

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**MARGARET MITCHELL, AS
ADMINISTRATRIX OF THE
PENDING ESTATE OF ANTHONY
DON MITCHELL**

Plaintiff,

v.

**SHERIFF NICK SMITH, IN HIS
INDIVIDUAL AND OFFICIAL
CAPACITY, CORRECTIONS
OFFICERS T.J. ARMSTRONG,
DENZEL MITCHELL, BRAXTON
KEE, BAILEY GAINEY,
KATHERINE CLIGAN, JACOB
SMITH, JEREMY FARLEY,
RICHARD HOLZMAN,
BENJAMIN SHOEMAKER,
DAYTON WAKEFIELD, NURSE
PRACTITIONER ALICIA
HERRON, NURSE BRAD
ALLRED, AND INVESTIGATOR
CARL CARPENTER**

Defendants.

**CIVIL ACTION NUMBER:
2:23-cv-00182-SGC**

**ANSWER AND AFFIRMATIVE DEFENSES
OF DEFENDANT ALEISHA HERRON**

COMES NOW Defendant, Aleisha Herron, erroneously designated as Alicia Herron (hereinafter referred to as this "Defendant" or "Herron"), and responds to

Plaintiff's Complaint, as follows:

COMPLAINT

The Plaintiff initially makes a number of allegations under the Complaint heading that are unnumbered. Many of these allegations are not directed at this Defendant or are Counsels' comments on the case and do not require a response from this Defendant. As to these allegations, this Defendant denies all allegations directed to this Defendant and demands strict proof thereof. Defendant specifically denies Plaintiff's allegations that in the early morning hours of January 26, 2023, the medical staff wandered over to Mitchell's open cell door to speculate and be entertained by his condition or failed to ask that he be transferred to the hospital. Defendants deny that an inmate can be sent to the hospital without the intervention of a security officer. Further, Defendant specifically denies that jail medical personnel were deliberately indifferent to Mitchell's serious medical needs and failed to obtain the medical treatment Mitchell needed.

I. JURISDICTION AND VENUE

1. In response to paragraph 1, it is admitted that the Plaintiff alleges a cause of action under the Fourteenth Amendment to the United States Constitution against this Defendant.

2. In response to paragraph 2, Defendant admits this Court has original jurisdiction, based upon the current allegations.

3. In response to paragraph 3, it is admitted that the Northern District is the correct venue, but it is denied that the Southern Division is the correct venue.

II. Parties

1. Defendant is without sufficient information to admit or deny paragraph 1.
2. Defendant is without sufficient information to admit or deny paragraph 2.
3. Defendant is without sufficient information to admit or deny paragraph 3.
4. It is admitted that Defendant Allred and Defendant Herron are employees of a private medical contractor and that they are sued in their individual capacity. The remaining allegations of paragraph 4 are denied.

5. Defendant is without sufficient information to admit or deny paragraph 5.

III. Statement of Facts.

A. Introduction

1. Defendant is without sufficient information to admit or deny paragraph 1.
2. Defendant is without sufficient information to admit or deny paragraph 2.
3. Defendant is without sufficient information to admit or deny paragraph 3.
4. It is admitted that Mr. Mitchell passed away on January 26, 2023, at the formerly named Walker Baptist Medical Center. The remaining allegations of paragraph 4 are denied.

5. Defendant is without sufficient information to admit or deny paragraph 5.

6. Paragraph 6 appears to contain information from Mitchell's medical

record, which speaks for itself. The remaining allegations of paragraph 6 are denied.

B. Tony Is Arrested in a Psychotic and Delusional State.

7. Defendant is without sufficient information to admit or deny paragraph 7.
8. Defendant is without sufficient information to admit or deny paragraph 8.
9. Defendant is without sufficient information to admit or deny paragraph 9.
10. Defendant is without sufficient information to admit or deny paragraph 10.
11. Defendant is without sufficient information to admit or deny paragraph 11.
12. Defendant is without sufficient information to admit or deny paragraph 12.
13. Defendant is without sufficient information to admit or deny paragraph 13.
14. Defendant is without sufficient information to admit or deny paragraph 14.
15. Defendant is without sufficient information to admit or deny paragraph 15.
16. Defendant is without sufficient information to admit or deny paragraph 16.
17. Defendant is without sufficient information to admit or deny paragraph 17.
18. It is admitted that the Walker County Sheriff's Office Facebook page contains the quoted statement.
19. Defendant is without sufficient information to admit or deny paragraph 19.
20. Defendant is without sufficient information to admit or deny paragraph 20.
21. Defendant is without sufficient information to admit or deny paragraph 21.
22. Defendant is without sufficient information to admit or deny paragraph 22.
23. Defendant is without sufficient information to admit or deny paragraph 23.

24. Defendant is without sufficient information to admit or deny paragraph 24.

25. Defendant is without sufficient information to admit or deny paragraph 25.

26. Paragraph 26 is not directed to this Defendant and Defendant is without sufficient information to admit or deny paragraph 26.

27. Paragraph 27 is not directed to this Defendant and Defendant is without sufficient information to admit or deny paragraph 27.

28. Paragraph 28 is not directed to this Defendant and Defendant is without sufficient information to admit or deny paragraph 28.

C. Tony Is Housed Naked in a Bare Concrete Isolation Cell.

29. Paragraph 29 is admitted.

30. Defendant is aware Mitchell was kept in cell BK5 . The remaining allegations of paragraph 30 are denied.

31. Defendant is without sufficient information to know whether Mitchell was provided a mat during his incarceration and, therefore, deny for lack of knowledge.

32. Defendant denies Mitchell was on suicide watch to her knowledge.

D. Tony's False Teeth Were Confiscated After He Was Tazed.

33. Defendant is without sufficient information to admit or deny paragraph 33.

34. Paragraph 34 of Plaintiff's Complaint contains information based upon video clips that have not been received by this Defendant to be reviewed and speak for themselves. As such, this Defendant is without sufficient information to admit or

deny paragraph 34.

35. Paragraph 35 of Plaintiff's Complaint contains information based upon video clips that have not been received by this Defendant to be reviewed and speak for themselves. As such, this Defendant is without sufficient information to admit or deny paragraph 35.

36. Defendant is without sufficient information to admit or deny paragraph 36.

37. Defendant is without sufficient information to admit or deny paragraph 37.

38. Paragraph 38 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves. As such, this Defendant is without sufficient information to admit or deny paragraph 38.

39. Paragraph 39 is denied.

E. Attempting to Cover up the Truth, T.J. Armstrong Releases a False Statement that Tony Was "Alert and Conscious" When He Left the Jail and Lies to Tony's Family about his Condition.

40. Defendant admits medical staff determined the inmate needed to be transported to the hospital for further evaluation after being alerted by a jail officer. As to the other remaining allegations, Defendant is without sufficient information to admit or deny paragraph 40.

41. Paragraph 41 is not directed to this Defendant and Defendant is without sufficient information to admit or deny paragraph 41.

42. Paragraph 42 contains information from Plaintiff's medical record which speaks for itself.

43. Paragraph 43 is not directed to this Defendant and Defendant is without sufficient information to admit or deny paragraph 43.

44. Paragraph 44 is not directed to this Defendant and Defendant is without sufficient information to admit or deny paragraph 44.

45. In response to paragraph 45, Defendant is without sufficient information to admit or deny what Armstrong told Steve Mitchell as alleged in paragraph 45.

46. In response to paragraph 46, Defendant is without sufficient information to admit or deny what Armstrong told Steve Mitchell as alleged in paragraph 46.

47. In response to paragraph 47, Defendant is without sufficient information to admit or deny what Armstrong told Steve Mitchell as alleged in paragraph 47.

48. Paragraph 48 is denied.

49. Defendant is without sufficient information to admit or deny paragraph 49.

50. Defendant is without sufficient information to admit or deny paragraph 50.

F. Surveillance Video Shows that Tony Was not "Alert and Conscious" When He Left the Jail.

51. In response to paragraph 51, Defendant is without sufficient information to admit or deny.

52. Paragraph 52 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed which speak for themselves. As

such, this Defendant is without sufficient information to admit or deny paragraph 52.

53. Defendant admits she was not in the loading and unloading area otherwise, paragraph 53 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves. As such, this Defendant is without sufficient information to admit or deny paragraph 53.

54. Paragraph 54 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves. As such, this Defendant is without sufficient information to admit or deny paragraph 54.

55. Paragraph 55 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves. As such, this Defendant is without sufficient information to admit or deny paragraph 55.

56. Paragraph 56 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves. As such, this Defendant is without sufficient information to admit or deny paragraph 56.

57. Paragraph 57 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves.

As such, this Defendant is without sufficient information to admit or deny paragraph 57.

58. Paragraph 58 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves. As such, this Defendant is without sufficient information to admit or deny paragraph 58.

59. Defendant denies she was completely in different to Mitchell's needs.

G. Tony's Heart Stopped Before He Arrived at the Hospital and Never Restarted.

60. Paragraph 60 of Plaintiff's Complaint contains information from Mitchell's medical record, which speaks for itself.

61. Paragraph 61 of Plaintiff's Complaint contains information from Mitchell's medical record, which speaks for itself.

62. Paragraph 62 of Plaintiff's Complaint contains information from Mitchell's medical record, which speaks for itself.

63. Paragraph 63 of Plaintiff's Complaint contains information from Mitchell's medical record, which speaks for itself.

64. Paragraph 64 of Plaintiff's Complaint contains information from Mitchell's medical record, which speaks for itself.

65. Paragraph 65 of Plaintiff's Complaint contains information from Mitchell's medical record, which speaks for itself.

H. No Explanation Other than Spending Hours in a Freezer or Similar Frigid Environment Explains Tony's Body Temperature Dropping to 72 Degrees Fahrenheit.

66. Defendant is without sufficient information to admit or deny paragraph 66.

67. Based on information and belief, paragraph 67 is admitted.

68. Defendant is without information or belief to admit or deny paragraph 68.

69. Defendant is without sufficient information to admit or deny paragraph 69.

70. Paragraph 70 is denied.

71. In response to paragraph 71, based on information and belief, security footage is available. Defendant is without sufficient information to admit or deny the remaining allegations of paragraph 71.

72. Defendant is without sufficient information to admit or deny paragraph 72.

I. At Least Five Hours Passed from the Time Tony Was Removed from the Frigid Environment Until He Was Transported to the Hospital.

73. Defendant is aware Braxton Kee was on duty, but is without sufficient information to admit or deny the remaining allegations of paragraph 73.

74. Paragraph 74 is not directed to this Defendant and Defendant is without sufficient information to admit or deny.

75. Defendant is without sufficient information to admit or deny paragraph 75.

76. Defendant is not aware of any evidence that Mitchell was placed in a walk-in freezer or frigid environment. The remaining allegations of paragraph 76 are

denied.

77. Paragraph 77 is denied.

J. Security Footage from 4:00 AM Shows Tony Lying on the Cement Floor of His Cell As Corrections Officers Kee and Mitchell Laugh at His Condition.

78. Paragraph 78 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves. As such, this Defendant is without sufficient information to admit or deny paragraph 78.

79. Paragraph 79 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves. It is admitted that Aleisha Herron did enter Mitchell's cell in the early morning hours on January 26, 2023, and took Mitchell's vital signs.

80. Paragraph 80 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves.

81. Paragraph 81 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves. It is admitted that Aleisha Herron, NP, enters Mitchell's cell in the early morning hours on January 26, 2023, and assessed him. Herron provided medical treatment by asking for a transfer to the emergency department which is done through the jail for security reasons. The remaining allegations of paragraph 81 are denied.

82. Paragraph 82 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves.

K. Security Footage from around the Time of the 6 AM Shift Change Shows Multiple Corrections Officers and Medical Personnel Exhibiting Deliberate Indifference.

83. Paragraph 83 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves.

84. Paragraph 84 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves.

85. Defendant lacks sufficient knowledge to admit or deny paragraph 85.

86. Paragraph 86 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves. It is admitted that on January 26, 2023, Nurse Brad Allred requested a jail officer to transfer Mitchell to the emergency department per Nurse Herron's earlier order.

87. Defendant is without sufficient information to admit or deny paragraph 87.

88. Paragraph 88 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves.

89. Paragraph 89 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves.

90. Paragraph 90 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves.

91. Paragraph 91 is denied that this Defendant did not take steps to provide Mitchell with emergency medical treatment. Per appropriate protocol, the medical staff asked that Mitchell be transferred to the emergency department.

L. At around 8:30 AM, Corrections Officers Remove Tony from the Cell, then Return Him to the Cell to Conceal His Presence as a Woman is Booked.

92. Paragraph 92 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves.

93. Paragraph 93 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves.

94. Paragraph 94 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves.

95. Paragraph 95 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves.

96. Paragraph 96 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves.

97. Paragraph 97 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves.

M. Tony's Heart Has Stopped by the Time Deputies Reach the Hospital, Over Five Hours After His Removal from the Frigid Environment.

98. Paragraph 98 of Plaintiff's Complaint contains information from

Plaintiff's medical record and video clips not received by this Defendant to be reviewed which speak for themselves.

99. Defendant is not aware of any evidence to support deputies put Mitchell in freezer or other frigid environment.

100. Paragraph 100 of Plaintiff's Complaint contains information from Plaintiff's medical record which speaks for itself.

N. **The Sheriff Has a Policy or Practice of Deliberate Indifference to Serious Medical Needs and Excessive and Unreasonable Force.**

101. Defendant is without sufficient information to admit or deny paragraph 101.

102. Defendant denies there is/was a policy of deliberate indifference at the Walker County Jail by medical staff.

103. Paragraph 103 of Plaintiff's Complaint contains information from video clips not received by this Defendant to be reviewed and which speak for themselves. Further, this allegation is not directed to this Defendant and as such this Defendant is without sufficient information to admit or deny paragraph 103.

104. Paragraph 104 is not directed to this Defendant and Defendant is without sufficient information to admit or deny paragraph 104.

105. Defendant denies she was/is deliberately indifferent to Hollis Chadwick Smith's medical needs.

O. The Sheriff and T.J. Armstrong Participated in the Scheme to Violate Tony's Constitutional Rights and Ratified the Conduct of Deputies.

106. Paragraph 106 is not directed to this Defendant and Defendant is without sufficient information to admit or deny paragraph 106.

107. Paragraph 107 is not directed to this Defendant and Defendant is without sufficient information to admit or deny paragraph 107.

108. Paragraph 108 is not directed to this Defendant and Defendant is without sufficient information to admit or deny paragraph 108.

109. Paragraph 109 is denied.

110. Paragraph 110 is not directed to this Defendant and Defendant is without sufficient information to admit or deny paragraph 110.

First Cause of Action: Wrongful Death – Substantive Due Process Clause of the Fourteenth Amendment to the United States Constitution via 42 USC §1983 – All Defendants Are Sued in their Individual Capacities.

111. Paragraph 111 is not directed to this Defendant. However, Defendant is without knowledge that correctional officers placed Mitchell in a walk-in freezer or similar frigid environment.

112. Paragraph 112 is not directed to this Defendant and Defendant is without sufficient information to admit or deny paragraph 112 other than admitting Braxton Kee was on duty.

113. Defendant denies she failed to intervene when she was made aware of

Mitchell's medical needs. She also denies she was deliberately indifferent to Mitchell's medical needs. As to the remaining allegations of paragraph 113, these allegations are not directed to this Defendant and Defendant is without sufficient information to admit or deny.

114. Paragraph 114 is not directed to this Defendant and Defendant is without sufficient information to admit or deny paragraph 114.

115. Paragraph 115 is not directed to this Defendant and Defendant is without sufficient information to admit or deny paragraph 115.

116. Paragraph 116 is not directed to this Defendant and Defendant is without sufficient information to admit or deny paragraph 116.

117. Paragraph 117 is denied as to this Defendant.

118. Paragraph 118 is not directed to this Defendant and Defendant is without sufficient information to admit or deny paragraph 118.

119. Paragraph 119 is denied.

Second Cause of Action – Wrongful Death – Policy or Practice Claim – Sheriff in His Official Capacity.

120. Paragraph 120 is not directed to this Defendant and Defendant is without sufficient information to admit or deny paragraph 120.

121. Paragraph 121 is not directed to this Defendant and Defendant is without sufficient information to admit or deny paragraph 121.

122. Paragraph 122 is not directed to this Defendant and Defendant is without

sufficient information to admit or deny paragraph 122.

123. Paragraph 123 is not directed to this Defendant and Defendant is without sufficient information to admit or deny paragraph 123.

Request for Relief

Defendant denies Plaintiff's allegations pursuant to the heading Request for Relief and demands strict proof thereof.

AFFIRMATIVE DEFENSES

1. This Defendant denies each and every material allegation of the Complaint not heretofore controverted.
2. This Defendant denies any breach of a legal duty, which caused Mr. Mitchell's death.
3. This Defendant denies any intentional, willful, gross, oppressive, wanton, malicious, and/or negligent acts of omission or commission.
4. This Defendant did not violate any statutes, rules and/or regulations of this State or the United States of America.
5. This Defendant asserts all applicable affirmative defenses under Rule 12(b).
6. This Defendant asserts that venue is improper.

7. The Complaint fails to state a claim against this Defendant upon which relief can be granted pursuant to Rule 12(b)(6).

8. The claims asserted in the Complaint have been waived and/or the Plaintiff is estopped from asserting said claims.

9. This Defendant reserves the defense of release, settlement, set off, accord and satisfaction, should these defenses become relevant in the future.

10. This Defendant pleads the Plaintiff's Complaint fails to contain a detailed specification and factual description of the acts and omissions alleged to render him liable to the Plaintiff.

11. This Defendant denies any acts of omission or commission proximately caused or proximately contributed to cause the injuries and/or damages alleged in the Complaint.

12. The injuries and/or damages alleged in the Complaint were proximately caused by an "efficient intervening cause."

13. The injuries and/or damages alleged in the Complaint occurred as a result of pre-existing medical conditions, causes and/or injuries completely unrelated to any act of omission or commission by this Defendant. The existence of these pre-existing medical conditions, causes, or injuries are plead as a bar to, or in mitigation of, any recovery.

14. Should facts develop that the Plaintiff's deceased was guilty of negligence,

and the Plaintiff's deceased's own negligence proximately caused or proximately contributed to cause the injuries and damages alleged in the Complaint, Defendant deserves the right to raise contributory negligence as a defense.

15. The injuries and/or damages alleged in the Complaint were proximately or solely caused by the actions and/or omissions of someone other than this Defendant and over whom this Defendant possesses no right of supervision or control and for whose acts this Defendant is not legally responsible.

16. This Defendant asserts the sole proximate causes of the Plaintiff's deceased's death are events, conditions, physiology, reactions and medical conditions which could not have been reasonably anticipated in the exercise of reasonable care, and as such, this Defendant can have no liability whatsoever for the Complaint and causes of action asserted.

17. The Plaintiff lacks standing to assert the claims purportedly asserted.

18. This Defendant did not have a policy or custom of providing inadequate medical care or deliberate indifference.

19. No policy, custom, or practice of this Defendant caused the alleged injury in this action.

20. This Defendant did not enact or carry out any policy, custom, or practice with deliberate indifference. Plaintiff cannot show that this Defendant was aware of a past history of constitutional violations resulting from the application of policies

or customs.

21. The Plaintiff's claims are barred because he has failed to comply with the heightened specificity requirements of Rule 8 in § 1981 cases against persons sued in their individual capacities. *See Oladeinde v. City of Birmingham*, 963 F.2d 1481, 1485 (11th Cir. 1992); *Arnold v. Bd. of Educ. of Escambia County*, 880 F.2d 305, 309 (11th Cir. 1989).

22. This Defendant asserts the Plaintiff's Complaint on its face is frivolous and filed in bad faith solely for the purpose of harassment, intimidation, and requests this Court, pursuant to 42 U.S.C. § 1988 to afford this Defendant reasonable attorneys' fees and costs incurred in the defense of this action.

23. This Defendant denies any Fourth of Fourteenth Amendment violations.

24. This Defendant denies any Fourteenth Amendment due process or equal protection violations.

25. This Defendant denies any violation of state laws.

26. This Defendant denies the claims of civil rights violations, if any, under 42 U.S.C. § 1981.

27. This Defendant denies a Constitutional violation resulting from any denial of medical or mental health care.

28. The Plaintiff's claims are barred because this Defendant did not act with deliberate indifference. *See Estelle v. Gamble*, 429 U.S. 97 (1976).

29. To the extent the Plaintiff seeks to recover attorney's fees, this Defendant objects to any and all such requests for fees that are not asserted in the Complaint or otherwise approved by court order.

30. Defendant claims any statutory damages caps which may be deemed to apply to the claims in the Complaint.

31. This Defendant is not guilty of any act of omission or commission which would entitle the Plaintiff to recover wrongful death damages.

32. To the extent the Plaintiff has concluded or may conclude a settlement or recover a verdict against any person, entity, or party against whom the Plaintiff has, or could have, made or will make a claim, then this Defendant is entitled to a set-off for any amount paid and is otherwise entitled to introduce the fact of said settlement or verdict at its option.

33. Should immunity be deemed to apply, this Defendant is immune from punitive damages per §6-11-26, Code of Alabama (1975), and Defendant reserves the right to plead immunity.

34. This Defendant is not guilty of any conduct which would entitle the Plaintiff to recover punitive damages in this case.

a. Claims for punitive damages are in contravention of this Defendant's rights under each of the following constitutional provisions: the Commerce Clause of Article I, Section 8 of the United States Constitution;

b. the Contracts Clause of Article I, Section 10 of the United States Constitution;

c. the prohibition against ex post facto laws embodied in Article I, Section 10 of the United States Constitution;

d. the Supremacy Clause of Article VI of the United States Constitution;

e. the Free Speech Clause of the First Amendment of the United States Constitution;

f. the Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution;

g. the Takings Clause of the Fifth Amendment of the United States Constitution;

h. the Right to Counsel of the Sixth Amendment of the United States Constitution;

i. the Excessive Fines Clause of the Eighth Amendment of the United States Constitution;

j. the Right to Trial by Jury contained in the Seventh Amendment of the United States Constitution;

k. the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution; and

1. similar or corresponding provisions of the Constitution of this State.

35. No act or omission of this Defendant was malicious, willful, or reckless and, therefore, any award of punitive damages is barred.

36. To the extent Plaintiff's Complaint seeks the imposition of punitive damages, this Defendant adopts by reference the defenses, criteria, limitations, standards and constitutional protections mandated or provided by the United States Supreme Court in the following cases: *Philip Morris USA v. Williams*, 127 S. Ct. 1057 (2007), *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003); *Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 923 (2001) *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), and similar cases from the Supreme Court of this State; *Safeco Insurance Co. of America v. Burr*, 551 U.S. 47 (2007)

37. Because of the lack of clear standards, any imposition of punitive damages against this Defendant would be unconstitutionally vague and/or overbroad.

38. Claims for punitive damages are subject to the limitations and requirements of State law.

39. This Defendant adopts all defenses asserted by other Defendants to the extent they are applicable to the claims purportedly asserted against this Defendant.

40. The Plaintiff's claims are barred because of the lack of damages suffered

due to any of the alleged wrongs asserted against Defendant.

41. This Defendant reserves the right to assert any additional defenses, counterclaims, crossclaims and/or file third-party complaints that discovery would reveal to be available and/or necessary.

THIS DEFENDANT DEMANDS A TRIAL BY STRUCK JURY.

Respectfully submitted, this the 8th day of March, 2023.

/s/ LaBella S. McCallum
LABELLA S. McCallum
Attorneys for Nurse Practitioner Aleisha Herron, erroneously designated as Alicia Herron, and Brad Allred

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CERTIFICATE OF SERVICE

This is to certify that on March 8, 2023, a true and correct copy of the foregoing was filed with the Clerk of the Court using the CM/ECF system, which automatically notifies counsel as follows:

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/s/ LaBella S. McCallum
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