

CAUSE №. 2021-78301

ASHLEY MARIE ABELAR,

Petitioner.

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In the District Court Of

Harris County, Texas

80th Judicial District

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**FIRST AMENDED**

**T.R.C.P. RULE 202 VERIFIED PETITION FOR  
ORAL DEPOSITIONS DUCES TECUM**

1. Ashley Abelar petitions the Court requesting the entry of an order authorizing the taking of depositions on oral examination pursuant to Rule 202 of the Texas Rules of Civil Procedure.
2. This First Amended Petition amends the Original Petition to include Harris County Sheriff's Office as a Respondent.

**Introduction and Depositions Sought**

2. Petitioner Ashley Abelar is currently being held at the Galveston County jail on charges unrelated to the basis for this petition. Ashley Abelar is represented by the undersigned, Paul Anderson, PLLC.
3. The following entities are sought to be deposed:
4. **Wal-Mart Stores Texas, LLC** ("Walmart") is a foreign business corporation that is registered to do business in Texas. Wal-Mart Stores Texas, LLC may be served by serving its counsel John A. Ramirez, Bush & Ramirez, PLLC, 5615 Kirby, Suite 900, Houston, Texas 77005.
5. Unidentified **City of Houston Police** Officer, c/o City of Houston Legal Department, 900 Bagby, 4<sup>th</sup>, Floor, Houston, Texas 77002.
6. Unidentified **Harris County Sheriff's Office** Deputy, Harris County Sheriff's Office, 1200 Baker Street, Houston, Texas 77002.

## **Jurisdiction and Venue**

7. Venue is proper in Harris County because all or substantially all of the events related to incident that caused Ashley Abelar's injuries occurred in Harris County. Further, Harris County is the Texas county of venue where an anticipated lawsuit should and may be filed.

8. The court has personal jurisdiction over WalMart because Walmart conducts business in Texas, is registered to do business in Texas, answers lawsuits in Texas District Courts and has a registered agent for the service of process in Texas.

## **Narrative of January 9<sup>th</sup>, 2021**

9. On January 9<sup>th</sup>, 2021 Ashley Abelar was detained for shoplifting at the Almeda-Genoa WalMart located in south Houston near Hobby Airport at 9598 Rowlett Road. Ms. Abelar, who was 31 at the time, was caught before she left the store by an unidentified off-duty Houston Police officer or Harris County Sheriff's Office Deputy. Ms. Abelar voluntarily accompanied the officer and two unidentified WalMart employees to a single room office with one desk.

10. Ashley Abelar testifies that, "One woman pulled a gun and held it to my face. The end of the gun made contact with my lips. She yelled at me "bitch." While the gun was in my face, she pulled a tazer [sic] she shot me in the abdomen with the prongs. I fell to the ground and she continued to tase me." *See attached Exhibit "A"* – Ashley Abelar August 3<sup>rd</sup>, 221 Affidavit.

11. Ms. Abelar suffered documented medical injuries and states, "I was also burned between my thighs as a result of arcing from the taser." *Id.*

12. The seriousness of the assault on Ms. Abelar was addressed by the Houston Police Department Internal Affairs Division. The HPD IAD visited Ashley Abelar while she was in custody and interviewed her. Ms. Abelar states that, "On or about April 11<sup>th</sup>, 2021 photographs were taken. A report was taken by HPD IAD." *Id.*

13. Despite months of attempts to determine additional facts related to the January 9<sup>th</sup>, 2021 vicious assault on Ashley Abelar, including Texas Public Information Act requests, almost no

information has been forthcoming. There has been absolutely no assistance in identifying the Houston Police officer who held a gun to Ashley Abelar's mouth and simultaneously tasered her for ninety seconds. This petition has been amended to include the reasonable belief that it may have been a Harris County Sheriff's Office Deputy that assaulted Ms. Abelar.

14. Ashly Abelar files this petition to take the oral depositions of the corporate representative of WalMart and the unidentified Houston Police Officer or Harris County Sheriff's Office Deputy who assaulted her, in order to investigate any potential claims or suits related to the incident which led to Ashley Abelar's injuries. Therefore, Ashley Abelar seeks testimony regarding information about the incident which led to her injuries and the subsequent lack of cooperation with investigating criminal conduct from the Houston Police Department or WalMart.

15. Under Rule 202 of the Texas Rules of Civil Procedure, a person may petition the court for an order authorizing the oral deposition duces tecum and/or written questions either: (a) to perpetuate or obtain the person's own testimony or that of any person for use in anticipated suit; or (b) to investigate a potential claim or suit.

#### **No Current Federal Jurisdiction**

16. The Federal courts lack jurisdiction over this suit. A Rule 202 pre-suit deposition is not an official filing of a civil lawsuit and thus brings forward no claims or causes of actions that can be removed to federal court. A Rule 202 petition is not itself a civil lawsuit and cannot be removed to federal court. See *McCrary v. Kan. City So. RR.*, 121 F Supp. 2d 566, 569 (ED Tex. 2002)(finding that a Rule 202 proceeding does not constitute a civil lawsuit or proceeding.)

17. Petitioner's interest arises under Texas Rule of Civil Procedure 202.2(d) to investigate a potential claim and the anticipation of a lawsuit. The subject matter of a potential action involves whether certain acts or omissions on the part of WalMart caused Ashley Abelar's injuries. The Petitioner seeks to investigate a potential claim because she sustained injuries and damages including, but not limited to, physical pain, physical impairment, mental anguish, emotional

distress and denial of medical care. Furthermore, Petitioner anticipates filing a lawsuit for gross negligence, and negligent hiring, training and retention.

**Duces Tecum**

**18. Petitioner's request from WalMart:**

19. a. All documents related to the circumstances relating to the Petitioner's detention at the WalMart located at 9598 Rowlett Road on January 9<sup>th</sup>, 2021, including, but not limited to, the investigations, incident reports, liability claims, electronic communications, photographs, audio and especially video recordings;
20. b. All documents regarding the identity of the two WalMart employees present in the office with the unidentified Houston Police Officer on January 9<sup>th</sup>, 2021 and involved in the incident.

**21. Petitioner's requests from the Houston Police Department:**

22. a. All documents related to the circumstances relating to the Petitioner's detention at the WalMart located at 9598 Rowlett Road on January 9<sup>th</sup>, 2021, including, but not limited to, the investigations, incident reports, liability claims, electronic communications, photographs, audio and video recordings;
23. b. All documents related to the interview with Petitioner on or about April 11<sup>th</sup>, 2021 by agents of the Houston Police Department including, but not limited to, the investigations, incident reports, liability claims, electronic communications, photographs, audio and video recordings;
24. c. All documents regarding the identity of any and all of the Houston Police Officers present at WalMart on January 9<sup>th</sup>, 2021 and involved in the incident with the Petitioner.

**25. Petitioner's requests from the Harris County Sheriff's Office:**

21. a. All documents related to the circumstances relating to the Petitioner's detention at the

WalMart located at 9598 Rowlett Road on January 9<sup>th</sup>, 2021, including, but not limited to, the investigations, incident reports, liability claims, electronic communications, photographs, audio and video recordings;

22. b. All documents related to the interview with Petitioner on or about April 11<sup>th</sup>, 2021 by agents of the Harris County Sheriff's Office Deputies including, but not limited to, the investigations, incident reports, liability claims, electronic communications, photographs, audio and video recordings;
23. c. All documents regarding the identity of any and all of the Harris County Sheriff's Office Deputies present at WalMart on January 9<sup>th</sup>, 2021 and involved in the incident with the Petitioner.

#### **Request for Order**

24. Petitioner Ashley Abelar requests an order authorizing the deposition and duces tecum of WalMart's corporate representative or store manager present on January 9<sup>th</sup>, 2021.
25. Petitioner Ashley Abelar requests an order authorizing the deposition and duces tecum of the unidentified Houston Police Officer detaining and tasing Petitioner.
26. Petitioner Ashley Abelar requests an order authorizing the deposition and duces tecum of the unidentified Harris County Sheriff's Office Deputy detaining and tasing Petitioner.

#### **Prayer**

27. Petitioner requests the Court set a hearing on this Petition, and after the hearing, make a finding allowing Petitioner to take the requested depositions with duces tecum, which will prevent a failure or delay of justice. Petitioner prays the Court finds that the likely benefit of allowing Petitioner to take the requested oral depositions with duces tecum to investigate her potential claims outweighs the burden or expense of the procedure.
28. Petitioner further requests that the Court issue an order authorizing Petitioner to take the deposition with duces tecum of the corporate representative of WalMart the Houston Police Officer

or Harris County Sheriff's Office Deputy that detained and taser Petitioner on January 9<sup>th</sup>, 2021.

Respectfully submitted,

PAUL ANDERSON, PLLC

A handwritten signature in black ink, consisting of a stylized 'P' and 'A' followed by a horizontal line.

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