

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

<b>ELIZABETH GOODWIN, as</b>	:	<b>Case No.</b>
<b>Administrator of the Estate of Tamir</b>	:	
<b>Rice, Deceased,</b>	:	
<b>c/o David B. Malik</b>	:	<b>Judge</b>
<b>Attorney at Law</b>	:	
<b>8437 Mayfield Rd. Suite 101</b>	:	<b>COMPLAINT</b>
<b>Chesterland, OH 44406,</b>	:	
	:	
	:	
<b>Plaintiff,</b>	:	
<b>v.</b>	:	
	:	
<b>TIMOTHY LOEHMANN</b>	:	
<b>FRANK GARMBACK</b>	:	
<b>C/O Cleveland Police Department</b>	:	
<b>1300 Ontario St.</b>	:	
<b>Cleveland, OH 44113</b>	:	
	:	
<b>Individually and in Their Official</b>	:	
<b>Capacities as Employees of the</b>	:	
<b>City of Cleveland, Ohio</b>	:	
	:	
<b>and</b>	:	
	:	
<b>CITY OF CLEVELAND, OHIO,</b>	:	
<b>601 Lakeside Ave.</b>	:	
<b>Cleveland, Ohio 44114</b>	:	
	:	
	:	
<b>Defendants.</b>	:	

**I. PRELIMINARY STATEMENT**

1. This civil rights and wrongful death case challenges the fatal shooting of twelve year old Tamir Rice by Cleveland Police Officer Timothy Loehmann on November 22, 2014. The young boy was at the Cudell Recreation Center Park in the afternoon with a toy gun. Defendants Loehmann and Garmback confronted him in a surprise fashion and fired multiple shots at him without any adequate investigation. Four minutes passed without any medical

care being provided to Tamir, who lay on the ground alive. Plaintiff brings this civil rights and state law action to secure fair compensation and to help end the violence perpetrated by Cleveland Police Officers against unarmed members of the community.

## **II. PARTIES**

2. Plaintiff Elizabeth Goodwin is the Administrator of the Estate of Tamir Rice and brings this action for the benefit of his heirs, including his mother Samaria Rice. Tamir Rice was an African American child.
3. Defendant Timothy Loehmann was at all times relevant to this action a white law enforcement officer employed by the Cleveland Police Department. Defendant Loehmann is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. He is sued individually and in his official capacity as an employee of the City of Cleveland.
4. Defendant Frank Garmback was at all times relevant to this action a white law enforcement officer employed by the Cleveland Police Department. Defendant Garmback is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. He is sued individually and in his official capacity as an employee of the City of Cleveland.
5. Defendant City of Cleveland, Ohio is a unit of local government organized under the laws of the State of Ohio. Defendant City of Cleveland is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law.

## **III. STATEMENT OF FACTS**

6. Tamir Rice was a twelve year old African American boy who lived with his family in Cleveland. He was in the sixth grade, loved basketball, and enjoyed life.

7. On the afternoon of November 22, 2014, Tamir was playing in the park at the Cudell Recreation Center. He sat on the swings, made snowballs, and played with an airsoft replica gun that is designed to shoot non-lethal plastic projectiles.
8. The airsoft replica or imitation gun is not a firearm and its sale is not regulated by state or federal laws. No law prohibits the sale of such devices to minors. No law prohibits the carrying or use of an airsoft replica gun by a child.
9. At all times relevant to this action the possession of the airsoft replica gun was in compliance with Ohio law.
10. Unknown to young Tamir, someone in the park had called 911 and reported that a person, “probably a juvenile” was pointing a gun, “probably fake.”
11. At approximately 3:30 p.m. Tamir was playing alone in the park. He was not endangering anyone. He was not violent. He was not threatening harm to himself or anyone else. He was not pointing his imitation gun at anyone.
12. At that time Defendant Garmback rapidly drove his police cruiser across the grounds and stopped immediately next to young Tamir.
13. Less than two seconds after appearing next to Tamir Defendant Loehmann shot Tamir twice, hitting him in the stomach at least once.
14. A surveillance camera captured the shooting:  
[http://www.huffingtonpost.com/2014/11/26/tamir-rice-video-shows-co\\_n\\_6227552.html](http://www.huffingtonpost.com/2014/11/26/tamir-rice-video-shows-co_n_6227552.html)
15. The officers then refused to provide any medical attention to Tamir for at least four minutes as he lay on the ground alive and bleeding.
16. The Defendant Officers had ample opportunity to safely initiate their encounter from a safe distance but instead stopped their cruiser immediately next to young Tamir.

17. The Defendant Officers had ample opportunity to safely provide clear, unhurried commands to the startled young boy but instead rapidly confronted him with their cruiser and their guns and shot him all within two seconds.
18. Had the Defendant Officers properly approached Tamir and properly investigated his possession of the replica gun they would undoubtedly have determined, as the 911 caller suspected, that the gun was fake and that the subject was a juvenile.
19. Young boys playing with replica guns are commonplace in America and police are expected to approach them safely if an investigation is warranted, not shoot them dead within two seconds.
20. Tamir Rice was transported from the scene to MetroHealth Medical Center and died the next day on November 23, 2014.
21. At all times relevant to this action Defendants Loehmann and Garmback acted within the scope of their duties as Cleveland Police Officers.
22. At no time did Defendants Loehmann and Garmback have probable cause to arrest Tamir Rice.
23. At all times relevant to this action, Defendants Loehmann and Garmback acted unreasonably, negligently, recklessly, wantonly, willfully, knowingly, intentionally, and with deliberate indifference to the safety and rights of Tamir Rice when they confronted him in a terrifying manner, used deadly force on him, and failed to secure timely medical assistance on November 22, 2014.
24. Defendant City of Cleveland's policies, patterns, practices, customs and usages regarding the use of deadly force against nondangerous subjects were the moving force behind the use of force and proximately caused Tamir Rice's suffering and death.

25. Defendant City of Cleveland failed to adequately train and supervise Defendants Loehmann and Garmback regarding use of force and that failure to train and supervise was a moving force behind the use of force and proximately caused Tamir Rice's suffering and death.
26. Defendant City of Cleveland hired Defendant Loehmann in March, 2014, after he was determined to be unfit for police duty and resigned from the police force in Independence, Ohio in 2012.
27. An official in Independence concluded Defendant Loehmann, "could not follow simple directions, could not communicate clear thoughts nor recollections, and his handgun performance was dismal." That official determined, "I do not believe that time, nor training, will be able to change or correct these deficiencies."
28. The fact that Defendant Loehmann was unfit for police work was evident from the personnel file of Defendant Loehmann which was a public record available to anyone making a request of the City of Independence, Ohio.
29. At the time the City of Cleveland did the background check and determined to hire Defendant Loehmann, the City of Cleveland policy, practice, and custom was not to request, inspect or read the personnel files from previous law enforcement jobs held by persons selected as police recruits for the City of Cleveland.
30. As a result of the policy, practice and custom of failing to request, inspect or read the previous law enforcement personnel files of Cleveland police recruits, the City of Cleveland failed to secure and read the personnel file of Defendant Loehmann related to his position at the Independence Ohio police department.
31. By hiring Defendant Loehmann, who was in need of special training and supervision to address these deficiencies, and then not providing that training and supervision to Defendant Loehmann, the policy makers and those responsible for hiring, training and supervision of

police officers within the City of Cleveland acted negligently, recklessly, intentionally, willfully, wantonly, knowingly and with deliberate indifference to the serious safety needs of the citizens of Cleveland, including Tamir Rice.

32. Defendant City of Cleveland has a policy, practice and custom of failing to adequately investigate and discipline police officers who use excessive force on citizens. This policy, practice and custom was the moving force behind the excessive force used against Tamir Rice and proximately caused his suffering and death.
33. Defendant City of Cleveland has a policy, practice and custom of allowing officers to use excessive force, failing to supervise officers to reduce excessive force, and failing to train officers to resolve encounters with citizens without using excessive force. That policy, practice and custom was the moving force behind the excessive force used against Tamir Rice and proximately caused his suffering and death.
34. Defendant City of Cleveland has a policy, practice and custom of using excessive force on African American citizens and that policy practice and custom was the moving force behind the excessive force used on Tamir Rice and proximately caused his suffering and death.
35. The policies, practices and customs described above have been the subject of federal civil rights investigations, previous lawsuits and have been well known within the Cleveland community for many years. See, for example, the finding of a pattern and practice of excessive force by the Cleveland Police announced by the United States Department of Justice and released on December 4, 2014. <http://www.justice.gov/usao/ohn>. These policies, practices and customs have been perpetuated by the line officers including Defendants Loehmann and Garmback, policy makers and those responsible for hiring, training and supervision of police officers within the City of Cleveland who have all acted negligently, recklessly, intentionally, knowingly and with

deliberate indifference to the serious safety needs of the citizens of Cleveland, including Tamir Rice.

36. As a direct and proximate result of the conduct of Defendants City of Cleveland, Loehmann, and Garmback, Tamir Rice suffered terror and fear as Defendants Loehmann and Garmback approached him with their cruiser and their guns. Tamir Rice also suffered physical injury, pain, torture, emotional and psychological trauma, and eventually died as a result of the use of force and failure to provide adequate medical care described above.

37. As a further direct and proximate result of Tamir Rice's wrongful death, Tamir's survivors, next of kin and/or heirs have suffered permanent damages, including but not limited to, grief, depression, and severe emotional distress. They have incurred funeral bills and other expenses and will incur additional expenses in the future.

#### **IV. FIRST CAUSE OF ACTION – EXCESSIVE FORCE**

38. Defendants have, under color of law, deprived Tamir Rice of rights, privileges, and immunities secured to him by the Fourth and Fourteenth Amendments to the United States Constitution including the right to be free from unreasonable searches and seizures without probable cause, the right to be free of and from the use of excessive force, and the right to adequate medical care while in custody.

#### **V. SECOND CAUSE OF ACTION – ASSAULT AND BATTERY**

39. Defendants Loehmann and Garmback intentionally and maliciously applied and threatened to apply unlawful and unnecessary force against Tamir Rice.

#### **VI. THIRD CAUSE OF ACTION – WRONGFUL DEATH**

40. Defendants' actions caused the wrongful death of Tamir Rice resulting in damages recoverable under R.C. §2125.02

**VII. JURY DEMAND**

41. Plaintiffs request a jury trial on all claims triable to a jury.

**VIII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that this Court award:

- A. Compensatory damages in an amount to be shown at trial;
- B. Punitive damages against the individual Defendants Loehmann and Garmback (not the City of Cleveland) in an amount to be shown at trial;
- C. Costs incurred in this action and reasonable attorney fees under 42 U.S.C. § 1988;
- D. Prejudgment interest; and
- E. Such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

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