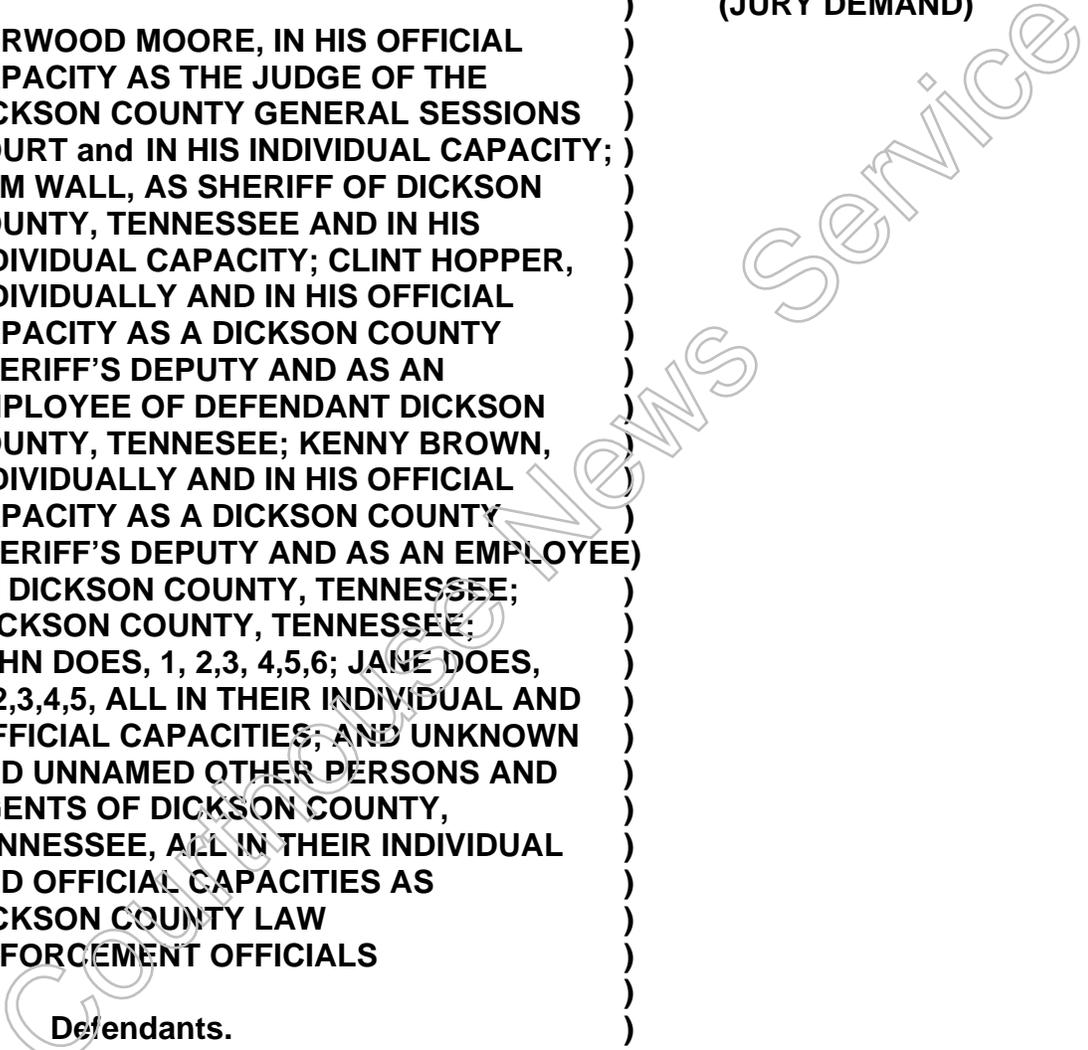


IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

BENJAMIN J. MARCHANT )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DURWOOD MOORE, IN HIS OFFICIAL )  
 CAPACITY AS THE JUDGE OF THE )  
 DICKSON COUNTY GENERAL SESSIONS )  
 COURT and IN HIS INDIVIDUAL CAPACITY; )  
 TOM WALL, AS SHERIFF OF DICKSON )  
 COUNTY, TENNESSEE AND IN HIS )  
 INDIVIDUAL CAPACITY; CLINT HOPPER, )  
 INDIVIDUALLY AND IN HIS OFFICIAL )  
 CAPACITY AS A DICKSON COUNTY )  
 SHERIFF'S DEPUTY AND AS AN )  
 EMPLOYEE OF DEFENDANT DICKSON )  
 COUNTY, TENNESSEE; KENNY BROWN, )  
 INDIVIDUALLY AND IN HIS OFFICIAL )  
 CAPACITY AS A DICKSON COUNTY )  
 SHERIFF'S DEPUTY AND AS AN EMPLOYEE )  
 OF DICKSON COUNTY, TENNESSEE; )  
 DICKSON COUNTY, TENNESSEE; )  
 JOHN DOES, 1, 2,3, 4,5,6; JANE DOES, )  
 1,2,3,4,5, ALL IN THEIR INDIVIDUAL AND )  
 OFFICIAL CAPACITIES; AND UNKNOWN )  
 AND UNNAMED OTHER PERSONS AND )  
 AGENTS OF DICKSON COUNTY, )  
 TENNESSEE, ALL IN THEIR INDIVIDUAL )  
 AND OFFICIAL CAPACITIES AS )  
 DICKSON COUNTY LAW )  
 ENFORCEMENT OFFICIALS )  
 )  
 Defendants. )

CASE NO. \_\_\_\_\_  
(JURY DEMAND)



**COMPLAINT FOR DAMAGES**

**I.  
JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction of this matter, pursuant to 28 U. S. C. § 1331 and 1343 (a) (3) (4) as the claims alleged herein arise under 42 U. S. C. § 1983, (Civil Rights) and supplemental jurisdiction under 28 U. S. C. §1367 (a) for claims arising out of the same nucleus of operative facts under Tennessee Law.

2. Venue is appropriate in this court according to 28 U. S. C. § 1391, the events or omissions giving rise to the claim having occurred in the Middle District of Tennessee.

## **II.** **PARTIES**

3. Plaintiff, **BENJAMIN J. MARCHANT**, is currently a citizen and resident of the state of South Carolina. He was a resident of White Bluff, Dickson County, Tennessee at the time of the events that are the basis for this cause of action. The events that are the basis for this cause of action took place in the Middle District of Tennessee.

4. Defendant, **DURWOOD MOORE**, is a General Sessions Judge for Dickson County, Tennessee. He was the Dickson County General Sessions Judge at the time that this cause of action arose and at all times alleged herein.

5. Defendant, **TOM WALL**, is the Sheriff of Dickson County, Tennessee as was the Sheriff of said County at all times alleged herein. This Defendant was duly elected and employed and acting under color of law as a Law Enforcement officer for the Defendant, **DICKSON COUNTY, TENNESSEE**.

At all times alleged herein, he employed certain unknown and unnamed JOHN DOE and/or JANE DOE Defendants.

6. Defendant, DICKSON COUNTY, TENNESSEE, is a local government and a political subdivision and a County Body of the state of Tennessee established under the laws of the State of Tennessee. At all times alleged herein, it employed and had control over, Tom Wall, Clint Hopper, Kenny Brown and certain unknown and unnamed JOHN DOE and/or JANE DOE Defendants and participated in the Defendant, Durwood Moore's actions.

7. Some of the Defendants, including Clint Hopper and Kenny Brown as well as some of the Defendants, JOHN DOE 1,2,3,4,5 AND/OR JANE DOE 1,2,3,4,5 are believed to be employees of the Defendant, TOM WALL AND/OR THE DEFENDANT DICKSON COUNTY, TENNESSEE and that they acted both in that official capacity and in an individual capacity at all times alleged herein. These Defendants were duly appointed, employed and acting under color of law as Law Enforcement officers for the Defendant, TOM WALL and the Defendant, DICKSON COUNTY, TENNESSEE. Further, that they acted along with the Defendant, DURWOOD MOORE, by action or omission.

8. Some of the Defendants, JOHN DOE 1,2,3,4,5 AND/OR JANE DOE 1,2,3,4,5 are unknown and unnamed at this time, but are believed to be agents or employees of Defendant, Sheriff Tom Wall and / or Defendant Dickson County, Tennessee. These Defendants participated in or took part in the actions against the Plaintiff, which are the basis for this cause of action, either by actions

or by omissions. They are liable for acting to violate the Plaintiff's Constitutional and Statutory rights under Federal Law and they are further liable both individually and pursuant to the doctrine of respondeat superior.

9. At all times relevant hereto, ALL DEFENDANTS herein, both named and unnamed and unknown were engaged in unconstitutional and unlawful acts under of color of law as alleged herein, acting to deprive the Plaintiff of his federally protected and fully expected constitutional rights. At no time was any Defendant acting in good faith while conducting this procedure. They are all sued individually and in their official capacity.

### **III. FACTUAL ALLEGATIONS**

10. On or about January 2, 2009, the Plaintiff was a spectator in the General Sessions Court for Dickson County, Tennessee, located in Charlotte, Tennessee.

11. That the Defendant, Durwood Moore, while sitting and acting as the General Sessions Judge for Dickson County, Tennessee, was sitting on the bench on the date aforesaid. Durwood Moore, on a hunch, Ordered that the Plaintiff be taken into custody by unknown and unnamed John Doe and / or Jane Doe Defendants, who are believed to be, Defendant Deputy Clint Hopper and Defendant Deputy Kenny Brown, both are employees of the Defendant, Tom Wall and of Dickson County, Tennessee.

12. That the unknown and unnamed deputies of Defendant Tom Wall, took the Plaintiff into their custody and control and removed the Plaintiff from the

Courtroom to a different location within the Dickson County Courthouse. These deputies, believed to be Deputy Clint Hopper and Deputy Kenny Brown, took the Plaintiff to a location where they had the Plaintiff submit to a drug screen urinalysis to a person, believed to be a Dickson County employee probation officer, believed to be Anita McCord. The drug screen was negative and the Plaintiff was later released from custody.

13. That Defendant, Durwood Moore, has provided a written statement that he routinely drug screens “spectators” in his courtroom if he “thinks” they may be under the influence of drugs or alcohol. Defendant Durwood Moore never had probable cause nor an articulable suspicion that the Plaintiff had or was committing a crime. Plaintiff was not a party before the Defendant, Durwood Moore’s Court nor was he required to be there for any other reason. The Plaintiff was merely there as transportation and as support for a person who was charged and was before the Court.

14. That the Plaintiff had done nothing wrong, illegal, contemptuous or anything that would give rise to a reasonable and an articulable suspicion nor to probable cause to detain the Plaintiff or to take him into custody. At no time did any of the Defendants have jurisdiction over the Plaintiff for any purpose. The Plaintiff was afforded no due process before or during his detention, search and seizure and his forcible taking of evidence from his body.

15. That the Defendant, Durwood Moore, ordered that the Plaintiff be taken into custody for the purpose of a drug and alcohol screen by Dickson County, Tennessee law enforcement officers. That these law enforcement

officers are employees of Dickson County, Tennessee and more specifically, employees of Tom Wall, Sheriff of Dickson County, Tennessee. That, under information and belief, these employee / Deputies of Defendant Tom Wall and Defendant Dickson County, Tennessee, have attended and completed the Tennessee Police Officer Training Academy and that they have been taught and understand that a person can only be taken into custody when there is a reasonable and articulable suspicion of criminal activity, if no warrant has been issued previously and no crime is being committed in their presence. Only a plainly incompetent officer or a knowing participant would have taken place in such unlawful and unconstitutional procedures.

16. That the Defendants, Deputy Clint Hopper, Deputy Kenny Brown and Sheriff Tom Wall, and the Defendants John Does and Jane Does, knowingly participated in the unlawful and illegal detention and seizure of the Plaintiff and in the unlawful and illegal practice of forcing the Plaintiff to submit bodily evidence from his person with no legally justifiable cause to do so. Such was the clearly established and often executed policy of the Defendant, Durwood Moore and the other Defendants. The Defendant Durwood Moore, in his response to his judicial complaint indicated that this was the routine policy of the court. The other Defendants knowingly participated in this policy. This was the clearly established and exercised policy of Dickson County, Tennessee, Sheriff Tom Wall, Judge Durwood Moore and the other Defendants, both named and unknown and unnamed.

17. Upon information and belief, some time prior to January 2, 2009, the Defendants, including Judge Durwood Moore, promulgated the policy of the General Sessions Court for Dickson County, Tennessee. Upon information and belief, the Defendant Sheriff Tom Wall participated in this policy, helped establish and helped implement those procedures. Defendant, Tom Wall and his employees, Deputy Clint Hopper, Deputy Kenny Brown and other John Does and Jane Does, as Defendants, knowingly and willfully participated in this unlawful and illegal scheme of the deprivation of the Plaintiff's Constitutional and Federally protected rights. As Law Enforcement officials for Dickson County, Tennessee, adequately and sufficiently trained and learned to know probable cause and reasonable and articulable suspicion, then these Defendants, as named in this paragraph, actively, knowingly, willfully and unlawfully participated in the unlawful seizure and the unlawful taking of evidence from the Plaintiff and further participated in the violation of the Plaintiff's civil rights and committed the statutory and common law offenses that give rise to the cause of actions as stated in this complaint.

18. That subsequent to the actions of the Defendants named and unnamed, known and unknown herein, a Judicial Ethics Complaint was filed with the Tennessee Court of the Judiciary against the Defendant, Durwood Moore.

19. That the Defendant, Durwood Moore, ultimately plead guilty to the charges that the Plaintiff made against him for the Judge's illegal, unlawful and unethical actions, including the unlawful detention of the Plaintiff, the denial of the

Plaintiff's Due Process Rights and the forced seizure of evidence from the Plaintiff, being a urinalysis drug screen of the Plaintiff.

20. That the Defendant, Durwood Moore, was investigated by the Supreme Court for the State of Tennessee, Administrative office of the Courts, Court of the Judiciary. The State Supreme Court's body that rules over the Judges of the State, found that the seizure and the drug testing of the Plaintiff were illegal actions, with no justification at law, either statutorily or constitutionally. The Judge was Ordered by the Presiding Judge of the Supreme Court's Judiciary Court, that the Defendant, Durwood Moore was to never violate a person's constitutional rights as he did to the Plaintiff, and was to never deny a person their rights of due process again, as he did to the Plaintiff.

21. That the Defendant, Durwood Moore, was Publicly Censured by the Tennessee State Supreme Court's Judiciary Court on the 1<sup>st</sup> day of May, 2009. The Court of the Judiciary stated that this was the highest form or punishment that could be given to a judge, short of a petition seeking his removal from the bench.

22. That the facts of the case are not subject to dispute or else the Defendant, Durwood Moore, would have disputed them when his career as a judge was in jeopardy. The Defendant, Durwood Moore, under information and belief and according to the Public Censure Issued by the Supreme Court, Court of the Judiciary, plead guilty to the allegations of the Unlawful Search and Seizure of the Plaintiff and the Unlawful Denial of Due Process of Law.

23. That the other Defendants were knowingly participating in the unlawful detention and the unlawful search and seizure of the Plaintiff.

24. That, the Defendant Tom Wall, Kenny Brown, Clint Hopper, John and Jane Does, believed to be deputies under the control of Defendant Sheriff Tom Wall or of Dickson County, Tennessee, acted with deliberate indifference to the unlawful and unconstitutional actions of the other Defendants, all acting under color of law and all following the custom or policy clearly established by the Defendants Durwood Moore, Tom Wall and Dickson County, Tennessee.

25. That the Defendants, individually and collectively, acted to deprive and to deny the Plaintiff of his Due Process Rights under the Fourteenth Amendment of the United States Constitution.

**IV.**  
**CLAIMS FOR RELIEF**

**COUNT ONE**  
**42 U.S.C. § 1983**

26. The Plaintiff hereby incorporates all paragraphs herein as though fully set forth at length.

27. The Plaintiff alleges that the deliberate and intentional acts and omissions as described herein by the individually named Defendants acting in their individual and official capacities under color of law as an elected, sitting Judge for the General Sessions Court of Dickson County, Tennessee and as law enforcement officers for Dickson County, Tennessee, constitute acts committed by the Defendants to deprive the Plaintiff of his federally protected due process liberty interest under the Fourteenth Amendment to the United States

Constitution and his right to be free from unreasonable seizure under the Fourth and Fourteenth Amendments to the United States Constitution and that the Defendants are jointly liable for damages under 42 U. S. C. § 1983.

28. Plaintiff avers that at the time of the events complained of it was clearly established that a seizure of a person by a judge, a state actor or by any law enforcement officials or other persons acting under color of law, must be based upon some reasonable suspicion or probable cause. Likewise, at the time of the events complained of it was clearly established that a Judge, a law enforcement officer or other state actor, acting under color of law, may not seize evidence from a person without a search warrant having been issued if a crime is not being committed in their presence, except with the seized person's consent. The illegal detention and seizure and the mandatory court order negates any argument of consent.

29. The actions of all of the Defendants violate the very core of the United States Constitution and the laws of the United States of America. To aggravate matters even further is the fact that these Defendants had previously established this by either declaration or by acts or omissions as the established policy of the General Sessions Court, and of Dickson County, Tennessee and of the Sheriff's Department for Dickson County, Tennessee. under color of law intentionally, knowingly, negligently, and with complete and deliberate indifference for the Plaintiff's constitutionally protected rights, authorized, permitted, and tolerated this custom and practice of unconstitutional conduct by the named and unnamed, known and unknown Defendants who are sworn to

uphold and to protect the constitutional rights of the citizenry; promulgate procedures and policies for search and seizures that are consistent with the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution; and this they violated by permitting these policies, procedures and customs to exist and to be followed by the said Defendants.

**COUNT TWO**  
**Outrageous Conduct.**

30. The Plaintiff alleges that the deliberate and intentional acts and omissions as described herein by the individually named Defendants acting in their individual and official capacities gives rise to a cause of action under the common laws of Tennessee for outrageous conduct and that the Defendants are jointly liable for damages.

**COUNT THREE**  
**Violation of T. C. A. § 4-21-702.**

31. The acts alleged herein constitute a claim of malicious harassment of the Plaintiff by the individually named Defendants under color of law imposing vicarious civil liability against all Defendants under T. C. A. § 4-21-701 for violations of the Tennessee Human Rights Act, the individually named Defendants under color of law while on duty, armed and in uniform; thereby making all Defendants liable to the Plaintiff for compensatory and punitive damages to be established at trial for violation of the Plaintiff's rights secured by Article One Sections 3, 8 and 19 of the Constitution of the State of Tennessee.

**COUNT FOUR**  
**Assault And Battery**

32. The Plaintiff alleges that the deliberate and intentional acts and omissions as described herein by the Defendants acting in their individual and official capacities as law enforcement officials, as a General Sessions Judge, and as principals and/or as employees of Sheriff, Tom Wall and / or of Dickson County, Tennessee, gives rise to a cause of action under the common law of Tennessee for assault and battery.

**COUNT FIVE**  
**False Imprisonment**

33. The Plaintiff alleges that the deliberate and intentional acts and omissions as described herein by the Defendants acting in their individual and official as law enforcement officials, as a General Sessions Judge, and as principals and/or as employees of Sheriff, Tom Wall and / or of Dickson County, Tennessee, gives rise to a cause of action under the common law of Tennessee for False Imprisonment.

**COUNT SIX**  
**Intentional Infliction of Emotional Distress**

34. The Plaintiff alleges that the deliberate and intentional acts and omissions as described herein by the Defendants acting in their individual and official capacity as law enforcement officials, as a General Sessions Judge, and as principals and/or as employees of Sheriff, Tom Wall and / or of Dickson County, Tennessee, gives rise to a cause of action under the common law of Tennessee for Intentional Infliction of Emotional Distress.

**COUNT SEVEN**

**PRAYER FOR RELIEF**

35. Wherefore, Plaintiff prays for the following relief:
- (a) That process issue and the Defendants be compelled to answer the averments of this complaint;
  - (b) That he have judgment against all Defendants;
  - (c) That all issues triable by a jury in this action be so tried;
  - (d) That he be awarded compensatory damages against all Defendants in an amount justified by the proof in this action;
  - (e) That he be awarded punitive damages against the individually named Defendant in an amount to be determined at trial;
  - (f) That he be awarded reasonable attorney's fees pursuant to 42 U. S. C. § 1988 and/or T. C. A. § 4-21-701 (b);
  - (g) That he have such further or general relief as the Court deems just and proper.

Respectfully submitted,  
**HANSROTE AND HANSROTE, ATTORNEYS**

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