IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

| JESSICA CURS, | § | |
|--------------------------------------|---|---------------------|
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | CIVIL ACTION NO: |
| | § | |
| CAPTAIN GARY MELSON, in his official | § | JURY TRIAL DEMANDED |
| and individual capacities, | § | |
| | § | |
| ALVARADO POLICE DEPARTMENT, | § | |
| and | § | |
| | § | |
| CITY OF ALVARADO, TEXAS | § | |
| | § | |
| Defendants. | § | |

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Jessica Curs, for her complaint against Defendants Captain Gary Melson, the Alvarado Police Department, and the City of Alvarado, Texas, states as follows:

INTRODUCTION

1. This is an action for money damages, declaratory, and injunctive relief brought pursuant to 42 U.S.C. § 1983, the Fourth and Fourteenth Amendments to the United States Constitution, and under the laws of the State of Texas against Captain Gary Melson (herein "Captain Melson"), a police captain of the City of Alvarado, in his individual and official capacity, against the Alvarado Police Department (herein "Police Department"), and against the City of Alvarado, Texas (herein "the City of Alvarado").

2. Plaintiff Jessica Curs alleges that Captain Melson made an unreasonable seizure of her person, assaulted, battered, and falsely imprisoned her by stopping her and physically restraining her without cause. Plaintiff alleges that Captain Melson committed the tort of malicious prosecution when he initiated the criminal prosecution of Plaintiff for the alleged offense of evading arrest. Plaintiff alleges that the Police Department and the City of Alvarado are liable under the theory of respondeat superior for the torts committed by Captain Melson.

THE PARTIES

3. Plaintiff Jessica Curs is an adult citizen and resident of Burleson, Texas.

4. Defendant Captain Gary Melson is a captain with the Alvarado Police Department. He is sued in his individual and official capacities.

5. Defendant Alvarado Police Department is a department of the municipal corporation of the City of Alvarado, Texas. It is located at 600 South Parkway, Alvarado, Texas 76009. It is the employer and supervisor of Captain Melson.

6. Defendant City of Alvarado, Texas is located in Johnson County, Texas. It is a municipal corporation and is the public employer of Captain Melson.

JURISDICTION AND VENUE

7. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 over Plaintiff's causes of action arising under the U.S. Constitution and 42 U.S.C. § 1983. This Court has supplemental jurisdiction over Plaintiff's causes of action arising under Texas state law pursuant to 28 U.S.C. § 1367.

8. This Court has personal jurisdiction over Defendants because Defendant Captain Melson resides in Texas, Defendant Police Department is a department of a Texas municipal corporation, and the City of Alvarado is a Texas municipal corporation.

9. Venue is based on 28 U.S.C. § 1391(b)(2) because a substantial part of the events

or omissions giving rise to Plaintiff's claims for relief arose in Johnson County, Texas.

BACKGROUND

10. On or about February 21, 2015, Plaintiff was coaching a girls youth basketball team at a game in Burleson, Texas. The game was held at Norwood Elementary, located at 619 Evelyn Lane, Burleson, Texas 76028, which is outside the jurisdiction of the Police Department.

11. Captain Melson, dressed in plain clothes, was a spectator at the game, and he volunteered to keep score. He was seated on Plaintiff's side of the gym. Most of the other spectators were seated in the bleachers across the gym from Plaintiff and Captain Melson.

12. At some point during the game, Captain Melson began heckling Plaintiff, saying things such as, "you're just trying to run out the clock" and "can't you just let the girls play." After a foul was called by the referee, Captain Melson stated that "this is how this team plays, this is how they win." At that point, Plaintiff turned to Captain Melson and, in a normal tone of voice, asked him to stop being a "dip." Captain Melson jumped up and grabbed Plaintiff's arm, telling her to step outside with him. Plaintiff refused and pulled her arm away. Captain Melson accused Plaintiff of using an expletive, which Plaintiff denied. Plaintiff explained to Captain Melson that she does not use expletives in front of her players, who are eight- and nine-year-old girls. Captain Melson insisted that Plaintiff exit the gymnasium with him, and he flashed his badge in Plaintiff's face. Plaintiff responded that she had no way of knowing that his badge was authentic. Captain Melson then informed Plaintiff that he was going to call the Burleson Police Department.

13. Officers from the Burleson Police Department arrived. They spoke with Plaintiff and with Captain Melson, and then they informed Plaintiff that she was free to go.

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14. About two months later, Plaintiff received a notice in the mail, which indicated that a warrant had been issued for her arrest by the Alvarado Police Department for evading arrest.

15. Plaintiff turned herself in to the Alvarado Police Department the next morning. Plaintiff was told that she would only have to submit to a "walk-through," in which she would sign paperwork and then leave. Plaintiff was told that the duration of walk-throughs could vary, but that it was a relatively simple process. Instead, Plaintiff was forced to submit to a demeaning search, her clothes were taken away, and she was left in a jail cell for approximately six hours.

16. Since this incident, Plaintiff's employer has been contacted anonymously several times with copies of Plaintiff's arrest warrant and related paperwork.

17. After the incident, the Alvarado Police Department also publicly posted misleading and defamatory statements about Plaintiff on social media outlets, including Facebook. See "Exhibit A," attached. This post was circulated by other media outlets, and it was widely viewed and commented on by members of the public before it was deleted by the Alvarado Police Department.

18. As a direct and proximate result of the acts of Captain Melson, Plaintiff suffered the following injuries and damages:

- (a) Violation of her rights under the Fourth and Fourteenth Amendments to the U.S. Constitution to be free from an unreasonable seizure of his person;
- (b) Loss of her physical liberty;
- (c) Intentional, offensive contact with her body; and
- (d) Humiliation and emotional distress.

19. The actions of Captain Melson violated the clearly established and well settled constitutional rights of Plaintiff, including the right to freedom from unreasonable seizure of her person.

20. At all relevant times, Captain Melson was acting under color of law and under color of authority as a police officer, employee, and agents/servant of the Alvarado Police Department and the City of Alvarado and as an agent of the State of Texas.

<u>COUNT I</u> 42 U.S.C. § 1983 Claim against Defendant Captain Melson

21. Plaintiff re-alleges and incorporates by reference $\P\P$ 1-20.

22. Plaintiff claims damages under 42 U.S.C. § 1983 for the injuries set forth above against Defendant Captain Melson for violation of her constitutional rights under color of law.

COUNT II Assault against Defendant Captain Melson

23. Plaintiff re-alleges and incorporates by reference \P 1-22.

24. Defendant Captain Melson assaulted Plaintiff by unlawfully offering or attempting to touch her under circumstances creating fear when he grabbed Plaintiff's arm and demanded that she go outside with him.

<u>COUNT III</u> Battery against Defendant Captain Melson

- 25. Plaintiff re-alleges and incorporates by reference \P 1-24.
- 26. Defendant Captain Melson battered Plaintiff by intentionally and offensively

making contact with Plaintiff's body when he grabbed her arm.

<u>COUNT IV</u> False Imprisonment against Defendant Captain Melson

27. Plaintiff re-alleges and incorporates by reference ¶¶ 1-26.

28. Defendant Captain Melson falsely imprisoned Plaintiff by unlawfully detaining her against her will. Defendant Captain Melson had no reason to detain Plaintiff because he did not reasonably believe that Plaintiff had committed a criminal offense.

<u>COUNT V</u> Malicious Prosecution against Defendant Captain Melson

29. Plaintiff re-alleges and incorporates by reference ¶¶ 1-28.

30. Defendant Captain Melson committed malicious prosecution against Plaintiff by maliciously procuring the criminal prosecution of Plaintiff for evading arrest when he did not have probable cause to do so.

<u>COUNT VI</u> 42 U.S.C. § 1983 Claim against Defendant Alvarado Police Department

31. Plaintiff re-alleges and incorporates by reference \P 1-30.

32. Prior to February 21, 2015, the Police Department developed and maintained policies exhibiting a conscious indifference to the constitutional rights of persons in and around the city of Alvarado, which caused or contributed to the violation of Plaintiff's rights.

33. It was the policy of the Police Department to fail to exercise reasonable care in hiring and supervising its police officers, including Captain Melson, thereby failing to prevent

constitutional violations on the part of its police officers.

34. The above-described policies demonstrate a conscious indifference on the part of the Police Department to the constitutional rights of persons in and around the city of Alvarado and were the cause of the violations of Plaintiff's rights as alleged herein.

<u>COUNT VII</u> Respondeat Superior of Defendant Alvarado Police Department

35. Plaintiff re-alleges and incorporates by reference \P 1-34.

36. The Police Department is liable for the assault, battery, false imprisonment, and malicious prosecution committed against Plaintiff by Captain Melson. The Police Department was the employer of Captain Melson who committed assault, battery, false imprisonment, and malicious prosecution while acting in the scope of his employment.

<u>COUNT VIII</u> 42 U.S.C. § 1983 Claim against Defendant City of Alvarado

37. Plaintiff re-alleges and incorporates by reference ¶¶ 1-36.

38. Prior to February 21, 2015, the Police Department developed and maintained policies exhibiting a conscious indifference to the constitutional rights of persons in and around the City of Alvarado, which caused or contributed to the violation of Plaintiff's rights.

39. It was the policy of the Police Department to fail to exercise reasonable care in hiring and supervising its police officers, including Captain Melson, thereby failing to prevent constitutional violations on the part of its police officers.

40. The above-described policies demonstrate a conscious indifference on the part of the City of Alvarado to the constitutional rights of persons in and around the City of Alvarado

and were the cause of the violations of Plaintiff's rights as alleged herein.

<u>COUNT IX</u> Respondeat Superior of City of Alvarado

41. Plaintiff re-alleges and incorporates by reference \P 1-40.

42. The City of Alvarado is liable for the assault, battery, false imprisonment, and malicious prosecution committed against Plaintiff by Captain Melson. The City of Alvarado was the employer of Captain Melson who committed assault, battery, false imprisonment, and malicious prosecution while acting in the scope of his employment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- (a) Enter a judgment in favor of Plaintiff and against Defendants;
- (b) Enter an order declaring Defendant Captain Melson's conduct unconstitutional;
- (c) Award Plaintiff compensatory and punitive damages against Defendants;
- (d) Award Plaintiff's counsel reasonable attorneys' fees and costs pursuant to 42U.S.C. § 1988 and any other applicable provisions of law; and
- (e) Grant to Plaintiff such other and further relief as this Court finds necessary and proper, including but not limited to appropriate injunctive relief.

DEMAND FOR JURY TRIAL

Plaintiff respectfully requests a trial by jury, pursuant to the Seventh Amendment to the U.S. Constitution, as to all claims for damages.

Respectfully submitted, CHAD WEST, PLLC

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ATTORNEYS FOR PLAINTIFF

EXHIBIT "A"

| Search Facebook | Q | Jonathan Hon | | |
|-----------------|---|---|--|--|
| | Alvarado Police Department | 🗯 Like Page | | |
| | *warning, language may not be suitable for ev | /eryone* | | |
| | Press Release Regarding Jessica Curs Arres | t: | | |
| | First, I would like to address CBS 11's reportinincidents. | ng on this, and other | | |
| | I was first introduced to unethical reporting many months ago when CBS 11 lied about wanting an interview and then took that information and twisted it for another purpose. During this time, prior to CBS 11 airing another unrelated story, I met with CBS 11's Senior Investigative Producer in my office and discussed Jessica Curs. At this time I provided CBS with a copy of the affidavit used to obtain the warrant for Curs as well as her book-in photo. The situation was completely explained to him then and he and I corresponded many times through email, in which he described Curs actions as a "tirade". It was only after CBS aired an unrelated/twisted story, and then pulled said story for obvious inaccuracies, that an in-person interview request was later denied regarding Curs. CBS was instructed to address any questions they would like answered to our department and they would be answered. This never happened. | | | |
| | The incident regarding Curs should and could Curs pressed the issue and her actions dictat officer. Curs screamed out a profanity, namely front of bleachers full of parents and kids. This parents to rise to their feet and began confror demanding action from APD Capt. Melson. C and instructed her to step outside the area of situation. This is where the matter could have being told to refrain from using profane langua asked Curs three times, showed her his badg card, told her he was a police officer, and that and speak with him. Curs committed the offense of disorderly cond | ed the response from a police y using the word "dick", in s action caused numerous ting Curs, complaining, and apt. Melson approached Curs play to deescalate the been resolved with Curs age in public. Capt. Melson e/department identification t she needed to step aside | | |

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| | card, told her he was a police officer, and that she needed to step aside and speak with him. Curs committed the offense of disorderly conduct: |
| | TEXAS PENAL CODE TITLE 9. OFFENSES AGAINST PUBLIC ORDER AND DECENCY CHAPTER 42. DISORDERLY CONDUCT AND RELATED OFFENSES Sec. 42.01. DISORDERLY CONDUCT. (a) A person commits an offense if he intentionally or knowingly: (1) uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace; |
| | And in regards to Capt. Melson being outside the city of Alvarado: CODE OF CRIMINAL PROCEDURE TITLE 1. CODE OF CRIMINAL PROCEDURE |
| | CHAPTER 14. ARREST WITHOUT WARRANT Art. 14.03. AUTHORITY OF PEACE OFFICERS. (d) A peace officer who is outside his jurisdiction may arrest, without warrant, a person who commits an offense within the officer's presence or view, if the offense is a felony, a violation of Chapter 42 or 49, Penal Code, or a breach of the peace. |
| | Ideally an off-duty officer does not want to get involved in situations like this one. But when being an officer is known by the majority of the people present, and the officer is asked to act, it is hard not to. |
| | Curs refused this lawful order from Capt. Melson and pulled away. Curs was assisted by her husband and others in putting distance between herself and Capt. Melson for the obvious reason she knew she was in the wrong. Capt. Melson's response was also fueled by many complaints by parents that wanted something done in regards to Curs' comment. These complainants were documented and supplied to the Johnson County Attorney's office, not the "Burleson prosecutors" as the CBS story notes. After the incident was looked at from all angles, the decision was made to issue a warrant for Curs for evading arrest. |
| | Curs committed the offense of evading arrest or detention: TEXAS PENAL CODE TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION |

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| | Curs committed the offense of evading arrest or detention: TEXAS PENAL CODE TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION CHAPTER 38. OBSTRUCTING GOVERNMENTAL OPERATION Sec. 38.04: Texas Statutes: EVADING ARREST OR DETENTION (a) A person commits an offense if he intentionally flees from a person he knows is a peace officer or federal special investigator attempting lawfully to arrest or detain him. |
| | CBS also falsely reported "Both the Alvarado school district and a private youth association that was using the gym told the I-Team they did not ask police to issue the warning" in regards to the issuing of a criminal trespass warning against Curs. The warning was issued by Kevin Bjork, a representative of AYSA, the governing youth sports body of Alvarado (Alvarado Youth Sports Association), as requested by the AYSA basketball director. The criminal trespass warning was then voided by the AYSA by allowing Curs to stay and watch her daughter play in a game. A copy of this warning with all above noted person's signatures was provided to the Johnson County Attorney's Office. |
| | APD Investigators tried to obtain the video from BISD officials within the retention time period. BISD turned over a video for this case but had copied the wrong time period. This was discovered after hours on a Friday and the district then went on spring break. This time frame made it impossible to obtain the correct video in light of the district only retaining their video for 14 days. |
| | Youth sports are very important and an involved activity and happens everywhere year round. Unfortunately some adults see this as a stage they can act out on and the rules and laws do not apply to them. To these parents this incident should be a sobering reminder that they are wrong. The example and message that you should and can yell profanities in public places and think this behavior is acceptable is sickening. Furthermore, the current message is the empty can rattles the most, and hope you don't have to be held accountable for your actions. |
| | Another element left out of this story was that Curs has a history of questionable behavior that has led to her to being removed from games/events, etc. This incident seems to be on par with Curs' past and the environment she thrives in. Chants of "fuck you Alvarado" could be |

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| | can act out on and the rules and laws do not apply to the parents this incident should be a sobering reminder that The example and message that you should and can yell public places and think this behavior is acceptable is sic Furthermore, the current message is the empty can rattl hope you don't have to be held accountable for your act | they are wrong. I profanities in kening. les the most, and | | | |
| | questionable behavior that has led to her to being removing ames/events, etc. This incident seems to be on par with | ith most cases, the person at fault here is Curs and Curs directed her path which resulted in her subsequent arrest and pending court case. found a voice with CBS and together they constructed a story based nethical reporting. This story, in addition to others, cements our sion to carefully guard any information supplied to CBS. The Alvarado the Department has always interacted and cooperated well with all news | | | |
| | own path which resulted in her subsequent arrest and p Curs found a voice with CBS and together they construct on unethical reporting. This story, in addition to others, o decision to carefully guard any information supplied to C | | | | |
| | 🖕 Like 📕 Comment 🦽 Share | | | | |
| | 282 people like this. | Most Recent * | | | |
| | 248 shares | | | | |
| | View previous comments | 31 of 381 | | | |
| | John Crane APD might want to reconsider their hiring crit to the officers they put on the public payroll. Clearly, this m issues; perhaps he should seek therapy or professional co Like - Reply - 🖒 2 - 57 mins | man has deep seated | | | |
| | 1 Reply | | | | |
| | Christopher Papachristou Yet police say far worse to pe Like - Reply - 🖒 3 - 54 mins | ople all the time | | | |
| | Gavin Seim Where is the local Sheriff upholding his oath lawless officers of the Alvarado Police Department. Like - Reply - 🖒 3 - 52 mins | and arresting the | | | |

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CERTIFICATE OF SERVICE

On October 12, 2015, I electronically submitted the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court.

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Chad West