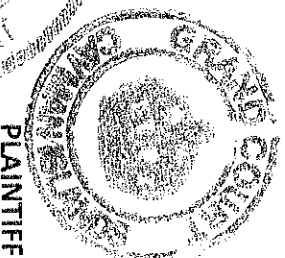


IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 80 OF 2012

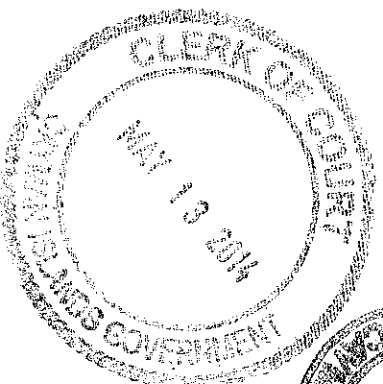
BETWEEN:

BRIDGET DAY



PLAINTIFF

AND



THE COMMISSIONER OF POLICE

FIRST DEFENDANT

THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS

SECOND DEFENDANT

**AMENDED STATEMENT OF DEFENCE ON BEHALF OF THE DEFENDANTS.**

1. Paragraph 1 of the Statement of Claim is not admitted.
2. Paragraph 2 of the Statement of Claim is not admitted. In response thereto, all civil proceedings against the Crown are to be instituted against the Attorney-General, in his representative capacity, pursuant to the Crown Proceedings Law (1997 Revision) section 11(2).
3. Paragraph 3 of the Statement of Claim is admitted.
4. Paragraph 4 of the Statement of Claim is not admitted. In response thereto the Defendants say that there were previous press reports of stone throwing in the Bodden Town area of Kipling Street. The Complainant in this case is Mr Avel McLaughlin the son of Beningo McLaughlin. Ms. Jacqueline McLaughlin stated that the stone throwing had been going on for approximately a period

- of 8 months prior to the date she gave a statement, in May 2008. The McLaughlin residence in particular bore the brunt of the attacks.
5. Paragraph 5 of the Statement of Claim is admitted. In response thereto the Defendants say that the Plaintiff was lawfully arrested on the 16<sup>th</sup> May 2008 and the 30<sup>th</sup> June 2008.
  6. Paragraph 5 of the Statement of Claim is admitted.
  7. Paragraph 6 of the Statement of Claim is not admitted. In response thereto the Defendants say that at times several houses in Kipling Street were targeted by stone throwing resulting in some individuals being injured as a result in addition to property damage to houses and vehicles.
  8. Paragraphs 7, 8 and 9 of the Statement of Claim are not admitted. In response thereto the Defendants say that whilst there were press reports, the contents of the press reports are hearsay and the truth of the contents of the press reports are not admitted.
  9. Paragraph 10 of the Statement of Claim is denied. In response thereto the Defendants say that the police carried out a thorough investigation in relation to the allegations of 'rock throwing'. The police also investigated whether someone had a grudge against the McLaughlin family.
  10. Paragraph 11 of the Statement of Claim is admitted.
  11. Paragraph 12 of the Statement of Claim is not admitted, save and except for that part which states that Ms Jacqueline McLaughlin wife of Mr McLaughlin stated 'Officer I think it's coming from the house to the back on the left side, that lady came out of her back door and when it slam the rocks started to come.'
  12. Paragraph 13 of the Statement of Claim is not admitted, save and except for that part which states that PC Conolly 136 stated that 'whilst speaking to them another rock came over the front left side'.
  13. Paragraph 14 of the Statement of Claim is admitted. In response thereto the Defendants say that after P.C. Joleta Conolly 136 saw the rock come over the

front left side. P.C. Joleta Conolly 136 and P.C. Bill McLaughlin 308 drove over to the next street and whilst they were walking to the Plaintiff's house on 51 Tennyson Street, the Plaintiff was observed getting into her bed. P.C. Joleta Conolly 136 knocked on the front door and when the Plaintiff opened the door P.C. Joleta Conolly 136 informed the Plaintiff of the said rock report. P.C. Joleta Conolly asked the Plaintiff 'if she or anyone else came outside before 15 minutes ago', the Plaintiff admitted that she had come outside as her drain was clogged while she was having a shower so she went outside to clear it. The Plaintiff also denied that her tenants would throw rocks.

14. Paragraph 15 of the Statement of Claim is denied. At all material times the police were conducting an investigation into the rock throwing incidents with a view to determining who were the persons responsible for same.

15. Paragraph 16 of the Statement of Claim is denied. In response thereto the Defendants say that after the incident of the 16<sup>th</sup> May 2008 the police continued an investigation in this matter generally with a view to determining who were the persons responsible for same.

16. Paragraph 17 of the Statement of Claim is admitted.

17. All particulars of assault, battery, wrongful arrest and or unlawful detention in relation to the incident of the 16<sup>th</sup> May 2008 are denied.

18. Paragraph 18 of the Statement of Claim is admitted.

19. Paragraph 19 of the Statement of Claim is admitted.

20. Paragraph 20 of the Statement of Claim is denied save and except for that part which states that the Plaintiff's yard at that time had construction material.

21. Paragraph 21 of the Statement of Claim is admitted save and except for that part which states that P.C. Gordon attended the scene after the call from the Complainant. In response thereto the Defendants say that the incident report was from Mrs Jacqueline McLaughlin and not the Complainant Mr

- Avel McLaughlin. Further, P.C. Brian Gordon 320 and P.C. Kaffion Montague 254 who were on mobile patrol responded to said incident report.
22. Paragraph 22 of the Statement of Claim is not admitted. In response thereto Mr Avel McLaughlin stated when he got struck in the head, he was facing west and the rock came from the east. Mr Avel McLaughlin stated that he did not know if the Plaintiff was still in her yard and that he and his wife went to the back, but did not see the Plaintiff in the yard and did not see anyone in the vicinity of Tennyson Street or any of his neighbours outside at that time.
23. Paragraph 23 of the Statement of Claim is not admitted. In response thereto Mr Avel McLaughlin said that the Plaintiff became a suspect on the night of the 16<sup>th</sup> May 2008 when he got struck in the head because of what the female police officer said she saw.
24. Paragraph 24 of the Statement of Claim is denied save and except for that part which states that the McLaughlin residence according to PC Gordon was separated by some 81 feet from its boundary fence with the Plaintiff. In response thereto P.C. Brian Gordon 320 measured the distance from the boundary fence to where the complainant, Mr Avel McLaughlin was standing when he was struck in his head by the rock and this amounted to 81 feet.
25. Paragraph 25 of the Statement of Claim is not admitted. In response thereto the Defendants say that the Plaintiff has a neighbour, but that the said house on Tennyson Street is a substantial distance away from the McLaughlin's residence. Further, the police made enquiries at the said house and spoke to the occupants and made enquiries in the surrounding area.
26. Paragraph 26 of the Statement of Claim is not admitted. In response thereto in his typed Investigation Diary P.C. Brian Gordon 320 stated that P.S. Campbell-Dyke had said that she saw Ms. Day(the Plaintiff) throw the rock. Further, P.C. Kaffion Montague 254 stated that she heard P.S. Dyke 18 say that she saw Ms. Day throw the rock. P.S. Campbell-Dyke 18 in a subsequent statement indicated that she saw a rock fall by P.C. Brian Gordon 320 and

that she looked across the fence and saw the Plaintiff going into the house behind the McLaughlin's house shortly after the rock was thrown.

27. Paragraph 27 of the Statement of Claim is denied. In response thereto, after the rock was thrown, P.C. Brian Gordon 320 remained for a while at the McLaughlin's residence. After the said rock was thrown, P.S. Campbell Dyke 18 went immediately to the Plaintiff's house and knocked on the Plaintiff's front door and the Plaintiff opened the front door wearing a towel. PS Campbell Dyke 18 asked the Plaintiff why she threw a rock next door. The Plaintiff said 'so what if I did'. P.S. Campbell Dyke 18 then informed the Plaintiff that the rock hit someone in the head. The Plaintiff then said 'so what that woman next door is evil and I was raking my garden'. P.S. Campbell Dyke 18 informed the Plaintiff that she should get dressed because she will be required to attend the Bodden Town Station in relation to the rock that she threw that hit Mr McLaughlin on his head. The Plaintiff refused to get dressed. P.C. Jennifer La Grande 297 arrived later at the Plaintiff's house. P.C. Jennifer La Grande joined P.S. Campbell Dyke 18 by the Plaintiff's apartment in front of the Plaintiff's door and the Plaintiff was shouting and behaving disorderly. P.S. Campbell Dyke 18 informed the Plaintiff that she would be placed under arrest. P.S. Campbell Dyke 18 then instructed P.C. Jennifer La Grande 297 to arrest the Plaintiff. P.C. Jennifer La Grande 297 arrested the Plaintiff at about 10:50pm hours on suspicion of assault occasioning actual bodily harm.

28. On the 16<sup>th</sup> May 2008 the Plaintiff was arrested at about 10:50pm at 51 Tennyson St., Bodden Town, on suspicion of assault occasioning actual bodily harm. The particulars of reasonable and probable cause for the arrest are as follows:

- a. An incident was reported on the 16<sup>th</sup> May 2008 at about 10:20pm by Ms Jacqueline McLaughlin that her husband was hit on the head with a rock.

- b. The victim Avel McLaughlin and Ms. Jacqueline McLaughlin were interviewed by the police.
- c. Avel McLaughlin stated that the rock came from the direction of the Plaintiff's house on 51 Tennyson Street and that some time before he was struck by the rock, he saw the Plaintiff shovelling stones at the back of her house. The Plaintiff's house on 51 Tennyson Street is behind Mr McLaughlin's house and both properties are separated by a chain link fence.
- d. Mrs. Jacqueline McLaughlin reported that she saw the rocks come from the left side of where Mr. Avel McLaughlin was standing.
- e. Mr Avel McLaughlin's had visible injuries, namely the left side of Mr. McLaughlin's head was swollen.
- f. As PC Brian Gordon 320 was walking away from the Plaintiff's house and towards Mr McLaughlin's house, he saw a rock fall in front of him, which came from behind him. PC Dyke saw the rock fall which almost hit PC Brian Gordon 230 and PC Campbell Dyke also saw the Plaintiff shortly afterwards.
29. On the 16<sup>th</sup> May 2008 P.C Brian Gordon 320 arrived at the Plaintiff's home after the Plaintiff was already arrested. P.C. Brian Gordon 320 and P.C. Kaffion Montague 254 were then instructed to transport the Plaintiff to the Boddan Town Police Station and they complied.
30. Paragraph 28 of the Statement of Claim is denied. In response thereto it is denied that the Plaintiff was assaulted, wrongfully arrested or wrongfully detained.
31. Paragraph 29 of the Statement of Claim is denied save and except for that part which states that the hour was late and that PS Dyke and PC La Grande were met with verbal resistance from the Plaintiff although no evidence of

swearing was ever presented or referred to by any of the officers attending. In response the Defendants say that the Plaintiff was shouting.

32. Paragraph 30 of the Statement of Claim is not admitted save and except for that part which states that the Plaintiff did raise her voice in protest. In response thereto P.C. Jennifer La Grande 297 stated that the Plaintiff was uncooperative.

33. Paragraph 31 of the Statement of Claim is denied save and except for that part which states that the Plaintiff was arrested on suspicion of assault causing actual bodily harm and taken to the Boddan Town Police Station. In response the Defendants say that at about 10:50 pm on the 16<sup>th</sup> May 2008 at 51 Tennyson St., Boddan Town, the Plaintiff was arrested and informed that the reason for the arrest was suspicion of assault causing actual bodily harm.

34. Paragraph 32 of the Statement of Claim is expressly denied. In response thereto the Defendants say that on the 23<sup>rd</sup> May, 2008 the Plaintiff was interviewed under caution in the presence of her attorney Ed Renvoize by PC Brian Gordon 320 in the presence of PC Stone 255. PC Gordon had not yet received the statement of PS Campbell Dyke 18 prior to the interview.

35. Paragraph 33 of the Statement of Claim is not admitted.

36. Paragraph 34 of the Statement of Claim is not admitted. In response thereto on the 16<sup>th</sup> May 2008 after the rock was thrown in the presence of P.C. Brian Gordon 320, he remained for a while at the McLaughlin's residence and when he arrived at the Plaintiff's residence, the Plaintiff had already been arrested. Therefore P.C. Brian Gordon 320 was not present at the Plaintiff's residence for the conversation between P.S. Campbell Dyke 18 and the Plaintiff, and therefore P.C. Gordon's statement dated 17<sup>th</sup> October 2008 made no reference to the conversation between the Plaintiff and P.S. Campbell Dyke 18.

37. Paragraph 35 of the Statement of Claim is denied.

38. Paragraph 36 of the Statement of Claim is denied.

39. Paragraph 37 of the Statement of Claim is denied save and except for that part which states that at the station the Plaintiff was requested to sign forms. In response thereto the Defendants say that the Plaintiff was informed of her rights and she was shown a notice setting out her rights and asked to state whether she required a lawyer. The Plaintiff was requested to sign the custody record, to confirm that she was informed of her rights. The Plaintiff was also requested to sign a notice setting out her rights were drawn to her attention. The Plaintiff was also required to state whether she required a lawyer.
40. Paragraph 38 of the Statement of Claim is denied save and except that part which states that the Plaintiff was subjected to the usual photographs and fingerprint exercise and a swab of saliva for a DNA sample was taken from inside her mouth. In response thereto the Defendants say, at that time, it was standard police practice that when a person is arrested they are processed at the police station, which includes, the taking of photographs, fingerprints and a DNA sample of saliva.
41. Paragraph 39 of the Statement of Claim is admitted.
42. Paragraph 40 of the statement of Claim is denied save and except for that part which states that the Plaintiff was placed overnight in a cell for approximately 12 hours.
43. Paragraph 41 of the Statement of Claim is denied save and except for that part which states that the Plaintiff was allowed to call friends to pick her up and take her home at 10:45am the following morning that is 17<sup>th</sup> May 2008 after signing a bail bond. In response thereto the Defendants say that the Plaintiff was arrested on the 16<sup>th</sup> May 2008 at about 10:50 pm and detained until the 17<sup>th</sup> May at about 10:45 ~~pm~~ am, when the Plaintiff was granted bail.
44. Paragraph 42 of the Statement of Claim is denied.

45. Paragraph 43 of the Statement of Claim is denied save and except for that part which states that there is a large piece of scrubland to the rear of the McLaughlin's residence. In response thereto the Defendants say that when complaints were made about stone throwing a proper investigation was launched and police made arrangements with CUC for electricity and the area was properly lighted. Further, the police conducted a thorough investigation into the incident reports.
46. Paragraph 44 of the Statement of Claim is denied. In response thereto the Defendants say that P.S. Campbell Dyke 18 and PC Jennifer La Grande 297 had the Plaintiff arrested on the 16<sup>th</sup> May 2008 and that there was reasonable and probable cause to arrest the Plaintiff and that the said arrest was lawful and that the Plaintiff was lawfully detained thereafter. Further, P.C. Brian Gordon 320 did not arrest the Plaintiff at any point in time nor did he cause the arrest of the Plaintiff on the 16<sup>th</sup> May 2008 and P.C. Brian Gordon 320 only arrived at the Plaintiff's residence after the Plaintiff was already arrested. P.C. Brian Gordon 320 was only instructed to transport the Plaintiff to the Bodden Town Police Station and pursuant to said instruction P.C. Brian Gordon 320 and P.C. Kaffion Montague 254 transported the Plaintiff to the Bodden Town Police Station. P.C. Kaffion Montague 254 then processed the Plaintiff at the Bodden Town Police Station.
47. The agents or servants of the Defendants had reasonable and probable cause to arrest the Plaintiff on the 16<sup>th</sup> May 2008 on suspicion that the Plaintiff committed assault causing actual bodily harm. The arrest and detention of the Plaintiff was lawful and reasonable at all material times.
48. Paragraphs 45.1, 45.2, 45.3, 45.4, 45.5, 45.6 and 45.7 of the Statement of Claim are denied.
49. All particulars of trespass, assault, battery, unlawful arrest and unlawful detention are specifically denied.
50. All particulars of false imprisonment of the Plaintiff are denied.

51. Paragraph 46.1 of the Statement of Claim is not admitted. In response thereto the Defendants say that the Plaintiff was lawfully arrested and lawfully detained for a period of about 12 hours at the Boddan Town Police Station and that the said period of detention was reasonable in the circumstances.
52. Paragraphs 46.2, 46.3, 46.4, 46.4, 46.5, 46.6, 46.7, 46.8, 46.9, 46.10 of the Statement of Claim are denied.
53. In response thereto the police had reasonable and probable cause to suspect that the Plaintiff had committed the offence of assault causing actual bodily harm and the arrest and detention at all material times was lawful.
54. The arrest and detention of the Plaintiff was in accordance with the law.
55. The detention of the Plaintiff was not oppressive or arbitrary.
56. It is denied that the Plaintiff suffered injury, loss and damage as alleged or at all.
57. Paragraph 47 of the Statement of Claim is admitted.
58. Paragraph 48 of the Statement of Claim is denied save and except for that part which states that at approximately 8:30 pm on the 30<sup>th</sup> June 2008 PC Joleta Conolly 136 arrested the Plaintiff at her residence on suspicion of idle and disorderly person and or disorderly conduct. In response to the allegations, P.C. Joleta Conolly 136 was acting on instructions when she arrested the Plaintiff.
59. On the 30<sup>th</sup> June 2008 the Plaintiff was arrested at about 8:30 pm at 51 Tennyson Avenue by P.C. Joleta Conolly 136 on suspicion of idle and disorderly person and or disorderly conduct. Particulars of reasonable and probable cause are as follows:
- a. On the 30<sup>th</sup> June 2008 at about 7:50 pm PC Joleta Conolly 136 was informed of an incident report from Mr Alvin Boddan of 81 Kipling Street, Boddan Town that he was visiting the McLaughlin's residence when he

saw the Plaintiff of 51 Tennyson Street, Boddan Town before rocks started to be thrown. Mr Boddan stated that a piece of a concrete block almost hit him.

b. P.C. Joleta Conolly 136, PC Oldham 186 and PC Courtney Gordon 329 were dispatched and proceeded to a residence at Kipling Street, Boddan Town, in relation to stone throwing to interview the Complainant. While at the location the complainant Mr. Alvin Boddan told P.C. Joleta Conolly 136 that he saw the lady next door outside when the rock was thrown and commented on her behaviour at the time.

c. P.C. Joleta Conolly 136, PC Oldham 186 and PC Courtney Gordon 329 then proceeded to the Plaintiff's residence on 51 Tennyson Street, Boddan Town. Enquiries were made whether the Plaintiff had been outside in the yard and the Plaintiff answered in the affirmative. A senior police officer at the Boddan Town Police Station was then informed via telephone of the situation and the said senior officer gave instructions to PC 329 Gordon or PC 186 Oldham that P.C. Conolly 136 was instructed to arrest the Plaintiff, Bridget Day, on suspicion of idle and disorderly person and or disorderly conduct. The said senior police officer had prior knowledge of the incident of the 16<sup>th</sup> May 2008 in relation to the Plaintiff and the rock throwing incident report.

d. PC Joleta Connelly 136 had previous knowledge of the report dated the 18th April 2008 from Mrs Jacqueline McLaughlin and Mr Avel McLaughlin in relation to a rock throwing allegation. Mrs Jacqueline McLaughlin had reported that she thought the rocks were coming from the Plaintiff's house and that when the Plaintiff came out of the back door and when the door slammed the rocks started to come. The Plaintiff was seen shortly before the rocks started to come and the rocks were coming from the direction of the Plaintiff's house.

- e. Prior to the arrest, of the 30<sup>th</sup> June 2008 PC Joleta Conolly had received instructions to arrest from a senior officer and also had knowledge of a report by the Complainant Mr Alvin Boddan, and had knowledge of the report of the 18<sup>th</sup> April 2008, and thereafter proceeded to arrest the Plaintiff on suspicion of idle and disorderly person and or disorderly conduct.
60. For an avoidance of doubt, P.C. Brian Gordon 320 did not arrest the Plaintiff on the 30<sup>th</sup> June 2008 nor did he cause the arrest of the Plaintiff on the 30<sup>th</sup> June 2008. P.C. Brian Gordon 230 was not present at the scene of the arrest on the 30<sup>th</sup> June 2008.
61. The Plaintiff was then taken to Boddan Town Police Station and processed and then taken to West Bay Police Station. The Plaintiff was arrested on the 30<sup>th</sup> June 2008 at 8:30 pm and detained until 1<sup>st</sup> July 2008 at about 3:35pm.
62. Paragraph 49 of the Statement of Claim is denied, save and except for that part which states that the Plaintiff was first taken to the Boddan Town Police Station for photographing and then taken to the West Bay Police station and detained overnight and released the next day.
63. Paragraph 50 of the Statement of Claim is denied. The Plaintiff was arrested based on instructions by a senior police officer and on suspicion of rock throwing as a result of a report by Mr Alvin Boddan of 81 Kipling Street, Boddan Town that he was visiting the McLaughlin's residence when he saw the Plaintiff of 51 Tennyson Street, Boddan Town before rocks started to be thrown and that a piece of a concrete block almost hit him.
64. Paragraph 51 of the Statement of Claim is denied.
65. Paragraph 52 of the Statement of Claim is admitted.
66. Paragraphs 53.1, 53.2, 53.3, 53.4, 53.5, 53.6, 53.7, 53.8, 53.9, 53.10, 53.11, 53.12 of the Statement of Claim are denied.

67. Paragraph 54.1 of the Statement of Claim is denied save and except for that part which states that a search warrant was issued for the Plaintiff's residence.

68. Paragraph 54.2 of the Statement of Claim is denied. In response thereto the Defendants say that P.C. Brian Gordon 230 had reasonable and probable cause to apply for a search warrant to be issued in all the circumstances of the case and was acting in good faith at all material times and the said warrant was lawfully issued. Further, that P.C. Brian Gordon acted reasonably in applying for a search warrant to be issued in the circumstances of this case and sufficient evidence was provided to the justice of the peace in the circumstances of this case. Further the search warrant was lawfully issued for the Plaintiff's residence and lawfully executed.

69. The agent or servant of the Defendants is and was at all material times a police officer and searched the Plaintiff's premises on the authority of the warrant issued by the justice of the peace. The agent or servant of the defendants had the warrant in his possession at all material times. The agent or servant of the Defendants searched the Plaintiff's home in obedience to the search warrant.

70. P.C. Brian Gordon 320 swore to affidavit on 22<sup>nd</sup> June 2008 before Justice of Peace Richard Arch in relation to an application for a search warrant of the Plaintiff's residence at 51 Tennyson Street, Boddan Town, for missile throwing apparatus in relation to the offence of assault causing actual bodily harm and a search warrant was lawfully issued. On 22<sup>nd</sup> June 2008 a search warrant was lawfully executed at No. 51 Tennyson Street, Boddan Town at the Plaintiff's home and nothing was found.

71. In August 2008, two search warrants were executed at other locations for stone throwing apparatus. The police carried out intensive investigations which included enquiries of all houses in the surrounding areas on Tennyson Street and Kipling Street, Woods Close.

72. Paragraph 54.3 of the Statement of Claim is denied.
73. Paragraph 54.4 of the Statement of Claim is denied.
74. Paragraph 54.5 of the Statement of Claim is admitted save and except for that part which states that the weakness of the investigation against the Plaintiff was evident on 1<sup>st</sup> July 2008.
75. Paragraph 54.6 of the Statement of Claim is denied save and except for that part which states that the application for a search warrant was supported by an affidavit sworn by PC Brian Gordon 230. In response thereto the application for the said search warrant was lawfully issued.
76. Paragraphs 54.7, 54.8, 54.9, 54.10, 54.11, 54.12 and 54.13 of the Statement of Claim are denied
77. Paragraphs 55.1, 55.2, 55.3, 55.5, 55.6, 55.7 and 55.8 of the Statement of Claim are denied.
78. Paragraph 55.4 of the Statement of Claim is not admitted.
79. Legal advice was sought by the Police in relation to the said case, from the agent or servant of the Second Defendant and the agent or servant of the Second Defendant approved the following charges to be laid against the Plaintiff on the 3<sup>rd</sup> October, 2008 as follows:
  - (1) Common assault on Avel McLaughlin
  - (2) Common assault on PC Brian 320 Gordon
  - (3) Common assault on Avel McLaughlin's daughter
  - (4) Negligent act causing harm (s.211 Penal Code) re injury to Avel McLaughlin
80. The following charges were laid by the police against the Plaintiff on the 14<sup>th</sup> October, 2008 at 4:55 p.m. and bail was granted at the same time.
81. On the 14<sup>th</sup> October 2008 the Plaintiff was charged for (1) Common assault contrary to section 215 of the Penal Code 2007 Revision on Avel McLaughlin, the particulars are such that on the 16<sup>th</sup> May 2008, at 66 Kipling Street,

Bodden Town, Grand Cayman the Plaintiff unlawfully assaulted Avel McLaughlin;(2) Common Assault, contrary to section 215 of the Penal Code 2007 Revision the particulars are that the Plaintiff on the 16<sup>th</sup> May 2008 at 66 Kipling Street, Bodden Town, Grand Cayman unlawfully assaulted PC Gordon.(3) Common Assault, contrary to section 215 of the Penal Code, 2007 Revision, the particulars being that Bridget Anne Day on Friday 16<sup>th</sup> May 2008 at 66 Kipling Street, Bodden Town, Grand Cayman unlawfully assaulted Aveline McLaughlin. (4) Reckless and negligent act contrary to section 211 of the Penal Code 2007 Revision, causing harm, the particulars are that the Plaintiff on the 16<sup>th</sup> May 2008 at 66 Kipling Street, Bodden Town did an act, pelt a rock and struck Avel McLaughlin, in a manner so rash or negligent as to endanger human life or safety.

82. At the trial of the captioned matter before the Summary Court on 27<sup>th</sup> March, 2009 an agent or servant of the Second Defendant offered no evidence against the Plaintiff and so the charges and prosecution were not proceeded with.

83. Paragraph 56 of the Statement of Claim is denied.

84. Paragraphs 56.1, 56.2, 56.3, 56.4, 56.5, 56.6, 56.7, 56.8, 56.9 and 56.10 of the Statement of Claim are denied.

85. The Plaintiff's claims at paragraphs 1,2,3,4 and 5 are denied.

86. In response thereto the Defendants say that at all material times the police officers were acting as servant or agent of the Defendants.

87. It is denied that the Plaintiff was falsely imprisoned by the agents or servants of the Defendants at all material times or at all.

88. All particulars of false imprisonment are specifically denied.

89. The periods of the detention of the Plaintiff were in all the circumstances reasonable, proper and lawful.

90. The servants or agents of the Defendants were acting within their authority and in the execution of their duty as police officers, in the circumstances,

which empowers a police officer to arrest if he has reasonable cause that an offence was committed.

91. Further or in the alternative the agents or servants of the Defendants believed in good faith and had reasonable cause for believing that the arrest and detention were necessary for the purpose.
92. The agents or servants of the Defendant had reasonable grounds for suspecting the Plaintiff to be guilty of having committed an arrestable offence of assault causing actual bodily harm.
93. Further or in the alternative the agents or servants of the Defendants had reasonable grounds for suspecting that the Plaintiff was in the act of committing an arrestable offence.
94. By reason of the matters aforesaid the arrest and detention of the Plaintiff were necessary for the prevention of crime and or to prevent a breach of peace.
95. The Plaintiff was informed of the fact of her being under arrest and the reasons for the arrests at all material times.
96. The agent or servant of the Defendants cautioned the Plaintiff at all material times.
97. It is specifically denied that the Plaintiff was assaulted and or beaten by the servants or agents of the Defendants as alleged herein or at all.
98. All particulars of assault and battery are expressly denied.
99. The servants or agents of the Defendants used no more force than was reasonably necessary to effect the arrest of the Plaintiff in the circumstances.
100. It is denied that the servants or agents of the Defendants had no reasonable and probable cause for preferring the said charges and for taking and or causing to be taken the said proceedings against the Plaintiffs and that in so doing acted with malice.

101. It is denied that any injury or damage suffered by the Plaintiffs was occasioned by or resulted from the prosecution of the said charges or the institution of the said proceedings against them as alleged or at all.
102. The agents or servants of the defendants deny that there was any negligence or breach of duty as alleged in the Statement of Claim or at all.
103. All particulars of injury, loss and damage as alleged by the Plaintiff are specifically denied.
104. Save as aforesaid, the defendants deny each and every allegation in the Statement of Claim as though the same were set out herein and traversed specifically.
105. The alleged causes of action for damages for personal injuries did not arise within three years before this action and are statute barred by section 13 of the Limitation Law (1996 Revision).
106. Further, the Writ of Summons was filed on the 21<sup>st</sup> February 2012. The Plaintiff was arrested on the 16<sup>th</sup> May 2008 and detained until the 17<sup>th</sup> May 2008. The Plaintiff was again arrested on the 30<sup>th</sup> June 2008 and detained until the 1<sup>st</sup> July 2008. Therefore, the alleged causes of action for personal injuries in relation to the alleged assault, battery, wrongful arrest and or unlawful detention did not arise within three years before this action and are statute barred by section 13 of the Limitation Law (1996 Revision).
107. Further, the alleged causes of action for damages for personal injuries due to the alleged malicious abuse of process and or trespass in relation to the procurement and or execution of the search warrants executed on the 22<sup>nd</sup> June 2008 and on the 1<sup>st</sup> July 2008 did not arise within three years before this action and are statute barred by section 13 of the Limitation Law (1996 Revision).
108. The first named Defendant is an improper party to these proceedings and should be struck out as a party, pursuant to section 11 of the Crown Proceedings Law (1997 Revision).

WHEREFORE the Defendants claim:

~~105-109.~~ That the Plaintiff's claims be dismissed; and

~~105-110.~~ That the Defendants be awarded costs against the Plaintiff.

~~Dated this 20<sup>th</sup> April 2012.~~

Dated this 13<sup>th</sup> May 2014

*Attorney General's Chambers*

Attorney General's Chambers

Attorneys at Law for the Defendants

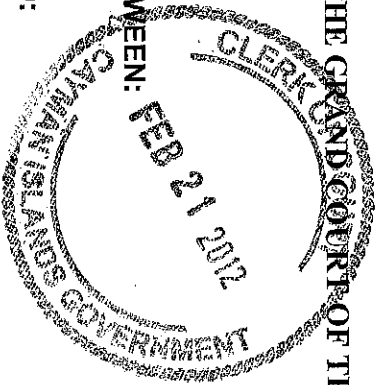
TO: The Clerk of the Court

AND TO Mr Irvin Banks, Attorneys-at-Law, 14 Rosemont Close, P.O. Box 1643

KY1-110, Grand Cayman, Cayman Islands.

This AMENDED STATEMENT OF DEFENCE AND ~~COUNTERCLAIM~~ is issued by the Attorney General's Chambers, whose address for service is P.O. Box 907, KY1-1103, Ground Floor, DMS House, Georgetown, Grand Cayman, Cayman Islands.

IN THE GRAND COURT OF THE CAYMAN ISLANDS



CAUSE NO: 80 OF 2012

*Letear Bro Cost #*

*14 CV 0139/*

*2011*

BRIDGET DAY

Plaintiff

AND:

- (1) THE COMMISSIONER OF THE ROYAL CAYMAN ISLANDS POLICE
- (2) THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS

Defendants

WRIT OF SUMMONS



TO: THE COMMISSIONER OF THE ROYAL CAYMAN ISLANDS POLICE AND THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within (14 Days) after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Courts Office, PO Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment of Service within the time stated, or if you return the Acknowledgment of Service without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and Judgment may be entered against you forthwith without further notice.

Issued this 20 February 2012

NOTE – This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by Order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

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## STATEMENT OF CLAIM

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1. The First Defendant is, and at all material times was, the Commissioner of Police for the Cayman Islands and by virtue of the Police Law 2010 and the Crown Proceedings Law (1997 Revision) is responsible for the torts committed by the police officers under his direction and control in the performance or purported performance of their duties.
2. The Second Defendant is, and at all material times was the Attorney General of the Cayman Islands and by virtue of the Crown Proceedings Law (1997 Revision) is responsible for the torts committed by legal counsel under his direction and control in the performance or purported performance of their duties, and acts for the First Defendant in legal proceedings brought against the First Defendant.
3. The Plaintiff now 64 years of age, at all material times resided at 51 Tennyson Street, Pease Bay, Bodden town, Grand Cayman, Cayman Islands and is, and was, a British citizen who possessed Caymanian Status by Grant.

### **Background to Plaintiff's claims**

4. According to press releases incidents of stone throwing in the Bodden Town area of Kipling Street had been reported since 2007, and the complainant in this case, a Mr. Avel McLaughlin, ("Mr. McLaughlin") the son of Mr. Ben McLaughlin, owner of the residence at 66 Kipling Street ("McLaughlin Residence"), admits that the incidents of rock throwing commenced in or around July of 2007, the McLaughlin Residence in particular bearing the brunt of the attacks.
5. In fact, in August of 2008, after the Plaintiff had been arrested on two occasions, for allegedly throwing stones at the McLaughlin Residence in May and June 2008, the stone throwing continued and the McLaughlin family claimed someone had even tried to set fire to their house.
6. Apparently the police were unable to solve the problem in which several houses in Kipling Street were targeted by stone throwing resulting in some individuals being injured as a result in addition to property damage to houses and vehicles.

7. Indeed one press release in early February 2008 stated that some residents had caught sight of the culprits and even chased them, claiming they were a gang of boys and young men.
8. The stone throwing appeared to have intensified in January and February of 2008 (34 complaints since October of 2007) again with no apparent police success in apprehending the criminal or criminals involved. Some of the rocks thrown were said to be 'half cement blocks', and the media showed photographs of roofs in Kipling Street being covered with rocks.
9. On 3 August 2008 a press release stated that Boddin Town MLA Mr. Osbourne Boddin visited the scene to hear Mr. McLaughlin's concerns. He said there were ...*"few clues in the neighbourhood, but nothing was certain about the identity of the rock hurlers..."* *"it appears to be focused primarily around Mr. Ben's son"* (Mr. McLaughlin) Mr. Boddin said, *"He has been employed previously with the prison. He has also been an immigration officer for the past two years and was just recently released...In these jobs it's quite easy to cross people who are not necessarily going to be great fans of yours."*
10. There is no evidence that the police ever investigated this possible source of the rock throwing i.e. some sort of grudge against Mr. McLaughlin, or in fact anyone else with a possible grudge against a member of the McLaughlin family who also had a teenage daughter at the time.
11. After a report of one particular rock throwing incident, the police attended the McLaughlin Residence. According to the statement of P.C. Joleta Connolly ("**PC Connolly**") at about 9.30 pm on 18 April 2008, she responded to a complaint of rock throwing from Mr. & Mrs. McLaughlin at the McLaughlin Residence.
12. According to her statement, Jacqueline McLaughlin wife of Mr. McLaughlin said to her *" Officer I think it's coming from the house at the back on the left side (South East)...that lady (The Plaintiff) came out of her back door and when it slam the rocks start to come"*.
13. According to P.C. Connolly a rock landed while she was there on the left side of the McLaughlin Residence although there is no evidence she knew where it came from.
14. Along with P.C. McLaughlin, P.C. Connolly then proceeded to the Plaintiffs residence observing her through a window getting ready for bed. When the

Plaintiff opened the door to the officers, the Plaintiff told them yes she had been outside briefly to fix her drain, and that none of her tenants would throw stones.

The officers checked on the Plaintiff's tenants who appeared to have just been woken up by the officers and the officers then left.

15. There is no evidence the officers searched the area looking for suspects at this time.

16. After another incident had been reported on 16<sup>th</sup> May 2008, the police began to pursue criminal charges against the Plaintiff as the person likely responsible for throwing rocks at the McLaughlin Residence on two or more occasions.

17. The Plaintiff lived in Tennyson Street, the next street running parallel to the rear of the McLaughlin Residence, with the Plaintiff's back yard adjoining a south west section of the McLaughlin's Residence back yard, separated by a fence.

#### **16<sup>th</sup> May 2008, assault & battery, wrongful arrest, unlawful detention (1)**

##### PARTICULARS OF CLAIM

18. On 16 May 2008 the police attended the McLaughlin Residence at around 10.30 pm after Mr. McLaughlin complained of being hit by a rock, and that his daughter had also seen a rock fall in the yard.

19. Although Mr. McLaughlin later claimed that he nor any of his family had ever had any problems with the Plaintiff, i.e. no arguments, or even any contact with her, he nevertheless on this occasion told the police when they arrived that the rock which had hit him in the side of the head, had come from the direction of the Plaintiff's house and that he and his wife had noticed the Plaintiff had been shovelling stones in her yard some time before he was hit.

20. The Plaintiff's yard (and property generally) was a work in progress at the time with left over construction material strewn about and the Plaintiff was often out in the yard clearing up debris.

21. P. C. Gordon ("P.C. Gordon") attended the scene after the call from complainant Mr. McLaughlin and after inspecting the rear of the McLaughlin Residence (back yard) he noted that Mr. McLaughlin's yard was well lit. He then claims he was returning to the front of the house with Mr. McLaughlin when another rock fell to the ground in front of him. P. C. Gordon claims the rock came from behind him and that P. C. Campbell-Dyke ("P.C. Campbell-Dyke") who had also arrived to assist was sitting in a squad car and getting ready to leave the McLaughlin Residence "said something to him".

22. In a subsequent statement, Mr. McLaughlin explained that after he was struck in the head (a rock coming from the East, not South East) he and his wife had gone to the back of his house and looked over his fence towards the Plaintiff's residence but never saw anyone in the Plaintiff's yard and never saw any of his neighbours up and about on the Plaintiff's street.
23. Mr. McLaughlin further claims the Plaintiff only became a suspect on account of what P.C. Campbell-Dyke claimed she saw after she arrived in a squad car on the night in question.
24. The Plaintiff had lived in her property since 2005. The McLaughlin Residence according to PC Gordon was separated by some 81 feet from its boundary fence with the Plaintiff. Another 80 feet or so would separate the Plaintiffs house from the McLaughlin Residence boundary fence. The Plaintiff would have had to have thrown fairly large rocks in excess of 100 feet or more in order to quickly rush inside her house so as not to be seen.
25. The Plaintiff also had a next door neighbour in close proximity to her residence in Tennyson Street which was also to the south east of the McLaughlin Residence. There is no evidence the police inspected these premises and or spoke to the occupants.
26. In his typed 'Investigation Diary' P.C. Gordon claims that P.C. Campbell-Dyke had told him that '*she saw Ms. Day (the Plaintiff) throw the rock*'. However PC Campbell-Dyke in a subsequent statement claims only that she saw the Plaintiff entering a door into her house just after the rock was thrown. The police Summary of Facts support this scenario.
27. According to statements, after the rock was thrown, P.C. Gordon and P.C. Campbell-Dyke along with P.C. La Grande ("**P.C. La Grande**") immediately proceeded to the Plaintiffs house (after collecting two other woman police officers on the way), P.C. McLaughlin ("**P.C. McLaughlin**") and P.C. Montague ("**P.C. Montague**"), and after banging on the Plaintiff's door, accused the Plaintiff of throwing stones at the McLaughlin Residence with P.C. Campbell-Dyke further claiming that '*she had seen it with her own eyes*'.
28. The officers attending the Plaintiff's residence on the night of 16 May 2008 collectively for the purposes of their allegedly assaulting the Plaintiff, and being involved in the Plaintiff's wrongful arrest and wrongful detention are now referred to as the "**Officers**", unless specifically mentioned by name.
29. Since the hour was late and the Officers were threatening in their manner, the Officers met with some verbal resistance from the Plaintiff although no evidence of swearing or abusive language was ever presented or referred to by any of the Officers attending.

30. In response to P.C. Campbell-Dykes accusations, and in the Plaintiff's own defence, the Plaintiff did raise her voice in protest and according to the arresting policewoman was 'un-cooperative').

31. The Officers forced their way onto the Plaintiff's premises pushing the Plaintiff back physically and arrested the Plaintiff on suspicion of assault causing actual bodily harm, whereupon they pulled off the Plaintiff's towel leaving her naked (she had just come from the shower) and ordered her to dress in a bath robe. They then handcuffed her and marched her off to a squad car which took her to Boddan Town Police Station.

32. According to the Plaintiff, P.C. Campbell-Dyke in particular was extremely aggressive in her approach to the Plaintiff and appears to have later fabricated or helped to fabricate (with P.C. Gordon) a conversation she had with the Plaintiff at the time of the arrest which is not supported by any of the Officers attending the scene, but was used during the interview with the Plaintiff conducted by P.C. Gordon on the 23 May 2008.

33. The conversation alleged centered around the Plaintiff's response when asked by P.C. Campbell-Dyke "*Why she threw the rocks*" the Plaintiff allegedly replying that it was because "*the woman next door was evil*", and "*so what if I did*".

34. Even P.C. Gordon in his statement dated 17 October 2008, made no reference to this alleged conversation between the Plaintiff and P.C. Campbell-Dyke however P.C. Campbell-Dyke does refer to this alleged conversation in her sworn statement.

35. This alleged conversation never took place.

36. In fact according to P.C. Jennifer La Grande's statement (P.C. La Grande accompanied P.C. Campbell-Dyke and was in fact the actual arresting officer on the 16 May 2008), P.C. Campbell-Dyke only asked the Plaintiff "*why she was outside of her house and in her garden so late in the evening*".

#### PARTICULARS OF CLAIM

##### Boddan Town Police Station

37. While at the station there were numerous requests for the Plaintiff to sign various forms but of course the Officers had marched the Plaintiff away from her house leaving her reading glasses behind. The Officers told the Plaintiff she was un-cooperative in this respect and refused to let her call an attorney.

38. The Plaintiff was subjected to the usual photographs and fingerprint exercise, and swabs were taken from inside her mouth presumably for the purpose of DNA

- testing in the event that the Officers would find some DNA evidence on one of the rocks she allegedly had thrown.
39. There is no evidence at any stage of the investigation that police sought and found any DNA evidence linking Ms. Day to the rock throwing.
40. At the Bodden Town police station, the Plaintiff was placed overnight in a cell for a total of 12 hours in full view of several shift officers coming and going and anyone else that visited the station. All the time the duty officers and others were laughing at the Plaintiff's predicament and calling her guilty. The toilet urinal in the lock-up was in full view and after numerous requests, the duty officers took a long time to come and take the Plaintiff to a more private toilet.
41. Eventually after many hours of fear, humiliation and anxiety, the Plaintiff was allowed to call friends who eventually were told to pick her up and take her home at 10.45 am the following morning i.e. 17 May 2008, after signing a bail bond.
42. There was of course no way that P.C. Gordon or the complainant Mr. McLaughlin could reasonably ascertain with any degree of certainty that a 5 feet tall, petite 120 lb woman who just happened to live to the rear of the McLaughlin Residence in Kipling Street, suddenly with no provocation and or motive for doing so, and after living in the same residence for some three years previously, and keeping very much to herself, and never having any previous confrontation with the McLaughlin family whatsoever, would suddenly decide she would not only throw heavy rocks at the McLaughlin Residence, but after seeing the police arrive on the night of the 16 May 2008, would continue to throw rocks at the McLaughlin Residence before discreetly returning back into her house.
43. A large piece of scrubland also lay to the rear of the McLaughlin Residence and there had been media reports that residents claimed police brought no external lighting to the area when complaints were made about stone throwing and so were unable to launch any proper investigation.
44. The Officers without reasonable cause and or suspicion and acting on an untrue and malicious allegation by P.C. Campbell-Dyke supported by P.C. Gordon, assaulted the Plaintiff physically and emotionally, and the arrest of the Plaintiff was unlawful and the Plaintiff was falsely imprisoned.

PARTICULARS OF TRESPASS, ASSAULT & BATTERY, UNLAWFUL (False)  
ARREST AND UNLAWFUL DETENTION (1)

- 45.1. The Plaintiff had not committed any offence, which had entitled any or all of the Officers to arrest her.
- 45.2. Neither P.C. Campbell-Dyke nor P.C. Gordon or any of the Officers at the scene of the Plaintiffs residence on the evening of 16 May 2008 could

reasonably have suspected that it was the Plaintiff who had committed the offence of 'rock throwing' either at the McLaughlin Residence or at police, for which they had the power of arrest, and did not reasonably suspect that the Plaintiff had committed such an offence.

45.3. PC Campbell Dyke together with other Officers in entering the Plaintiff's residence without being invited committed trespass against the Plaintiff and her property and assaulted the Plaintiff by way of shoving the Plaintiff in the chest backwards into the Plaintiff's living room. The Officers then pulled off the Plaintiff's bath towel, ordering the Plaintiff to go put on a bath robe. The Officers then forced the Plaintiff's wrists behind her back, handcuffed her, and then pulled her by her arms to a police car, which took her to Bodden Town police station.

45.4. The said Officers committed trespass, assault and battery against the Plaintiff, the arrest was unlawful and the Officers thereby falsely imprisoned the Plaintiff. Further, the said trespass, assault and battery, and unlawful arrest carried out by the Officers described in previous paragraphs, and in particular P.C. Campbell-Dyke, when physically entering the Plaintiff's residence, and pushing back the Plaintiff, and the Officers by hand-cuffing and man-handling the Plaintiff, was oppressive, arbitrary and unconstitutional

45.5 By reason of the said trespass, assault and battery and false arrest, the Plaintiff suffered loss and damage, and will claim compensatory, aggravating and exemplary damages against the First Defendant.

45.6 The Plaintiff suffered minor personal injuries to her chest, arms and wrists but did not seek medical assistance.

45.7 Further, the Plaintiff claims interest on any and all damages in accordance with the Judicature Law 2007 Revision and the Judgment debts (rates of interest) Rules 2010, together with all court and legal fees.

#### PARTICULARS OF FASE IMPRISONMENT (1)

46.

46.1. The Plaintiff was deprived of her liberty for 12 hours at the Bodden Town Police Station.

46.2. The Plaintiff had not committed any offence.

46.3. None of the Officers involved in the arrest and unlawful detention of the Plaintiff could have reasonably suspected that the Plaintiff, on the evidence before the Officers, had committed any offence and did not actually suspect that the Plaintiff had committed an arrestable offence,

namely stone throwing at the Plaintiff's neighbour The McLaughlin Residence and at the police.

46.4 The Plaintiff was deprived of her liberty.

46.5. As a result of the unlawful arrest and false imprisonment and manner of imprisonment, namely an open cell with a toilet visible to everyone coming and going at the police station and the attitude of the Officers who pointed fingers at the Plaintiff when laughing, the Plaintiff suffered loss and damage, including but not limited to, fear, apprehension, loss of dignity, anxiety, and the Plaintiff became fearful as to what would happen to her immigration status.

46.6 Contrary to Article 5 of Schedule 1 to the Human Rights Act 1998 the First Defendant deprived the Plaintiff of her liberty other than in accordance with a procedure prescribed by law.

46.7. During her 12 hours unlawful incarceration at Boddin Town police station, the Plaintiff suffered emotional scarring, humiliation, loss of dignity, fear and apprehension, and loss of sleep.

46.8 The unlawful detention of the Plaintiff was oppressive, arbitrary and unconstitutional

46.9 By reason of the said unlawful (false) imprisonment, the Plaintiff suffered loss and damage and will claim compensatory, aggravating and exemplary damages against the First Defendant.

46.10 Further, the Plaintiff claims interest on any and all damages in accordance with the Judicature Law 2007 Revision and the Judgment debts (rates of interest) Rules 2010, together with all court and legal fees.

### **30 June 2008, assault wrongful arrest and unlawful detention (2)**

#### PARTICULARS OF CLAIM

47. Again on 30 June 2008 a report had been received of rock throwing in the Kipling Street vicinity. This time the complainant was another Kipling street resident, a Mr. Alvin Boddin who was visiting the McLaughlin Residence when he says a concrete rock was thrown into the residence which almost hit him. He complained that just prior to the rock being thrown, he had observed the Plaintiff looking out of her window and opening and closing her window blinds.

48. At approx 8.30 pm on 30<sup>th</sup> June 2008 when the Plaintiff was in bed, police officers (**P.C.'s Connolly, Oldham and Gordon**), ("**the Officers**") arrived at the Plaintiff's residence and after knocking on her bedroom window, arrested the

Plaintiff for being an Idle & Disorderly Person in the Plaintiff's own house, an offence which does not exist.

49. Again the Plaintiff was subjected to unlawful detention, first being taken to the Bodden Town Police Station for photographing and then to West Bay Police Station where it had been determined she would be detained overnight in extremely cold and uncomfortable conditions, and then for some reason the Plaintiff was taken back to the Bodden Town Police Station the next day, before eventually being released.

50. The duty police officer's reason for the arrest according to records was "you were seen looking out of your window and opening and closing your blinds before rocks were thrown".

51. The Plaintiff spent a total of 16 hours in Police custody before finally being driven home by police officers who donned plastic gloves and searched the premises.

52. P.C. Gordon wrote up the Police incident report and entitled it 'Inconsiderate behaviour'.

PARTICULARS OF ASSAULT, WRONGFUL ARREST AND UNLAWFUL  
DETENTION (2)

53.

53.1 The Officers purported to arrest the Plaintiff for committing an offence which does not exist in the Penal Code, namely "idle & disorderly person" and if it exists in other statutes, bears no comparable meaning when compared to the circumstances of the Plaintiff's arrest.

53.2. The Plaintiff had not committed any offence, which had entitled any or all of the Officers to arrest her.

53.3 None of the three Officers at the scene of the Plaintiff's residence on the evening of 30 June 2008, nor P.C. Gordon who wrote up the incident report could reasonably have suspected that it was the Plaintiff who had committed the offence of 'rock throwing' that evening either at the McLaughlin Residence or at the police, for which they had the power of arrest, and did not reasonably suspect that the Plaintiff had committed such an offence.

53.4. The Officers then forced the Plaintiff's wrists behind her back, handcuffed her, and then pulled her by her arms to a police car, which took her to West Bay police station.

53.5. The said Officers assaulted the Plaintiff by handcuffing her against her will and manhandling the Plaintiff generally, the arrest was unlawful and the

Officers thereby falsely imprisoned the Plaintiff for the second time in weeks.

53.6. The Plaintiff was deprived of her liberty for 16 hours in extremely uncomfortable conditions.

53.7. The said unlawful arrest and detention in the way it was conceived and executed was oppressive, arbitrary and unconstitutional.

53.8. The Plaintiff suffered minor personal injuries to her arms and wrists but did not seek medical assistance.

53.9. Contrary to Article 5 of Schedule 1 to the Human Rights Act 1998 the First Defendant deprived the Plaintiff of her liberty other than in accordance with a procedure prescribed by law.

53.10. During her 16 hours unlawful incarceration at West Bay Police Station the Plaintiff suffered emotional scarring, humiliation, loss of dignity, fear and apprehension, and loss of sleep.

53.11 By reason of the said assault, false arrest and false imprisonment the Plaintiff suffered loss and damage at the hands of the arresting Officers and others, and will claim compensatory, aggravating and exemplary damages against the First Defendant.

53.12 Further, the Plaintiff claims interest on any and all damages in accordance with the Judicature Law 2007 Revision and the Judgment debts (rates of interest) Rules 2010, together with all court and legal fees.

### **Malicious abuse of process and malicious prosecution leading to trespass**

#### **PARTICULARS OF CLAIM**

54.

54.1. A long process of malicious abuse of process leading to trespass commenced on 22 June 2008 with a request by P. C. Gordon for a search warrant to be issued for the Plaintiff's residence and ending with the eventual prosecution of the Plaintiff.

54.2 There was obviously a question as to the Plaintiff's rock throwing 'prowess's' and PC Gordon, unreasonably, acting on the assumption that he may find some incriminating evidence in the Plaintiff's residence, proceeded with the request for a warrant without providing the JP with sufficient evidence of what he expected to find at the Plaintiff's residence.

- 54.3 The idea of a 'missile throwing device' had developed because of the lack of any other evidence, and indeed a Sgt. Stone asked the Plaintiff on one occasion whether she possessed a 'catapult device'.
- 54.4 There are no evidential facts to show that the Plaintiff may have had or had access to, a missile projecting apparatus in her home, and as stated there was no evidence offered to the J.P. by PC Gordon that a rock throwing device of some sort was reasonably suspected to be found at the Plaintiff's residence.
- 54.5 The weakness of the investigation against the Plaintiff was evident on 1 July 2008 when **Crown Counsel K. Gunn** ("**CC. Gunn**"), signed off on a Legal Ruling Submission form that the police should re-submit after obtaining statement clarifications, looking for other possible suspects, obtaining photographs and maps of the area in order to support their case.
- 54.6 Another search warrant was sought and granted on 1 July 2008 by P.C. Gordon after the Plaintiff was arrested for the second time, looking for the same catapult device. There is no copy of affidavit evidence available or any note of evidence given on oath by P.C. Gordon and the presumption is that no evidence exists. The application for the Warrant was therefore unlawful.
- 54.7 It is not known why the Justices of the Peace, who signed off on the two warrants, were not more inquisitive as to the evidence P.C. Gordon possessed in relation to a 'missile throwing apparatus' allegedly being hidden on the premises of the Plaintiff to assist the Plaintiff in attacking her neighbours and police.
- 54.8 Nor is there any discussion as to the type of rock throwing device required to send a 'half concrete block' considerable distance. The throwing of this type of missile had been reported by the media after interviewing residents of Kipling Street.
- 54.9 The Plaintiff swears that in addition to the two 'official' search warrants described above, there were two other occasions when officers came to search the premises without the necessary warrants. On 24 July 2008 again police officers knocked at the Plaintiff's door stating they were just checking, without any explanation given, and Inspector Richard Harford also knocked on her door on 23 August 2008 asking for an up-date as to the Plaintiff's status.
- 54.10. There is no question that senior officers were involved from time to time in some if not all of the malicious abuse of process and prosecution of the Plaintiff, and that at least one request for a search warrant was authorised illegally, and was a direct trespass against the Plaintiff and her property.

54.11 As a result of the said illegal search warrants resulting from the malicious process and prosecution of the Plaintiff, the Officers involved, in particular PC Gordon, acted oppressively, arbitrarily and unconstitutionally, and trespassed against the Plaintiff and her property.

54.12 CC Gunn participated in the malicious process and prosecution of the Plaintiff and may have been involved in approving the procurement of the unlawful search warrants.

54.13 As a result therefore, the Plaintiff will claim compensatory, aggravating and exemplary damages against the First Defendant and the Second Defendant.

#### PARTICULARS OF MALICE

55.

55.1 Malice is to be inferred from the lack of reasonable and probable cause for the prosecution generally and the actions and approach taken or not taken by the Defendants in conducting the investigation of the Plaintiff, specifically, P. C. Gordon, P.C. Campbell-Dyke and CC Gun, and in particular the fabrication of evidence by P. C. Gordon and P. C. Campbell - Dyke,

55.2 P. C. Campbell-Dyke fabricated portions of her initial evidence supported by P. C. Gordon who was aware of the fabrication but then aided and abetted P. C. Campbell-Dyke to make false accusations against the Plaintiff, namely that P. C. Campbell-Dyke had seen the Plaintiff throw rocks at the McLaughlin Residence and the police with her own eyes, and that the Plaintiff had made certain statements which were not in fact true.

55.3 On 5 September 2008, CC. Gunn despite the complete lack of evidence against the Plaintiff and knowing that at least two search warrants had not produced any evidence with which to convict the Plaintiff, authorised serious charges to be brought against the Plaintiff.

55.4 The Plaintiff was charged with four offences namely (a) reckless and dangerous act against Mr. McLaughlin, (b) common assault against Mr. McLaughlin, (c) common assault against P. C. Gordon and (d) common assault against the McLaughlin's daughter Aveline McLaughlin.

55.5 The two officers P. C. Campbell-Dyke and P. C. Gordon so acted throughout the police investigation and prosecution intending that the Plaintiff should be convicted of an offence which they knew she had not committed.

55.6 It was not reasonable for CC Gunn on the evidence before her to approve the four charges levelled at the Plaintiff.

55.7 Further CC Gunn could not and did not actually suspect that the Plaintiff had committed the serious offences she authorised to be charged as described above.

55.8 In October of 2008 the Plaintiff was charged and appeared in summary court for the first time. The Plaintiff was required to attend Court on four occasions where she was the subject of public attention, contempt and ridicule and was gravely humiliated and lost valuable time away from work

#### FURTHER PARTICULARS

56.

56.1 On 27 March 2009, the case was dismissed for lack of evidence and the Plaintiff acquitted, some 5 months after being charged and 9 months after first being wrongfully arrested.

56.2 From October of 2008 to March of 2009 the Plaintiff was under threat of being wrongly convicted of serious offences partly based on the fabrication of evidence of the above said officers and the lack of professional problem solving by other officers including senior police officers who managed the investigation against the Plaintiff, and by the Crown Counsel responsible for the case who called for the charges to be brought without sufficient evidence to succeed in any prosecution.

56.3 From October of 2008 to March of 2009, even though she knew she was innocent of the charges brought against her, the Plaintiff feared that she would be imprisoned if convicted of the offences charged and suffer severe financial consequences as a result, i.e. loss of employment etc.

56.4 For the entire period of arrest to acquittal the Plaintiff lived in fear of actions taken by the immigration department, since although having Caymanian status, the Plaintiff knew this could be taken away on the basis of criminal convictions.

56.5 The Plaintiff was acquitted of all charges ostensibly on the fresh evidence of P.C. Gordon. This 'fresh' evidence has never been made available to the Plaintiff even after requesting same under the Freedom of Information Law. P.C. Gordon left the force some three months after the Plaintiff's acquittal.

56.6 Notwithstanding her acquittal, the Plaintiff's reputation in this small community and specific neighbourhood where she resided, has been

damaged, she has been the subject of ridicule from small children in the neighbourhood and regrettably forced to place her residence on the market for sale.

56.7 The Plaintiff has suffered loss and damage including psychiatric damage and substantial legal fees prior to bringing these proceedings with the assistance of legal aid.

56.8 The said malicious abuse of process and of prosecution was oppressive, arbitrary and unconstitutional.

56.9 By reason of all of the above said assaults and batteries, trespasses, false arrests, false imprisonments and malicious abuse of process and prosecution detailed above, the Plaintiff suffered loss and damage as stated and will claim compensatory, aggravating and exemplary damages against the First and Second Defendants.

56.10 Further, pursuant to Section 34 of the Judicature Law (2004 Revision) the Plaintiff is entitled to and hereby claims pre and post settlement interest on the sum of damages found to be due and or outstanding to the Plaintiff for such period and at such a rate as the Court shall think fit, together with all fixed costs and reasonable legal fees incurred in bringing these proceedings before the Court.

**And the Plaintiff claims:-**

1. Special damages to be assessed;
2. General Damages and in addition, compensatory damages and aggravated damages together with exemplary damages to be assessed and awarded as this Honourary Court deems fit;
3. Psychiatric damage to be assessed on the basis of a professional report to be sought by the Plaintiff;
4. Interest referred to in paragraph 56.10 above thereon to be assessed pursuant to section 34 of the Judicature Law (2004 Revision).
5. Costs including fixed costs and legal fees

Dated this ~~20<sup>th</sup>~~ day of February 2012

  
**Irvin Banks**  
**ATTORNEY-AT-LAW**

**TO:** The Clerk of the Court

**AND TO:** The First and Second Defendant, care of the Attorney Generals  
Chambers, Legal department, Grand Cayman, Cayman Islands.

Ivin Banks, attorney-at-law  
14 Rosemont Close, George Town, P.O. Box 1643, Grand Cayman KY1-1109, Cayman Islands  
Phone: (cell) 345 325 6395, Phone (office) 345 945 9169, Fax: 345 945 9169, E-mail: [ivin.banks@candw.ky](mailto:ivin.banks@candw.ky)

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**CAUSE NO:**

**OF 2012**

**BETWEEN:**

**BRIDGET DAY**

**Plaintiff**

**AND:**

**(1) THE COMMISSIONER OF POLICE  
(2) THE ATTORNEY GENERAL**

**Defendant**

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**ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS**

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If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED. Delay may result in Judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

- 
1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged
- 

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

Yes     No

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3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a Stay of Execution against any judgment entered by the Plaintiff (tick box)

Yes     No

Service of the Writ of Summons is acknowledged accordingly

(Signed) \_\_\_\_\_  
Attorney for the Defendant or Defendant in person

### NOTE ON ADDRESS FOR SERVICE

**Attorney:** Where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

**Defendant in person:** where the Defendant is acting in person, he/she must give his post office box number and the physical address of his/her residence or, if he/she does not reside in the Cayman Islands, he/she must give an address in Grand Cayman where communications for him/her should be sent. In the case of a Limited Company "residence" means its registered or principal office.

Indorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his/her name, address and reference, if any, in the box below.

Irvin Banks  
Attorney-at-Law  
14 Rosemont Close  
George Town  
P. O. Box 1643  
Grand Cayman, KY1-1109  
Cayman Islands  
Tel: 345 325 6395  
Fax: 345 945 9169  
irvin.banks@candw.ky

Endorsement by Defendant's Attorney (or by Defendant if responding in person) of his/her name, address and reference, if any, in the box below.



**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE OF  
WRIT OF SUMMONS**

1. The accompanying form of **Acknowledgment of Service** should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion, it must be delivered or sent by post to the Law Courts, PO Box 495, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the Proceedings **must also serve a Defence** on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for Judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter Judgment against him without further notice.

3. A **Stay of Execution** against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any Judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a Stay, Execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, **issue a Summons** for a Stay of Execution, supported by an Affidavit of his Means. The Affidavit should state any offer which the Defendant desires to make for payment of the money by installments or otherwise.

***See over for Notes of Guidance***



**Notes for Guidance:**

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, a Writ served on the Defendant personally is treated as having been served on the day it was delivered to him/her.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (*the name stated on the Writ of Summons*)".
4. Where the Defendant is a **FIRM** and an Attorney is not instructed, the form must be completed by a **PARTNER** by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual **TRADING IN A NAME OTHER THAN HIS OWN**, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a **LIMITED COMPANY** the form must be completed by an Attorney or by someone authorized to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his behalf.
7. Where the Defendant is a **MINOR** or a **MENTAL PATIENT**, the form must be completed by an Attorney acting for a guardian *ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.