL CLAIM
42 U.S.S. [sic] § 1983 FAILURE TO PROVIDE MEDICAL CARE
DEFENDANTS ATTEBERRY, KALDAHL, MILLER,
HAGEMANN, HOBSON, AND ROGERS

69. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here.

70. Defendant admits that he observed part of the use of force, did not call an ambulance, and did not offer medical care. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 70 of Plaintiff's complaint.

71. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 71 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 71 of Plaintiff's complaint.

72. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about events that occurred after the Champaign County Juvenile Detention Center detained TJP, including the duration of detention or the medical attention provided. Defendant denies the remaining allegations in paragraph 72 of Plaintiff's complaint.

73. Defendant denies the allegations in paragraph 73 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count V be dismissed with prejudice and with an award of costs to Defendant.

COUNT “V” [sic] – FEDERAL CLAIM
42 U.S.S. [sic] § 1985 CIVIL CONSPIRACY
DEFENDANTS ATTEBERRY, KALDAHL, MILLER,
HAGEMANN, HOBSON, AND ROGERS

74. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff’s complaint as if fully restated here.

75. To the extent that allegations above about alleged misconduct are incorporated here, Defendant hereby incorporates its response to each of those allegations. Defendant denies the remaining allegations in paragraph 75 of Plaintiff’s complaint.

76. Defendant denies the allegations in paragraph 76 of Plaintiff’s complaint.

77. Defendant denies the allegations in paragraph 77 of Plaintiff’s complaint.

WHEREFORE, Defendant prays that Count “V” be dismissed with prejudice and with an award of costs to Defendant.

COUNT VI – FEDERAL CLAIM
42 U.S.C. § 1983 MONELL POLICY CLAIM
DEFENDANT CITY OF CHAMPAIGN

78. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff’s complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

79. Defendant admits that the City of Champaign adopts rules and regulations for the governance of the City of Champaign and the Champaign Police Department. To the extent that the remaining allegations in paragraph 79 of Plaintiff’s complaint mischaracterize the law, including the extent to which the City is responsible for adopting a particular rule, Defendant denies the allegations.

80. Defendant admits that the City of Champaign has policy makers. Defendant admits that the City of Champaign has employees who train and supervise Champaign police officers regarding proper arrests, investigations, interactions with the public, and use of force.

81. To the extent that allegations above about alleged unconstitutional actions are incorporated here, Defendant hereby incorporates its response to each of those allegations. Defendant denies the remaining allegations in paragraph 81 of Plaintiff's complaint.

82. Defendant denies the allegations in paragraph 82 of Plaintiff's complaint.

83. Defendant denies the allegations in paragraph 83 of Plaintiff's complaint, including the suggestion that the alleged circumstances in those cases were the same as the alleged circumstances in this case.

84. Defendant denies the allegations in paragraph 84 of Plaintiff's complaint.

85. Defendant admits that the City has settled some lawsuits without admitting any liability in those suits, in order to buy its peace. Defendant denies the remaining allegations in paragraph 85 of Plaintiff's complaint, including the suggestion that the alleged circumstances in those cases were the same as the alleged circumstances in this case.

86. Defendant denies the allegations in paragraph 86 of Plaintiff's complaint, including the suggestion that the alleged circumstances in those cases were the same as the alleged circumstances in this case.

87. Defendant denies the allegations in paragraph 87 of Plaintiff's complaint.

88. Defendant denies the allegations in paragraph 88 of Plaintiff's complaint.

89. Defendant denies the allegations in paragraph 89 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count VI be dismissed with prejudice and with an award of costs to Defendant.

COUNT “XI” [sic] – CLAIM UNDER ILLINOIS LAW
INDEMNIFICATION
DEFENDANT CITY OF CHAMPAIGN

90. Defendant hereby incorporates its response to each of the foregoing paragraphs of Plaintiff’s complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

91. Defendant admits the allegations in paragraph 91 of Plaintiff’s Complaint.

92. To the extent that the allegations in paragraph 92 of Plaintiff’s complaint mischaracterize the law, including the erroneous assertion that a municipality is required to indemnify any judgment beyond a tort judgment for compensatory damages, Defendant denies the allegations.

WHEREFORE, Defendant prays that Count “XI” be dismissed with prejudice and with an award of costs to Defendant.

AFFIRMATIVE DEFENSES

NOW COMES the Defendant TIMOTHY ATTEBERRY (“Defendant”), by and through his undersigned counsel, and asserts that Plaintiff’s complaint should be dismissed, in whole or in part, based on the following affirmative defenses. Defendant asserts these defenses without assuming the burden of proof where it properly lies with Plaintiff.

1. As to Count I, if TJP is charged and convicted for resisting arrest in the state court and the facts underlying the claim of excessive force necessarily imply the invalidity of that conviction, then Count I must be dismissed. *E.g. Helman v. Duhaime*, 742 F.3d 760, 762 (7th Cir. 2014).

2. As to Counts II – V and “V”, if TJP is charged and convicted in state court, and if

any of those counts would necessarily imply the invalidity of his conviction, then such counts must be dismissed. *E.g. Wallace v. Kato*, 549 U.S. 384, 393–94, 395 n.5 (2007).

3. To the extent that Plaintiff asserts a *respondeat superior* theory, *see* paragraph 14 of Plaintiff’s complaint, Plaintiff has failed to state a claim for relief to which *respondeat superior* could apply, because “a municipality cannot be held liable under § 1983 on a *respondeat superior* theory.” *See, e.g., Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 691 (1978).

4. Counts I-“V” fail to the extent that a particular Defendant was not personally involved in any constitutional violation.

5. Counts II-IV and “V”-VI fail, because there was actual and arguable probable cause to arrest TJP.

6. As to Counts I – “V”, the Defendant officers are entitled to qualified immunity because:

- a. his conduct did not amount to a violation of TJP’s constitutional rights,
- b. a reasonable officer in his position could have believed his actions did not violate the Constitution in light of clearly established law and the information he possessed at the time, and
- c. there was arguable probable cause to arrest TJP at all pertinent times.

7. As to Counts I - VI,:

- a. Defendant’s conduct was not a proximate cause of TJP’s alleged damages,
- b. TJP’s conduct was a proximate cause of his alleged damages, or
- c. third parties were a proximate cause of TJP’s alleged damages, including but not limited to any alleged failure to receive medical care when detained outside of the

presence of Defendant, upon information and belief.

8. If the individual Defendant officers are not liable, then Count “XI” fails, because a local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable. *See Fleming v. Livingston Cty., Ill.*, 674 F.3d 874, 881 (7th Cir. 2012) (quoting 745 ILCS 10/2–109).

9. As to Count II, Plaintiff cannot recover any damages under that count beyond the issuance of process or arraignment of TJP. *Wallace v. Kato*, 549 U.S. 384, 390 (2007).

10. To the extent that Plaintiff seeks to recover for “compensatory damages” for “injuries”:

- a. Plaintiff has not specifically stated any special damages as required by Fed. R. Civ. P. 9(g), and
- b. to the extent that Plaintiff claims any continuing injuries, Plaintiff or TJP has failed to mitigate those alleged injuries and damages, upon information and belief.

11. To the extent that Plaintiff seeks duplicative damages, such as damages for the same “injuries” under multiple counts, Plaintiff cannot receive a double recovery.

12. To the extent that Plaintiff seeks punitive damages, Defendant’s conduct was not motivated by evil motive or intent, and Defendant’s conduct did not involve reckless or callous indifference to Plaintiff’s federally protected rights.

13. To the extent that Plaintiff seeks punitive damages, Defendant adopts by reference the defenses, criteria, limitations, standards and constitutional protections mandated or provided with respect to punitive damages in the following cases and their progeny: *BMW v. Gore*, 517 U.S. 559 (1996); *Cooper Indus., Inc. v. Leatherman Tool, Inc.*, 532 U.S. 424 (2001); and *State Farm v. Campbell*, 538 U.S. 408 (2003).

WHEREFORE, Defendant prays that Plaintiff's complaint be dismissed with prejudice and with an award of costs to Defendant.

DEMAND FOR JURY TRIAL

Defendant demands a jury on all issues triable of right by a jury, and Defendant respectfully requests a jury on all other issues triable by a jury.

Respectfully submitted,

Defendant TIMOTHY ATTEBERRY ("Defendant")

By his attorneys:

Dated: April 5, 2019

s/ Justin N. Brunner
David E. Krchak (#3127316)
Justin N. Brunner (#6323496)
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CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2019, I caused the foregoing document:

*DEFENDANT TIMOTHY ATTEBERRY'S
ANSWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND*

to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notice to all attorneys of record.

s/ Justin N. Brunner
Justin N. Brunner (#6323496)
THOMAS, MAMER & HAUGHEY, LLP

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

THERESA PREMO,
as next friend to TJP, a minor,

Plaintiff,

v.

CITY OF CHAMPAIGN POLICE OFFICERS
TIMOTHY ATTEBERRY, DANE KALDAHL,
ARTHUR MILLER, JORDAN HAGEMANN,
JAMES HOBSON, SERGEANT BRIAN ROGERS,
and THE CITY OF CHAMPAIGN, ILLINOIS,
a municipal corporation,

Defendants.

CASE No. 19-CV-1078-CSB-EIL

JURY TRIAL DEMANDED

**DEFENDANT CITY OF CHAMPAIGN'S
ANSWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND**

NOW COMES Defendant CITY OF CHAMPAIGN, ILLINOIS (“Defendant”), by and through its undersigned counsel, and in answer to Plaintiff’s complaint, states as follows. Defendant generally denies the allegations in Plaintiff’s complaint, including any in the unnumbered headings, except for those allegations specifically admitted in this answer.

1. Defendant admits that Defendants Atteberry and Kaldahl arrested TJP on December 28, 2018, and that Defendants Miller, Hagemann, and Hobson were in the vicinity. Defendant denies the remaining allegations in paragraph 1 of Plaintiff’s complaint.

2. Defendant admits that Plaintiff Theresa Premo purports to bring this lawsuit as the next friend of TJP to seek redress against Defendants. Defendant denies the remaining allegations in paragraph 2 of Plaintiff’s complaint.

3. Defendant admits that Plaintiff claims to have causes of action under the Fourth and Fourteenth Amendments, 42 U.S.C. §§ 1983 and 1988, and Illinois state law. Defendant

denies the remaining allegations in paragraph 3 of Plaintiff's complaint, including the suggestion that Plaintiff has valid claims.

4. Defendant admits that Plaintiff invokes jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3), and that Plaintiff invokes supplemental jurisdiction under § 1367(a). Defendant denies the remaining allegations in paragraph 4 of Plaintiff's complaint, including the suggestion that Plaintiff has valid claims.

5. Defendant admits that venue is proper in this district under 28 U.S.C. § 1391(b)(2). To the extent that Plaintiff incorporates allegations about events from other parts of her complaint, Defendant incorporates its responses to those allegations here.

6. Defendant admits that Plaintiff Theresa Premo purports to bring this lawsuit as the next friend of TJP. Defendant admits the remaining allegations in paragraph 6 of Plaintiff's complaint, based upon information and belief.

7. Defendant admits the allegations in paragraph 7 of Plaintiff's complaint, based upon information and belief.

8. Defendant admits the allegations in paragraph 8 of Plaintiff's complaint, except that, when Defendant Atteberry was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

9. Defendant admits the allegations in paragraph 9 of Plaintiff's complaint, except that, when Defendant Kaldahl was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

10. Defendant admits the allegations in paragraph 10 of Plaintiff's complaint, except that, when Defendant Miller was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

11. Defendant admits the allegations in paragraph 11 of Plaintiff's complaint, except that, when Defendant Hagemann was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

12. Defendant admits the allegations in paragraph 12 of Plaintiff's complaint, except that, when Defendant Hobson was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

13. Defendant admits the allegations in paragraph 13 of Plaintiff's complaint, except that, when Defendant Rogers was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

14. Defendant admits that Defendant City of Champaign was the employer of the individual Defendant officers during the relevant time. Defendant admits that Plaintiff purports to sue Defendant City of Champaign directly under a *Monell* claim. Defendant denies the remaining allegations in paragraph 14 of Plaintiff's complaint, including the erroneous assertion that a municipality may be held liable under 42 U.S.C. § 1983 on a *respondeat superior* theory, which Plaintiff does not plead anywhere else below.

15. Defendant admits that TJP was 16 years old as of December 28, 2018 and that he is African-American, based upon information and belief. Defendant denies the remaining allegations in paragraph 15 of Plaintiff's complaint.

16. Defendant admits the allegations in paragraph 16 of Plaintiff's Complaint

17. Defendant admits the allegations in paragraph 17 of Plaintiff's Complaint.

18. Defendant admits the allegations in paragraph 18 of Plaintiff's Complaint.

19. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who resided in the premises and who was related to TJP. Defendant admits the remaining allegations in paragraph 19 of Plaintiff's Complaint.

20. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 20 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. Defendant admits that Defendant Atteberry walked up to the vehicle, instructed the vehicle's occupants to exit at various times, and searched at least some of the occupants, and Defendant admits that all three occupants were searched. Defendant denies the remaining allegations in paragraph 20 of Plaintiff's complaint.

21. To the extent that Plaintiff is purporting to quote a recording, the recording speaks for itself, and Defendant denies any allegation in paragraph 21 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Hagemann shined a flashlight on a window where a person was peeking through the blinds and that he ordered the person to come to the door. Defendant denies the remaining allegations in paragraph 21 of Plaintiff's complaint.

22. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who resided in the premises and who was related to TJP. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 22 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant admits that a woman appeared and asked Defendant Hagemann something to that effect, that Defendant Hagemann asked to speak with the person who ran into

the house, and that the woman responded “yeah.” Defendant denies the remaining allegations in paragraph 22 of Plaintiff’s complaint.

23. Defendant admits that TJP exited the house and stood on the top of the stairs. Defendant denies the remaining allegations in paragraph 23 of Plaintiff’s complaint, including that TJP made any statement that Defendant Hagemann could hear.

24. Defendant admits the allegations in paragraph 24 of Plaintiff’s Complaint.

25. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who was related to TJP. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 25 of Plaintiff’s complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant admits that the woman near the door made statements to that effect.

26. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 26 of Plaintiff’s complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Atteberry made a statement to that effect.

27. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who was related to TJP. To the extent that Plaintiff is purporting to quote or paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 27 of Plaintiff’s complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant admits that the woman near the door made statements to that effect.

28. To the extent that Plaintiff is purporting to quote a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 28 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Atteberry made a statement to that effect.

29. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 29 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Atteberry reached for TJP and made a statement to that effect.

30. Defendant denies the allegations in paragraph 30 of Plaintiff's complaint.

31. Defendant denies the allegations in paragraph 31 of Plaintiff's complaint.

32. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who was related to TJP. To the extent that Plaintiff is purporting to quote or paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 32 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant admits that Defendant Hagemann observed Defendant Atteberry reach for TJP, that he did not try to prevent that, that Defendant Hagemann guided a woman off the porch for their safety, that he blocked the woman as she attempted to reach Defendant Atteberry, that he nudged her away after she repeatedly pushed toward him, and that she made a comment to that effect. Defendant denies the remaining allegations in paragraph 32 of Plaintiff's complaint.

33. Defendant admits that Defendant Kaldahl became aware that Defendant Atteberry was in contact with TJP and that Defendant Kaldahl jogged to their location. Defendant denies the remaining allegations in paragraph 33 of Plaintiff's complaint.

34. Defendant admits that Defendant Atteberry had TJP's right arm. Defendant denies the remaining allegations in paragraph 34 of Plaintiff's complaint.

35. Defendant admits that Defendant Kaldahl observed that Defendant Atteberry had TJP's right arm and that Defendant Kaldahl grabbed TJP's left arm. Defendant denies the remaining allegations in paragraph 35 of Plaintiff's complaint.

36. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 36 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Miller drew his taser device, aimed it at TJP, and ordered him to get on the ground.

37. Defendant admits that Defendant Atteberry and Defendant Kaldahl took TJP to the ground and that Defendant Kaldahl put his hand near the base of the back of TJP's neck. Defendant denies the remaining allegations in paragraph 37 of Plaintiff's complaint.

38. Defendant denies the allegations in paragraph 38 of Plaintiff's complaint.

39. Defendant admits that Defendant Kaldahl placed handcuffs on TJP in the vicinity of Defendant Atteberry. Defendant denies the remaining allegations in paragraph 39 of Plaintiff's complaint.

40. Defendant denies the allegations in paragraph 40 of Plaintiff's complaint.

41. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 41 of Plaintiff's

complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant denies the remaining allegations in paragraph 41 of Plaintiff's complaint.

42. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 42 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that one woman was shouting statements to that effect as she repeatedly attempted to approach officers and, after she ignored repeated warnings to back up, Defendant Hagemann, believing that she was trying to get into a physical altercation with officers, made a statement to the effect that he would deploy pepper-spray if she did not stay back. Defendant denies the remaining allegations in paragraph 42 of Plaintiff's complaint.

43. Defendant admits that Defendant Hobson was present on a portion of the property, observed parts of officers' interactions with TJP, observed that TJP was in custody, and did not intervene. Defendant denies the remaining allegations in paragraph 43 of Plaintiff's complaint.

44. Defendant admits the allegations in paragraph 44 of Plaintiff's Complaint.

45. Defendant admits that Defendant Rogers was called to the scene, that he was a sergeant, that he was Defendant Hobson's direct supervisor, and that he had command authority over the remaining officers.

46. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 46 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the

statements were made. With that caveat, Defendant admits that civilians made statements to Defendant Rogers about their opinions and admits that Defendant Rogers approved of the use of force and arrest based on what he was told. Defendant denies the remaining allegations in paragraph 46 of Plaintiff's complaint.

47. Defendant admits that TJP made a statement to that effect and that Defendant Rogers loosened the left handcuff. Defendant denies the remaining allegations in paragraph 47 of Plaintiff's complaint.

48. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 48 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Rogers did not call for an ambulance or personally provide medical attention, though he did ask TJP if he was injured. Defendant denies the remaining allegations in paragraph 48 of Plaintiff's complaint.

49. To the extent that Plaintiff's vague allegations are meant to reference the City of Champaign's police station, Defendant denies the allegations in paragraph 49 of Plaintiff's complaint. To the extent that Plaintiff's vague allegations are meant to reference the Champaign County Juvenile Detention Center that detained TJP, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about whether medical care was provided there.

50. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about events that occurred after the Champaign County Juvenile Detention Center detained TJP, including the duration of detention or the medical attention

provided or withheld. Defendant denies the remaining allegations in paragraph 50 of Plaintiff's complaint.

51. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about why TJP's probation was revoked or the consequences of revocation. Defendant denies the remaining allegations in paragraph 51 of Plaintiff's complaint.

COUNT I – FEDERAL CLAIM
42 U.S.C. § 1983 EXCESSIVE FORCE
DEFENDANTS ATTEBERRY, KALDAHL, AND MILLER

52. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

53. Defendant denies the allegations in paragraph 53 of Plaintiff's complaint.

54. Defendant denies the allegations in paragraph 54 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count I be dismissed with prejudice and with an award of costs to Defendant.

COUNT II – FEDERAL CLAIM
42 U.S.C. § 1983 FALSE ARREST
DEFENDANTS ATTEBERRY AND KALDAHL

55. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

56. Defendant denies the allegations in paragraph 56 of Plaintiff's complaint.

57. Defendant denies the allegations in paragraph 57 of Plaintiff's complaint.

58. Defendant denies the allegations in paragraph 58 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count II be dismissed with prejudice and with an award of costs to Defendant.

COUNT III – FEDERAL CLAIM
42 U.S.C. § 1983 FAILURE TO INTERVENE
DEFENDANTS MILLER, HAGEMANN, AND HOBSON

59. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

60. Defendant admits that Defendants Miller, Hagemann, and Hobson were present at the property and that they each observed part of the use of force. Defendant denies the remaining allegations in paragraph 60 of Plaintiff's complaint.

61. Defendant admits that Defendants Miller, Hagemann, and Hobson did not intervene to prevent the use of force or the arrest. Defendant denies the remaining allegations in paragraph 61 of Plaintiff's complaint.

62. Defendant denies the allegations in paragraph 62 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count III be dismissed with prejudice and with an award of costs to Defendant.

COUNT IV – FEDERAL CLAIM
42 U.S.C. § 1983 SUPERVISORY LIABILITY
DEFENDANTS ROGERS

63. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against

Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

64. Defendant admits that Defendant Rogers was aware of the arrest and of officer conduct. Defendant denies the remaining allegations in paragraph 64 of Plaintiff's complaint.

65. Defendant admits the allegations in paragraph 65 of Plaintiff's Complaint.

66. Defendant admits the allegations in paragraph 66 of Plaintiff's Complaint.

67. Defendant denies the allegations in paragraph 67 of Plaintiff's complaint.

68. Defendant denies the allegations in paragraph 68 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count IV be dismissed with prejudice and with an award of costs to Defendant.

COUNT V – FEDERAL CLAIM
42 U.S.S. [sic] § 1983 FAILURE TO PROVIDE MEDICAL CARE
DEFENDANTS ATTEBERRY, KALDAHL, MILLER,
HAGEMANN, HOBSON, AND ROGERS

69. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

70. Defendant admits that Defendants Atteberry, Kaldahl, Miller, Hagemann, and Hobson each observed part of the use of force, did not call an ambulance, and did not offer medical care. Defendant denies the remaining allegations in paragraph 70 of Plaintiff's complaint.

71. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 71 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the

statements were made. With that caveat, Defendant admits that Defendant Rogers did not call for an ambulance or offer medical care. Defendant denies the remaining allegations in paragraph 71 of Plaintiff's complaint.

72. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about events that occurred after the Champaign County Juvenile Detention Center detained TJP, including the duration of detention or the medical attention provided. Defendant denies the remaining allegations in paragraph 72 of Plaintiff's complaint.

73. Defendant denies the allegations in paragraph 73 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count V be dismissed with prejudice and with an award of costs to Defendant.

COUNT "V" [sic] – FEDERAL CLAIM
42 U.S.S. [sic] § 1985 CIVIL CONSPIRACY
DEFENDANTS ATTEBERRY, KALDAHL, MILLER,
HAGEMANN, HOBSON, AND ROGERS

74. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

75. To the extent that allegations above about alleged misconduct are incorporated here, Defendant hereby incorporates its response to each of those allegations. Defendant denies the remaining allegations in paragraph 75 of Plaintiff's complaint.

76. Defendant denies the allegations in paragraph 76 of Plaintiff's complaint.

77. Defendant denies the allegations in paragraph 77 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count "V" be dismissed with prejudice and with an award of costs to Defendant.

COUNT VI – FEDERAL CLAIM
42 U.S.C. § 1983 MONELL POLICY CLAIM
DEFENDANT CITY OF CHAMPAIGN

78. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here.

79. Defendant admits that the City of Champaign adopts rules and regulations for the governance of the City of Champaign and the Champaign Police Department. To the extent that the remaining allegations in paragraph 79 of Plaintiff's complaint mischaracterize the law, including the extent to which the City is responsible for adopting a particular rule, Defendant denies the allegations.

80. Defendant admits that the City of Champaign has policy makers. Defendant admits that the City of Champaign has employees who train and supervise Champaign police officers regarding proper arrests, investigations, interactions with the public, and use of force.

81. To the extent that allegations above about alleged unconstitutional actions are incorporated here, Defendant hereby incorporates its response to each of those allegations. Defendant denies the remaining allegations in paragraph 81 of Plaintiff's complaint.

82. Defendant denies the allegations in paragraph 82 of Plaintiff's complaint.

83. Defendant denies the allegations in paragraph 83 of Plaintiff's complaint, including the suggestion that the alleged circumstances in those cases were the same as the alleged circumstances in this case.

84. Defendant denies the allegations in paragraph 84 of Plaintiff's complaint.

85. Defendant admits that the City has settled some lawsuits without admitting any liability in those suits, in order to buy its peace. Defendant denies the remaining allegations in

paragraph 85 of Plaintiff's complaint, including the suggestion that the alleged circumstances in those cases were the same as the alleged circumstances in this case.

86. Defendant denies the allegations in paragraph 86 of Plaintiff's complaint, including the suggestion that the alleged circumstances in those cases were the same as the alleged circumstances in this case.

87. Defendant denies the allegations in paragraph 87 of Plaintiff's complaint.

88. Defendant denies the allegations in paragraph 88 of Plaintiff's complaint.

89. Defendant denies the allegations in paragraph 89 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count VI be dismissed with prejudice and with an award of costs to Defendant.

COUNT "XI" [sic] – CLAIM UNDER ILLINOIS LAW
INDEMNIFICATION
DEFENDANT CITY OF CHAMPAIGN

90. Defendant hereby incorporates its response to each of the foregoing paragraphs of Plaintiff's complaint as if fully restated here.

91. Defendant admits the allegations in paragraph 91 of Plaintiff's Complaint.

92. To the extent that the allegations in paragraph 92 of Plaintiff's complaint mischaracterize the law, including the erroneous assertion that a municipality is required to indemnify any judgment beyond a tort judgment for compensatory damages, Defendant denies the allegations.

WHEREFORE, Defendant prays that Count "XI" be dismissed with prejudice and with an award of costs to Defendant.

AFFIRMATIVE DEFENSES

NOW COMES the Defendant CITY OF CHAMPAIGN, ILLINOIS (“Defendant”), by and through its undersigned counsel, and asserts that Plaintiff’s complaint should be dismissed, in whole or in part, based on the following affirmative defenses. Defendant asserts these defenses without assuming the burden of proof where it properly lies with Plaintiff.

1. As to Count I, if TJP is charged and convicted for resisting arrest in the state court and the facts underlying the claim of excessive force necessarily imply the invalidity of that conviction, then Count I must be dismissed. *E.g. Helman v. Duhaime*, 742 F.3d 760, 762 (7th Cir. 2014).

2. As to Counts II – V and “V”, if TJP is charged and convicted in state court, and if any of those counts would necessarily imply the invalidity of his conviction, then such counts must be dismissed. *E.g. Wallace v. Kato*, 549 U.S. 384, 393–94, 395 n.5 (2007).

3. To the extent that Plaintiff asserts a *respondeat superior* theory, *see* paragraph 14 of Plaintiff’s complaint, Plaintiff has failed to state a claim for relief to which *respondeat superior* could apply, because “a municipality cannot be held liable under § 1983 on a *respondeat superior* theory.” *See, e.g., Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 691 (1978).

4. Counts I-“V” fail to the extent that a particular Defendant was not personally involved in any constitutional violation.

5. Counts II-IV and “V”-VI fail, because there was actual and arguable probable cause to arrest TJP.

6. As to Counts I – “V”, the Defendant officers are entitled to qualified immunity because:

- a. his conduct did not amount to a violation of TJP's constitutional rights,
 - b. a reasonable officer in his position could have believed his actions did not violate the Constitution in light of clearly established law and the information he possessed at the time, and
 - c. there was arguable probable cause to arrest TJP at all pertinent times.
7. As to Counts I - VI,:
- a. Defendant's conduct was not a proximate cause of TJP's alleged damages,
 - b. TJP's conduct was a proximate cause of his alleged damages, or
 - c. third parties were a proximate cause of TJP's alleged damages, including but not limited to any alleged failure to receive medical care when detained outside of the presence of Defendant, upon information and belief.
8. If the individual Defendant officers are not liable, then Count "XI" fails, because a local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable. *See Fleming v. Livingston Cty., Ill.*, 674 F.3d 874, 881 (7th Cir. 2012) (quoting 745 ILCS 10/2-109).
9. As to Count II, Plaintiff cannot recover any damages under that count beyond the issuance of process or arraignment of TJP. *Wallace v. Kato*, 549 U.S. 384, 390 (2007).
10. To the extent that Plaintiff seeks to recover for "compensatory damages" for "injuries":
- a. Plaintiff has not specifically stated any special damages as required by Fed. R. Civ. P. 9(g), and
 - b. to the extent that Plaintiff claims any continuing injuries, Plaintiff or TJP has failed to mitigate those alleged injuries and damages, upon information and belief.

11. To the extent that Plaintiff seeks duplicative damages, such as damages for the same “injuries” under multiple counts, Plaintiff cannot receive a double recovery.

12. To the extent that Plaintiff seeks punitive damages, Defendant’s conduct was not motivated by evil motive or intent, and Defendant’s conduct did not involve reckless or callous indifference to Plaintiff’s federally protected rights.

13. To the extent that Plaintiff seeks punitive damages, Defendant adopts by reference the defenses, criteria, limitations, standards and constitutional protections mandated or provided with respect to punitive damages in the following cases and their progeny: *BMW v. Gore*, 517 U.S. 559 (1996); *Cooper Indus., Inc. v. Leatherman Tool, Inc.*, 532 U.S. 424 (2001); and *State Farm v. Campbell*, 538 U.S. 408 (2003).

WHEREFORE, Defendant prays that Plaintiff’s complaint be dismissed with prejudice and with an award of costs to Defendant.

DEMAND FOR JURY TRIAL

Defendant demands a jury on all issues triable of right by a jury, and Defendant respectfully requests a jury on all other issues triable by a jury.

Respectfully submitted,

Defendant CITY OF CHAMPAIGN, ILLINOIS (“Defendant”)

By its attorneys:

Dated: April 5, 2019

s/ Justin N. Brunner
David E. Krchak (#3127316)
Justin N. Brunner (#6323496)
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CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2019, I caused the foregoing document:

*DEFENDANT CITY OF CHAMPAIGN'S
ANSWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND*

to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notice to all attorneys of record.

s/ Justin N. Brunner
Justin N. Brunner (#6323496)
THOMAS, MAMER & HAUGHEY, LLP

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

THERESA PREMO,
as next friend to TJP, a minor,

Plaintiff,

v.

CITY OF CHAMPAIGN POLICE OFFICERS
TIMOTHY ATTEBERRY, DANE KALDAHL,
ARTHUR MILLER, JORDAN HAGEMANN,
JAMES HOBSON, SERGEANT BRIAN ROGERS,
and THE CITY OF CHAMPAIGN, ILLINOIS,
a municipal corporation,

Defendants.

CASE No. 19-cv-1078-CSB-EIL

JURY TRIAL DEMANDED

**DEFENDANT JORDAN HAGEMANN’S
ANSWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND**

NOW COMES Defendant JORDAN HAGEMANN (“Defendant”), by and through his undersigned counsel, and in answer to Plaintiff’s complaint, states as follows. Defendant generally denies the allegations in Plaintiff’s complaint, including any in the unnumbered headings, except for those allegations specifically admitted in this answer.

1. Defendant admits that Defendants Atteberry and Kaldahl arrested TJP on December 28, 2018, and that Defendants Miller, Hagemann, and Hobson were in the vicinity. Defendant denies the remaining allegations in paragraph 1 of Plaintiff’s complaint.

2. Defendant admits that Plaintiff Theresa Premo purports to bring this lawsuit as the next friend of TJP to seek redress against Defendants. Defendant denies the remaining allegations in paragraph 2 of Plaintiff’s complaint.

3. Defendant admits that Plaintiff claims to have causes of action under the Fourth and Fourteenth Amendments, 42 U.S.C. §§ 1983 and 1988, and Illinois state law. Defendant

denies the remaining allegations in paragraph 3 of Plaintiff's complaint, including the suggestion that Plaintiff has valid claims.

4. Defendant admits that Plaintiff invokes jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3), and that Plaintiff invokes supplemental jurisdiction under § 1367(a). Defendant denies the remaining allegations in paragraph 4 of Plaintiff's complaint, including the suggestion that Plaintiff has valid claims.

5. Defendant admits that venue is proper in this district under 28 U.S.C. § 1391(b)(2). To the extent that Plaintiff incorporates allegations about events from other parts of her complaint, Defendant incorporates its responses to those allegations here.

6. Defendant admits that Plaintiff Theresa Premo purports to bring this lawsuit as the next friend of TJP. Defendant admits the remaining allegations in paragraph 6 of Plaintiff's complaint, based upon information and belief.

7. Defendant admits the allegations in paragraph 7 of Plaintiff's complaint, based upon information and belief.

8. Defendant admits the allegations in paragraph 8 of Plaintiff's complaint, except that, when Defendant Atteberry was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

9. Defendant admits the allegations in paragraph 9 of Plaintiff's complaint, except that, when Defendant Kaldahl was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

10. Defendant admits the allegations in paragraph 10 of Plaintiff's complaint, except that, when Defendant Miller was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

11. Defendant admits the allegations in paragraph 11 of Plaintiff's complaint, except that, when Defendant Hagemann was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

12. Defendant admits the allegations in paragraph 12 of Plaintiff's complaint, except that, when Defendant Hobson was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

13. Defendant admits the allegations in paragraph 13 of Plaintiff's complaint, except that, when Defendant Rogers was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

14. Defendant admits that Defendant City of Champaign was the employer of the individual Defendant officers during the relevant time. Defendant admits that Plaintiff purports to sue Defendant City of Champaign directly under a *Monell* claim. Defendant denies the remaining allegations in paragraph 14 of Plaintiff's complaint, including the erroneous assertion that a municipality may be held liable under 42 U.S.C. § 1983 on a *respondeat superior* theory, which Plaintiff does not plead anywhere else below.

15. Defendant admits that TJP was 16 years old as of December 28, 2018 and that he is African-American, based upon information and belief. Defendant denies the remaining allegations in paragraph 15 of Plaintiff's complaint.

16. Defendant admits that a radio call was broadcast at approximately 12:12 a.m. on December 28, 2018 regarding a single shot fired in an area near Hedge Road. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 16 of Plaintiff's Complaint.

17. Defendant admits that he observed a silver Mustang parked in a driveway of 1501 North Willis, Champaign, Illinois. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 17 of Plaintiff's Complaint.

18. Defendant admits the allegations in paragraph 18 of Plaintiff's Complaint, as of the time he observed the vehicle.

19. Defendant admits that he observed at least two individuals sitting in the silver Mustang. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 19 of Plaintiff's Complaint.

20. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 20 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 20 of Plaintiff's complaint.

21. To the extent that Plaintiff is purporting to quote a recording, the recording speaks for itself, and Defendant denies any allegation in paragraph 21 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Hagemann shined a flashlight on a window where a person was peeking through the blinds and that he ordered the person to come to the door. Defendant denies the remaining allegations in paragraph 21 of Plaintiff's complaint.

22. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who resided in the premises and who was related to TJP. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 22 of Plaintiff's complaint that

mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant admits that a woman appeared and asked Defendant Hagemann something to that effect, that Defendant Hagemann asked to speak with the person who ran into the house, and that the woman responded “yeah.” Defendant denies the remaining allegations in paragraph 22 of Plaintiff’s complaint.

23. Defendant admits that TJP exited the house and stood on the top of the stairs. Defendant denies the remaining allegations in paragraph 23 of Plaintiff’s complaint, including that TJP made any statement that Defendant Hagemann could hear.

24. Defendant admits the allegations in paragraph 24 of Plaintiff’s Complaint.

25. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who was related to TJP. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 25 of Plaintiff’s complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant admits that the woman near the door made statements to that effect.

26. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 26 of Plaintiff’s complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Atteberry made a statement to that effect.

27. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who was related to TJP. To the extent that Plaintiff is purporting to quote or paraphrase a recorded communication, the recording speaks for itself, and Defendant

denies any allegation in paragraph 27 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant admits that the woman near the door made statements to that effect.

28. To the extent that Plaintiff is purporting to quote a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 28 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Atteberry made a statement to that effect.

29. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 29 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Atteberry reached for TJP. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 29 of Plaintiff's complaint.

30. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 30 of Plaintiff's complaint.

31. Defendant denies the allegations in paragraph 31 of Plaintiff's complaint.

32. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who was related to TJP. To the extent that Plaintiff is purporting to quote or paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 32 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant admits that Defendant Hagemann observed Defendant Atteberry reach for TJP, that he did not

try to prevent that, that Defendant Hagemann guided a woman off the porch for their safety, that he blocked the woman as she attempted to reach Defendant Atteberry, that he nudged her away after she repeatedly pushed toward him, and that she made a comment to that effect. Defendant denies the remaining allegations in paragraph 32 of Plaintiff's complaint.

33. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 33 of Plaintiff's complaint.

34. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 34 of Plaintiff's complaint.

35. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 35 of Plaintiff's complaint.

36. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 36 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Miller made a statement to TJP. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 36 of Plaintiff's complaint.

37. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 37 of Plaintiff's complaint.

38. Defendant denies the allegations in paragraph 38 of Plaintiff's complaint.

39. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 39 of Plaintiff's complaint.

40. Defendant denies the allegations in paragraph 40 of Plaintiff's complaint.

41. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 41 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant denies the remaining allegations in paragraph 41 of Plaintiff's complaint.

42. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 42 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that one woman was shouting statements to that effect as she repeatedly attempted to approach officers and, after she ignored repeated warnings to back up, Defendant Hagemann, believing that she was trying to get into a physical altercation with officers, made a statement to the effect that he would deploy pepper-spray if she did not stay back. Defendant denies the remaining allegations in paragraph 42 of Plaintiff's complaint.

43. Defendant admits that Defendant Hobson was present on a portion of the property and that he did not intervene. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 43 of Plaintiff's complaint.

44. Defendant admits the allegations in paragraph 44 of Plaintiff's Complaint.

45. Defendant admits that Defendant Rogers was called to the scene, that he was a sergeant, that he was Defendant Hobson's direct supervisor, and that he had command authority over the remaining officers.

46. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 46 of Plaintiff's

complaint that mischaracterizes the content of the recording or the manner in which the statements were made. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 46 of Plaintiff's complaint.

47. Defendant admits that TJP made a statement to that effect and that Defendant Rogers loosened the left handcuff. Defendant denies the remaining allegations in paragraph 47 of Plaintiff's complaint.

48. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 48 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 48 of Plaintiff's complaint.

49. To the extent that Plaintiff's vague allegations are meant to reference the City of Champaign's police station, Defendant denies the allegations in paragraph 49 of Plaintiff's complaint. To the extent that Plaintiff's vague allegations are meant to reference the Champaign County Juvenile Detention Center that detained TJP, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about whether medical care was provided there.

50. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about events that occurred after the Champaign County Juvenile Detention Center detained TJP, including the duration of detention or the medical attention provided or withheld. Defendant denies the remaining allegations in paragraph 50 of Plaintiff's complaint.

51. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about why TJP's probation was revoked or the consequences of revocation. Defendant denies the remaining allegations in paragraph 51 of Plaintiff's complaint.

COUNT I – FEDERAL CLAIM
42 U.S.C. § 1983 EXCESSIVE FORCE
DEFENDANTS ATTEBERRY, KALDAHL, AND MILLER

52. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

53. Defendant denies the allegations in paragraph 53 of Plaintiff's complaint.

54. Defendant denies the allegations in paragraph 54 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count I be dismissed with prejudice and with an award of costs to Defendant.

COUNT II – FEDERAL CLAIM
42 U.S.C. § 1983 FALSE ARREST
DEFENDANTS ATTEBERRY AND KALDAHL

55. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

56. Defendant denies the allegations in paragraph 56 of Plaintiff's complaint.

57. Defendant denies the allegations in paragraph 57 of Plaintiff's complaint.

58. Defendant denies the allegations in paragraph 58 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count II be dismissed with prejudice and with an award of costs to Defendant.

COUNT III – FEDERAL CLAIM
42 U.S.C. § 1983 FAILURE TO INTERVENE
DEFENDANTS MILLER, HAGEMANN, AND HOBSON

59. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here.

60. Defendant admits that Defendants Miller, Hagemann, and Hobson were present at the property and that Defendant observed part of the use of force. Defendant denies that he observed all of the use of force or the arrest. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 60 of Plaintiff's complaint.

61. Defendant admits that Defendants Miller, Hagemann, and Hobson did not intervene to prevent the use of force or the arrest. Defendant denies the remaining allegations in paragraph 61 of Plaintiff's complaint.

62. Defendant denies the allegations in paragraph 62 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count III be dismissed with prejudice and with an award of costs to Defendant.

COUNT IV – FEDERAL CLAIM
42 U.S.C. § 1983 SUPERVISORY LIABILITY
DEFENDANTS ROGERS

63. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

64. Defendant admits that Defendant Rogers was aware of the arrest and of officer conduct. Defendant denies the remaining allegations in paragraph 64 of Plaintiff's complaint.

65. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 65 of Plaintiff's complaint.

66. Defendant admits the allegations in paragraph 66 of Plaintiff's Complaint.

67. Defendant denies the allegations in paragraph 67 of Plaintiff's complaint.

68. Defendant denies the allegations in paragraph 68 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count IV be dismissed with prejudice and with an award of costs to Defendant.

COUNT V – FEDERAL CLAIM
42 U.S.S. [sic] § 1983 FAILURE TO PROVIDE MEDICAL CARE
DEFENDANTS ATTEBERRY, KALDAHL, MILLER,
HAGEMANN, HOBSON, AND ROGERS

69. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here.

70. Defendant admits that he observed part of the use of force, did not call an ambulance, and did not offer medical care. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 70 of Plaintiff's complaint.

71. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 71 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 71 of Plaintiff's complaint.

72. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about events that occurred after the Champaign County Juvenile Detention Center detained TJP, including the duration of detention or the medical attention provided. Defendant denies the remaining allegations in paragraph 72 of Plaintiff's complaint.

73. Defendant denies the allegations in paragraph 73 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count V be dismissed with prejudice and with an award of costs to Defendant.

COUNT "V" [sic] – FEDERAL CLAIM
42 U.S.S. [sic] § 1985 CIVIL CONSPIRACY
DEFENDANTS ATTEBERRY, KALDAHL, MILLER,
HAGEMANN, HOBSON, AND ROGERS

74. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here.

75. To the extent that allegations above about alleged misconduct are incorporated here, Defendant hereby incorporates its response to each of those allegations. Defendant denies the remaining allegations in paragraph 75 of Plaintiff's complaint.

76. Defendant denies the allegations in paragraph 76 of Plaintiff's complaint.

77. Defendant denies the allegations in paragraph 77 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count "V" be dismissed with prejudice and with an award of costs to Defendant.

COUNT VI – FEDERAL CLAIM
42 U.S.C. § 1983 MONELL POLICY CLAIM
DEFENDANT CITY OF CHAMPAIGN

78. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against

Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

79. Defendant admits that the City of Champaign adopts rules and regulations for the governance of the City of Champaign and the Champaign Police Department. To the extent that the remaining allegations in paragraph 79 of Plaintiff's complaint mischaracterize the law, including the extent to which the City is responsible for adopting a particular rule, Defendant denies the allegations.

80. Defendant admits that the City of Champaign has policy makers. Defendant admits that the City of Champaign has employees who train and supervise Champaign police officers regarding proper arrests, investigations, interactions with the public, and use of force.

81. To the extent that allegations above about alleged unconstitutional actions are incorporated here, Defendant hereby incorporates its response to each of those allegations. Defendant denies the remaining allegations in paragraph 81 of Plaintiff's complaint.

82. Defendant denies the allegations in paragraph 82 of Plaintiff's complaint.

83. Defendant denies the allegations in paragraph 83 of Plaintiff's complaint, including the suggestion that the alleged circumstances in those cases were the same as the alleged circumstances in this case.

84. Defendant denies the allegations in paragraph 84 of Plaintiff's complaint.

85. Defendant admits that the City has settled some lawsuits without admitting any liability in those suits, in order to buy its peace. Defendant denies the remaining allegations in paragraph 85 of Plaintiff's complaint, including the suggestion that the alleged circumstances in those cases were the same as the alleged circumstances in this case.

86. Defendant denies the allegations in paragraph 86 of Plaintiff's complaint, including the suggestion that the alleged circumstances in those cases were the same as the alleged circumstances in this case.

87. Defendant denies the allegations in paragraph 87 of Plaintiff's complaint.

88. Defendant denies the allegations in paragraph 88 of Plaintiff's complaint.

89. Defendant denies the allegations in paragraph 89 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count VI be dismissed with prejudice and with an award of costs to Defendant.

COUNT "XI" [sic] – CLAIM UNDER ILLINOIS LAW
INDEMNIFICATION
DEFENDANT CITY OF CHAMPAIGN

90. Defendant hereby incorporates its response to each of the foregoing paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Court makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

91. Defendant admits the allegations in paragraph 91 of Plaintiff's Complaint.

92. To the extent that the allegations in paragraph 92 of Plaintiff's complaint mischaracterize the law, including the erroneous assertion that a municipality is required to indemnify any judgment beyond a tort judgment for compensatory damages, Defendant denies the allegations.

WHEREFORE, Defendant prays that Count "XI" be dismissed with prejudice and with an award of costs to Defendant.

AFFIRMATIVE DEFENSES

NOW COMES the Defendant JORDAN HAGEMANN (“Defendant”), by and through his undersigned counsel, and asserts that Plaintiff’s complaint should be dismissed, in whole or in part, based on the following affirmative defenses. Defendant asserts these defenses without assuming the burden of proof where it properly lies with Plaintiff.

1. As to Count I, if TJP is charged and convicted for resisting arrest in the state court and the facts underlying the claim of excessive force necessarily imply the invalidity of that conviction, then Count I must be dismissed. *E.g. Helman v. Duhaime*, 742 F.3d 760, 762 (7th Cir. 2014).

2. As to Counts II – V and “V”, if TJP is charged and convicted in state court, and if any of those counts would necessarily imply the invalidity of his conviction, then such counts must be dismissed. *E.g. Wallace v. Kato*, 549 U.S. 384, 393–94, 395 n.5 (2007).

3. To the extent that Plaintiff asserts a *respondeat superior* theory, *see* paragraph 14 of Plaintiff’s complaint, Plaintiff has failed to state a claim for relief to which *respondeat superior* could apply, because “a municipality cannot be held liable under § 1983 on a *respondeat superior* theory.” *See, e.g., Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 691 (1978).

4. Counts I-“V” fail to the extent that a particular Defendant was not personally involved in any constitutional violation.

5. Counts II-IV and “V”-VI fail, because there was actual and arguable probable cause to arrest TJP.

6. As to Counts I – “V”, the Defendant officers are entitled to qualified immunity because:

- a. his conduct did not amount to a violation of TJP's constitutional rights,
 - b. a reasonable officer in his position could have believed his actions did not violate the Constitution in light of clearly established law and the information he possessed at the time, and
 - c. there was arguable probable cause to arrest TJP at all pertinent times.
7. As to Counts I - VI,:
- a. Defendant's conduct was not a proximate cause of TJP's alleged damages,
 - b. TJP's conduct was a proximate cause of his alleged damages, or
 - c. third parties were a proximate cause of TJP's alleged damages, including but not limited to any alleged failure to receive medical care when detained outside of the presence of Defendant, upon information and belief.
8. If the individual Defendant officers are not liable, then Count "XI" fails, because a local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable. *See Fleming v. Livingston Cty., Ill.*, 674 F.3d 874, 881 (7th Cir. 2012) (quoting 745 ILCS 10/2-109).
9. As to Count II, Plaintiff cannot recover any damages under that count beyond the issuance of process or arraignment of TJP. *Wallace v. Kato*, 549 U.S. 384, 390 (2007).
10. To the extent that Plaintiff seeks to recover for "compensatory damages" for "injuries":
- a. Plaintiff has not specifically stated any special damages as required by Fed. R. Civ. P. 9(g), and
 - b. to the extent that Plaintiff claims any continuing injuries, Plaintiff or TJP has failed to mitigate those alleged injuries and damages, upon information and belief.

11. To the extent that Plaintiff seeks duplicative damages, such as damages for the same “injuries” under multiple counts, Plaintiff cannot receive a double recovery.

12. To the extent that Plaintiff seeks punitive damages, Defendant’s conduct was not motivated by evil motive or intent, and Defendant’s conduct did not involve reckless or callous indifference to Plaintiff’s federally protected rights.

13. To the extent that Plaintiff seeks punitive damages, Defendant adopts by reference the defenses, criteria, limitations, standards and constitutional protections mandated or provided with respect to punitive damages in the following cases and their progeny: *BMW v. Gore*, 517 U.S. 559 (1996); *Cooper Indus., Inc. v. Leatherman Tool, Inc.*, 532 U.S. 424 (2001); and *State Farm v. Campbell*, 538 U.S. 408 (2003).

WHEREFORE, Defendant prays that Plaintiff’s complaint be dismissed with prejudice and with an award of costs to Defendant.

DEMAND FOR JURY TRIAL

Defendant demands a jury on all issues triable of right by a jury, and Defendant respectfully requests a jury on all other issues triable by a jury.

Respectfully submitted,

Defendant JORDAN HAGEMANN (“Defendant”)

By his attorneys:

Dated: April 5, 2019

s/ Justin N. Brunner
David E. Krchak (#3127316)
Justin N. Brunner (#6323496)
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casey@tmh-law.com

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2019, I caused the foregoing document:

*DEFENDANT JORDAN HAGEMANN'S
ANSWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND*

to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notice to all attorneys of record.

s/ Justin N. Brunner
Justin N. Brunner (#6323496)
THOMAS, MAMER & HAUGHEY, LLP

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

THERESA PREMO,
as next friend to TJP, a minor,

Plaintiff,

v.

CITY OF CHAMPAIGN POLICE OFFICERS
TIMOTHY ATTEBERRY, DANE KALDAHL,
ARTHUR MILLER, JORDAN HAGEMANN,
JAMES HOBSON, SERGEANT BRIAN ROGERS,
and THE CITY OF CHAMPAIGN, ILLINOIS,
a municipal corporation,

Defendants.

CASE No. 19-cv-1078-CSB-EIL

JURY TRIAL DEMANDED

**DEFENDANT JAMES HOBSON’S
ANSWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND**

NOW COMES Defendant JAMES HOBSON (“Defendant”), by and through his undersigned counsel, and in answer to Plaintiff’s complaint, states as follows. Defendant generally denies the allegations in Plaintiff’s complaint, including any in the unnumbered headings, except for those allegations specifically admitted in this answer.

1. Defendant admits that Defendants Atteberry and Kaldahl arrested TJP on December 28, 2018, and that Defendants Miller, Hagemann, and Hobson were in the vicinity. Defendant denies the remaining allegations in paragraph 1 of Plaintiff’s complaint.

2. Defendant admits that Plaintiff Theresa Premo purports to bring this lawsuit as the next friend of TJP to seek redress against Defendants. Defendant denies the remaining allegations in paragraph 2 of Plaintiff’s complaint.

3. Defendant admits that Plaintiff claims to have causes of action under the Fourth and Fourteenth Amendments, 42 U.S.C. §§ 1983 and 1988, and Illinois state law. Defendant

denies the remaining allegations in paragraph 3 of Plaintiff's complaint, including the suggestion that Plaintiff has valid claims.

4. Defendant admits that Plaintiff invokes jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3), and that Plaintiff invokes supplemental jurisdiction under § 1367(a). Defendant denies the remaining allegations in paragraph 4 of Plaintiff's complaint, including the suggestion that Plaintiff has valid claims.

5. Defendant admits that venue is proper in this district under 28 U.S.C. § 1391(b)(2). To the extent that Plaintiff incorporates allegations about events from other parts of her complaint, Defendant incorporates its responses to those allegations here.

6. Defendant admits that Plaintiff Theresa Premo purports to bring this lawsuit as the next friend of TJP. Defendant admits the remaining allegations in paragraph 6 of Plaintiff's complaint, based upon information and belief.

7. Defendant admits the allegations in paragraph 7 of Plaintiff's complaint, based upon information and belief.

8. Defendant admits the allegations in paragraph 8 of Plaintiff's complaint, except that, when Defendant Atteberry was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

9. Defendant admits the allegations in paragraph 9 of Plaintiff's complaint, except that, when Defendant Kaldahl was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

10. Defendant admits the allegations in paragraph 10 of Plaintiff's complaint, except that, when Defendant Miller was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

11. Defendant admits the allegations in paragraph 11 of Plaintiff's complaint, except that, when Defendant Hagemann was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

12. Defendant admits the allegations in paragraph 12 of Plaintiff's complaint, except that, when Defendant Hobson was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

13. Defendant admits the allegations in paragraph 13 of Plaintiff's complaint, except that, when Defendant Rogers was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

14. Defendant admits that Defendant City of Champaign was the employer of the individual Defendant officers during the relevant time. Defendant admits that Plaintiff purports to sue Defendant City of Champaign directly under a *Monell* claim. Defendant denies the remaining allegations in paragraph 14 of Plaintiff's complaint, including the erroneous assertion that a municipality may be held liable under 42 U.S.C. § 1983 on a *respondeat superior* theory, which Plaintiff does not plead anywhere else below.

15. Defendant admits that TJP was 16 years old as of December 28, 2018 and that he is African-American, based upon information and belief. Defendant denies the remaining allegations in paragraph 15 of Plaintiff's complaint.

16. Defendant admits that a radio call was broadcast at approximately 12:12 a.m. on December 28, 2018 regarding a single shot fired in an area near Hedge Road. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 16 of Plaintiff's Complaint.

17. Defendant admits that he observed a silver Mustang parked in a driveway of 1501 North Willis, Champaign, Illinois. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 17 of Plaintiff's Complaint.

18. Defendant admits the allegations in paragraph 18 of Plaintiff's Complaint, as of the time he observed the vehicle.

19. Defendant admits that he observed at least one individual sitting in the silver Mustang. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 19 of Plaintiff's Complaint.

20. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 20 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. Defendant admits that at least two of the vehicle's occupants were searched. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 20 of Plaintiff's complaint.

21. To the extent that Plaintiff is purporting to quote a recording, the recording speaks for itself, and Defendant denies any allegation in paragraph 21 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Hagemann shined a flashlight on a window where a person was peeking through the blinds and that he ordered the person to come to the door, upon information and belief. Defendant denies the remaining allegations in paragraph 21 of Plaintiff's complaint, upon information and belief.

22. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who resided in the premises and who was related to TJP. To the extent

that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 22 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant admits that a woman appeared and asked Defendant Hagemann something to that effect. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 22 of Plaintiff's complaint.

23. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 23 of Plaintiff's complaint.

24. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 24 of Plaintiff's complaint.

25. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who was related to TJP. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 25 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 25 of Plaintiff's complaint.

26. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 26 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 26 of Plaintiff's complaint.

27. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who was related to TJP. To the extent that Plaintiff is purporting to quote or paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 27 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 27 of Plaintiff's complaint.

28. To the extent that Plaintiff is purporting to quote a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 28 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 28 of Plaintiff's complaint.

29. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 29 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 29 of Plaintiff's complaint.

30. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 30 of Plaintiff's complaint.

31. Defendant denies the allegations in paragraph 31 of Plaintiff's complaint.

32. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who was related to TJP. To the extent that Plaintiff is purporting to quote or paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 32 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant admits that a woman made a comment to that effect. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 32 of Plaintiff's complaint.

33. Defendant admits that Defendant Kaldahl arrived at the location of Defendant Atteberry and TJP. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 33 of Plaintiff's complaint.

34. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 34 of Plaintiff's complaint.

35. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 35 of Plaintiff's complaint.

36. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 36 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Miller aimed his taser device at TJP. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 36 of Plaintiff's complaint.

37. Defendant admits that Defendant Atteberry and Defendant Kaldahl took TJP to the ground. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 37 of Plaintiff's complaint.

38. Defendant denies the allegations in paragraph 38 of Plaintiff's complaint.

39. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 39 of Plaintiff's complaint.

40. Defendant denies the allegations in paragraph 40 of Plaintiff's complaint.

41. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 41 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 41 of Plaintiff's complaint.

42. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 42 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 42 of Plaintiff's complaint.

43. Defendant admits that Defendant Hobson was present on a portion of the property, observed parts of officers' interactions with TJP, observed that TJP was in custody, and did not intervene. Defendant denies the remaining allegations in paragraph 43 of Plaintiff's complaint.

44. Defendant admits the allegations in paragraph 44 of Plaintiff's Complaint.

45. Defendant admits that Defendant Rogers was called to the scene, that he was a sergeant, that he was Defendant Hobson's direct supervisor, and that he had command authority over the remaining officers.

46. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 46 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 46 of Plaintiff's complaint.

47. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 47 of Plaintiff's complaint.

48. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 48 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 48 of Plaintiff's complaint.

49. To the extent that Plaintiff's vague allegations are meant to reference the City of Champaign's police station, Defendant denies the allegations in paragraph 49 of Plaintiff's complaint. To the extent that Plaintiff's vague allegations are meant to reference the Champaign County Juvenile Detention Center that detained TJP, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about whether medical care was provided there.

50. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about events that occurred after the Champaign County Juvenile Detention Center detained TJP, including the duration of detention or the medical attention provided or withheld. Defendant denies the remaining allegations in paragraph 50 of Plaintiff's complaint.

51. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about why TJP's probation was revoked or the consequences of revocation. Defendant denies the remaining allegations in paragraph 51 of Plaintiff's complaint.

COUNT I – FEDERAL CLAIM
42 U.S.C. § 1983 EXCESSIVE FORCE
DEFENDANTS ATTEBERRY, KALDAHL, AND MILLER

52. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

53. Defendant denies the allegations in paragraph 53 of Plaintiff's complaint.

54. Defendant denies the allegations in paragraph 54 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count I be dismissed with prejudice and with an award of costs to Defendant.

COUNT II – FEDERAL CLAIM
42 U.S.C. § 1983 FALSE ARREST
DEFENDANTS ATTEBERRY AND KALDAHL

55. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against

Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

56. Defendant denies the allegations in paragraph 56 of Plaintiff's complaint.

57. Defendant denies the allegations in paragraph 57 of Plaintiff's complaint.

58. Defendant denies the allegations in paragraph 58 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count II be dismissed with prejudice and with an award of costs to Defendant.

COUNT III – FEDERAL CLAIM
42 U.S.C. § 1983 FAILURE TO INTERVENE
DEFENDANTS MILLER, HAGEMANN, AND HOBSON

59. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here.

60. Defendant admits that Defendants Miller, Hagemann, and Hobson were present at the property and that Defendant observed part of the use of force. Defendant denies that he observed all of the use of force or the arrest. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 60 of Plaintiff's complaint.

61. Defendant admits that Defendants Miller, Hagemann, and Hobson did not intervene to prevent the use of force or the arrest. Defendant denies the remaining allegations in paragraph 61 of Plaintiff's complaint.

62. Defendant denies the allegations in paragraph 62 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count III be dismissed with prejudice and with an award of costs to Defendant.

COUNT IV – FEDERAL CLAIM
42 U.S.C. § 1983 SUPERVISORY LIABILITY
DEFENDANTS ROGERS

63. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Court makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Court. To the extent a response is required, Defendant answers as follows.

64. Defendant admits that Defendant Rogers was aware of the arrest and of officer conduct. Defendant denies the remaining allegations in paragraph 64 of Plaintiff's complaint.

65. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 65 of Plaintiff's complaint.

66. Defendant admits the allegations in paragraph 66 of Plaintiff's Complaint.

67. Defendant denies the allegations in paragraph 67 of Plaintiff's complaint.

68. Defendant denies the allegations in paragraph 68 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count IV be dismissed with prejudice and with an award of costs to Defendant.

COUNT V – FEDERAL CLAIM
42 U.S.S. [sic] § 1983 FAILURE TO PROVIDE MEDICAL CARE
DEFENDANTS ATTEBERRY, KALDAHL, MILLER,
HAGEMANN, HOBSON, AND ROGERS

69. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here.

70. Defendant admits that he observed part of the use of force, did not call an ambulance, and did not offer medical care. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 70 of Plaintiff's complaint.

71. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 71 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 71 of Plaintiff's complaint.

72. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about events that occurred after the Champaign County Juvenile Detention Center detained TJP, including the duration of detention or the medical attention provided. Defendant denies the remaining allegations in paragraph 72 of Plaintiff's complaint.

73. Defendant denies the allegations in paragraph 73 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count V be dismissed with prejudice and with an award of costs to Defendant.

COUNT "V" [sic] – FEDERAL CLAIM
42 U.S.S. [sic] § 1985 CIVIL CONSPIRACY
DEFENDANTS ATTEBERRY, KALDAHL, MILLER,
HAGEMANN, HOBSON, AND ROGERS

74. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here.

75. To the extent that allegations above about alleged misconduct are incorporated here, Defendant hereby incorporates its response to each of those allegations. Defendant denies the remaining allegations in paragraph 75 of Plaintiff's complaint.

76. Defendant denies the allegations in paragraph 76 of Plaintiff's complaint.

77. Defendant denies the allegations in paragraph 77 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count “V” be dismissed with prejudice and with an award of costs to Defendant.

COUNT VI – FEDERAL CLAIM
42 U.S.C. § 1983 *MONELL* POLICY CLAIM
DEFENDANT CITY OF CHAMPAIGN

78. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff’s complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

79. Defendant admits that the City of Champaign adopts rules and regulations for the governance of the City of Champaign and the Champaign Police Department. To the extent that the remaining allegations in paragraph 79 of Plaintiff’s complaint mischaracterize the law, including the extent to which the City is responsible for adopting a particular rule, Defendant denies the allegations.

80. Defendant admits that the City of Champaign has policy makers. Defendant admits that the City of Champaign has employees who train and supervise Champaign police officers regarding proper arrests, investigations, interactions with the public, and use of force.

81. To the extent that allegations above about alleged unconstitutional actions are incorporated here, Defendant hereby incorporates its response to each of those allegations. Defendant denies the remaining allegations in paragraph 81 of Plaintiff’s complaint.

82. Defendant denies the allegations in paragraph 82 of Plaintiff’s complaint.

83. Defendant denies the allegations in paragraph 83 of Plaintiff’s complaint, including the suggestion that the alleged circumstances in those cases were the same as the alleged circumstances in this case.

84. Defendant denies the allegations in paragraph 84 of Plaintiff's complaint.

85. Defendant admits that the City has settled some lawsuits without admitting any liability in those suits, in order to buy its peace. Defendant denies the remaining allegations in paragraph 85 of Plaintiff's complaint, including the suggestion that the alleged circumstances in those cases were the same as the alleged circumstances in this case.

86. Defendant denies the allegations in paragraph 86 of Plaintiff's complaint, including the suggestion that the alleged circumstances in those cases were the same as the alleged circumstances in this case.

87. Defendant denies the allegations in paragraph 87 of Plaintiff's complaint.

88. Defendant denies the allegations in paragraph 88 of Plaintiff's complaint.

89. Defendant denies the allegations in paragraph 89 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count VI be dismissed with prejudice and with an award of costs to Defendant.

COUNT "XI" [sic] – CLAIM UNDER ILLINOIS LAW
INDEMNIFICATION
DEFENDANT CITY OF CHAMPAIGN

90. Defendant hereby incorporates its response to each of the foregoing paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

91. Defendant admits the allegations in paragraph 91 of Plaintiff's Complaint.

92. To the extent that the allegations in paragraph 92 of Plaintiff's complaint mischaracterize the law, including the erroneous assertion that a municipality is required to

indemnify any judgment beyond a tort judgment for compensatory damages, Defendant denies the allegations.

WHEREFORE, Defendant prays that Count “XI” be dismissed with prejudice and with an award of costs to Defendant.

AFFIRMATIVE DEFENSES

NOW COMES the Defendant JAMES HOBSON (“Defendant”), by and through his undersigned counsel, and asserts that Plaintiff’s complaint should be dismissed, in whole or in part, based on the following affirmative defenses. Defendant asserts these defenses without assuming the burden of proof where it properly lies with Plaintiff.

1. As to Count I, if TJP is charged and convicted for resisting arrest in the state court and the facts underlying the claim of excessive force necessarily imply the invalidity of that conviction, then Count I must be dismissed. *E.g. Helman v. Duhaime*, 742 F.3d 760, 762 (7th Cir. 2014).

2. As to Counts II – V and “V”, if TJP is charged and convicted in state court, and if any of those counts would necessarily imply the invalidity of his conviction, then such counts must be dismissed. *E.g. Wallace v. Kato*, 549 U.S. 384, 393–94, 395 n.5 (2007).

3. To the extent that Plaintiff asserts a *respondeat superior* theory, *see* paragraph 14 of Plaintiff’s complaint, Plaintiff has failed to state a claim for relief to which *respondeat superior* could apply, because “a municipality cannot be held liable under § 1983 on a *respondeat superior* theory.” *See, e.g., Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 691 (1978).

4. Counts I-“V” fail to the extent that a particular Defendant was not personally involved in any constitutional violation.

5. Counts II-IV and “V”-VI fail, because there was actual and arguable probable cause to arrest TJP.

6. As to Counts I – “V”, the Defendant officers are entitled to qualified immunity because:

- a. his conduct did not amount to a violation of TJP’s constitutional rights,
- b. a reasonable officer in his position could have believed his actions did not violate the Constitution in light of clearly established law and the information he possessed at the time, and
- c. there was arguable probable cause to arrest TJP at all pertinent times.

7. As to Counts I - VI,:

- a. Defendant’s conduct was not a proximate cause of TJP’s alleged damages,
- b. TJP’s conduct was a proximate cause of his alleged damages, or
- c. third parties were a proximate cause of TJP’s alleged damages, including but not limited to any alleged failure to receive medical care when detained outside of the presence of Defendant, upon information and belief.

8. If the individual Defendant officers are not liable, then Count “XI” fails, because a local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable. *See Fleming v. Livingston Cty., Ill.*, 674 F.3d 874, 881 (7th Cir. 2012) (quoting 745 ILCS 10/2–109).

9. As to Count II, Plaintiff cannot recover any damages under that count beyond the issuance of process or arraignment of TJP. *Wallace v. Kato*, 549 U.S. 384, 390 (2007).

10. To the extent that Plaintiff seeks to recover for “compensatory damages” for “injuries”:

a. Plaintiff has not specifically stated any special damages as required by Fed. R. Civ. P. 9(g), and

b. to the extent that Plaintiff claims any continuing injuries, Plaintiff or TJP has failed to mitigate those alleged injuries and damages, upon information and belief.

11. To the extent that Plaintiff seeks duplicative damages, such as damages for the same “injuries” under multiple counts, Plaintiff cannot receive a double recovery.

12. To the extent that Plaintiff seeks punitive damages, Defendant’s conduct was not motivated by evil motive or intent, and Defendant’s conduct did not involve reckless or callous indifference to Plaintiff’s federally protected rights.

13. To the extent that Plaintiff seeks punitive damages, Defendant adopts by reference the defenses, criteria, limitations, standards and constitutional protections mandated or provided with respect to punitive damages in the following cases and their progeny: *BMW v. Gore*, 517 U.S. 559 (1996); *Cooper Indus., Inc. v. Leatherman Tool, Inc.*, 532 U.S. 424 (2001); and *State Farm v. Campbell*, 538 U.S. 408 (2003).

WHEREFORE, Defendant prays that Plaintiff’s complaint be dismissed with prejudice and with an award of costs to Defendant.

DEMAND FOR JURY TRIAL

Defendant demands a jury on all issues triable of right by a jury, and Defendant respectfully requests a jury on all other issues triable by a jury.

Respectfully submitted,

Defendant JAMES HOBSON (“Defendant”)

By his attorneys:

Dated: April 5, 2019

s/ Justin N. Brunner
David E. Krchak (#3127316)
Justin N. Brunner (#6323496)
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CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2019, I caused the foregoing document:

*DEFENDANT JAMES HOBSON’S
ANSWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND*

to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notice to all attorneys of record.

s/ Justin N. Brunner
Justin N. Brunner (#6323496)
THOMAS, MAMER & HAUGHEY, LLP

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

THERESA PREMO,
as next friend to TJP, a minor,

Plaintiff,

v.

CITY OF CHAMPAIGN POLICE OFFICERS
TIMOTHY ATTEBERRY, DANE KALDAHL,
ARTHUR MILLER, JORDAN HAGEMANN,
JAMES HOBSON, SERGEANT BRIAN ROGERS,
and THE CITY OF CHAMPAIGN, ILLINOIS,
a municipal corporation,

Defendants.

CASE No. 19-cv-1078-CSB-EIL

JURY TRIAL DEMANDED

**DEFENDANT DANE KALDAHL'S
ANSWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND**

NOW COMES Defendant DANE KALDAHL ("Defendant"), by and through his undersigned counsel, and in answer to Plaintiff's complaint, states as follows. Defendant generally denies the allegations in Plaintiff's complaint, including any in the unnumbered headings, except for those allegations specifically admitted in this answer.

1. Defendant admits that Defendants Atteberry and Kaldahl arrested TJP on December 28, 2018, and that Defendants Miller, Hagemann, and Hobson were in the vicinity. Defendant denies the remaining allegations in paragraph 1 of Plaintiff's complaint.

2. Defendant admits that Plaintiff Theresa Premo purports to bring this lawsuit as the next friend of TJP to seek redress against Defendants. Defendant denies the remaining allegations in paragraph 2 of Plaintiff's complaint.

3. Defendant admits that Plaintiff claims to have causes of action under the Fourth and Fourteenth Amendments, 42 U.S.C. §§ 1983 and 1988, and Illinois state law. Defendant

denies the remaining allegations in paragraph 3 of Plaintiff's complaint, including the suggestion that Plaintiff has valid claims.

4. Defendant admits that Plaintiff invokes jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3), and that Plaintiff invokes supplemental jurisdiction under § 1367(a). Defendant denies the remaining allegations in paragraph 4 of Plaintiff's complaint, including the suggestion that Plaintiff has valid claims.

5. Defendant admits that venue is proper in this district under 28 U.S.C. § 1391(b)(2). To the extent that Plaintiff incorporates allegations about events from other parts of her complaint, Defendant incorporates its responses to those allegations here.

6. Defendant admits that Plaintiff Theresa Premo purports to bring this lawsuit as the next friend of TJP. Defendant admits the remaining allegations in paragraph 6 of Plaintiff's complaint, based upon information and belief.

7. Defendant admits the allegations in paragraph 7 of Plaintiff's complaint, based upon information and belief.

8. Defendant admits the allegations in paragraph 8 of Plaintiff's complaint, except that, when Defendant Atteberry was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

9. Defendant admits the allegations in paragraph 9 of Plaintiff's complaint, except that, when Defendant Kaldahl was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

10. Defendant admits the allegations in paragraph 10 of Plaintiff's complaint, except that, when Defendant Miller was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

11. Defendant admits the allegations in paragraph 11 of Plaintiff's complaint, except that, when Defendant Hagemann was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

12. Defendant admits the allegations in paragraph 12 of Plaintiff's complaint, except that, when Defendant Hobson was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

13. Defendant admits the allegations in paragraph 13 of Plaintiff's complaint, except that, when Defendant Rogers was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

14. Defendant admits that Defendant City of Champaign was the employer of the individual Defendant officers during the relevant time. Defendant admits that Plaintiff purports to sue Defendant City of Champaign directly under a *Monell* claim. Defendant denies the remaining allegations in paragraph 14 of Plaintiff's complaint, including the erroneous assertion that a municipality may be held liable under 42 U.S.C. § 1983 on a *respondeat superior* theory, which Plaintiff does not plead anywhere else below.

15. Defendant admits that TJP was 16 years old as of December 28, 2018 and that he is African-American, based upon information and belief. Defendant denies the remaining allegations in paragraph 15 of Plaintiff's complaint.

16. Defendant admits that a radio call was broadcast at approximately 12:12 a.m. on December 28, 2018 regarding a single shot fired in an area near Hedge Road. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 16 of Plaintiff's Complaint.

17. Defendant admits that he observed a silver Mustang parked in a driveway of 1501 North Willis, Champaign, Illinois. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 17 of Plaintiff's Complaint.

18. Defendant admits the allegations in paragraph 18 of Plaintiff's Complaint, as of the time he observed the vehicle.

19. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who resided in the premises and who was related to TJP. Defendant admits the remaining allegations in paragraph 19 of Plaintiff's Complaint.

20. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 20 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. Defendant admits that he searched at least one of the occupants. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 20 of Plaintiff's complaint.

21. To the extent that Plaintiff is purporting to quote a recording, the recording speaks for itself, and Defendant denies any allegation in paragraph 21 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 21 of Plaintiff's complaint.

22. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who resided in the premises and who was related to TJP. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 22 of Plaintiff's complaint that

mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 22 of Plaintiff's complaint.

23. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 23 of Plaintiff's complaint.

24. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 24 of Plaintiff's complaint.

25. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who was related to TJP. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 25 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 25 of Plaintiff's complaint.

26. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 26 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 26 of Plaintiff's complaint.

27. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who was related to TJP. To the extent that Plaintiff is purporting to quote or paraphrase a recorded communication, the recording speaks for itself, and Defendant

denies any allegation in paragraph 27 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 27 of Plaintiff's complaint.

28. To the extent that Plaintiff is purporting to quote a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 28 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 28 of Plaintiff's complaint.

29. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 29 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 29 of Plaintiff's complaint.

30. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 30 of Plaintiff's complaint.

31. Defendant denies the allegations in paragraph 31 of Plaintiff's complaint.

32. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who was related to TJP. To the extent that Plaintiff is purporting to quote or paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 32 of Plaintiff's complaint that mischaracterizes the content of

the recording or the manner in which the statements were made. With those caveats, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 32 of Plaintiff's complaint.

33. Defendant admits that Defendant Kaldahl became aware that Defendant Atteberry was in contact with TJP and that Defendant Kaldahl jogged to their location. Defendant denies the remaining allegations in paragraph 33 of Plaintiff's complaint.

34. Defendant admits that Defendant Atteberry had TJP's right arm. Defendant denies the remaining allegations in paragraph 34 of Plaintiff's complaint.

35. Defendant admits that Defendant Kaldahl observed that Defendant Atteberry had TJP's right arm and that Defendant Kaldahl grabbed TJP's left arm. Defendant denies the remaining allegations in paragraph 35 of Plaintiff's complaint.

36. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 36 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Miller aimed his taser device at TJP. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 36 of Plaintiff's complaint.

37. Defendant admits that Defendant Atteberry and Defendant Kaldahl took TJP to the ground and that Defendant Kaldahl put his hand near the base of the back of TJP's neck. Defendant denies the remaining allegations in paragraph 37 of Plaintiff's complaint.

38. Defendant denies the allegations in paragraph 38 of Plaintiff's complaint.

39. Defendant admits that Defendant Kaldahl placed handcuffs on TJP in the vicinity of Defendant Atteberry. Defendant denies the remaining allegations in paragraph 39 of Plaintiff's complaint.

40. Defendant denies the allegations in paragraph 40 of Plaintiff's complaint.

41. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 41 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 41 of Plaintiff's complaint.

42. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 42 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 42 of Plaintiff's complaint.

43. Defendant admits that Defendant Hobson was present on a portion of the property and that he did not intervene. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 43 of Plaintiff's complaint.

44. Defendant admits the allegations in paragraph 44 of Plaintiff's Complaint.

45. Defendant admits that Defendant Rogers was called to the scene, that he was a sergeant, that he was Defendant Hobson's direct supervisor, and that he had command authority over the remaining officers.

46. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 46 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 46 of Plaintiff's complaint.

47. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 47 of Plaintiff's complaint.

48. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 48 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 48 of Plaintiff's complaint.

49. To the extent that Plaintiff's vague allegations are meant to reference the City of Champaign's police station, Defendant denies the allegations in paragraph 49 of Plaintiff's complaint. To the extent that Plaintiff's vague allegations are meant to reference the Champaign County Juvenile Detention Center that detained TJP, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about whether medical care was provided there.

50. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about events that occurred after the Champaign County Juvenile Detention Center detained TJP, including the duration of detention or the medical attention provided or withheld. Defendant denies the remaining allegations in paragraph 50 of Plaintiff's complaint.

51. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about why TJP's probation was revoked or the consequences of revocation. Defendant denies the remaining allegations in paragraph 51 of Plaintiff's complaint.

COUNT I – FEDERAL CLAIM
42 U.S.C. § 1983 EXCESSIVE FORCE
DEFENDANTS ATTEBERRY, KALDAHL, AND MILLER

52. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here.

53. Defendant denies the allegations in paragraph 53 of Plaintiff's complaint.

54. Defendant denies the allegations in paragraph 54 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count I be dismissed with prejudice and with an award of costs to Defendant.

COUNT II – FEDERAL CLAIM
42 U.S.C. § 1983 FALSE ARREST
DEFENDANTS ATTEBERRY AND KALDAHL

55. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here.

56. Defendant denies the allegations in paragraph 56 of Plaintiff's complaint.

57. Defendant denies the allegations in paragraph 57 of Plaintiff's complaint.

58. Defendant denies the allegations in paragraph 58 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count II be dismissed with prejudice and with an award of costs to Defendant.

COUNT III – FEDERAL CLAIM
42 U.S.C. § 1983 FAILURE TO INTERVENE
DEFENDANTS MILLER, HAGEMANN, AND HOBSON

59. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Court makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

60. Defendant admits that Defendants Miller, Hagemann, and Hobson were present at the property. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 60 of Plaintiff's complaint.

61. Defendant admits that Defendants Miller, Hagemann, and Hobson did not intervene to prevent the use of force or the arrest. Defendant denies the remaining allegations in paragraph 61 of Plaintiff's complaint.

62. Defendant denies the allegations in paragraph 62 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count III be dismissed with prejudice and with an award of costs to Defendant.

COUNT IV – FEDERAL CLAIM
42 U.S.C. § 1983 SUPERVISORY LIABILITY
DEFENDANTS ROGERS

63. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Court makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

64. Defendant admits that Defendant Rogers was aware of the arrest and of officer conduct. Defendant denies the remaining allegations in paragraph 64 of Plaintiff's complaint.

65. Defendant admits the allegations in paragraph 65 of Plaintiff's Complaint.

66. Defendant admits the allegations in paragraph 66 of Plaintiff's Complaint.

67. Defendant denies the allegations in paragraph 67 of Plaintiff's complaint.

68. Defendant denies the allegations in paragraph 68 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count IV be dismissed with prejudice and with an award of costs to Defendant.

COUNT V – FEDERAL CLAIM
42 U.S.S. [sic] § 1983 FAILURE TO PROVIDE MEDICAL CARE
DEFENDANTS ATTEBERRY, KALDAHL, MILLER,
HAGEMANN, HOBSON, AND ROGERS

69. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here.

70. Defendant admits that he observed part of the use of force, did not call an ambulance, and did not offer medical care. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 70 of Plaintiff's complaint.

71. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 71 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 71 of Plaintiff's complaint.

72. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about events that occurred after the Champaign County Juvenile

Detention Center detained TJP, including the duration of detention or the medical attention provided. Defendant denies the remaining allegations in paragraph 72 of Plaintiff's complaint.

73. Defendant denies the allegations in paragraph 73 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count V be dismissed with prejudice and with an award of costs to Defendant.

COUNT "V" [sic] – FEDERAL CLAIM
42 U.S.S. [sic] § 1985 CIVIL CONSPIRACY
DEFENDANTS ATTEBERRY, KALDAHL, MILLER,
HAGEMANN, HOBSON, AND ROGERS

74. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here.

75. To the extent that allegations above about alleged misconduct are incorporated here, Defendant hereby incorporates its response to each of those allegations. Defendant denies the remaining allegations in paragraph 75 of Plaintiff's complaint.

76. Defendant denies the allegations in paragraph 76 of Plaintiff's complaint.

77. Defendant denies the allegations in paragraph 77 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count "V" be dismissed with prejudice and with an award of costs to Defendant.

COUNT VI – FEDERAL CLAIM
42 U.S.C. § 1983 MONELL POLICY CLAIM
DEFENDANT CITY OF CHAMPAIGN

78. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

79. Defendant admits that the City of Champaign adopts rules and regulations for the governance of the City of Champaign and the Champaign Police Department. To the extent that the remaining allegations in paragraph 79 of Plaintiff's complaint mischaracterize the law, including the extent to which the City is responsible for adopting a particular rule, Defendant denies the allegations.

80. Defendant admits that the City of Champaign has policy makers. Defendant admits that the City of Champaign has employees who train and supervise Champaign police officers regarding proper arrests, investigations, interactions with the public, and use of force.

81. To the extent that allegations above about alleged unconstitutional actions are incorporated here, Defendant hereby incorporates its response to each of those allegations. Defendant denies the remaining allegations in paragraph 81 of Plaintiff's complaint.

82. Defendant denies the allegations in paragraph 82 of Plaintiff's complaint.

83. Defendant denies the allegations in paragraph 83 of Plaintiff's complaint, including the suggestion that the alleged circumstances in those cases were the same as the alleged circumstances in this case.

84. Defendant denies the allegations in paragraph 84 of Plaintiff's complaint.

85. Defendant admits that the City has settled some lawsuits without admitting any liability in those suits, in order to buy its peace. Defendant denies the remaining allegations in paragraph 85 of Plaintiff's complaint, including the suggestion that the alleged circumstances in those cases were the same as the alleged circumstances in this case.

86. Defendant denies the allegations in paragraph 86 of Plaintiff's complaint, including the suggestion that the alleged circumstances in those cases were the same as the alleged circumstances in this case.

87. Defendant denies the allegations in paragraph 87 of Plaintiff's complaint.

88. Defendant denies the allegations in paragraph 88 of Plaintiff's complaint.

89. Defendant denies the allegations in paragraph 89 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count VI be dismissed with prejudice and with an award of costs to Defendant.

COUNT "XI" [sic] – CLAIM UNDER ILLINOIS LAW
INDEMNIFICATION
DEFENDANT CITY OF CHAMPAIGN

90. Defendant hereby incorporates its response to each of the foregoing paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

91. Defendant admits the allegations in paragraph 91 of Plaintiff's Complaint.

92. To the extent that the allegations in paragraph 92 of Plaintiff's complaint mischaracterize the law, including the erroneous assertion that a municipality is required to indemnify any judgment beyond a tort judgment for compensatory damages, Defendant denies the allegations.

WHEREFORE, Defendant prays that Count "XI" be dismissed with prejudice and with an award of costs to Defendant.

AFFIRMATIVE DEFENSES

NOW COMES the Defendant DANE KALDAHL ("Defendant"), by and through his undersigned counsel, and asserts that Plaintiff's complaint should be dismissed, in whole or in part, based on the following affirmative defenses. Defendant asserts these defenses without assuming the burden of proof where it properly lies with Plaintiff.

1. As to Count I, if TJP is charged and convicted for resisting arrest in the state court and the facts underlying the claim of excessive force necessarily imply the invalidity of that conviction, then Count I must be dismissed. *E.g. Helman v. Duhaime*, 742 F.3d 760, 762 (7th Cir. 2014).

2. As to Counts II – V and “V”, if TJP is charged and convicted in state court, and if any of those counts would necessarily imply the invalidity of his conviction, then such counts must be dismissed. *E.g. Wallace v. Kato*, 549 U.S. 384, 393–94, 395 n.5 (2007).

3. To the extent that Plaintiff asserts a *respondeat superior* theory, *see* paragraph 14 of Plaintiff’s complaint, Plaintiff has failed to state a claim for relief to which *respondeat superior* could apply, because “a municipality cannot be held liable under § 1983 on a *respondeat superior* theory.” *See, e.g., Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 691 (1978).

4. Counts I-“V” fail to the extent that a particular Defendant was not personally involved in any constitutional violation.

5. Counts II-IV and “V”-VI fail, because there was actual and arguable probable cause to arrest TJP.

6. As to Counts I – “V”, the Defendant officers are entitled to qualified immunity because:

- a. his conduct did not amount to a violation of TJP’s constitutional rights,
- b. a reasonable officer in his position could have believed his actions did not violate the Constitution in light of clearly established law and the information he possessed at the time, and
- c. there was arguable probable cause to arrest TJP at all pertinent times.

7. As to Counts I - VI:
 - a. Defendant's conduct was not a proximate cause of TJP's alleged damages,
 - b. TJP's conduct was a proximate cause of his alleged damages, or
 - c. third parties were a proximate cause of TJP's alleged damages, including but not limited to any alleged failure to receive medical care when detained outside of the presence of Defendant, upon information and belief.
8. If the individual Defendant officers are not liable, then Count "XI" fails, because a local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable. *See Fleming v. Livingston Cty., Ill.*, 674 F.3d 874, 881 (7th Cir. 2012) (quoting 745 ILCS 10/2-109).
9. As to Count II, Plaintiff cannot recover any damages under that count beyond the issuance of process or arraignment of TJP. *Wallace v. Kato*, 549 U.S. 384, 390 (2007).
10. To the extent that Plaintiff seeks to recover for "compensatory damages" for "injuries":
 - a. Plaintiff has not specifically stated any special damages as required by Fed. R. Civ. P. 9(g), and
 - b. to the extent that Plaintiff claims any continuing injuries, Plaintiff or TJP has failed to mitigate those alleged injuries and damages, upon information and belief.
11. To the extent that Plaintiff seeks duplicative damages, such as damages for the same "injuries" under multiple counts, Plaintiff cannot receive a double recovery.
12. To the extent that Plaintiff seeks punitive damages, Defendant's conduct was not motivated by evil motive or intent, and Defendant's conduct did not involve reckless or callous indifference to Plaintiff's federally protected rights.

13. To the extent that Plaintiff seeks punitive damages, Defendant adopts by reference the defenses, criteria, limitations, standards and constitutional protections mandated or provided with respect to punitive damages in the following cases and their progeny: *BMW v. Gore*, 517 U.S. 559 (1996); *Cooper Indus., Inc. v. Leatherman Tool, Inc.*, 532 U.S. 424 (2001); and *State Farm v. Campbell*, 538 U.S. 408 (2003).

WHEREFORE, Defendant prays that Plaintiff's complaint be dismissed with prejudice and with an award of costs to Defendant.

DEMAND FOR JURY TRIAL

Defendant demands a jury on all issues triable of right by a jury, and Defendant respectfully requests a jury on all other issues triable by a jury.

Respectfully submitted,

Defendant DANE KALDAHL ("Defendant")

By his attorneys:

Dated: April 5, 2019

s/ Justin N. Brunner
David E. Krchak (#3127316)
Justin N. Brunner (#6323496)
Casey R. Bales (#6329412)
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CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2019, I caused the foregoing document:

*DEFENDANT DANE KALDAHL'S
ANSWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND*

to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notice to all attorneys of record.

s/ Justin N. Brunner
Justin N. Brunner (#6323496)
THOMAS, MAMER & HAUGHEY, LLP

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

THERESA PREMO,
as next friend to TJP, a minor,

Plaintiff,

v.

CITY OF CHAMPAIGN POLICE OFFICERS
TIMOTHY ATTEBERRY, DANE KALDAHL,
ARTHUR MILLER, JORDAN HAGEMANN,
JAMES HOBSON, SERGEANT BRIAN ROGERS,
and THE CITY OF CHAMPAIGN, ILLINOIS,
a municipal corporation,

Defendants.

CASE No. 19-cv-1078-CSB-EIL

JURY TRIAL DEMANDED

**DEFENDANT ARTHUR MILLER’S
ANSWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND**

NOW COMES Defendant ARTHUR MILLER (“Defendant”), by and through his undersigned counsel, and in answer to Plaintiff’s complaint, states as follows. Defendant generally denies the allegations in Plaintiff’s complaint, including any in the unnumbered headings, except for those allegations specifically admitted in this answer.

1. Defendant admits that Defendants Atteberry and Kaldahl arrested TJP on December 28, 2018, and that Defendants Miller, Hagemann, and Hobson were in the vicinity. Defendant denies the remaining allegations in paragraph 1 of Plaintiff’s complaint.

2. Defendant admits that Plaintiff Theresa Premo purports to bring this lawsuit as the next friend of TJP to seek redress against Defendants. Defendant denies the remaining allegations in paragraph 2 of Plaintiff’s complaint.

3. Defendant admits that Plaintiff claims to have causes of action under the Fourth and Fourteenth Amendments, 42 U.S.C. §§ 1983 and 1988, and Illinois state law. Defendant

denies the remaining allegations in paragraph 3 of Plaintiff's complaint, including the suggestion that Plaintiff has valid claims.

4. Defendant admits that Plaintiff invokes jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3), and that Plaintiff invokes supplemental jurisdiction under § 1367(a). Defendant denies the remaining allegations in paragraph 4 of Plaintiff's complaint, including the suggestion that Plaintiff has valid claims.

5. Defendant admits that venue is proper in this district under 28 U.S.C. § 1391(b)(2). To the extent that Plaintiff incorporates allegations about events from other parts of her complaint, Defendant incorporates its responses to those allegations here.

6. Defendant admits that Plaintiff Theresa Premo purports to bring this lawsuit as the next friend of TJP. Defendant admits the remaining allegations in paragraph 6 of Plaintiff's complaint, based upon information and belief.

7. Defendant admits the allegations in paragraph 7 of Plaintiff's complaint, based upon information and belief.

8. Defendant admits the allegations in paragraph 8 of Plaintiff's complaint, except that, when Defendant Atteberry was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

9. Defendant admits the allegations in paragraph 9 of Plaintiff's complaint, except that, when Defendant Kaldahl was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

10. Defendant admits the allegations in paragraph 10 of Plaintiff's complaint, except that, when Defendant Miller was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

11. Defendant admits the allegations in paragraph 11 of Plaintiff's complaint, except that, when Defendant Hagemann was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

12. Defendant admits the allegations in paragraph 12 of Plaintiff's complaint, except that, when Defendant Hobson was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

13. Defendant admits the allegations in paragraph 13 of Plaintiff's complaint, except that, when Defendant Rogers was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

14. Defendant admits that Defendant City of Champaign was the employer of the individual Defendant officers during the relevant time. Defendant admits that Plaintiff purports to sue Defendant City of Champaign directly under a *Monell* claim. Defendant denies the remaining allegations in paragraph 14 of Plaintiff's complaint, including the erroneous assertion that a municipality may be held liable under 42 U.S.C. § 1983 on a *respondeat superior* theory, which Plaintiff does not plead anywhere else below.

15. Defendant admits that TJP was 16 years old as of December 28, 2018 and that he is African-American, based upon information and belief. Defendant denies the remaining allegations in paragraph 15 of Plaintiff's complaint.

16. Defendant admits that a radio call was broadcast at approximately 12:12 a.m. on December 28, 2018 regarding a single shot fired in an area near Hedge Road. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 16 of Plaintiff's Complaint.

17. Defendant admits that he observed a silver Mustang parked in a driveway of 1501 North Willis, Champaign, Illinois. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 17 of Plaintiff's Complaint.

18. Defendant admits the allegations in paragraph 18 of Plaintiff's Complaint, as of the time he observed the vehicle.

19. Defendant admits that he observed three individuals sitting in the silver Mustang. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 19 of Plaintiff's Complaint.

20. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 20 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. Defendant admits that he searched at least one of the occupants. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 20 of Plaintiff's complaint.

21. To the extent that Plaintiff is purporting to quote a recording, the recording speaks for itself, and Defendant denies any allegation in paragraph 21 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 21 of Plaintiff's complaint.

22. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who resided in the premises and who was related to TJP. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 22 of Plaintiff's complaint that

mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 22 of Plaintiff's complaint.

23. Defendant admits that TJP exited the house and stood on the top of the stairs. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 23 of Plaintiff's complaint.

24. Defendant admits the allegations in paragraph 24 of Plaintiff's Complaint.

25. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who was related to TJP. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 25 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant admits that the woman near the door made statements to that effect.

26. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 26 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 26 of Plaintiff's complaint.

27. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who was related to TJP. To the extent that Plaintiff is purporting to quote or paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 27 of Plaintiff's complaint that mischaracterizes the content of

the recording or the manner in which the statements were made. With those caveats, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 27 of Plaintiff's complaint.

28. To the extent that Plaintiff is purporting to quote a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 28 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 28 of Plaintiff's complaint.

29. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 29 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Atteberry reached for TJP. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 29 of Plaintiff's complaint.

30. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 30 of Plaintiff's complaint.

31. Defendant denies the allegations in paragraph 31 of Plaintiff's complaint.

32. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who was related to TJP. To the extent that Plaintiff is purporting to quote or paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 32 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant

admits that a woman made a comment to that effect. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 32 of Plaintiff's complaint.

33. Defendant admits that Defendant Kaldahl arrived at the location of Defendant Atteberry and TJP. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 33 of Plaintiff's complaint.

34. Defendant admits that Defendant Atteberry had TJP's right arm. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 34 of Plaintiff's complaint.

35. Defendant admits that Defendants Atteberry and Kaldahl held TJP's arms. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 35 of Plaintiff's complaint.

36. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 36 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Miller drew his taser device, aimed it at TJP, and ordered him to get on the ground.

37. Defendant admits that Defendant Atteberry and Defendant Kaldahl took TJP to the ground. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 37 of Plaintiff's complaint.

38. Defendant denies the allegations in paragraph 38 of Plaintiff's complaint.

39. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 39 of Plaintiff's complaint.

40. Defendant denies the allegations in paragraph 40 of Plaintiff's complaint.

41. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 41 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 41 of Plaintiff's complaint.

42. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 42 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that one woman was shouting statements to that effect. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 42 of Plaintiff's complaint.

43. Defendant admits that Defendant Hobson did not intervene. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 43 of Plaintiff's complaint.

44. Defendant admits the allegations in paragraph 44 of Plaintiff's Complaint.

45. Defendant admits that Defendant Rogers was called to the scene, that he was a sergeant, that he was Defendant Hobson's direct supervisor, and that he had command authority over the remaining officers.

46. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 46 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the

statements were made. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 46 of Plaintiff's complaint.

47. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 47 of Plaintiff's complaint.

48. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 48 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 48 of Plaintiff's complaint.

49. To the extent that Plaintiff's vague allegations are meant to reference the City of Champaign's police station, Defendant denies the allegations in paragraph 49 of Plaintiff's complaint. To the extent that Plaintiff's vague allegations are meant to reference the Champaign County Juvenile Detention Center that detained TJP, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about whether medical care was provided there.

50. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about events that occurred after the Champaign County Juvenile Detention Center detained TJP, including the duration of detention or the medical attention provided or withheld. Defendant denies the remaining allegations in paragraph 50 of Plaintiff's complaint.

51. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about why TJP's probation was revoked or the consequences of revocation. Defendant denies the remaining allegations in paragraph 51 of Plaintiff's complaint.

COUNT I – FEDERAL CLAIM
42 U.S.C. § 1983 EXCESSIVE FORCE
DEFENDANTS ATTEBERRY, KALDAHL, AND MILLER

52. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here.

53. Defendant denies the allegations in paragraph 53 of Plaintiff's complaint.

54. Defendant denies the allegations in paragraph 54 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count I be dismissed with prejudice and with an award of costs to Defendant.

COUNT II – FEDERAL CLAIM
42 U.S.C. § 1983 FALSE ARREST
DEFENDANTS ATTEBERRY AND KALDAHL

55. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

56. Defendant denies the allegations in paragraph 56 of Plaintiff's complaint.

57. Defendant denies the allegations in paragraph 57 of Plaintiff's complaint.

58. Defendant denies the allegations in paragraph 58 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count II be dismissed with prejudice and with an award of costs to Defendant.

COUNT III – FEDERAL CLAIM
42 U.S.C. § 1983 FAILURE TO INTERVENE
DEFENDANTS MILLER, HAGEMANN, AND HOBSON

59. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here.

60. Defendant admits that Defendants Miller, Hagemann, and Hobson were present at the property and that Defendant observed part of the use of force. Defendant denies that he observed all of the use of force or the arrest. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 60 of Plaintiff's complaint.

61. Defendant admits that Defendants Miller, Hagemann, and Hobson did not intervene to prevent the use of force or the arrest. Defendant denies the remaining allegations in paragraph 61 of Plaintiff's complaint.

62. Defendant denies the allegations in paragraph 62 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count III be dismissed with prejudice and with an award of costs to Defendant.

COUNT IV – FEDERAL CLAIM
42 U.S.C. § 1983 SUPERVISORY LIABILITY
DEFENDANTS ROGERS

63. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

64. Defendant admits that Defendant Rogers was aware of the arrest and of officer conduct. Defendant denies the remaining allegations in paragraph 64 of Plaintiff's complaint.

65. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 65 of Plaintiff's complaint.

66. Defendant admits the allegations in paragraph 66 of Plaintiff's Complaint.

67. Defendant denies the allegations in paragraph 67 of Plaintiff's complaint.

68. Defendant denies the allegations in paragraph 68 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count IV be dismissed with prejudice and with an award of costs to Defendant.

COUNT V – FEDERAL CLAIM
42 U.S.S. [sic] § 1983 FAILURE TO PROVIDE MEDICAL CARE
DEFENDANTS ATTEBERRY, KALDAHL, MILLER,
HAGEMANN, HOBSON, AND ROGERS

69. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here.

70. Defendant admits that he observed part of the use of force, did not call an ambulance, and did not offer medical care. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 70 of Plaintiff's complaint.

71. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 71 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 71 of Plaintiff's complaint.

72. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about events that occurred after the Champaign County Juvenile Detention Center detained TJP, including the duration of detention or the medical attention provided. Defendant denies the remaining allegations in paragraph 72 of Plaintiff's complaint.

73. Defendant denies the allegations in paragraph 73 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count V be dismissed with prejudice and with an award of costs to Defendant.

COUNT “V” [sic] – FEDERAL CLAIM
42 U.S.S. [sic] § 1985 CIVIL CONSPIRACY
DEFENDANTS ATTEBERRY, KALDAHL, MILLER,
HAGEMANN, HOBSON, AND ROGERS

74. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff’s complaint as if fully restated here.

75. To the extent that allegations above about alleged misconduct are incorporated here, Defendant hereby incorporates its response to each of those allegations. Defendant denies the remaining allegations in paragraph 75 of Plaintiff’s complaint.

76. Defendant denies the allegations in paragraph 76 of Plaintiff’s complaint.

77. Defendant denies the allegations in paragraph 77 of Plaintiff’s complaint.

WHEREFORE, Defendant prays that Count “V” be dismissed with prejudice and with an award of costs to Defendant.

COUNT VI – FEDERAL CLAIM
42 U.S.C. § 1983 MONELL POLICY CLAIM
DEFENDANT CITY OF CHAMPAIGN

78. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff’s complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

79. Defendant admits that the City of Champaign adopts rules and regulations for the governance of the City of Champaign and the Champaign Police Department. To the extent that the remaining allegations in paragraph 79 of Plaintiff’s complaint mischaracterize the law,

including the extent to which the City is responsible for adopting a particular rule, Defendant denies the allegations.

80. Defendant admits that the City of Champaign has policy makers. Defendant admits that the City of Champaign has employees who train and supervise Champaign police officers regarding proper arrests, investigations, interactions with the public, and use of force.

81. To the extent that allegations above about alleged unconstitutional actions are incorporated here, Defendant hereby incorporates its response to each of those allegations. Defendant denies the remaining allegations in paragraph 81 of Plaintiff's complaint.

82. Defendant denies the allegations in paragraph 82 of Plaintiff's complaint.

83. Defendant denies the allegations in paragraph 83 of Plaintiff's complaint, including the suggestion that the alleged circumstances in those cases were the same as the alleged circumstances in this case.

84. Defendant denies the allegations in paragraph 84 of Plaintiff's complaint.

85. Defendant admits that the City has settled some lawsuits without admitting any liability in those suits, in order to buy its peace. Defendant denies the remaining allegations in paragraph 85 of Plaintiff's complaint, including the suggestion that the alleged circumstances in those cases were the same as the alleged circumstances in this case.

86. Defendant denies the allegations in paragraph 86 of Plaintiff's complaint, including the suggestion that the alleged circumstances in those cases were the same as the alleged circumstances in this case.

87. Defendant denies the allegations in paragraph 87 of Plaintiff's complaint.

88. Defendant denies the allegations in paragraph 88 of Plaintiff's complaint.

89. Defendant denies the allegations in paragraph 89 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count VI be dismissed with prejudice and with an award of costs to Defendant.

COUNT “XI” [sic] – CLAIM UNDER ILLINOIS LAW
INDEMNIFICATION
DEFENDANT CITY OF CHAMPAIGN

90. Defendant hereby incorporates its response to each of the foregoing paragraphs of Plaintiff’s complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

91. Defendant admits the allegations in paragraph 91 of Plaintiff’s Complaint.

92. To the extent that the allegations in paragraph 92 of Plaintiff’s complaint mischaracterize the law, including the erroneous assertion that a municipality is required to indemnify any judgment beyond a tort judgment for compensatory damages, Defendant denies the allegations.

WHEREFORE, Defendant prays that Count “XI” be dismissed with prejudice and with an award of costs to Defendant.

AFFIRMATIVE DEFENSES

NOW COMES the Defendant ARTHUR MILLER (“Defendant”), by and through his undersigned counsel, and asserts that Plaintiff’s complaint should be dismissed, in whole or in part, based on the following affirmative defenses. Defendant asserts these defenses without assuming the burden of proof where it properly lies with Plaintiff.

1. As to Count I, if TJP is charged and convicted for resisting arrest in the state court and the facts underlying the claim of excessive force necessarily imply the invalidity of that conviction, then Count I must be dismissed. *E.g. Helman v. Duhaime*, 742 F.3d 760, 762 (7th

Cir. 2014).

2. As to Counts II – V and “V”, if TJP is charged and convicted in state court, and if any of those counts would necessarily imply the invalidity of his conviction, then such counts must be dismissed. *E.g. Wallace v. Kato*, 549 U.S. 384, 393–94, 395 n.5 (2007).

3. To the extent that Plaintiff asserts a *respondeat superior* theory, *see* paragraph 14 of Plaintiff’s complaint, Plaintiff has failed to state a claim for relief to which *respondeat superior* could apply, because “a municipality cannot be held liable under § 1983 on a *respondeat superior* theory.” *See, e.g., Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 691 (1978).

4. Counts I-“V” fail to the extent that a particular Defendant was not personally involved in any constitutional violation.

5. Counts II-IV and “V”-VI fail, because there was actual and arguable probable cause to arrest TJP.

6. As to Counts I – “V”, the Defendant officers are entitled to qualified immunity because:

- a. his conduct did not amount to a violation of TJP’s constitutional rights,
- b. a reasonable officer in his position could have believed his actions did not violate the Constitution in light of clearly established law and the information he possessed at the time, and
- c. there was arguable probable cause to arrest TJP at all pertinent times.

7. As to Counts I - VI,:

- a. Defendant’s conduct was not a proximate cause of TJP’s alleged damages,
- b. TJP’s conduct was a proximate cause of his alleged damages, or

- c. third parties were a proximate cause of TJP's alleged damages, including but not limited to any alleged failure to receive medical care when detained outside of the presence of Defendant, upon information and belief.

8. If the individual Defendant officers are not liable, then Count "XI" fails, because a local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable. *See Fleming v. Livingston Cty., Ill.*, 674 F.3d 874, 881 (7th Cir. 2012) (quoting 745 ILCS 10/2–109).

9. As to Count II, Plaintiff cannot recover any damages under that count beyond the issuance of process or arraignment of TJP. *Wallace v. Kato*, 549 U.S. 384, 390 (2007).

10. To the extent that Plaintiff seeks to recover for "compensatory damages" for "injuries":

- a. Plaintiff has not specifically stated any special damages as required by Fed. R. Civ. P. 9(g), and
- b. to the extent that Plaintiff claims any continuing injuries, Plaintiff or TJP has failed to mitigate those alleged injuries and damages, upon information and belief.

11. To the extent that Plaintiff seeks duplicative damages, such as damages for the same "injuries" under multiple counts, Plaintiff cannot receive a double recovery.

12. To the extent that Plaintiff seeks punitive damages, Defendant's conduct was not motivated by evil motive or intent, and Defendant's conduct did not involve reckless or callous indifference to Plaintiff's federally protected rights.

13. To the extent that Plaintiff seeks punitive damages, Defendant adopts by reference the defenses, criteria, limitations, standards and constitutional protections mandated or provided with respect to punitive damages in the following cases and their progeny: *BMW v. Gore*, 517

U.S. 559 (1996); *Cooper Indus., Inc. v. Leatherman Tool, Inc.*, 532 U.S. 424 (2001); and *State Farm v. Campbell*, 538 U.S. 408 (2003).

WHEREFORE, Defendant prays that Plaintiff's complaint be dismissed with prejudice and with an award of costs to Defendant.

DEMAND FOR JURY TRIAL

Defendant demands a jury on all issues triable of right by a jury, and Defendant respectfully requests a jury on all other issues triable by a jury.

Respectfully submitted,

Defendant ARTHUR MILLER ("Defendant")

By his attorneys:

Dated: April 5, 2019

s/ Justin N. Brunner
David E. Krchak (#3127316)
Justin N. Brunner (#6323496)
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CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2019, I caused the foregoing document:

*DEFENDANT ARTHUR MILLER'S
ANSWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND*

to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notice to all attorneys of record.

s/ Justin N. Brunner
Justin N. Brunner (#6323496)
THOMAS, MAMER & HAUGHEY, LLP

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

THERESA PREMO,
as next friend to TJP, a minor,

Plaintiff,

v.

CITY OF CHAMPAIGN POLICE OFFICERS
TIMOTHY ATTEBERRY, DANE KALDAHL,
ARTHUR MILLER, JORDAN HAGEMANN,
JAMES HOBSON, SERGEANT BRIAN ROGERS,
and THE CITY OF CHAMPAIGN, ILLINOIS,
a municipal corporation,

Defendants.

CASE No. 19-cv-1078-CSB-EIL

JURY TRIAL DEMANDED

DEFENDANT BRIAN ROGERS'S
ANSWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND

NOW COMES Defendant BRIAN ROGERS (“Defendant”), by and through his undersigned counsel, and in answer to Plaintiff’s complaint, states as follows. Defendant generally denies the allegations in Plaintiff’s complaint, including any in the unnumbered headings, except for those allegations specifically admitted in this answer.

1. Defendant admits that Defendants Atteberry and Kaldahl arrested TJP on December 28, 2018, and that Defendants Miller, Hagemann, and Hobson were in the vicinity. Defendant denies the remaining allegations in paragraph 1 of Plaintiff’s complaint.

2. Defendant admits that Plaintiff Theresa Premo purports to bring this lawsuit as the next friend of TJP to seek redress against Defendants. Defendant denies the remaining allegations in paragraph 2 of Plaintiff’s complaint.

3. Defendant admits that Plaintiff claims to have causes of action under the Fourth and Fourteenth Amendments, 42 U.S.C. §§ 1983 and 1988, and Illinois state law. Defendant

denies the remaining allegations in paragraph 3 of Plaintiff's complaint, including the suggestion that Plaintiff has valid claims.

4. Defendant admits that Plaintiff invokes jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3), and that Plaintiff invokes supplemental jurisdiction under § 1367(a). Defendant denies the remaining allegations in paragraph 4 of Plaintiff's complaint, including the suggestion that Plaintiff has valid claims.

5. Defendant admits that venue is proper in this district under 28 U.S.C. § 1391(b)(2). To the extent that Plaintiff incorporates allegations about events from other parts of her complaint, Defendant incorporates its responses to those allegations here.

6. Defendant admits that Plaintiff Theresa Premo purports to bring this lawsuit as the next friend of TJP. Defendant admits the remaining allegations in paragraph 6 of Plaintiff's complaint, based upon information and belief.

7. Defendant admits the allegations in paragraph 7 of Plaintiff's complaint, based upon information and belief.

8. Defendant admits the allegations in paragraph 8 of Plaintiff's complaint, except that, when Defendant Atteberry was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

9. Defendant admits the allegations in paragraph 9 of Plaintiff's complaint, except that, when Defendant Kaldahl was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

10. Defendant admits the allegations in paragraph 10 of Plaintiff's complaint, except that, when Defendant Miller was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

11. Defendant admits the allegations in paragraph 11 of Plaintiff's complaint, except that, when Defendant Hagemann was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

12. Defendant admits the allegations in paragraph 12 of Plaintiff's complaint, except that, when Defendant Hobson was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

13. Defendant admits the allegations in paragraph 13 of Plaintiff's complaint, except that, when Defendant Rogers was acting under color of law, he was not necessarily acting under Illinois state "ordinances, regulations, customs, and usages[.]"

14. Defendant admits that Defendant City of Champaign was the employer of the individual Defendant officers during the relevant time. Defendant admits that Plaintiff purports to sue Defendant City of Champaign directly under a *Monell* claim. Defendant denies the remaining allegations in paragraph 14 of Plaintiff's complaint, including the erroneous assertion that a municipality may be held liable under 42 U.S.C. § 1983 on a *respondeat superior* theory, which Plaintiff does not plead anywhere else below.

15. Defendant admits that TJP was 16 years old as of December 28, 2018 and that he is African-American, based upon information and belief. Defendant denies the remaining allegations in paragraph 15 of Plaintiff's complaint.

16. Defendant admits the allegations in paragraph 16 of Plaintiff's Complaint, upon information and belief.

17. Defendant admits the allegations in paragraph 17 of Plaintiff's Complaint, upon information and belief.

18. Defendant admits the allegations in paragraph 18 of Plaintiff's Complaint, as of the time he observed the vehicle.

19. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who resided in the premises and who was related to TJP. Defendant admits the remaining allegations in paragraph 19 of Plaintiff's Complaint, upon information and belief.

20. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 20 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. Defendant admits that Defendant Atteberry walked up to the vehicle, ordered the vehicle's occupants to exit, and searched at least some of the occupants, and that two other occupants were searched, upon information and belief. Defendant denies the remaining allegations in paragraph 20 of Plaintiff's complaint.

21. To the extent that Plaintiff is purporting to quote a recording, the recording speaks for itself, and Defendant denies any allegation in paragraph 21 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Hagemann shined a flashlight on a window where a person was peeking through the blinds and that he ordered the person to come to the door, upon information and belief. Defendant denies the remaining allegations in paragraph 21 of Plaintiff's complaint, upon information and belief.

22. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who resided in the premises and who was related to TJP. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for

itself, and Defendant denies any allegation in paragraph 22 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant admits that a woman appeared and asked Defendant Hagemann something to that effect, that Defendant Hagemann asked to speak with the person who ran into the house, and that the woman responded "yeah," upon information and belief. Defendant denies the remaining allegations in paragraph 22 of Plaintiff's complaint.

23. Defendant admits that TJP exited the house and stood on the top of the stairs. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 23 of Plaintiff's complaint.

24. Defendant admits the allegations in paragraph 24 of Plaintiff's Complaint.

25. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who was related to TJP. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 25 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant admits that the woman near the door made statements to that effect.

26. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 26 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Atteberry made a statement to that effect.

27. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who was related to TJP. To the extent that Plaintiff is purporting to

quote or paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 27 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant admits that the woman near the door made statements to that effect.

28. To the extent that Plaintiff is purporting to quote a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 28 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Atteberry made a statement to that effect.

29. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 29 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Atteberry reached for TJP and made a statement to that effect.

30. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 30 of Plaintiff's complaint.

31. Defendant denies the allegations in paragraph 31 of Plaintiff's complaint.

32. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations of who was related to TJP. To the extent that Plaintiff is purporting to quote or paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 32 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With those caveats, Defendant admits that Defendant Hagemann did not try to prevent Defendant Atteberry from reaching for

TJP, that Defendant Hagemann blocked a woman as she attempted to reach Defendant Atteberry, and that she made a comment to that effect. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 32 of Plaintiff's complaint.

33. Defendant admits that Defendant Kaldahl became aware that Defendant Atteberry was in contact with TJP and that Defendant Kaldahl jogged to their location. Defendant denies the remaining allegations in paragraph 33 of Plaintiff's complaint.

34. Defendant admits that Defendant Atteberry had TJP's right arm. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 34 of Plaintiff's complaint.

35. Defendant admits that Defendant Kaldahl observed that Defendant Atteberry had TJP's right arm and that Defendant Kaldahl grabbed TJP's left arm. Defendant denies the remaining allegations in paragraph 35 of Plaintiff's complaint.

36. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 36 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Miller drew his taser device, aimed it at TJP, and ordered him to get on the ground.

37. Defendant admits that Defendant Atteberry and Defendant Kaldahl took TJP to the ground and that Defendant Kaldahl put his hand near the base of the back of TJP's neck. Defendant denies the remaining allegations in paragraph 37 of Plaintiff's complaint.

38. Defendant denies the allegations in paragraph 38 of Plaintiff's complaint.

39. Defendant admits that Defendant Kaldahl placed handcuffs on TJP in the vicinity of Defendant Atteberry. Defendant admits that, at a later point in time, one handcuff was too tight.

40. Defendant denies the allegations in paragraph 40 of Plaintiff's complaint.

41. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 41 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant denies the remaining allegations in paragraph 41 of Plaintiff's complaint.

42. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 42 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that one woman was shouting statements to that effect as she repeatedly attempted to approach officers and, after she ignored repeated warnings to back up, Defendant Hagemann, believing that she was trying to get into a physical altercation with officers, made a statement to the effect that he would deploy pepper-spray if she did not stay back. Defendant denies the remaining allegations in paragraph 42 of Plaintiff's complaint.

43. Defendant admits that Defendant Hobson was present on a portion of the property and that he did not intervene. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 43 of Plaintiff's complaint.

44. Defendant admits the allegations in paragraph 44 of Plaintiff's Complaint.

45. Defendant admits that Defendant Rogers was called to the scene, that he was a sergeant, that he was Defendant Hobson's direct supervisor, and that he had command authority over the remaining officers.

46. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 46 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that civilians made statements to Defendant Rogers about their opinions and admits that Defendant Rogers approved of the use of force and arrest based on what he was told. Defendant denies the remaining allegations in paragraph 46 of Plaintiff's complaint.

47. Defendant admits that TJP made a statement to that effect and that Defendant Rogers loosened the left handcuff. Defendant denies the remaining allegations in paragraph 47 of Plaintiff's complaint.

48. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 48 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Rogers did not call for an ambulance or personally provide medical attention, though he did ask TJP if he was injured. Defendant denies the remaining allegations in paragraph 48 of Plaintiff's complaint.

49. To the extent that Plaintiff's vague allegations are meant to reference the City of Champaign's police station, Defendant denies the allegations in paragraph 49 of Plaintiff's complaint. To the extent that Plaintiff's vague allegations are meant to reference the Champaign County Juvenile Detention Center that detained TJP, Defendant lacks knowledge or information

sufficient to form a belief about the truth of the allegations about whether medical care was provided there.

50. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about events that occurred after the Champaign County Juvenile Detention Center detained TJP, including the duration of detention or the medical attention provided or withheld. Defendant denies the remaining allegations in paragraph 50 of Plaintiff's complaint.

51. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about why TJP's probation was revoked or the consequences of revocation. Defendant denies the remaining allegations in paragraph 51 of Plaintiff's complaint.

COUNT I – FEDERAL CLAIM
42 U.S.C. § 1983 EXCESSIVE FORCE
DEFENDANTS ATTEBERRY, KALDAHL, AND MILLER

52. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

53. Defendant denies the allegations in paragraph 53 of Plaintiff's complaint.

54. Defendant denies the allegations in paragraph 54 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count I be dismissed with prejudice and with an award of costs to Defendant.

COUNT II – FEDERAL CLAIM
42 U.S.C. § 1983 FALSE ARREST
DEFENDANTS ATTEBERRY AND KALDAHL

55. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

56. Defendant denies the allegations in paragraph 56 of Plaintiff's complaint.

57. Defendant denies the allegations in paragraph 57 of Plaintiff's complaint.

58. Defendant denies the allegations in paragraph 58 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count II be dismissed with prejudice and with an award of costs to Defendant.

COUNT III – FEDERAL CLAIM
42 U.S.C. § 1983 FAILURE TO INTERVENE
DEFENDANTS MILLER, HAGEMANN, AND HOBSON

59. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

60. Defendant admits that Defendants Miller, Hagemann, and Hobson were present at the property. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 60 of Plaintiff's complaint.

61. Defendant admits that Defendants Miller, Hagemann, and Hobson did not intervene to prevent the use of force or the arrest. Defendant denies the remaining allegations in paragraph 61 of Plaintiff's complaint.

62. Defendant denies the allegations in paragraph 62 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count III be dismissed with prejudice and with an award of costs to Defendant.

COUNT IV – FEDERAL CLAIM
42 U.S.C. § 1983 SUPERVISORY LIABILITY
DEFENDANTS ROGERS

63. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here.

64. Defendant admits that Defendant Rogers was aware of the arrest and of officer conduct. Defendant denies the remaining allegations in paragraph 64 of Plaintiff's complaint.

65. Defendant admits the allegations in paragraph 65 of Plaintiff's Complaint.

66. Defendant admits the allegations in paragraph 66 of Plaintiff's Complaint.

67. Defendant denies the allegations in paragraph 67 of Plaintiff's complaint.

68. Defendant denies the allegations in paragraph 68 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count IV be dismissed with prejudice and with an award of costs to Defendant.

COUNT V – FEDERAL CLAIM
42 U.S.S. [sic] § 1983 FAILURE TO PROVIDE MEDICAL CARE
DEFENDANTS ATTEBERRY, KALDAHL, MILLER,
HAGEMANN, HOBSON, AND ROGERS

69. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here.

70. Defendant admits that Defendants Atteberry, Kaldahl, Miller, Hagemann, and Hobson each observed part of the use of force and did not call an ambulance. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about

whether they offered medical care. Defendant denies the remaining allegations in paragraph 70 of Plaintiff's complaint.

71. To the extent that Plaintiff is purporting to paraphrase a recorded communication, the recording speaks for itself, and Defendant denies any allegation in paragraph 71 of Plaintiff's complaint that mischaracterizes the content of the recording or the manner in which the statements were made. With that caveat, Defendant admits that Defendant Rogers did not call for an ambulance or offer medical care. Defendant denies the remaining allegations in paragraph 71 of Plaintiff's complaint.

72. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations about events that occurred after the Champaign County Juvenile Detention Center detained TJP, including the duration of detention or the medical attention provided. Defendant denies the remaining allegations in paragraph 72 of Plaintiff's complaint.

73. Defendant denies the allegations in paragraph 73 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count V be dismissed with prejudice and with an award of costs to Defendant.

COUNT "V" [sic] – FEDERAL CLAIM
42 U.S.S. [sic] § 1985 CIVIL CONSPIRACY
DEFENDANTS ATTEBERRY, KALDAHL, MILLER,
HAGEMANN, HOBSON, AND ROGERS

74. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here.

75. To the extent that allegations above about alleged misconduct are incorporated here, Defendant hereby incorporates its response to each of those allegations. Defendant denies the remaining allegations in paragraph 75 of Plaintiff's complaint.

76. Defendant denies the allegations in paragraph 76 of Plaintiff's complaint.

77. Defendant denies the allegations in paragraph 77 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count "V" be dismissed with prejudice and with an award of costs to Defendant.

COUNT VI – FEDERAL CLAIM
42 U.S.C. § 1983 MONELL POLICY CLAIM
DEFENDANT CITY OF CHAMPAIGN

78. Defendant hereby incorporates its response to each of the paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

79. Defendant admits that the City of Champaign adopts rules and regulations for the governance of the City of Champaign and the Champaign Police Department. To the extent that the remaining allegations in paragraph 79 of Plaintiff's complaint mischaracterize the law, including the extent to which the City is responsible for adopting a particular rule, Defendant denies the allegations.

80. Defendant admits that the City of Champaign has policy makers. Defendant admits that the City of Champaign has employees who train and supervise Champaign police officers regarding proper arrests, investigations, interactions with the public, and use of force.

81. To the extent that allegations above about alleged unconstitutional actions are incorporated here, Defendant hereby incorporates its response to each of those allegations. Defendant denies the remaining allegations in paragraph 81 of Plaintiff's complaint.

82. Defendant denies the allegations in paragraph 82 of Plaintiff's complaint.

83. Defendant denies the allegations in paragraph 83 of Plaintiff's complaint, including the suggestion that the alleged circumstances in those cases were the same as the alleged circumstances in this case.

84. Defendant denies the allegations in paragraph 84 of Plaintiff's complaint.

85. Defendant admits that the City has settled some lawsuits without admitting any liability in those suits, in order to buy its peace. Defendant denies the remaining allegations in paragraph 85 of Plaintiff's complaint, including the suggestion that the alleged circumstances in those cases were the same as the alleged circumstances in this case.

86. Defendant denies the allegations in paragraph 86 of Plaintiff's complaint, including the suggestion that the alleged circumstances in those cases were the same as the alleged circumstances in this case.

87. Defendant denies the allegations in paragraph 87 of Plaintiff's complaint.

88. Defendant denies the allegations in paragraph 88 of Plaintiff's complaint.

89. Defendant denies the allegations in paragraph 89 of Plaintiff's complaint.

WHEREFORE, Defendant prays that Count VI be dismissed with prejudice and with an award of costs to Defendant.

COUNT "XI" [sic] – CLAIM UNDER ILLINOIS LAW
INDEMNIFICATION
DEFENDANT CITY OF CHAMPAIGN

90. Defendant hereby incorporates its response to each of the foregoing paragraphs of Plaintiff's complaint as if fully restated here. Beyond those allegations, this Count makes no claim against Defendant; hence, Defendant has no obligation to respond to the allegations contained in this Count. To the extent a response is required, Defendant answers as follows.

91. Defendant admits the allegations in paragraph 91 of Plaintiff's Complaint.

92. To the extent that the allegations in paragraph 92 of Plaintiff's complaint mischaracterize the law, including the erroneous assertion that a municipality is required to indemnify any judgment beyond a tort judgment for compensatory damages, Defendant denies the allegations.

WHEREFORE, Defendant prays that Count "XI" be dismissed with prejudice and with an award of costs to Defendant.

AFFIRMATIVE DEFENSES

NOW COMES the Defendant BRIAN ROGERS ("Defendant"), by and through his undersigned counsel, and asserts that Plaintiff's complaint should be dismissed, in whole or in part, based on the following affirmative defenses. Defendant asserts these defenses without assuming the burden of proof where it properly lies with Plaintiff.

1. As to Count I, if TJP is charged and convicted for resisting arrest in the state court and the facts underlying the claim of excessive force necessarily imply the invalidity of that conviction, then Count I must be dismissed. *E.g. Helman v. Duhaime*, 742 F.3d 760, 762 (7th Cir. 2014).

2. As to Counts II – V and "V", if TJP is charged and convicted in state court, and if any of those counts would necessarily imply the invalidity of his conviction, then such counts must be dismissed. *E.g. Wallace v. Kato*, 549 U.S. 384, 393–94, 395 n.5 (2007).

3. To the extent that Plaintiff asserts a *respondeat superior* theory, *see* paragraph 14 of Plaintiff's complaint, Plaintiff has failed to state a claim for relief to which *respondeat superior* could apply, because "a municipality cannot be held liable under § 1983 on a *respondeat superior* theory." *See, e.g., Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 691 (1978).

4. Counts I-“V” fail to the extent that a particular Defendant was not personally involved in any constitutional violation.

5. Counts II-IV and “V”-VI fail, because there was actual and arguable probable cause to arrest TJP.

6. As to Counts I – “V”, the Defendant officers are entitled to qualified immunity because:

- a. his conduct did not amount to a violation of TJP’s constitutional rights,
- b. a reasonable officer in his position could have believed his actions did not violate the Constitution in light of clearly established law and the information he possessed at the time, and
- c. there was arguable probable cause to arrest TJP at all pertinent times.

7. As to Counts I - VI,:

- a. Defendant’s conduct was not a proximate cause of TJP’s alleged damages,
- b. TJP’s conduct was a proximate cause of his alleged damages, or
- c. third parties were a proximate cause of TJP’s alleged damages, including but not limited to any alleged failure to receive medical care when detained outside of the presence of Defendant, upon information and belief.

8. If the individual Defendant officers are not liable, then Count “XI” fails, because a local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable. *See Fleming v. Livingston Cty., Ill.*, 674 F.3d 874, 881 (7th Cir. 2012) (quoting 745 ILCS 10/2–109).

9. As to Count II, Plaintiff cannot recover any damages under that count beyond the issuance of process or arraignment of TJP. *Wallace v. Kato*, 549 U.S. 384, 390 (2007).

10. To the extent that Plaintiff seeks to recover for “compensatory damages” for “injuries”:
- a. Plaintiff has not specifically stated any special damages as required by Fed. R. Civ. P. 9(g), and
 - b. to the extent that Plaintiff claims any continuing injuries, Plaintiff or TJP has failed to mitigate those alleged injuries and damages, upon information and belief.

11. To the extent that Plaintiff seeks duplicative damages, such as damages for the same “injuries” under multiple counts, Plaintiff cannot receive a double recovery.

12. To the extent that Plaintiff seeks punitive damages, Defendant’s conduct was not motivated by evil motive or intent, and Defendant’s conduct did not involve reckless or callous indifference to Plaintiff’s federally protected rights.

13. To the extent that Plaintiff seeks punitive damages, Defendant adopts by reference the defenses, criteria, limitations, standards and constitutional protections mandated or provided with respect to punitive damages in the following cases and their progeny: *BMW v. Gore*, 517 U.S. 559 (1996); *Cooper Indus., Inc. v. Leatherman Tool, Inc.*, 532 U.S. 424 (2001); and *State Farm v. Campbell*, 538 U.S. 408 (2003).

WHEREFORE, Defendant prays that Plaintiff’s complaint be dismissed with prejudice and with an award of costs to Defendant.

DEMAND FOR JURY TRIAL

Defendant demands a jury on all issues triable of right by a jury, and Defendant respectfully requests a jury on all other issues triable by a jury.

Respectfully submitted,

Defendant BRIAN ROGERS (“Defendant”)

By his attorneys:

Dated: April 5, 2019

s/ Justin N. Brunne
David E. Krchak (#3127316)
Justin N. Brunner (#6323496)
Casey R. Bales (#6329412)
THOMAS, MAMER & HAUGHEY, LLP
30 E. Main St., Ste. 500; P.O. Box 560
Champaign, IL 61824-0560
Tel.: (217) 351-1500; Fax: (217) 351-2169
krchak@tmh-law.com; justin@tmh-law.com;
casey@tmh-law.com

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2019, I caused the foregoing document:

*DEFENDANT BRIAN ROGERS’
ANSWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND*

to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notice to all attorneys of record.

s/ Justin N. Brunner
Justin N. Brunner (#6323496)
THOMAS, MAMER & HAUGHEY, LLP

UNITED STATES DISTRICT COURT

for the

Central District of Illinois

RECEIVED

MAR 15 2019

City Clerk's Office
City of Champaign

Theresa Premo, as next friend to TJP, a minor)

Plaintiff(s)

v.

Civil Action No. 19-1078

City of Champaign Police Officers Timothy Atteberry,
Dane Kaldahl, Arthur Miller, Jordan Hagemann,
James Hobson, Sergeant Brian Rogers, and the City
of Champaign, Illinois, a municipal corporation)

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) City of Champaign
City Clerk
102 N. Nell St.
Champaign, IL
61820

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Andrew Hale
Jordan Marsh
Shawn Barnett
HALE & MONICO LLC
53 West Jackson, Suite 330
Chicago, IL 60604

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Signature of Clerk or Deputy Clerk

Date: 03/08/2019

Civil Action No. 19-1078

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

RECEIVED

MAR 15 2019

**City Clerk's Office
City of Champaign**

Theresa Premo, as next friend to TJP, a minor)
)
 Plaintiff,)
)
 v.)
)
 City of Champaign Police Officers Timothy Atteberry,)
 Dane Kaldahl, Arthur Miller, Jordan Hagemann,)
 James Hobson, Sergeant Brian Rogers, and the City)
 of Champaign, Illinois, a municipal corporation,)
)
 Defendants.)

No.

COMPLAINT AT LAW

Plaintiff THERESA PREMOM, as next friend for TJP, a minor, by and through her attorneys, complaining of Defendants Timothy Atteberry, Dane Kaldahl, Artur Miller, Jordan Hagemann, James Hobson, Brian Rogers, and the City of Chicago, Illinois, and states the following:

INTRODUCTION

1. On December 28, 2018, members of the Champaign Police Department stood around and watched as Defendants Atteberry and Kaldahl used excessive force to arrest TJP; an arrest that was in no way supported by probable cause or justified by any stretch of the imagination. On the contrary, Defendants Atteberry and Kaldahl arrested TJP for the simple reason that TJP exerted his constitutional right to decline to talk to the police.
2. Plaintiff Theresa Premo brings this lawsuit against Defendants as the next friend of TJP and seeks redress for the violations of TJP's rights and to bring to light the

Champaign Police Department's pattern and practice of discriminating against minorities.

JURSDICTION AND VENUE

3. This action arises under the Constitution of the United States, particularly the Fourth and Fourteenth Amendments to the Constitution of the United States, under the laws of the United States, particularly the Civil Rights Act, Title 42 of the United States Code, Sections 1983 and 1988, and under the laws of the State of Illinois.

4. The jurisdiction of this Court is invoked under the provisions of Title 28 of the United States Code, Sections 1331 and 1343. Plaintiff also invokes the supplemental jurisdiction of this Court pursuant to Title 28 of the United States Code, Section 1367.

5. Venue is proper in the United States District Court for the Central District of Illinois, Urbana division, under Title 28 of the United States Code, Section 1391(b)(2), as the events complained of occurred within this district.

PARTIES

6. At all times relevant herein, Plaintiff THERESA was a resident of the City of Champaign, Illinois. Plaintiff Premo is the mother of TJP and brings this lawsuit as his next friend.

7. TJP is a minor and was 16 years old on December 28, 2018.

8. Defendant TIMOTHY ATTEBERRY was, at all times relevant, a sworn officer employed by Defendant CITY OF CHAMPAIGN as a member of the Champaign Police Department. During the relevant time, Defendant Atteberry was acting within the scope of his agency, service, and/or employment with the City of Champaign, and was acting under color of the statutes, ordinances, regulations, customs, and usages of the State of Illinois. Defendant Atteberry is sued in his individual capacity.

9. Defendant DANE KALDAHL was, at all times relevant, a sworn officer employed by Defendant CITY OF CHAMPAIGN as a member of the Champaign Police Department. During the relevant time, Defendant Kaldahl was acting within the scope of his agency, service, and/or employment with the City of Champaign, and was acting under color of the statutes, ordinances, regulations, customs, and usages of the State of Illinois. Defendant Kaldahl is sued in his individual capacity.

10. Defendant ARTHUR MILLER was, at all times relevant, a sworn officer employed by Defendant CITY OF CHAMPAIGN as a member of the Champaign Police Department. During the relevant time, Defendant Miller was acting within the scope of his agency, service, and/or employment with the City of Champaign, and was acting under color of the statutes, ordinances, regulations, customs, and usages of the State of Illinois. Defendant Miller is sued in his individual capacity.

11. Defendant JORDAN HAGEMANN was, at all times relevant, a sworn officer employed by Defendant CITY OF CHAMPAIGN as a member of the Champaign Police Department. During the relevant time, Defendant Hagemann was acting within the scope of his agency, service, and/or employment with the City of Champaign, and was acting under color of the statutes, ordinances, regulations, customs, and usages of the State of Illinois. Defendant Hagemann is sued in his individual capacity.

12. Defendant JAMES HOBSON was, at all times relevant, a sworn officer employed by Defendant CITY OF CHAMPAIGN as a member of the Champaign Police Department. During the relevant time, Defendant Hobson was acting within the scope of his agency, service, and/or employment with the City of Champaign, and was acting under color of the statutes, ordinances, regulations, customs, and usages of the State of Illinois. Defendant Hobson is sued in his individual capacity.

13. Defendant BRIAN ROGERS was, at all times relevant, a sworn officer employed by Defendant CITY OF CHAMPAIGN as a member of the Champaign Police Department. During the relevant time, Defendant Rogers was acting within the scope of his agency, service, and/or employment with the City of Champaign, and was acting under color of the statutes, ordinances, regulations, customs, and usages of the State of Illinois. Defendant Rogers is sued in his individual capacity.

14. Defendant CITY OF CHAMPAIGN was, during the relevant time, the employer of Defendants Atteberry, Kaldahl, Miller, Hagemann, Hobson, and Rogers. Defendant City of Champaign is named both pursuant to the legal theory of Respondeat Superior and directly as Defendant City of Champaign is responsible for the policies, practices, and customs of the Champaign Police Department.

FACTS

15. TJP is a 16 year-old African-American kid who stands five foot three inches tall and weighs 110 pounds.

16. In the early morning hours of December 28, 2018, Defendant Atteberry was on patrol when he heard of a radio call of a single shot being fired in an area east of Hedge Road. This call was broadcasted at approximately 12:12 AM.

17. Defendant Atteberry observed a silver Mustang parked in a driveway of 1501 North Willis, Champaign, Illinois.

18. The silver Mustang was not violating any traffic laws.

19. Three individuals were sitting in the silver Mustang. A fourth, TJP, had just walked from the Mustang into a house, which was the home of his relative.

20. Defendant Atteberry walked up to the silver Mustang and forced all of the occupants out of the vehicle. Defendant Atteberry then searched the driver of the vehicle. The two other occupants of the silver Mustang were also searched.

21. Defendant Hagemann started shining a flashlight into the house TJP had walked into. He ordered any occupants of the house to “come to the door.”

22. TJP’s relative appeared and asked why Defendant Hagemann was shining a light into her residence. Defendant Hagemann asked if they could speak to TJP.

23. TJP exited the house and stood on the top of the stairs and spoke to Defendant Hagemann.

24. Defendant Atteberry approached TJP, who was still at the top of the stairs.

25. TJP’s relative informed the officers that TJP was juvenile. TJP’s relative offered to call TJP’s mother.

26. Defendant Atteberry stated that he would call TJP’s mother.

27. TJP’s relative stated that TJP would not speak to the officers because he was nervous around police officers. TJP’s relative further stated that “[w]e don’t play with the police.”

28. Defendant Atteberry responded “[t]he police don’t play either.”

29. Defendant Atteberry then grabbed at TJP and stated that he had to step down from the porch.

30. At no time did Defendant Atteberry state that TJP was under arrest.

31. There was no basis – either probable cause or even reasonable suspicion – to detain TJP for any offense.

32. Defendant Hagemann observed Defendant Atteberry grab at TJP. Defendant Hagemann made no effort to prevent Defendant Atteberry from grabbing TJP. On the

contrary, Defendant Hagemann blocked TJP's relative and pushed her away from TJP and then physically restrained her when TJP's relative screamed for someone in the house to "get a camera."

33. Defendant Kaldahl became aware that Defendant Atteberry was grabbing TJP on the porch. Defendant Kaldahl then ran over to Defendant Atteberry and TJP.

34. Defendant Atteberry had TJP's right arm and was forcing TJP to the ground.

35. Defendant Kaldahl observed that Defendant Atteberry had TJP's right arm. Defendant Kaldahl grabbed TJP's left arm and twisted it behind his back to force TJP to the ground.

36. Defendant Miller pulled his taser device, pointed the device at TJP, and ordered TJP onto the ground.

37. Defendant Atteberry and Defendant Kaldahl forced TJP to the ground. Defendant Kaldahl put his hand on TJP's neck and pushed him into the mud.

38. The force used by Defendants Atteberry, Kaldahl, and Miller was unreasonable based on the totality of the circumstances.

39. Defendants Atteberry and Kaldahl then placed handcuffs on TJP. Defendants Atteberry and Kaldahl tightened the handcuffs too tight.

40. There was no probable cause for TJP to be detained.

41. Defendant Hagemann ordered the occupants of the house to stop recording the actions of the police.

42. When civilians told Defendants to get off the property and that they were acting in an unlawful manner by detaining TJP, Defendant Hagemann stated that he would pepper-spray them if they did not get back.

43. Defendant Hobson was physically present and observed the use of force on TJP and that TJP was placed into custody without probable cause. Defendant Hobson did not intervene to prevent the use of force or the arrest.

44. TJP was placed into a police vehicle.

45. Defendant Rogers was called to respond to the scene; Defendant Rogers was a sergeant and a supervisor for Defendants Atteberry, Kaldahl, Miller, Hagemann, and Hobson.

46. Defendant Rogers was told by civilians that the force used by Defendants Atteberry and Kaldahl was unreasonable and that there was no lawful basis for TJP to have been arrested. Defendant Rogers informed the civilians that the actions of the other officers was justified and that TJP was going to remain under arrest. By doing so, Defendant Rogers approved and condoned the actions of Defendants Atteberry, Kaldahl, Miller, Hagemann, and Hobson.

47. TJP informed Defendant Rogers that the handcuffs were too tight. Defendant Rogers loosened the handcuffs.

48. TJP informed Defendant Rogers that he was injured from the actions of Defendants Atteberry and Kaldahl. Defendant Rogers did not provide TJP any medical attention and did not call for an ambulance.

49. TJP was taken to the police station. At the police station, TJP was not provided with any medical care.

50. TJP was not released from custody until over 10 hours after he was placed under arrest by Defendants Atteberry and Kaldahl. At no point during his time in custody was TJP provided medical attention following the use of force by Defendants Atteberry and Kaldahl.

51. As a result of TJP's false arrest by Defendants Atteberry and Kaldahl, TJP's probation was revoked and he was forced to spend ten (10) days in a juvenile correctional facility. The false arrest by Defendants Atteberry and Kaldahl was the proximate cause of TJP's ten (10) days in the juvenile facility.

COUNT I – FEDERAL CLAIM
42 U.S.C. § 1983 EXCESSIVE FORCE
DEFENDANTS ATTEBERRY, KALDAHL, AND MILLER

52. Each paragraph of this Complaint is incorporated as if restated fully herein.

53. The actions of Defendants Atteberry, Kaldahl, and Miller constituted unreasonable, unjustified, and excessive force against TJP, violating his rights under the Fourth Amendment to the United States Constitution, and 42 U.S.C. Section 1983.

54. As a result of the unreasonable use of force, TJP suffered injuries.

WHEREFORE, Plaintiff THERESA PREMO, as next friend for TJP, a minor, prays for judgment against Defendants Atteberry, Kaldahl, and Miller, and an award of compensatory damages, punitive damages, attorneys' fees, costs, and for any additional relief that is just and proper.

COUNT II – FEDERAL CLAIM
42 U.S.C. § 1983 FALSE ARREST
DEFENDANTS ATTEBERRY AND KALDAHL

55. Each paragraph of this Complaint is incorporated as if restated fully herein.

56. Defendants Atteberry and Kaldahl placed TJP under arrest without probable cause.

57. The actions of Defendant Atteberry and Kaldahl constituted a false arrest against TJP, violating his rights under the Fourth Amendment to the United States Constitution, and 42 U.S.C., Section 1983.

58. As a result of the false arrest, TJP suffered injuries.

WHEREFORE, Plaintiff THERESA PREMO, as next friend for TJP, a minor, prays for judgment against Defendants Atteberry and Kaldahl, and an award of compensatory damages, punitive damages, attorneys' fees, costs, and for any additional relief that is just and proper.

COUNT III – FEDERAL CLAIM
42 U.S.C. § 1983 FAILURE TO INTERVENE
DEFENDANTS MILLER, HAGEMANN, AND HOBSON

59. Each paragraph of this Complaint is incorporated as if restated fully herein.
60. Defendants Miller, Hagemann, and Hobson were physically present and observed the use of force against TJP and TJP's arrest by Defendants Atteberry and Kaldahl.
61. Defendants Miller, Hagemann, and Hobson had a realistic opportunity to prevent the use of force and the arrest of TJP but did not intervene to prevent either.
62. As a result of Defendants Miller's, Hagemann's, and Hobson's inaction, TJP suffered injuries.

WHEREFORE, Plaintiff THERESA PREMO, as next friend for TJP, a minor, prays for judgment against Defendants Miller, Hagemann, and Hobson, and an award of compensatory damages, punitive damages, attorneys' fees, costs, and for any additional relief that is just and proper.

COUNT IV – FEDERAL CLAIM
42 U.S.C. § 1983 SUPERVISORY LIABILITY
DEFENDANTS ROGERS

63. Each paragraph of this Complaint is incorporated as if restated fully herein.
64. Defendant Rogers was informed about the unreasonable conduct of Defendants Atteberry and Kaldahl and that the arrest of TJP was without probable cause.
65. Defendant Rogers did not discipline or admonish Defendants Atteberry or Kaldahl.

66. Defendant Rogers did not release TJP from custody.

67. By failing to remedy the misconduct that he knew about, Defendant Rogers facilitated, approved, condoned, or turned a blind eye to the misconduct.

68. As a result of Defendant Roger's inaction, TJP suffered injuries.

WHEREFORE, Plaintiff THERESA PREMO, as next friend for TJP, a minor, prays for judgment against Defendant Rogers, and an award of compensatory damages, punitive damages, attorneys' fees, costs, and for any additional relief that is just and proper.

COUNT V – FEDERAL CLAIM

42 U.S.S. § 1983 FAILURE TO PROVIDE MEDICAL CARE

**DEFENDANTS ATTEBERRY, KALDAHL, MILLER, HAGEMANN, HOBSON,
AND ROGERS**

69. Each paragraph of this Complaint is incorporated as if restated fully herein.

70. Defendants Atteberry, Kaldahl, Miller, Hagemann, and Hobson observed the use of force against TJP and did not call for an ambulance or offer TJP medical care.

71. Defendant Rogers was personally informed by TJP that he had been injured but did not call for an ambulance or offer TJP medical care.

72. The failure to provide TJP medical care was objectively unreasonable and there was no justifiable basis to not provide TJP any medical care during the more than 10 hours he was in custody.

73. As a result of the failure to provide medical care, TJP suffered injuries.

WHEREFORE, Plaintiff THERESA PREMO, as next friend for TJP, a minor, prays for judgment against Defendants Atteberry, Kaldahl, Miller, Hagemann, Hobson, and Rogers, and an award of compensatory damages, punitive damages, attorneys' fees, costs, and for any additional relief that is just and proper.

COUNT V – FEDERAL CLAIM
42 U.S.S. § 1985 CIVIL CONSPIRACY
**DEFENDANTS ATTEBERRY, KALDAHL, MILLER, HAGEMANN, HOBSON,
AND ROGERS**

74. Each paragraph of this Complaint is incorporated as if restated fully herein.
75. Following the use of excessive force and false arrest of TJP, Defendants Atteberry, Kaldahl, Miller, Hagemann, Hobson, and Rogers agreed to make false reports to justify the use of force and arrest of TJP. Specifically, TJP would be falsely charged with resisting arrest.
76. Defendants Atteberry, Kaldahl, Miller, Hagemann, Hobson, and Rogers did create reports that falsely stated TJP had resisted arrest and that the conduct of the officers was justified. These reports were the overt acts in furtherance of the conspiracy.
77. As a result of the civil conspiracy, TJP suffered injuries.

WHEREFORE, Plaintiff THERESA PREMO, as next friend for TJP, a minor, prays for judgment against Defendants Atteberry, Kaldahl, Miller, Hagemann, Hobson, and Rogers, and an award of compensatory damages, punitive damages, attorneys' fees, costs, and for any additional relief that is just and proper.

COUNT VI – FEDERAL CLAIM
42 U.S.C. § 1983 MONELL POLICY CLAIM
DEFENDANT CITY OF CHAMPAIGN

78. Each paragraph of this Complaint is incorporated as if restated fully herein.
79. Defendant City of Champaign ("City") is responsible for the creation and adoption of rules and regulations for the governance of the City of Champaign, including the Champaign Police Department.

80. Defendant City retains policymakers who train and supervise its police officers about proper arrests, proper investigations and interactions with the public, and the proper use of force against civilians.

81. The unconstitutional actions of Defendants Atteberry, Kaldahl, Miller, Hagemann, Hobson, and Rogers were committed pursuant to a pattern and practice by the City and its police officers to charge members of the public with false resisting/obstructing criminal charges in order to cover up their misconduct in arresting people without probable cause and utilizing excessive force against civilians.

82. It is commonplace within the City of Champaign for its police officers to arrest members of the public without probable cause and then to falsely charge those individuals with no other crime besides trumped up charged of obstruction or resisting arrests.

83. Recent examples of this illegal pattern and practice can be observed thorough the facts in the civil litigation *Benjamin Mann v. City of Champaign*; *Kisica Seets v. Officer Matt Rush*; *Precious Jackson v. City of Champaign*; and *Alton Corey v. City of Champaign*.

84. Upon information and belief, in each of the aforementioned cases, the plaintiffs were charged with resisting and/or obstruction and/or battery charges that were not supported by probable cause. Such false charges were made with the purpose of covering up the excessive force perpetrated by the Champaign police officers against the plaintiff victims.

85. Defendant City was made aware of this pattern and practice by way of those lawsuits and the fact that Defendant City settled many of those lawsuits.

86. This illegal pattern and practice was permitted to continue despite the policymakers being aware of this problematic custom. The failure to remedy this pattern, practice, or custom constituted deliberate indifference on behalf of the policymakers for Defendant City.

87. The illegal pattern, practice, or custom was so widespread that it constituted *de facto* policy for Defendant City.

88. The illegal pattern, practice, or custom was the moving force behind the misconduct of Individual Defendants, who used excessive force against TJP and then attempted to conceal their misconduct by falsely charging TJP with resisting arrest.

89. As a result of Defendant City's pattern, practice, or custom, TJP suffered injuries. WHEREFORE, Plaintiff THERESA PREMO, as next friend for TJP, a minor, prays for judgment against Defendant City, and an award of compensatory damages, attorneys' fees, costs, and for any additional relief that is just and proper.

COUNT XI – CLAIM UNDER ILLINOIS LAW
INDEMNIFICATION
DEFENDANT CITY OF CHAMPAIGN

90. Each of the foregoing paragraphs of this Complaint is incorporated as if restated fully herein.

91. During the relevant time, Defendants Atteberry, Kaldahl, Miller, Hagemann, Hobson, and Rogers were employees of Defendant City and acted within the scope of their employment with Defendant City.

92. Pursuant to 745 ILCS 10/9-102, Defendant City is required to indemnify Defendants Atteberry, Kaldahl, Miller, Hagemann, Hobson, and Rogers for any judgment against them for acts or omissions done within the scope of their employment.

WHEREFORE, Plaintiff THERESA PREMO, as next friend for TJP, a minor, prays for judgment against Defendant City, and an award of compensatory damages, attorneys' fees, costs, and for any additional relief that is just and proper.

JURY DEMAND

Plaintiff demands a jury trial on all issues so triable.

Respectfully submitted,

By: /s/ Shawn W. Barnett
Shawn W. Barnett, Atty. No. 6312312
One of the Attorneys for Plaintiff

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