2008CI06869 -P00001

CAUSE NO. 2008CI06869

VANESSA SAMUDIO	§	IN THE DISTRICT COURT
	§	
VS.	§	407th JUDICIAL DISTRICT
	§	
CITY OF SAN ANTONIO	§	BEXAR COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION AND DISCOVERY REQUESTS

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now **VANESSA SAMUDIO**, Plaintiff herein, complaining of **CITY OF SAN ANTONIO**, Defendant herein, and for cause of action and grounds therefore, would respectfully show unto this Honorable Court as follows:

DISCOVERY CONTROL PLAN

1. Discovery in this cause should be conducted under a Level 3 Discovery Control Plan. TEX. R. CIV. P. 190.4.

PARTIES

2. Plaintiff, **VANESSA SAMUDIO**, is an individual residing in San Antonio, Bexar County, Texas.

3. Defendant, **CITY OF SAN ANTONIO**, is a governmental municipality and may be served with process by serving its City Manager, Sheryl L. Scully, at P.O. Box 839966, San Antonio, Texas 78283-3966, or by serving its City Clerk, Ms. Leticia M. Vacek, Office of the City Clerk, at P.O. Box 839966, San Antonio, Texas 78238-3966.

VENUE AND JURISDICTION

4. Venue is proper in Bexar County because all or a substantial part of the events and/or omissions giving rise to Plaintiff's claims occurred in Bexar County. TEX. CIV. PRAC. & REM. CODE § 15.002(a). Jurisdiction is proper in this Court because Plaintiff's damages exceed the minimum jurisdictional limits of the Court.

FACTS

5. On or about April 3, 2008, at approximately 10:00 p.m., Plaintiff, **VANESSA SAMUDIO**, was operating a motor vehicle, a 1992 Acura Integra, at all times in a lawful and prudent manner, exercising ordinary care for her safety and the safety of others. She was driving southbound in the 7600 block of Blanco Road in San Antonio, Bexar County, Texas. At that location, Blanco Road consists of two lanes of travel in each direction (north/south) and a middle turn lane.

6. From the middle turn lane of Blanco Road, Plaintiff, **VANESSA SAMUDIO**, proceeded to make a left turn into the Sunray Apartments located at 7600 Blanco Road in a lawful and prudent manner, exercising ordinary care for her safety and the safety of others. As she turned, her vehicle was suddenly and violently struck by a San Antonio Police Department cruiser, operated by a San Antonio Police Department officer and owned by Defendant, **CITY OF SAN ANTONIO**, traveling northbound on Blanco Road at an excessive and unsafe speed.

7. The San Antonio Police Department officer operated said vehicle in an unlawful, imprudent, and reckless manner, by recklessly failing to maintain a proper speed, failing to maintain a proper lookout, failing to timely slow and/or stop the police cruiser, and

failing to take proper evasive procedures, such as a reasonable driver using ordinary care would have done under the same or similar circumstances. As a result of the foregoing negligence, the police cruiser violently struck Plaintiff, **VANESSA SAMUDIO**, causing devastating damage to Plaintiff's vehicle and grievous and life-threatening injuries to Plaintiff, of which Plaintiff now complains.

8. Plaintiff would show that the above-described collision and the resulting injuries, harm, and damages were brought about and caused to occur directly and proximately by the negligence of the Defendant and its agents and/or employees. More specifically, Plaintiff would show that the San Antonio Police Department officer who caused the collision was, at the time the wrongful acts and/or omissions were committed, and at all times relevant to this lawsuit, the agent, servant, and/or employee of Defendant, **CITY OF SAN ANTONIO**, and was acting within the scope of his authority in operating the police cruiser. Plaintiff would show further that said vehicle was owned and/or operated in the furtherance of the business of Defendant, **CITY OF SAN ANTONIO**.

9. The acts and/or omissions of Defendant, **CITY OF SAN ANTONIO**, by and through its agents, servants, and/or employees, proximately caused and/or contributed to cause the injury, harm, and damages complained of by Plaintiffs herein. Defendant, **CITY OF SAN ANTONIO**, is therefore liable for Plaintiff's damages under the doctrine of respondeat superior.

TEXAS TORT CLAIMS ACT

10. Plaintiff, **VANESSA SAMUDIO**, brings this suit pursuant to the Texas Tort Claims Act, TEX. CIV. PRAC. & REM. CODE §§ 101.001-101.109, for her personal injuries

which were proximately caused by Defendant.

11. Plaintiff would further show unto this Honorable Court that the San Antonio Police Department officer who caused the collision, an agent, servant, and/or employee of Defendant named herein, while acting in the course and scope of his employment with said Defendant, was negligent in the following acts of commission and omission, among others, to-wit:

a. in failing to keep and maintain a proper lookout as a person using ordinary care would have kept under the same or similar circumstances;

b. in failing to make such application of the brakes of his vehicle as a person using ordinary care would have made under the same or similar circumstances;

c. in failing to timely apply the brakes of his vehicle in order to avoid the collision in question;

d. in failing to take proper evasive measures;

e. in driving his vehicle in willful or wanton disregard for the safety of persons and property; and

f. in driving his vehicle at a rate of speed in excess of that which a person of ordinary prudence in the exercise of ordinary care would have driven under the same or similar circumstances.

12. Plaintiff would show each of the above acts and omissions, whether singularly or in combination with others, constituted negligence, and such negligence was a proximate cause of the occurrence in question and Plaintiff's resulting injuries.

DAMAGES

13. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff, **VANESSA SAMUDIO**, was caused to suffer injuries and damages as

follows:

a. reasonable and necessary medical expenses in the past;

b. reasonable and necessary medical expenses which, in reasonable probability, Plaintiff will suffer in the future;

c. lost wages;

d. loss of earning capacity;

e. physical pain and mental anguish in the past;

f. physical pain and mental anguish which, in reasonable probability, Plaintiff will suffer in the future;

g. physical disfigurement in the past;

h. physical disfigurement which, in reasonable probability, Plaintiff will suffer in the future;

i. physical impairment in the past; and

j. physical impairment which, in reasonable probability, Plaintiff will suffer in the future.

14. Plaintiff's damages as set out above are in an amount in excess of the minimum jurisdictional limits of the Court.

CONDITIONS PRECEDENT

15. All conditions precedent to this cause of action have been performed or have otherwise occurred.

JURY DEMAND

16. Plaintiff submits her demand for a trial by jury and tenders the requisite fee.

P R A Y E R

WHEREFORE, PREMISES CONSIDERED, Plaintiff, **VANESSA SAMUDIO**, prays

that Defendant, **CITY OF SAN ANTONIO**, be duly cited to appear and answer herein; and that upon a final trial hereof, Plaintiff recover judgment for actual damages from Defendant for a just and reasonable sum within the jurisdictional limits of this Court; for pre-judgment and post-judgment interest at the highest legal rate; for costs of Court herein expended; and for such other and further relief, general and specific, at law and in equity, to which Plaintiff may show herself justly entitled.

PLAINTIFF'S DISCOVERY REQUESTS TO DEFENDANT

Pursuant to the Texas Rules of Civil Procedure, Plaintiff hereby propounds the following discovery requests upon Defendant:

1. Plaintiff's Requests for Disclosure;
2. Plaintiff's Requests for Production;
3. Plaintiff's Requests for Admissions; and,
4. Plaintiff's Interrogatories.

DEFINITIONS AND INSTRUCTIONS FOR PLAINTIFF'S DISCOVERY REQUESTS

1. As used herein, the terms "**you**" and "**your**" shall refer to the Defendant in this lawsuit, **CITY OF SAN ANTONIO**, Defendant's attorneys, agents, and all other natural persons or business or legal entities acting or purporting to act for or on behalf of Defendant, whether authorized to do so or not.

2. As used herein, the term "**documents**" shall mean all writings of every kind, source and authorship, both originals and all nonidentical copies thereof, in your possession, custody, or control, or known by you to exist, irrespective of whether the writing is one intended for or transmitted internally by you, or intended for or transmitted to any other person or entity, including without limitation any government agency, department, administrative, or private entity or person. The term shall include handwritten, typewritten, printed, photocopied, photographic, or recorded matter. It shall include communications in words, symbols, pictures, sound recordings, films, tapes, and information stored in, or accessible through, computer or other information storage or retrieval systems, together with the codes and/or programming instructions and other materials necessary to understand and use such systems. For purposes of illustration and not limitation, the term shall include: affidavits; agendas; agreements; analyses; announcements; bills, statements, and other records of obligations and expenditures; books; brochures; bulletins; calendars; canceled checks, vouchers, receipts and other records of payments; charts or drawings; check registers; checkbooks; circulars; collateral

qualified.

INTERROGATORY NUMBER 13: If you contend that any opinion rendered by any expert identified by Plaintiff is not "reliable" within the meaning of *Robinson v. E.I. DuPont de Nemours*, 923 S.W.2d 549 (Tex. 1995), or in any subsequent opinion by the Supreme Court of Texas which you contend extends the holdings of *Robinson*, please state the substance of that opinion and describe the basis for your contention.

INTERROGATORY NUMBER 14: Please state the date on which you first subjectively believed that there was a substantial chance that litigation would arise from the incident made the basis of this lawsuit? What facts gave rise to your subjective relief?

INTERROGATORY NUMBER 15: Please state the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be rendered in this case or to indemnify or reimburse for payments made to satisfy the judgment. Include in this answer the existence of any applicable insurance policy, whether it be primary, secondary, excess, or umbrella and the policy or liability limits of each applicable policy, and stating whether or not this Defendant is covered under the policy.

INTERROGATORY NUMBER 16: If you denied any of the above Request for Admissions, please state all reasons for such denial.

Respectfully submitted:

CRT
PROCESS DEPT.

STOUWIE & MAYO, P.L.L.C.
3238 N.W. Loop 410
San Antonio, TX 78213
Telephone: (210) 593-0060
Telefax: (210) 593-0002

BY: _____
KEVIN W. STOUWIE
State Bar No. 24000674
MATTHEW M. EDWARDS
State Bar No. 24032034

Attorneys for Plaintiff

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No. 2008-CI-06869

VANESSA SAMUDIO	§	IN THE DISTRICT COURT
	§	
V.	§	407TH JUDICIAL DISTRICT
	§	
CITY OF SAN ANTONIO	§	BEXAR COUNTY, TEXAS

DEFENDANT CITY OF SAN ANTONIO'S ORIGINAL ANSWER AND REQUEST FOR DISCLOSURES

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes CITY OF SAN ANTONIO, Defendant, in the above-entitled and numbered cause. Reserving the right to file other and further pleadings, exceptions, and denials, Defendant City of San Antonio files this document as its Original Answer to Plaintiff's Original Petition, and Defendant would respectfully show the Court as follows:

I. General Denial

Defendants generally deny each and every, all and singular, the allegations contained in Plaintiff's Petition and demand strict proof thereof by preponderance of the evidence.

II. Home-rule Municipality

Defendant City specifically asserts that it is a home-rule municipality pursuant to its City Charter and the laws of the State of Texas and is therefore entitled to all the rights and privileges associated with its status as a governmental entity.

III. Sovereign Immunity

Defendant City pleads the governmental defenses, immunities and limitations of liability to which it is entitled pursuant to common law and statutory law, including Chapter 101, *et seq*, of the Texas Civil Practice & Remedies Code, also known as the Texas Tort Claims Act. Defendants also plead all immunity-related defenses available to them under both common and

statutory law, including sovereign immunity, immunity from liability, official immunity, qualified immunity, immunity from damages and limitations on claims and awards.

IV. Limitation of Liability

Defendant City pleads the limitation of liability provided by Section 101.023(c) of the Texas Civil Practice and Remedies Code in effect at the time of the filing of Plaintiff's Original Petition. Defendant also pleads the limitation of liability provided by Section 108.002(a) of the Texas Civil Practice and Remedies Code in effect at the time of the filing of Plaintiff's Original Petition and all other applicable damage limitations in effect.

V. Notice

Defendant, **CITY OF SAN ANTONIO**, would further show that it did not have adequate notice of the claims made the basis of Plaintiff's Original Petition pursuant to Section 150 of the Charter of the City of San Antonio, Bexar County, Texas nor pursuant to the Texas Tort Claims Act, Texas Civil Practice and Remedies Code § 101.101 as a matter of law.

VI. Request for Disclosure

In accordance with Rule 194 of the Texas Rules of Civil Procedure you are hereby requested to disclose, in writing and within 30 days of service of this request, all of the information and material described in Rule 194.2 of the Texas Rules of Civil Procedure.

VII. Jury Trial

Defendant demands a jury trial.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant City of San Antonio prays that Plaintiff take nothing by her lawsuit against it, that Defendants has judgment herein, and that the

Defendant be awarded its costs expended, and for such other and further relief, both general and special, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

CITY OF SAN ANTONIO
Michael D. Bernard, City Attorney
SBN: 02211310
Office of the City Attorney
Litigation Division
111 Soledad St., 10th Floor
San Antonio, Texas 78205
(210) 207-8784 / (210) 207-4357 FAX

DAVID M. WILLIAMS
Assistant City Attorney
SBN: 24033462
Attorney for Defendant City

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served on the following on May 23, 2008:

Kevin Stouwie
STOUWIE & MAYO
3238 N.W. Loop 410
San Antonio, Texas 78213

☐ CMRRR

☐ Hand Delivery

☒ Fax

DAVID M. WILLIAMS

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VANESSA SAMUDIO	§	IN THE DISTRICT COURT
	§	
V.	§	407TH JUDICIAL DISTRICT
	§	
CITY OF SAN ANTONIO	§	BEXAR COUNTY, TEXAS

FINAL JUDGMENT

On this date, came on to be heard the above-styled and numbered cause, wherein Defendant CITY OF SAN ANTONIO, Plaintiff VANESSA SAMUDIO, and Intervenors HUGO MENDEZ and MARIA MARTINEZ MENDEZ announced that all matters in controversy between the parties have been compromised and settled by agreement, and that such agreement was to the effect that Plaintiff VANESSA SAMUDIO and Intervenors HUGO MENDEZ and MARIA MARTINEZ MENDEZ take nothing against the Defendant, CITY OF SAN ANTONIO, and that costs of Court incurred in this suit shall be taxed against each party.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that Plaintiff, VANESSA SAMUDIO, take nothing by her suit against Defendant, CITY OF SAN ANTONIO.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Intervenors HUGO MENDEZ and MARIA MARTINEZ MENDEZ take nothing against the Defendant CITY OF SAN ANTONIO.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the costs of Court incurred in this suit be taxed against each party.

This dismissal is with prejudice to refiling.

SIGNED this the 28 day of July, 2009.

Gloria Saldaña
JUDGE PRESIDING

07/29/2009 VOL 13432 PG 2387

APPROVED AS TO FORM:

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--and—

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