

Case No. 05-C-534

FILED FOR RECORD
CASS COUNTY, TEXAS

2007 MAR -6 PM 1:53

BILLY RAY JOHNSON)
through Next Friend)
Lue Wilson,)
Plaintiff,)

IN THE DISTRICT COURT

DECKY WILBANKS
DISTRICT CLERK

BY _____ DEPUTY

OF CASS COUNTY, TEXAS

~~CHRISTOPHER COLT AMOX~~

5th JUDICIAL DISTRICT

~~JAMES CORY HICKS, and~~

~~JOHN WESLEY OWENS.~~

Defendants.

ORIGINAL PETITION

THIRD AMENDED ORIGINAL

D COURT:

TO THE HONORABLE JUDGE OF SAID

friend, LUE WILSON, and files his Third Amended Original Petition against

Defendants, CHRISTOPHER COLT AMOX, JAMES CORY HICKS, and JOHN

WESLEY OWENS, and for cause of action would show unto the Court as

follows: ::::::::::::::

DISCOVERY CONTROL PLAN

1. Plaintiff requests that discovery be conducted under Level 3 and

case. A Pretrial Docket Control Order and Discovery specifically tailored to the

ter the parties have been served and appear.

Plan will be submitted af

VENUE

This is a petition seeking damages for personal injury that is
... of intentional and negligent conduct that took place in Cass County,
... Texas. Therefore, pursuant to the applicable venue rules, venue is prop-
er in Cass County district court.

THE PARTIES

3. Plaintiff BILLY RAY JOHNSON is a 45-year-old African-American
man with severe mental and physical disabilities. He is a resident and citizen of
Texas. Prior to residing in the
the Texarkana Nursing Center in Bowie County,
home and during an in-home care period, he was a citizen and
of Linden, in Cass County, Texas. resident

Bill Ray Johnson, Next Next LEE DULSON, et al, is his plaintiff
... in the State of Texas, in the County of Cass, Texas, and ...

citizen of Linden in Cass County, Texas, and was so at all times relevant to this

STATEMENT OF FACTS

8. On the evening of September 27, 2003, defendant Owens, who is

white, hosted a "pasture party" on his father's property where Owens resided.

Approximately fifteen young white people (including all of the defendants)

The guests attended the party, which began at approximately 10:30 p.m.

gathered around a bonfire and drank beer.

9. On September 28, 2003, Owens left his home and drove to the Country Store in Linden, Texas. At approximately 12:00 a.m. on September

28, 2003, Owens saw a sign on the Country Store that read "Country Store" and Owens saw a sign that read "Country Store" and Owens saw a sign that read "Country Store".

10. Owens saw a sign on the Country Store that read "Country Store" and Owens saw a sign that read "Country Store" and Owens saw a sign that read "Country Store".

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18. When Owens returned to the party with the plaintiff, he supplied

the plaintiff with beer and cigarettes, which he drank and smoked around the campfire. Owens saw a sign that read "Country Store" and Owens saw a sign that read "Country Store" and Owens saw a sign that read "Country Store".

party.

11. Several of the guests were offended by the exploitation, ridicule, and harassment of the plaintiff and left the party. By approximately 2:00 a.m., only six people remained at the party: the plaintiff, Lacy Dorgan, Dallas Stone and defendants Amox, Hicks, and Owens.

12. Defendant Hicks stated that "[s]omeone needs to whip the shit out of Billy Ray" and encouraged defendant Amox and Dallas Stone to do so. Defendant Owens heard this threat and also heard Dallas Stone encourage

...to you." Defendant Owens heard defendant Amox telling the plaintiff to leave

...and saw that he struck the back of the plaintiff's head with his

...because he knew that the plaintiff was unaware of the danger

...of the plaintiff was aware of the danger of the plaintiff

...for the assault or in any way protect the plaintiff. Owens took no action to warn the plaintiff, s

...ck the plaintiff - his invited guest - from attack

...defendants or any other person. At no time did he have in his

...thy kind. aggressive manner. He had no weapon of

...ocation, defendant Amox punched the plaintiff 17. Without any reasonable provo

...fall backward and hit his head on the ground. plaintiff in his face, causing the plaintiff to f

ground.

...the plaintiff was lying unconscious on the ground, the plaintiff began to

...vomit and make gurgling sounds. Despite the plaintiff's injury and his obvious

...help him or to call for medical assistance. Instead, all of the defendants simply

...stood around the plaintiff's unconscious body for at least an hour. At one point

...d breathing to determine if he was alive. Defendant Owens picked up the plaintiff's

...plaintiff's unconscious body, tried to help him or to call for medical assistance. Instead, all of the defendants simply

stand him on his feet, and then negligently shook him to try and wake him and

and then dropped him to the ground.

19 Defendant Hicks told the other defendants that he would lose his job as a jailer and lose custody of his children if they called the authorities.

Defendant Hicks dissuaded Lucy Dorgan from driving the plaintiff to the hospital on the basis that the plaintiff's blood would stain her car seats.

During all of this time, the defendants had access to cellular telephones that could have been used to call for help. They also had access to at least three trucks that could have been used to drive the plaintiff to the nearby

hospital. The defendants stood around the plaintiff's unconscious body, and after an hour of standing around the plaintiff's unconscious body, the defendants decided not to take action. Rather than seeking medical attention for the plaintiff, the defendants decided to transport the plaintiff on a truck, resented

by the plaintiff, to County Road 1620. Defendant Amox and Dallas Stone loaded the plaintiff's body into the bed of Amox's truck, drove to County Road 1620, and placed the plaintiff's body approximately six to eight feet from the side of the road at a location several miles farther away from the local hospital than the location of the party. Although it was only 50 degrees outside, the

plaintiff's condition worsened, and defendant Amox and Dallas Stone loaded the plaintiff's body into the bed of Amox's truck, drove to County Road 1620, and placed the plaintiff's body approximately six to eight feet from the side of the road at a location several miles farther away from the local hospital than the location of the party. Although it was only 50 degrees outside, the

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the t-shirt and jeans that he had been wearing when defendant Owens brought

him to the party.

22. After leaving the plaintiff's body by the side of the road, the four

defendants went to a nearby area where they saw the plaintiff's shirt and blood

from the bed of defendant Amox's truck.

23. Defendants Owens and Hicks later returned to the location where

they had dumped the plaintiff's body and saw that he was still unconscious.

When they were approximately 500 feet from the location where they had dumped

the plaintiff's body, they saw a sign for a nearby store. They saw the sign

and they saw a body lying on the side of the road. They did not provide

any medical assistance or the cause of his injuries.

25. Defendants Hicks and Owens met a deputy sheriff at an

intersection near the location of the plaintiff's body and directed him there.

They did not provide the deputy with any information about the assault that had

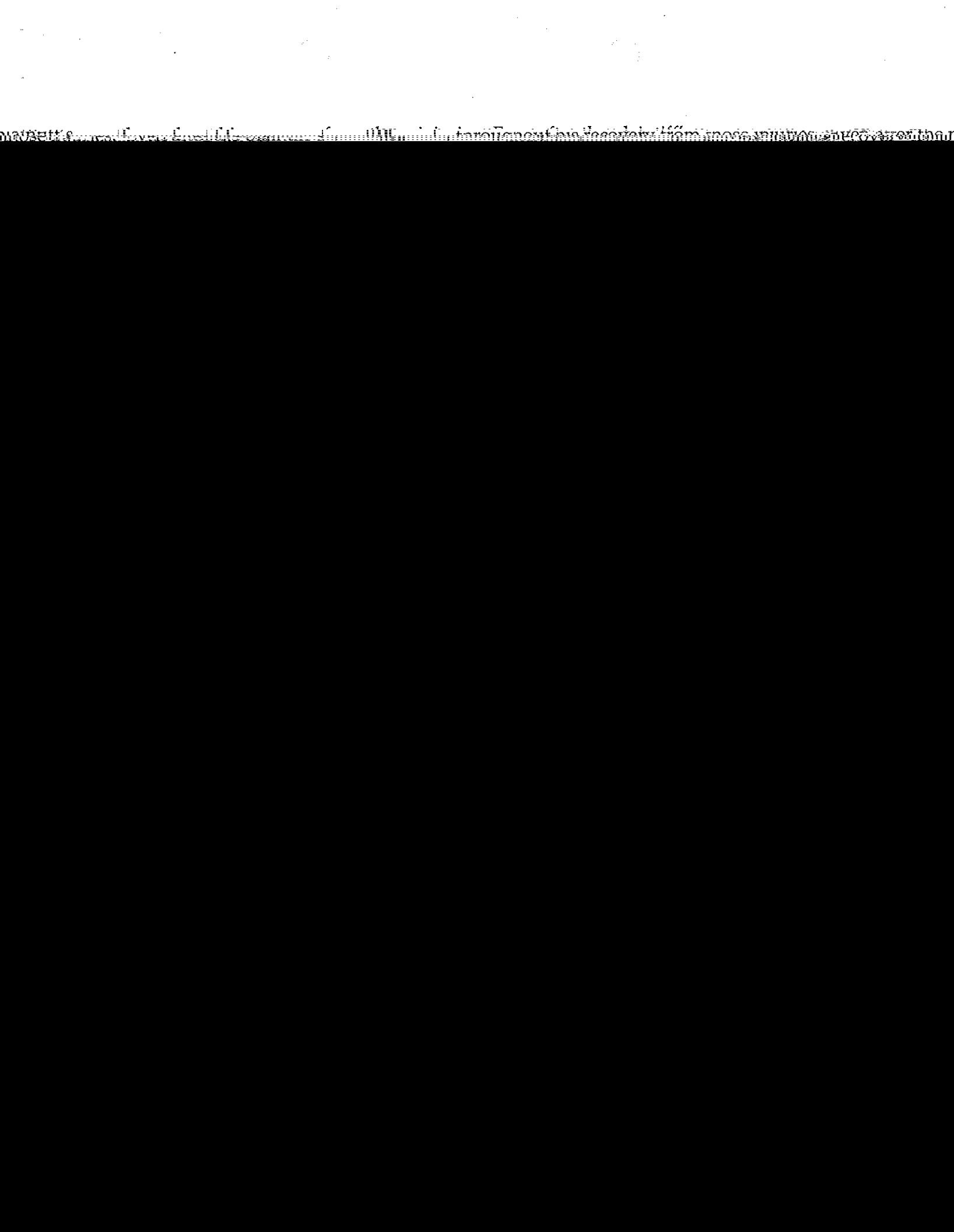
occurred a few hours earlier, nor did they mention the plaintiff's need for

medical assistance.

26. Upon examining the plaintiff's unconscious body and observing his

condition, the deputy sheriff immediately called for an ambulance to take the

plaintiff to the hospital, located four miles away.



COUNT II - CAUSE OF ACTION AGAINST AMOX AND

HICKS FOR CIVIL CONSPIRACY TO COMMIT ASSAULT

alternative, plaintiff states a cause of

35 Pleading further and/or in th

of Texas for civil conspiracy to commit assault

36 Defendants Amox and Hicks willfully and maliciously conspired to

the plaintiff and substantially assisted and encouraged defendant Amox to

the conspiracy, the plaintiff was knocked unconscious, fell backward, and struck

his head on the ground

37 The conduct of the defendants as set forth above was negligent, wilful,

reckless, and involved infliction of bodily injury on plaintiff.

38 The conduct of the defendants as set forth above proximately

caused damages to the plaintiff.

39 The conduct of the defendants constituted aggravated assault in

violation of Section 22.02 of the Texas Penal Code because they caused serious

bodily injury to the plaintiff.

COUNT III - CAUSE OF ACTION FOR

OWENS

REMEDIAL REMEDIAL LIABILITY AGAINST DEFENDANT

4. Pleading further and/or in the alternative, plaintiff states a cause of

action against defendant OWENS under the common law of the State of Texas

for premises liability.

41. Upon information and belief, defendant Owens was the possessor

control of the premises by his father, the landowner.

42. Defendant Owens owed a duty to the plaintiff – his licensee – to

either warn the plaintiff or to make reasonable safe a dangerous condition on
which defendant Owens was aware.

43. Defendant Owens had actual knowledge of the existence of a

dangerous condition on the premises that posed an unreasonable risk of harm to

defendants Hicks and Amox and Dallas Stone were

the plaintiff – namely, that

threatening to harm the plaintiff.

was not aware of the danger, and defendant Owens

44. The plaintiff w

knew or should have known that the plaintiff was unaware of the danger.

Owens failed to exercise ordinary care to protect the

45. Defendant

specifically, defendant Owens failed to warn the plaintiff

of plaintiff from danger. Sp

or do anything to make the plaintiff reasonably safe.

46. The conduct of the defendant as set forth above proximately caused

damages to the plaintiff.

COUNT IV - CAUSE OF ACTION FOR
NEGLIGENCE AGAINST DEFENDANT OWENS

47. Pleading further and/or in the alternative, the plaintiff states a cause of action against defendant OWENS under the common law of the State of Texas for negligence.

48. Defendant Owens knew or should have known that bringing the plaintiff to the party was in the plaintiff's best interests and that the plaintiff was in harm's way, knew or should have known of the increasing danger to the plaintiff as the night progressed, knew that the plaintiff was being racially harassed, harassed and threatened, chose not to return the plaintiff to the Country Store as he had originally promised, left the plaintiff alone with the other defendants, knew or should have known that the plaintiff could not appreciate the danger he faced, and knew that the plaintiff was about to be attacked immediately beforehand.

Having negligently created this dangerous situation, defendant Owens had a duty to do something to prevent injury to the plaintiff because it

reasonably appeared or should have appeared that the plaintiff may have been harmed thereby.

50. Despite his actual knowledge of the risk of harm to the plaintiff,

defendant Owens breached his duty by failing to protect the plaintiff from danger.

51. The negligent conduct of the defendant as set forth above proximately caused damages to the plaintiff.

COUNT V - CAUSE OF ACTION FOR

breach of duty. Plaintiff seeks damages for the negligence of the State of Tennessee for plaintiffs OWENS, AMOS, and HICKS under the

and lay unconscious on the ground. 53. After the plaintiff was assaulted voluntarily embarked on an affirmative defense, the defendants acting together, vol-

breach of duty. Defendants owed a duty to the plaintiff to act with reasonable care and to avoid negligent acts that might worsen the plaintiff's condition. Defendants

breached this duty by: (a) moving the unconscious plaintiff without any medical training or assistance from emergency personnel; (b) placing him in the bed of a pickup truck; (c) leaving the plaintiff's unconscious body along the side of a dark deserted road near an ant bed; (d) failing to drive the plaintiff to a hospital where he could receive medical attention; and (e) failing to inform the hospital of the plaintiff's condition. The hospital staff, however, did not attempt to revive the plaintiff. Defendant Owens also breached his duty by failing to inform the hospital staff of the plaintiff's condition.

ground.

54. The actions and conduct of the defendants as set forth above

proximately caused damages to the plaintiff.

COUNT VI CAUSE OF ACTION FOR NEGLIGENCE AGAINST ALL DEFENDANTS

further and/or in the alternative, Plaintiff states a cause of action against

defendants OWENS, HICKS, and AMOX for negligence per se.

person. The defendants breached their duty to care for a disabled

the individual by omission.

is mentioned as showing negligence by omission. The defendant

injury to plaintiff after having assumed care, custody or control of

the plaintiff, caused individual

58. Defendant Owens pled guilty to a violation of this statute

Defendant Hicks was convicted of a violation of this statute. Defendant AMOX

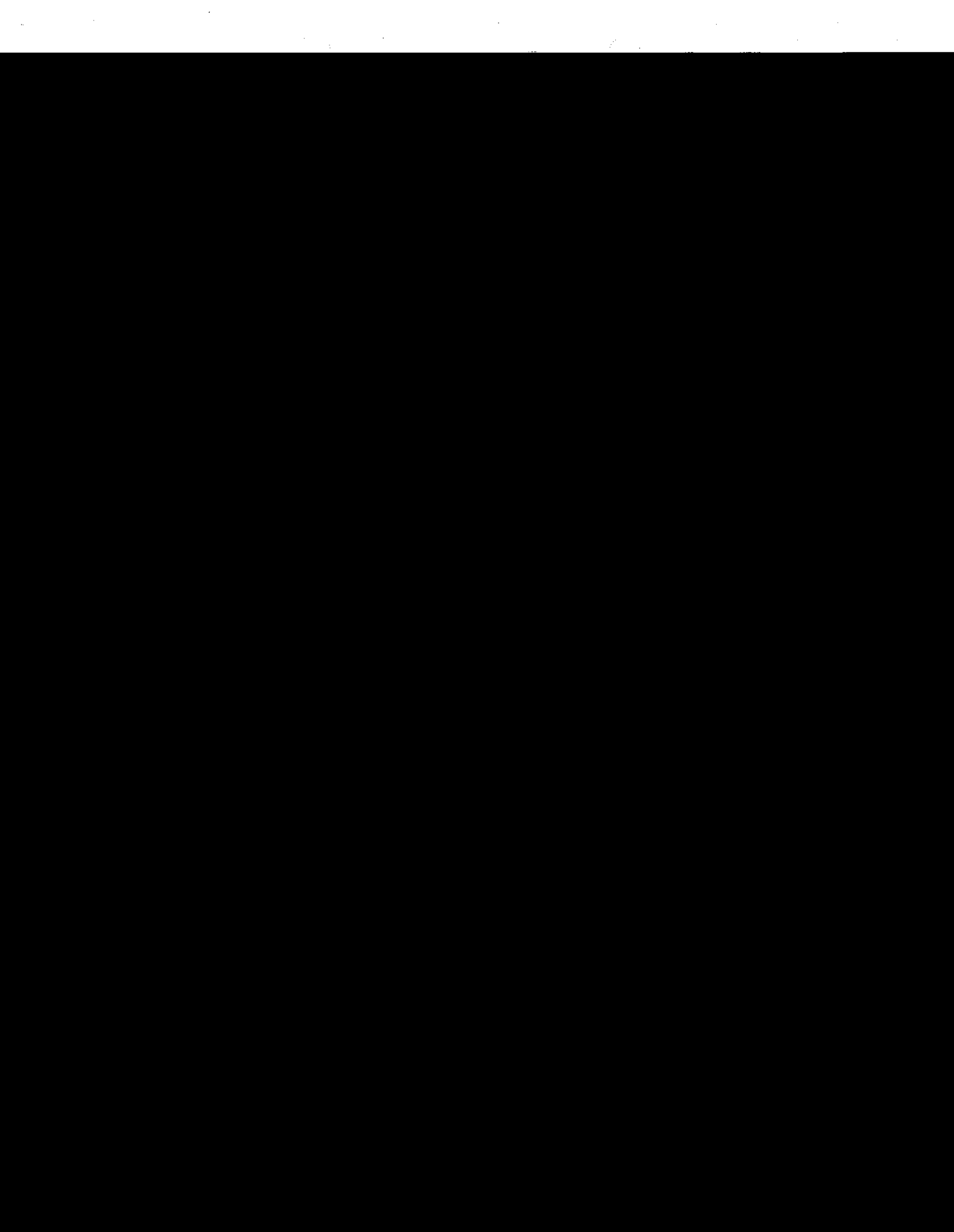
also violated this statute.

59. The defendants' violation of the statute proximately caused

damages to the plaintiff.

DAMAGES

defendants as set forth above proximately caused 60. The acts of the defen



Respectfully submitted,

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By 
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This 6th day of March, 2007

